目录

概述

一、 亚太及美国司法管辖区内有关 CCP 的监管部门及法律规定

CCP（Central Counterparties）系金融市场基础制度的一部分。在金融衍生品交易中，CCP 作为结算的基石，构成市场运作的核心与命脉，关系到整个金融市场运行的健康、安全与高效。尤其是 2008 金融危机之后，全球各个金融市场均意识到场外金融衍生品的风险及 CCP 对于该等风险的防控作用，CCP 被视为降低市场风险及增加市场效率的“利器”。当前，越来越多主流金融市场为增加透明度与市场稳定性，要求场外金融衍生品必须在认定的 CCP 中进行结算。

需要注意的是，CCP 类似于“功能标签”，即该清算机构具备中央对手清算制度。从法律层面来看，亚太及美国司法管辖区之中，一般会采用独立的法律概念，如：“recognized clearing house”“approved clearing houses”以描述该类由有权部门认定的场外金融衍生品中央对手方清算机构。

（一） 美国（CFTC）

《商品交易法》Section 2 （h）（1）（A）“清算标准”规定：“掉期交易在被清算时，除非该主体将这种掉期交易提交给根据本章注册的衍生品清算机构或根据本章免于注册的衍生品清算机构，否则该主体参与其中是违法的。” 因此，在美国 Swap 交易必须在根据《商品交易法》注册的衍生品清算机构完成清算。

Commodity Exchange Act Section 2 (h) Clearing Requirement (1) In General (A) Standard for clearing：

It shall be unlawful for any person to engage in a swap unless that person submits such swap for clearing to a derivatives clearing organization that is registered under this chapter or a derivatives clearing organization that is exempt from registration under this chapter if the swap is required to be cleared.

并且，《商品交易法》中第 7a-1 节针对“*derivatives clearing organization*”注册申请、资质要求等作出专门规定，衍生品机构需向 CFTC 注册。

《多德-弗兰克华尔街改革和消费者保护法》第 803 节（8）规定：“（8）监管机构（A）一般情况下。‘监管机构’是指根据联邦银行、证券和商品

期货法律对指定的金融市场公用事业公司具有主要管辖权的联邦机构，具体如下：(i) 对于作为在证券和交易委员会注册的结算机构的指定金融市场公用事业公司，监管机构为证券和交易委员会；(ii) 对于作为注册于商品期货交易委员会的衍生品清算机构的指定金融市场公用事业公司，监管机构为商品期货交易委员会……”

Dodd-Frank Wall Street Reform and Consumer Protection Act

Section 803 (8) SUPERVISORY AGENCY.

(A) IN GENERAL. The term ‘Supervisory Agency’ means the Federal agency that has primary jurisdiction over a designated financial market utility under Federal banking, securities, or commodity futures laws, as follows:

(i) The Securities and Exchange Commission, with respect to a designated financial market utility that is a clearing agency registered with the Securities and Exchange Commission.

(ii) The Commodity Futures Trading Commission, with respect to a designated financial market utility that is a derivatives clearing organization registered with the Commodity Futures Trading Commission……

即根据注册的有权机构不同，注册于商品期货交易委员会（CFTC）的衍生品清算机构，则由 CFTC 负责监管。

（二） 香港特区（SFC）

根据香港特区证券及期货监察委员会（SFC）官网“场外衍生品监管制度”显示：“为了解决 2008 年全球金融危机凸显的场外衍生品市场的结构性缺陷，立法会于 2014 年 3 月 26 日颁布了《2014 年证券及期货（修订）条例》（修订条例）。修订条例为香港场外衍生品市场提供了监管框架。修订条例现正分阶段实施：第一阶段于 2015 年 7 月 10 日生效，涉及强制报告某些利率互换（IRS）和不可交割远期交易以及相关记录保存义务以及新制度的总体框架；第二阶段涉及（i）以港元或 G4 货币之一（即美元、欧元、英镑或日元）对标准化 IRS 的某些交易进行强制清算，以及相关的记录保存义务，同时指定中央交易对手进行强制清算；以及（ii）扩大强制报告，以涵盖所有五个关键资产类别（即利率、外汇、股票、信贷和商品）下的场外衍生品。这分别于 2016 年 9 月 1 日和 2017

年 7 月 1 日实施……”可见，SFC 负责香港特区场外衍生品及 CCP 的监管。

OTC derivatives regulatory regime

To address the structural deficiencies in the over-the-counter (OTC) derivatives market highlighted by the 2008 global financial crisis, the Legislative Council enacted the Securities and Futures (Amendment) Ordinance 2014 (Amendment Ordinance) on 26 March 2014. The Amendment Ordinance provides a regulatory framework for the OTC derivatives market in Hong Kong.

The Amendment Ordinance is being implemented in stages:

The first stage came into effect on 10 July 2015, involving mandatory reporting of transactions in certain interest rate swaps (IRS) and non-deliverable forwards and related record keeping obligations together with the general framework of the new regime;

The second stage involves (i) mandatory clearing of certain transactions of standardised IRS in HKD or one of the G4 currencies (i.e. USD, EUR, GBP or JPY) and related record keeping obligations, together with designation of central counterparties for the purposes of mandatory clearing; and (ii) expanding mandatory reporting so that OTC derivatives under all five key asset classes (namely interest rates, foreign exchange, equities, credit and commodities) are covered. This was implemented on 1 September 2016 and 1 July 2017 respectively……

（三） 新加坡（**MAS**）

《证券和期货法》第 129C（1）规定：“作为指定衍生品合约一方的特定主体必须在有关部门根据第 129G 节制定的法规规定的时间内，通过由受批准清算机构或受认可清算机构运营的清算设施，根据受批准清算机构或受认可清算机构（视情况而定）的业务规则完成清算。”及新加坡金融监管局（MAS）媒体公告“MAS 要求场外衍生品必须中央清算以减少系统性风险”（https://www.mas.gov.sg/news/media-releases/2018/mas-requires-otc-derivatives-to-be-centrally-cleared-to-mitigate-systemic-risk），可见，在新加坡场外衍生品必须在受批准清算机构或受认可清算机构完成清算。

Securities and Futures Act 2001

129C.—(1) Every specified person who is a party to a specified derivatives contract must, within such time as the Authority may prescribe by regulations made under section 129G, cause the specified derivatives contract to undergo clearing, by a clearing facility operated by an approved clearing house or a recognised clearing house, in accordance with the business rules of the approved clearing house or recognised clearing house, as the case may be.

此外，《证券和期货法》第 2 条针对“有权部门”规定为：“根据《金融监管法》设立的新加坡金融监管局”

Securities and Futures Act 2001

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

“Authority” means the Monetary Authority of Singapore established under the Monetary Authority of Singapore Act 1970

二、 亚太及美国司法管辖区内有关 OTC 清算规则的审批规则

（一） 美国

根据 CFTC 制定的《商品期货交易组织规章》，在 CFTC 登记的衍生品清算机构可分为“衍生品清算机构”（derivatives clearing organizations，DCO）和“具有系统重要性的衍生品清算组织”（systemically important derivatives clearing organizations，SIDCO）。

1. DOC

根据规则内容的不同，DCO 制定的新规或对已有规则的修订有以下 4 种生效方式：

a) 自愿提交给 CFTC 审批的，审批后生效[1]；

b) 未经审批的，DCO 需要提交自证（Self-Certification），证明规则内容符合法律规定，CFTC 审阅（Review）阶段后，规则才能实施[2]，若 CFTC 在审阅阶段提出反对意见，则无法实施；

[1] https://www.ecfr.gov/current/title-17/chapter-I/part-40/section-40.5
[2] https://www.ecfr.gov/current/title-17/chapter-I/part-40/section-40.6

c) 对规则的非实质性修改[3]，只需通知 CFTC 即可实施[4]；

d) 行政程序、行政惯例等事项的修改，无须通知 CFTC，即可实施[5]。

2. SIDCO

基本与 DCO 相同，但对于规则的“重大变更”（CFTC 明确了违约处置属于重大变更），必须至少提前 60 天通知 CFTC，自证修改的合法性，经过 CFTC 审阅（Review）通过后才能实施。

《CFTC 规则》

§40.10 具有系统重要性的衍生品清算机构提交规则的特别认证程序。

（a）提前通知。被金融稳定监督委员会指定为具有系统重要性的衍生品清算机构的注册衍生品清算组织，应在对其规则、程序或业务的任何拟议变化可能对具有系统重要性的衍生品清算组织提出的风险的性质或水平产生重大影响之前，至少提前 60 天向委员会发出通知。根据本节提交的通知应符合第 40.6（a）（1）条的备案要求和第 40.6（a）（2）条的网站发布要求……

（b）重要性。当用于确定对具有系统重要性的衍生品清算机构的规则、程序或业务的变更时，“对所呈现的风险的性质或水平产生重大影响”一语是指存在合理可能性的事项，该变更可能影响基本清算和结算功能的履行或具有系统重要性的衍生品清算组织所呈现的风险的总体性质或水平。这些变化可能包括但不限于对财务资源、参与者和产品资格、风险管理（包括与保证金和压力测试有关的事项）、日常或日内结算程序、**违约程序**、系统保障措施（业务连续性和灾难恢复）和治理有重大影响的变化。如果具有系统重要性的衍生品清算组织确定某项拟议的变更并不重要，因此没有根据本第 40.10 条提交预先通知，但委员会确定该变更是重要的，委员会可以要求该具有系统重要性的衍生品清算组织撤回拟议的变更，并根据本条提供通知。

[3] 非实质性的修订。纠正印刷错误、重新编号、定期对注册实体的识别信息进行例行更新，以及对产品条款和条件的其他此类对经济特性没有影响的修改。。

[4] https://www.cftc.gov/IndustryOversight/RuleAmendments/index.htm

[5] https://www.cftc.gov/IndustryOversight/RuleAmendments/index.htm

CFTC Regulations

§ 40.10 Special certification procedures for submission of rules by systemically important derivatives clearing organizations.

(a) Advance notice. A registered derivatives clearing organization that has been designated by the Financial Stability Oversight Council as a systemically important derivatives clearing organization shall provide notice to the Commission not less than 60 days in advance of any proposed change to its rules, procedures, or operations that could materially affect the nature or level of risks presented by the systemically important derivatives clearing organization. A notice submitted under this section shall be subject to the filing requirements of § 40.6(a)(1) and the Web site publication requirements of § 40.6(a)(2)……

(b) Materiality. The term "materially affect the nature or level of risks presented," when used to qualify determinations on a change to rules, procedures, or operations of a systemically important derivatives clearing organization, means matters as to which there is a reasonable possibility that the change could affect the performance of essential clearing and settlement functions or the overall nature or level of risk presented by the systemically important derivatives clearing organization. Such changes may include, but are not limited to, changes that materially affect financial resources, participant and product eligibility, risk management (including matters relating to margin and stress testing), daily or intraday settlement procedures, default procedures, system safeguards (business continuity and disaster recovery), and governance. If a systemically important derivatives clearing organization determines that a proposed change is not material and therefore does not file an advance notice under this § 40.10, but the Commission determines that the change is material, the Commission may require the systemically important derivatives clearing organization to withdraw the proposed change and provide notice pursuant to this section.

（二） **香港特别行政区**

《证券及期货条例》第 41（1）规定：“除第(7)款另有规定外，认可结算所的规章（不论是否根据第 40 条订立）或对该等规章的修订须获证监会书面批准，否则不具效力”。该条第（7）款规定：“证监会可藉宪报公告宣布认可结算所的某类别的规章(违责处理规则除外)无须根据第(1)款获批准,而任何属于该类别的该结算所规章(包括对该等规章的修订)即使没有根据第（1）款获批准，仍属有效”。即，在香港特区，与违约相关的规则必须经审批。

Securities and Futures Ordinance

41 Approval of rules or amendments to rules of recognized clearing house

(1) Subject to subsection (7), no rule (whether or not made under section 40) of a recognized clearing house or any amendment thereto shall have effect unless it has the approval in writing of the Commission.

……

(7) The Commission may, by notice published in the Gazette, declare any class of rules of a recognized clearing house (except any default rules of the clearing house) to be a class of rules which are not required to be approved under subsection.

同时，香港交易所下属子公司香港场外结算有限公司，在其《场外汇率及外汇衍生品清算规则》第 201 条“修改”针对规则修改作出规定：“在遵守《证券及期货条例》和香港场外结算有限公司章程的前提下……”，即《场外汇率及外汇衍生品清算规则》亦明确其修改必须先行符合《证券及期货条例》。

OTC Clear Rates and FX Derivatives Clearing Rules

201 Amendment

Subject to the SFO and the Articles of Association of OTC Clear：……

（三） **新加坡**

《新加坡证券及期货法案》第 23 条（2）规定：“核准清算所不得对其业务规则作出任何修订，除非其符合有权机关所制定的要求”。即，在新加坡地区，符合场外衍生品中央对手清算的核准清算所享有的规则修改权

限是被严格限制的。

Securities and Future Act 2001

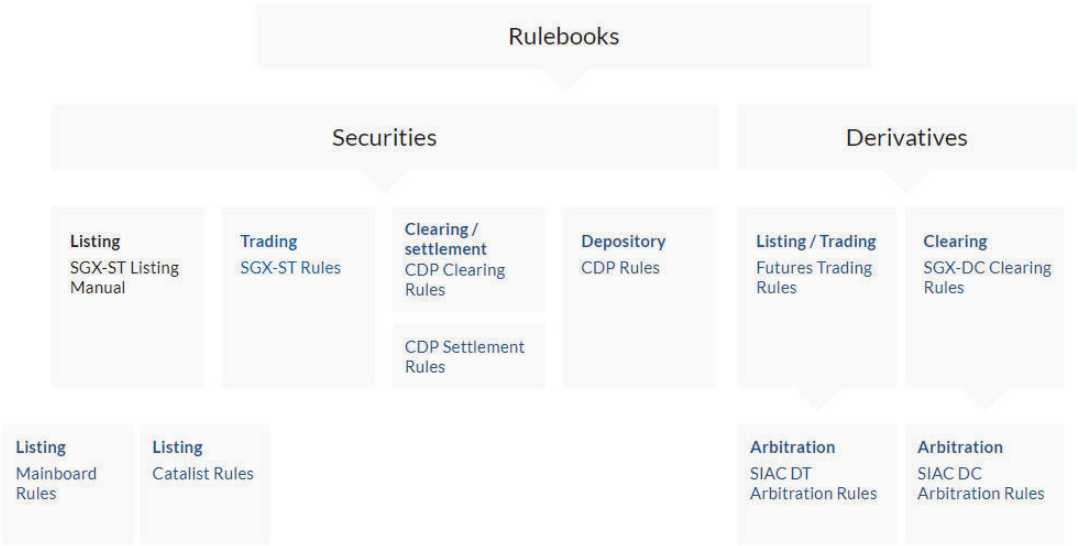
66. Business Rules of approved clearing houses

(2) An approved clearing house must not make any amendment to its business rules unless it complies with such requirements as the Authority may prescribe

同时，《新加坡交易所衍生品清算规则》（注：对应场外金融衍生品清算）第 1.05.1 条的规定："除非清算所符合有权机关、《新加坡证券及期货法案》或任何适用法律规定的要求，否则不得对本规则进行任何修订，即清算所的不得自行修改规则"。

SGX-DC Clearing Rules

1.05.1 The Clearing House is prohibited from making any amendments to this Rules unless it complies with such requirements as prescribed by the Authority, under the SFA or under any applicable laws.



（新加坡交易所关于 Rulebooks 分类图）

CHAPTER 1—COMMODITY EXCHANGES

Sec.

§1. Short title

This chapter may be cited as the "Commodity Exchange Act."

(Sept. 21, 1922, ch. 369, §1, 42 Stat. 998; June 15, 1936, ch. 545, §1, 49 Stat. 1491.)

Prior Provisions

This chapter superseded act Aug. 24, 1921, ch. 86, 42 Stat. 187, known as "The Future Trading Act," which act was declared unconstitutional, at least in part, in *Hill v. Wallace*, Ill. 1922, 42 S.Ct. 453, 259 U.S. 44, 66 L.Ed. 822. Section 3 of that act was found unconstitutional as imposing a penalty in *Trusler v. Crooks*, Mo. 1926, 46 S.Ct. 165, 269 U.S. 475, 70 L.Ed. 365.

Amendments

1936—Act June 15, 1936, substituted "Commodity Exchange Act" for "The Grain Futures Act".

Effective Date of 1936 Amendment

Act June 15, 1936, ch. 545, §13, 49 Stat. 1501, provided that: "All provisions of this Act [see Tables for classification] authorizing the registration of futures commission merchants and floor brokers, the fixing of fees and charges therefor, the promulgation of rules, regulations and orders, and the holding of hearings precedent to the promulgation of rules, regulations, and orders shall be effective immediately. All other provisions of this Act shall take effect ninety days after the enactment of this Act [June 15, 1936]."

Short Title of 2015 Amendment

Pub. L. 114–1, title III, §301, Jan. 12, 2015, 129 Stat. 28, provided that: "This title [amending section 6s of this title and section 78o–10 of Title 15, Commerce and Trade, and enacting provisions set out as a note under section 6s of this title] may be cited as the 'Business Risk Mitigation and Price Stabilization Act of 2015'."

Short Title of 2008 Amendment

Pub. L. 110–234, title XIII, §13001, May 22, 2008, 122 Stat. 1427, and Pub. L. 110–246, §4(a), title XIII, §13001, June 18, 2008, 122 Stat. 1664, 2189, provided that: "This title [amending sections 1a, 2, 6a, 6b, 6f, 6g, 6i, 6k, 6o–1, 6q, 7a, 7a–2, 7b, 8, 9, 12, 13, 13a, 13a–1, 16, 18, 21, and 25 of this title and enacting provisions set out as notes under section 2 of this title] may be cited as the 'CFTC Reauthorization Act of 2008'."

[Pub. L. 110–234 and Pub. L. 110–246 enacted identical provisions. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246, set out as a note under section 8701 of this title.]

Short Title of 2000 Amendment

Pub. L. 106–554, §1(a)(5) [§1(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–365, provided that: "This Act [H.R. 5660, as enacted by section 1(a)(5) of Pub. L. 106–554, enacting sections 5, 6o–1, 7 to 7a–3, 7b–1, 7b–2, 9c, and 27 to 27f of this title, sections 781 to 784 of Title 11, Bankruptcy, sections 339a, 4421, and 4422 of Title 12, Banks and Banking, and sections 77b–1 and 78c–1 of Title 15, Commerce and Trade, amending sections 1a, 2, 2a, 4, 4a, 6 to 6m, 6p, 7a–2, 7b, 8 to 9a, 10a, 11, 12, 12a to 12c, 13, 13a to 13b, 16, 18 to 21, and 25 of this title, sections 101, 103, 109, and 761 of Title 11, sections 624 and 4402 of Title 12, and sections 77b, 77c, 77l, 77q, 78c, 78f, 78g, 78i, 78j, 78k–1, 78l, 78o, 78o–3, 78p, 78q, 78q–1, 78s, 78t, 78u, 78u–1, 78bb, 78ee, 78ccc, 78lll, 80a–2, 80b–2, and 80b–3 of Title 15, repealing sections 5, 7, 7a, and 12e of this title, and enacting provisions set out as notes under this section, section 2 of this title, and section 78c of Title 15] may be cited as the 'Commodity Futures Modernization Act of 2000'."

Pub. L. 106–554, §1(a)(5) [title IV, §401], Dec. 21, 2000, 114 Stat. 2763, 2763A–457, provided that: "This title [title IV of H.R. 5660, as enacted by section 1(a)(5) of Pub. L. 106–554, enacting sections 27 to 27f of this title] may be cited as the 'Legal Certainty for Bank Products Act of 2000'."

Short Title of 1995 Amendment

Pub. L. 104–9, §1, Apr. 21, 1995, 109 Stat. 154, provided that: "This Act [amending section 16 of this title] may be cited as the 'CFTC Reauthorization Act of 1995'."

Short Title of 1992 Amendment

Pub. L. 102–546, §1(a), Oct. 28, 1992, 106 Stat. 3590, provided that: "This Act [enacting sections 1a and 12e of this title, amending sections 2, 2a, 4, 4a, 6 to 6c, 6e to 6g, 6j, 6p, 7 to 9a, 10a, 12, 12a, 12c, 13 to 13c, 15, 16, 18, 19, 21, and 25 of this title, repealing section 26 of this title, enacting provisions set out as notes under sections 1a, 4a, 6c, 6e, 6j, 6p, 7a, 13, 16a, 21, and 22 of this title, and repealing provisions set out as a note under section 4a of this title] may be cited as the 'Futures Trading Practices Act of 1992'."

Short Title of 1986 Amendment

Pub. L. 99–641, §1, Nov. 10, 1986, 100 Stat. 3556, provided that: "This Act [enacting section 2271a of this title, amending sections 2a, 6b, 6c, 7a, 13, 13a–1, 15, 16, 21, 23, 74, 87b, 1444, 1445b–3, and 1445c–2 of this title, sections 590h and 3831 of Title 16, Conservation, sections 606, 609, 621, 671, and 676 of Title 21, Food and Drugs, repealing section 14 of this title, and enacting provisions set out as notes under sections 20, 71, 76, 87b, and 2271a of this title and sections 601, 606, 609, 621, 671, and 676 of Title 21] may be cited as the 'Futures Trading Act of 1986'."

Short Title of 1983 Amendment

Pub. L. 97–444, §1, Jan. 11, 1983, 96 Stat. 2294, provided: "That this Act [enacting sections 2a, 12d, 25, and 26 of this title, amending sections 2, 4, 4a, 5, 6, 6a, 6c, 6d, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 7a, 8, 9, 12, 12a, 13, 13a–1, 13a–2, 13c, 16, 16a, 18, 20, 21, 23, and 612c–3 of this title, and enacting provisions set out as a note under section 2 of this title] may be cited as the 'Futures Trading Act of 1982'."

Short Title of 1978 Amendment

Pub. L. 95–405, §1, Sept. 30, 1978, 92 Stat. 865, provided: "That this Act [enacting sections 13a–2, 16a, and 23 of this title, amending sections 2, 4a, 6c, 6d, 6f, 6g, 6k, 6m, 6n, 6o, 7a, 8, 12, 12a, 12c, 13, 13a, 15, 16, 18, and 21 of this title and section 6001 of Title 18, Crimes and Criminal Procedure, repealing section 15a of this title, omitting sections 12–1 to 12–3 of this title, and enacting provisions set out as notes under sections 2 and 20 of this title] may be cited as the 'Futures Trading Act of 1978'."

Short Title of 1974 Amendment

Pub. L. 93–463, §1, Oct. 23, 1974, 88 Stat. 1389, provided: "That this Act [enacting sections 4a, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 9a, 12–2, 13–3, 12c, 13a–1, 15a, 18, 19, 20, 21, and 22 of this title, amending sections 2, 4, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6i, 7, 7a, 7b, 8, 9, 11, 12, 12–1, 12a, 12b, 13, 13a, 13b, 13c, 15, and 16 of this title and sections 5314, 5315, 5316, and 5108 of Title 5, Government Organization and Employees, and enacting provisions set out as notes

under sections 2, 4a, and 6a of this title] may be cited as the 'Commodity Futures Trading Commission Act of 1974'."

Savings Provisions for 2000 Amendment

Pub. L. 106–554, §1(a)(5) [title III, §304], Dec. 21, 2000, 114 Stat. 2763, 2763A–457, provided that: "Nothing in this Act [see Short Title of 2000 Amendment note above] or the amendments made by this Act shall be construed as finding or implying that any swap agreement is or is not a security for any purpose under the securities laws. Nothing in this Act or the amendments made by this Act shall be construed as finding or implying that any swap agreement is or is not a futures contract or commodity option for any purpose under the Commodity Exchange Act [7 U.S.C. 1 et seq.]."

Construction of 2000 Amendment

Pub. L. 106–554, §1(a)(5) [title I, §122], Dec. 21, 2000, 114 Stat. 2763, 2763A–405, provided that: "Except as expressly provided in this Act [see Short Title of 2000 Amendment note above] or an amendment made by this Act, nothing in this Act or an amendment made by this Act supersedes, affects, or otherwise limits or expands the scope and applicability of laws governing the Securities and Exchange Commission."

Purposes of 2000 Amendment

Pub. L. 106–554, §1(a)(5) [§2], Dec. 21, 2000, 114 Stat. 2763, 2763A–366, provided that: "The purposes of this Act [see Short Title of 2000 Amendment note above] are—

"(1) to reauthorize the appropriation for the Commodity Futures Trading Commission;

"(2) to streamline and eliminate unnecessary regulation for the commodity futures exchanges and other entities regulated under the Commodity Exchange Act [7 U.S.C. 1 et seq.];

"(3) to transform the role of the Commodity Futures Trading Commission to oversight of the futures markets;

"(4) to provide a statutory and regulatory framework for allowing the trading of futures on securities;

"(5) to clarify the jurisdiction of the Commodity Futures Trading Commission over certain retail foreign exchange transactions and bucket shops that may not be otherwise regulated;

"(6) to promote innovation for futures and derivatives and to reduce systemic risk by enhancing legal certainty in the markets for certain futures and derivatives transactions;

"(7) to reduce systemic risk and provide greater stability to markets during times of market disorder by allowing the clearing of transactions in over-the-counter derivatives through appropriately regulated clearing organizations; and

"(8) to enhance the competitive position of United States financial institutions and financial markets."

Report to Congress

Pub. L. 106–554, §1(a)(5) [title I, §125], Dec. 21, 2000, 114 Stat. 2763, 2763A–411, provided that:

"(a) The Commodity Futures Trading Commission (in this section referred to as the 'Commission') shall undertake and complete a study of the Commodity Exchange Act [7 U.S.C. 1 et seq.] (in this section referred to as 'the Act') and the Commission's rules, regulations and orders governing the conduct of persons required to be registered under the Act, not later than 1 year after the date of the enactment of this Act [Dec. 21, 2000]. The study shall identify—

"(1) the core principles and interpretations of acceptable business practices that the Commission has adopted or intends to adopt to replace the provisions of the Act and the Commission's rules and regulations thereunder;

"(2) the rules and regulations that the Commission has determined must be retained and the reasons therefor;

"(3) the extent to which the Commission believes it can effect the changes identified in paragraph (1) of this subsection through its exemptive authority under section 4(c) of the Act [7 U.S.C. 6(c)]; and

"(4) the regulatory functions the Commission currently performs that can be delegated to a registered futures association (within the meaning of the Act) and the regulatory functions that the Commission has determined must be retained and the reasons therefor.

"(b) In conducting the study, the Commission shall solicit the views of the public as well as Commission registrants, registered entities, and registered futures associations (all within the meaning of the Act).

"(c) The Commission shall transmit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report of the results of its study, which shall include an analysis of comments received."

§1a. Definitions

As used in this chapter:

(1) Alternative trading system

The term "alternative trading system" means an organization, association, or group of persons that—

(A) is registered as a broker or dealer pursuant to section 15(b) of the Securities Exchange Act of 1934 [15 U.S.C. 78o(b)] (except paragraph (11) thereof);

(B) performs the functions commonly performed by an exchange (as defined in section 3(a)(1) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(1)]);

(C) does not—

(i) set rules governing the conduct of subscribers other than the conduct of such subscribers' trading on the alternative trading system; or

(ii) discipline subscribers other than by exclusion from trading; and

(D) is exempt from the definition of the term "exchange" under such section 3(a)(1) [15 U.S.C. 78c(a)(1)] by rule or regulation of the Securities and Exchange Commission on terms that require compliance with regulations of its trading functions.

(2) Appropriate Federal banking agency

The term "appropriate Federal banking agency"—

(A) has the meaning given the term in section 1813 of title 12;

(B) means the Board in the case of a noninsured State bank; and

(C) is the Farm Credit Administration for farm credit system institutions.

(3) Associated person of a security-based swap dealer or major security-based swap participant

The term "associated person of a security-based swap dealer or major security-based swap participant" has the meaning given the term in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

(4) Associated person of a swap dealer or major swap participant

(A) In general

The term "associated person of a swap dealer or major swap participant" means a person who is associated with a swap dealer or major swap participant as a partner, officer, employee, or agent (or any person occupying a similar status or performing similar functions), in any capacity that involves—

(i) the solicitation or acceptance of swaps; or

(ii) the supervision of any person or persons so engaged.

(B) Exclusion

Other than for purposes of section 6s(b)(6) of this title, the term "associated person of a swap dealer or major swap participant" does not include any person

associated with a swap dealer or major swap participant the functions of which are solely clerical or ministerial.

(5) Board

The term "Board" means the Board of Governors of the Federal Reserve System.

(6) Board of trade

The term "board of trade" means any organized exchange or other trading facility.

(7) Cleared swap

The term "cleared swap" means any swap that is, directly or indirectly, submitted to and cleared by a derivatives clearing organization registered with the Commission.

(8) Commission

The term "Commission" means the Commodity Futures Trading Commission established under section 2(a)(2) of this title.

(9) Commodity

The term "commodity" means wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, mill feeds, butter, eggs, Solanum tuberosum (Irish potatoes), wool, wool tops, fats and oils (including lard, tallow, cottonseed oil, peanut oil, soybean oil, and all other fats and oils), cottonseed meal, cottonseed, peanuts, soybeans, soybean meal, livestock, livestock products, and frozen concentrated orange juice, and all other goods and articles, except onions (as provided by section 13–1 of this title) and motion picture box office receipts (or any index, measure, value, or data related to such receipts), and all services, rights, and interests (except motion picture box office receipts, or any index, measure, value or data related to such receipts) in which contracts for future delivery are presently or in the future dealt in.

(10) Commodity pool

(A) In general

The term "commodity pool" means any investment trust, syndicate, or similar form of enterprise operated for the purpose of trading in commodity interests, including any—

(i) commodity for future delivery, security futures product, or swap;

(ii) agreement, contract, or transaction described in section 2(c)(2)(C)(i) of this title or section 2(c)(2)(D)(i) of this title;

(iii) commodity option authorized under section 6c of this title; or

(iv) leverage transaction authorized under section 23 of this title.

(B) Further definition

The Commission, by rule or regulation, may include within, or exclude from, the term "commodity pool" any investment trust, syndicate, or similar form of enterprise if the Commission determines that the rule or regulation will effectuate the purposes of this chapter.

(11) Commodity pool operator

(A) In general

The term "commodity pool operator" means any person—

(i) engaged in a business that is of the nature of a commodity pool, investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in commodity interests, including any—

(I) commodity for future delivery, security futures product, or swap;

(II) agreement, contract, or transaction described in section 2(c)(2)(C)(i) of this title or section 2(c)(2)(D)(i) of this title;

(III) commodity option authorized under section 6c of this title; or

(IV) leverage transaction authorized under section 23 of this title; or

(ii) who is registered with the Commission as a commodity pool operator.

(B) Further definition

The Commission, by rule or regulation, may include within, or exclude from, the term "commodity pool operator" any person engaged in a business that is of the nature of a commodity pool, investment trust, syndicate, or similar form of enterprise if the Commission determines that the rule or regulation will effectuate the purposes of this chapter.

(12) Commodity trading advisor

(A) In general

Except as otherwise provided in this paragraph, the term "commodity trading advisor" means any person who—

(i) for compensation or profit, engages in the business of advising others, either directly or through publications, writings, or electronic media, as to the value of or the advisability of trading in—

(I) any contract of sale of a commodity for future delivery, security futures product, or swap;

(II) any agreement, contract, or transaction described in section 2(c)(2)(C)(i) of this title or section 2(c)(2)(D)(i) of this title [1]

(III) any commodity option authorized under section 6c of this title; or

(IV) any leverage transaction authorized under section 23 of this title;

(ii) for compensation or profit, and as part of a regular business, issues or promulgates analyses or reports concerning any of the activities referred to in clause (i).

(iii) is registered with the Commission as a commodity trading advisor; or

(iv) the Commission, by rule or regulation, may include if the Commission determines that the rule or regulation will effectuate the purposes of this chapter.

(B) Exclusions

Subject to subparagraph (C), the term "commodity trading advisor" does not include—

(i) any bank or trust company or any person acting as an employee thereof;

(ii) any news reporter, news columnist, or news editor of the print or electronic media, or any lawyer, accountant, or teacher;

(iii) any floor broker or futures commission merchant;

(iv) the publisher or producer of any print or electronic data of general and regular dissemination, including its employees;

(v) the fiduciary of any defined benefit plan that is subject to the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.);

(vi) any contract market or derivatives transaction execution facility; and

(vii) such other persons not within the intent of this paragraph as the Commission may specify by rule, regulation, or order.

(C) Incidental services

Subparagraph (B) shall apply only if the furnishing of such services by persons referred to in subparagraph (B) is solely incidental to the conduct of their business or profession.

(D) Advisors

The Commission, by rule or regulation, may include within the term "commodity trading advisor", any person advising as to the value of commodities or issuing reports or analyses concerning commodities if the Commission determines that the rule or regulation will effectuate the purposes of this paragraph.

(13) Contract of sale

The term "contract of sale" includes sales, agreements of sale, and agreements to sell.

(14) Cooperative association of producers

The term "cooperative association of producers" means any cooperative association, corporate, or otherwise, not less than 75 percent in good faith owned or controlled, directly or indirectly, by producers of agricultural products and otherwise complying with sections 291 and 292 of this title, including any organization acting for a group of such associations and owned or controlled by such associations, except that business done for or with the United States, or any agency thereof, shall not be considered either member or nonmember business in determining the compliance of any such association with this chapter.

(15) Derivatives clearing organization

(A) In general

The term "derivatives clearing organization" means a clearinghouse, clearing association, clearing corporation, or similar entity, facility, system, or organization that, with respect to an agreement, contract, or transaction—

(i) enables each party to the agreement, contract, or transaction to substitute, through novation or otherwise, the credit of the derivatives clearing organization for the credit of the parties;

(ii) arranges or provides, on a multilateral basis, for the settlement or netting of obligations resulting from such agreements, contracts, or transactions executed by participants in the derivatives clearing organization; or

(iii) otherwise provides clearing services or arrangements that mutualize or transfer among participants in the derivatives clearing organization the credit risk arising from such agreements, contracts, or transactions executed by the participants.

(B) Exclusions

The term "derivatives clearing organization" does not include an entity, facility, system, or organization solely because it arranges or provides for—

(i) settlement, netting, or novation of obligations resulting from agreements, contracts, or transactions, on a bilateral basis and without a central counterparty;

(ii) settlement or netting of cash payments through an interbank payment system; or

(iii) settlement, netting, or novation of obligations resulting from a sale of a commodity in a transaction in the spot market for the commodity.

(16) Electronic trading facility

The term "electronic trading facility" means a trading facility that—

(A) operates by means of an electronic or telecommunications network; and

(B) maintains an automated audit trail of bids, offers, and the matching of orders or the execution of transactions on the facility.

(17) Eligible commercial entity

The term "eligible commercial entity" means, with respect to an agreement, contract or transaction in a commodity—

(A) an eligible contract participant described in clause (i), (ii), (v), (vii), (viii), or (ix) of paragraph (18)(A) that, in connection with its business—

(i) has a demonstrable ability, directly or through separate contractual arrangements, to make or take delivery of the underlying commodity;

(ii) incurs risks, in addition to price risk, related to the commodity; or

(iii) is a dealer that regularly provides risk management or hedging services to, or engages in market-making activities with, the foregoing entities involving transactions to purchase or sell the commodity or derivative agreements, contracts, or transactions in the commodity;

(B) an eligible contract participant, other than a natural person or an instrumentality, department, or agency of a State or local governmental entity, that—

(i) regularly enters into transactions to purchase or sell the commodity or derivative agreements, contracts, or transactions in the commodity; and

(ii) either—

(I) in the case of a collective investment vehicle whose participants include persons other than—

(aa) qualified eligible persons, as defined in Commission rule 4.7(a) (17 CFR 4.7(a));

(bb) accredited investors, as defined in Regulation D of the Securities and Exchange Commission under the Securities Act of 1933 [15 U.S.C. 77a et seq.] (17 CFR 230.501(a)), with total assets of $2,000,000; or

(cc) qualified purchasers, as defined in section 2(a)(51)(A) of the Investment Company Act of 1940 [15 U.S.C. 80a–2(a)(51)(A)];

in each case as in effect on December 21, 2000, has, or is one of a group of vehicles under common control or management having in the aggregate, $1,000,000,000 in total assets; or

(II) in the case of other persons, has, or is one of a group of persons under common control or management having in the aggregate, $100,000,000 in total assets; or

(C) such other persons as the Commission shall determine appropriate and shall designate by rule, regulation, or order.

(18) Eligible contract participant

The term "eligible contract participant" means—

(A) acting for its own account—

(i) a financial institution;

(ii) an insurance company that is regulated by a State, or that is regulated by a foreign government and is subject to comparable regulation as determined by the Commission, including a regulated subsidiary or affiliate of such an insurance company;

(iii) an investment company subject to regulation under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) or a foreign person performing a similar role or function subject as such to foreign regulation (regardless of whether each investor in the investment company or the foreign person is itself an eligible contract participant);

(iv) a commodity pool that—

(I) has total assets exceeding $5,000,000; and

(II) is formed and operated by a person subject to regulation under this chapter or a foreign person performing a similar role or function subject as such to foreign regulation (regardless of whether each investor in the commodity pool or the foreign person is itself an eligible contract

participant) provided, however, that for purposes of section 2(c)(2)(B)(vi) of this title and section 2(c)(2)(C)(vii) of this title, the term "eligible contract participant" shall not include a commodity pool in which any participant is not otherwise an eligible contract participant;

(v) a corporation, partnership, proprietorship, organization, trust, or other entity—

(I) that has total assets exceeding $10,000,000;

(II) the obligations of which under an agreement, contract, or transaction are guaranteed or otherwise supported by a letter of credit or keepwell, support, or other agreement by an entity described in subclause (I), in clause (i), (ii), (iii), (iv), or (vii), or in subparagraph (C); or

(III) that—

(aa) has a net worth exceeding $1,000,000; and

(bb) enters into an agreement, contract, or transaction in connection with the conduct of the entity's business or to manage the risk associated with an asset or liability owned or incurred or reasonably likely to be owned or incurred by the entity in the conduct of the entity's business;

(vi) an employee benefit plan subject to the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.), a governmental employee benefit plan, or a foreign person performing a similar role or function subject as such to foreign regulation—

(I) that has total assets exceeding $5,000,000; or

(II) the investment decisions of which are made by—

(aa) an investment adviser or commodity trading advisor subject to regulation under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) or this chapter;

(bb) a foreign person performing a similar role or function subject as such to foreign regulation;

(cc) a financial institution; or

(dd) an insurance company described in clause (ii), or a regulated subsidiary or affiliate of such an insurance company;

(vii)(I) a governmental entity (including the United States, a State, or a foreign government) or political subdivision of a governmental entity;

(II) a multinational or supranational government entity; or

(III) an instrumentality, agency, or department of an entity described in subclause (I) or (II);

except that such term does not include an entity, instrumentality, agency, or department referred to in subclause (I) or (III) of this clause unless (aa) the entity, instrumentality, agency, or department is a person described in clause (i), (ii), or (iii) of paragraph (17)(A); (bb) the entity, instrumentality, agency, or department owns and invests on a discretionary basis $50,000,000 or more in investments; or (cc) the agreement, contract, or transaction is offered by, and entered into with, an entity that is listed in any of subclauses (I) through (VI) of section 2(c)(2)(B)(ii) of this title;

(viii)(I) a broker or dealer subject to regulation under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) or a foreign person performing a similar role or function subject as such to foreign regulation, except that, if the broker or dealer or foreign person is a natural person or proprietorship, the broker or dealer or foreign person shall not be considered to be an eligible contract participant unless the broker or dealer or foreign person also meets the requirements of clause (v) or (xi);

(II) an associated person of a registered broker or dealer concerning the financial or securities activities of which the registered person makes and keeps records under section 15C(b) or 17(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–5(b), 78q(h));

(III) an investment bank holding company (as defined in section 17(i) [2] of the Securities Exchange Act of 1934 (15 U.S.C. 78q(i)); [3]

(ix) a futures commission merchant subject to regulation under this chapter or a foreign person performing a similar role or function subject as such to foreign regulation, except that, if the futures commission merchant or foreign person is a natural person or proprietorship, the futures commission merchant or foreign person shall not be considered to be an eligible contract participant unless the futures commission merchant or foreign person also meets the requirements of clause (v) or (xi);

(x) a floor broker or floor trader subject to regulation under this chapter in connection with any transaction that takes place on or through the facilities of a registered entity (other than an electronic trading facility with respect to a significant price discovery contract) or an exempt board of trade, or any affiliate thereof, on which such person regularly trades; or

(xi) an individual who has amounts invested on a discretionary basis, the aggregate of which is in excess of—

(I) $10,000,000; or

(II) $5,000,000 and who enters into the agreement, contract, or transaction in order to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by the individual;

(B)(i) a person described in clause (i), (ii), (iv), (v), (viii), (ix), or (x) of subparagraph (A) or in subparagraph (C), acting as broker or performing an equivalent agency function on behalf of another person described in subparagraph (A) or (C); or

(ii) an investment adviser subject to regulation under the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 et seq.], a commodity trading advisor subject to regulation under this chapter, a foreign person performing a similar role or function subject as such to foreign regulation, or a person described in clause (i), (ii), (iv), (v), (viii), (ix), or (x) of subparagraph (A) or in subparagraph (C), in any such case acting as investment manager or fiduciary (but excluding a person acting as broker or performing an equivalent agency function) for another person described in subparagraph (A) or (C) and who is authorized by such person to commit such person to the transaction; or

(C) any other person that the Commission determines to be eligible in light of the financial or other qualifications of the person.

(19) Excluded commodity

The term "excluded commodity" means—

(i) an interest rate, exchange rate, currency, security, security index, credit risk or measure, debt or equity instrument, index or measure of inflation, or other macroeconomic index or measure;

(ii) any other rate, differential, index, or measure of economic or commercial risk, return, or value that is—

(I) not based in substantial part on the value of a narrow group of commodities not described in clause (i); or

(II) based solely on one or more commodities that have no cash market;

(iii) any economic or commercial index based on prices, rates, values, or levels that are not within the control of any party to the relevant contract, agreement, or transaction; or

(iv) an occurrence, extent of an occurrence, or contingency (other than a change in the price, rate, value, or level of a commodity not described in clause (i)) that is—

(I) beyond the control of the parties to the relevant contract, agreement, or transaction; and

(II) associated with a financial, commercial, or economic consequence.

(20) Exempt commodity

The term "exempt commodity" means a commodity that is not an excluded commodity or an agricultural commodity.

(21) Financial institution

The term "financial institution" means—

(A) a corporation operating under the fifth undesignated paragraph of section 25 of the Federal Reserve Act (12 U.S.C. 603), commonly known as "an agreement corporation";

(B) a corporation organized under section 25A of the Federal Reserve Act (12 U.S.C. 611 et seq.), commonly known as an "Edge Act corporation";

(C) an institution that is regulated by the Farm Credit Administration;

(D) a Federal credit union or State credit union (as defined in section 1752 of title 12);

(E) a depository institution (as defined in section 1813 of title 12);

(F) a foreign bank or a branch or agency of a foreign bank (each as defined in section 3101 of title 12);

(G) any financial holding company (as defined in section 1841 of title 12);

(H) a trust company; or

(I) a similarly regulated subsidiary or affiliate of an entity described in any of subparagraphs (A) through (H).

(22) Floor broker

(A) In general

The term "floor broker" means any person—

(i) who, in or surrounding any pit, ring, post, or other place provided by a contract market for the meeting of persons similarly engaged, shall purchase or sell for any other person—

(I) any commodity for future delivery, security futures product, or swap; or

(II) any commodity option authorized under section 6c of this title; or

(ii) who is registered with the Commission as a floor broker.

(B) Further definition

The Commission, by rule or regulation, may include within, or exclude from, the term "floor broker" any person in or surrounding any pit, ring, post, or other place provided by a contract market for the meeting of persons similarly engaged who trades for any other person if the Commission determines that the rule or regulation will effectuate the purposes of this chapter.

(23) Floor trader

(A) In general

The term "floor trader" means any person—

(i) who, in or surrounding any pit, ring, post, or other place provided by a contract market for the meeting of persons similarly engaged, purchases, or sells solely for such person's own account—

(I) any commodity for future delivery, security futures product, or swap; or

(II) any commodity option authorized under section 6c of this title; or

(ii) who is registered with the Commission as a floor trader.

(B) Further definition

The Commission, by rule or regulation, may include within, or exclude from, the term "floor trader" any person in or surrounding any pit, ring, post, or other place provided by a contract market for the meeting of persons similarly engaged who trades solely for such person's own account if the Commission determines that the rule or regulation will effectuate the purposes of this chapter.

(24) Foreign exchange forward

The term "foreign exchange forward" means a transaction that solely involves the exchange of 2 different currencies on a specific future date at a fixed rate agreed upon on the inception of the contract covering the exchange.

(25) Foreign exchange swap

The term "foreign exchange swap" means a transaction that solely involves—

(A) an exchange of 2 different currencies on a specific date at a fixed rate that is agreed upon on the inception of the contract covering the exchange; and

(B) a reverse exchange of the 2 currencies described in subparagraph (A) at a later date and at a fixed rate that is agreed upon on the inception of the contract covering the exchange.

(26) Foreign futures authority

The term "foreign futures authority" means any foreign government, or any department, agency, governmental body, or regulatory organization empowered by a foreign government to administer or enforce a law, rule, or regulation as it relates to a futures or options matter, or any department or agency of a political subdivision of a foreign government empowered to administer or enforce a law, rule, or regulation as it relates to a futures or options matter.

(27) Future delivery

The term "future delivery" does not include any sale of any cash commodity for deferred shipment or delivery.

(28) Futures commission merchant

(A) In general

The term "futures commission merchant" means an individual, association, partnership, corporation, or trust—

(i) that—

(I) is—

(aa) engaged in soliciting or in accepting orders for—

(AA) the purchase or sale of a commodity for future delivery;

(BB) a security futures product;

(CC) a swap;

(DD) any agreement, contract, or transaction described in section 2(c)(2)(C)(i) of this title or section 2(c)(2)(D)(i) of this title;

(EE) any commodity option authorized under section 6c of this title; or

(FF) any leverage transaction authorized under section 23 of this title; or

(bb) acting as a counterparty in any agreement, contract, or transaction described in section 2(c)(2)(C)(i) of this title or section 2(c)(2)(D)(i) of this title; and

(II) in or in connection with the activities described in items (aa) or (bb) of subclause (I), accepts any money, securities, or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom; or

(ii) that is registered with the Commission as a futures commission merchant.

(B) Further definition

The Commission, by rule or regulation, may include within, or exclude from, the term "futures commission merchant" any person who engages in soliciting or accepting orders for, or acting as a counterparty in, any agreement, contract, or transaction subject to this chapter, and who accepts any money, securities, or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom, if the Commission determines that the rule or regulation will effectuate the purposes of this chapter.

(29) Hybrid instrument

The term "hybrid instrument" means a security having one or more payments indexed to the value, level, or rate of, or providing for the delivery of, one or more commodities.

(30) Interstate commerce

The term "interstate commerce" means commerce—

(A) between any State, territory, or possession, or the District of Columbia, and any place outside thereof; or

(B) between points within the same State, territory, or possession, or the District of Columbia, but through any place outside thereof, or within any territory or possession, or the District of Columbia.

(31) Introducing broker

(A) In general

The term "introducing broker" means any person (except an individual who elects to be and is registered as an associated person of a futures commission merchant)—

(i) who—

(I) is engaged in soliciting or in accepting orders for—

(aa) the purchase or sale of any commodity for future delivery, security futures product, or swap;

(bb) any agreement, contract, or transaction described in section 2(c)(2)(C)(i) of this title or section 2(c)(2)(D)(i) of this title;

(cc) any commodity option authorized under section 6c of this title; or

(dd) any leverage transaction authorized under section 23 of this title; and

(II) does not accept any money, securities, or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom; or

(ii) who is registered with the Commission as an introducing broker.

(B) Further definition

The Commission, by rule or regulation, may include within, or exclude from, the term "introducing broker" any person who engages in soliciting or accepting orders for any agreement, contract, or transaction subject to this chapter, and who does not accept any money, securities, or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom, if the Commission determines that the rule or regulation will effectuate the purposes of this chapter.

(32) Major security-based swap participant

The term "major security-based swap participant" has the meaning given the term in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

(33) Major swap participant

(A) In general

The term "major swap participant" means any person who is not a swap dealer, and—

(i) maintains a substantial position in swaps for any of the major swap categories as determined by the Commission, excluding—

(I) positions held for hedging or mitigating commercial risk; and

(II) positions maintained by any employee benefit plan (or any contract held by such a plan) as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002) for the primary purpose of hedging or mitigating any risk directly associated with the operation of the plan;

(ii) whose outstanding swaps create substantial counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets; or

(iii)(I) is a financial entity that is highly leveraged relative to the amount of capital it holds and that is not subject to capital requirements established by an appropriate Federal banking agency; and

(II) maintains a substantial position in outstanding swaps in any major swap category as determined by the Commission.

(B) Definition of substantial position

For purposes of subparagraph (A), the Commission shall define by rule or regulation the term "substantial position" at the threshold that the Commission determines to be prudent for the effective monitoring, management, and oversight of entities that are systemically important or can significantly impact the financial system of the United States. In setting the definition under this subparagraph, the Commission shall consider the person's relative position in uncleared as opposed to cleared swaps and may take into consideration the value and quality of collateral held against counterparty exposures.

(C) Scope of designation

For purposes of subparagraph (A), a person may be designated as a major swap participant for 1 or more categories of swaps without being classified as a major swap participant for all classes of swaps.

(D) Exclusions

The definition under this paragraph shall not include an entity whose primary business is providing financing, and uses derivatives for the purpose of hedging underlying commercial risks related to interest rate and foreign currency exposures, 90 percent or more of which arise from financing that facilitates the purchase or lease of products, 90 percent or more of which are manufactured by the parent company or another subsidiary of the parent company.

(34) Member of a registered entity; member of a derivatives transaction execution facility

The term "member" means, with respect to a registered entity or derivatives transaction execution facility, an individual, association, partnership, corporation, or trust—

(A) owning or holding membership in, or admitted to membership representation on, the registered entity or derivatives transaction execution facility; or

(B) having trading privileges on the registered entity or derivatives transaction execution facility.

A participant in an alternative trading system that is designated as a contract market pursuant to section 7b–1 of this title is deemed a member of the contract market for purposes of transactions in security futures products through the contract market.

(35) Narrow-based security index

(A) The term "narrow-based security index" means an index—

(i) that has 9 or fewer component securities;

(ii) in which a component security comprises more than 30 percent of the index's weighting;

(iii) in which the five highest weighted component securities in the aggregate comprise more than 60 percent of the index's weighting; or

(iv) in which the lowest weighted component securities comprising, in the aggregate, 25 percent of the index's weighting have an aggregate dollar value of average daily trading volume of less than $50,000,000 (or in the case of an index with 15 or more component securities, $30,000,000), except that if there are two or more securities with equal weighting that could be included in the calculation of the lowest weighted component securities comprising, in the aggregate, 25 percent of the index's weighting, such securities shall be ranked from lowest to highest dollar value of average daily trading volume and shall be included in the calculation based on their ranking starting with the lowest ranked security.

(B) Notwithstanding subparagraph (A), an index is not a narrow-based security index if—

(i)(I) it has at least 9 component securities;

(II) no component security comprises more than 30 percent of the index's weighting; and

(III) each component security is—

(aa) registered pursuant to section 12 of the Securities Exchange Act of 1934 [15 U.S.C. 78l];

(bb) one of 750 securities with the largest market capitalization; and

(cc) one of 675 securities with the largest dollar value of average daily trading volume;

(ii) a board of trade was designated as a contract market by the Commodity Futures Trading Commission with respect to a contract of sale for future delivery on the index, before December 21, 2000;

(iii)(I) a contract of sale for future delivery on the index traded on a designated contract market or registered derivatives transaction execution facility for at least 30 days as a contract of sale for future delivery on an index that was not a narrow-based security index; and

(II) it has been a narrow-based security index for no more than 45 business days over 3 consecutive calendar months;

(iv) a contract of sale for future delivery on the index is traded on or subject to the rules of a foreign board of trade and meets such requirements as are jointly established by rule or regulation by the Commission and the Securities and Exchange Commission;

(v) no more than 18 months have passed since December 21, 2000, and—

(I) it is traded on or subject to the rules of a foreign board of trade;

(II) the offer and sale in the United States of a contract of sale for future delivery on the index was authorized before December 21, 2000; and

(III) the conditions of such authorization continue to be met; or

(vi) a contract of sale for future delivery on the index is traded on or subject to the rules of a board of trade and meets such requirements as are jointly established by rule, regulation, or order by the Commission and the Securities and Exchange Commission.

(C) Within 1 year after December 21, 2000, the Commission and the Securities and Exchange Commission jointly shall adopt rules or regulations that set forth the requirements under subparagraph (B)(iv).

(D) An index that is a narrow-based security index solely because it was a narrow-based security index for more than 45 business days over 3 consecutive calendar months pursuant to clause (iii) of subparagraph (B) shall not be a narrow-based security index for the 3 following calendar months.

(E) For purposes of subparagraphs (A) and (B)—

(i) the dollar value of average daily trading volume and the market capitalization shall be calculated as of the preceding 6 full calendar months; and

(ii) the Commission and the Securities and Exchange Commission shall, by rule or regulation, jointly specify the method to be used to determine market capitalization and dollar value of average daily trading volume.

(36) Option

The term "option" means an agreement, contract, or transaction that is of the character of, or is commonly known to the trade as, an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty", or "decline guaranty".

(37) Organized exchange

The term "organized exchange" means a trading facility that—

(A) permits trading—

(i) by or on behalf of a person that is not an eligible contract participant; or

(ii) by persons other than on a principal-to-principal basis; or

(B) has adopted (directly or through another nongovernmental entity) rules that—

(i) govern the conduct of participants, other than rules that govern the submission of orders or execution of transactions on the trading facility; and

(ii) include disciplinary sanctions other than the exclusion of participants from trading.

(38) Person

The term "person" imports the plural or singular, and includes individuals, associations, partnerships, corporations, and trusts.

(39) Prudential regulator

The term "prudential regulator" means—

(A) the Board in the case of a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant that is—

(i) a State-chartered bank that is a member of the Federal Reserve System;

(ii) a State-chartered branch or agency of a foreign bank;

(iii) any foreign bank which does not operate an insured branch;

(iv) any organization operating under section 25A of the Federal Reserve Act [12 U.S.C. 611 et seq.] or having an agreement with the Board under section 225 of the Federal Reserve Act [4];

(v) any bank holding company (as defined in section 2 of the Bank Holding Company Act of 1965 [4] (12 U.S.C. 1841)), any foreign bank (as defined in section 3101(7) of title 12) that is treated as a bank holding company under section 3106(a) of title 12, and any subsidiary of such a company or foreign bank (other than a subsidiary that is described in subparagraph (A) or (B) or

that is required to be registered with the Commission as a swap dealer or major swap participant under this chapter or with the Securities and Exchange Commission as a security-based swap dealer or major security-based swap participant);

(vi) after the transfer date (as defined in section 311 of the Dodd-Frank Wall Street Reform and Consumer Protection Act [12 U.S.C. 5411]), any savings and loan holding company (as defined in section 1467a of title 12) and any subsidiary of such company (other than a subsidiary that is described in subparagraph (A) or (B) or that is required to be registered as a swap dealer or major swap participant with the Commission under this chapter or with the Securities and Exchange Commission as a security-based swap dealer or major security-based swap participant); or

(vii) any organization operating under section 25A of the Federal Reserve Act (12 U.S.C. 611 et seq.) or having an agreement with the Board under section 25 of the Federal Reserve Act (12 U.S.C. 601 et seq.);

(B) the Office of the Comptroller of the Currency in the case of a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant that is—

(i) a national bank;

(ii) a federally chartered branch or agency of a foreign bank; or

(iii) any Federal savings association;

(C) the Federal Deposit Insurance Corporation in the case of a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant that is—

(i) a State-chartered bank that is not a member of the Federal Reserve System; or

(ii) any State savings association;

(D) the Farm Credit Administration, in the case of a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant that is an institution chartered under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.); and

(E) the Federal Housing Finance Agency in the case of a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant that is a regulated entity (as such term is defined in section 4502 of title 12).

(40) Registered entity

The term "registered entity" means—

(A) a board of trade designated as a contract market under section 7 of this title;

(B) a derivatives clearing organization registered under section 7a–1 of this title;

(C) a board of trade designated as a contract market under section 7b–1 of this title;

(D) a swap execution facility registered under section 7b–3 of this title;

(E) a swap data repository registered under section 24a of this title; and

(F) with respect to a contract that the Commission determines is a significant price discovery contract, any electronic trading facility on which the contract is executed or traded.

(41) Security

The term "security" means a security as defined in section 2(a)(1) of the Securities Act of 1933 (15 U.S.C. 77b(a)(1)) or section 3(a)(10) of the Securities

Exchange Act of 1934 (15 U.S.C. 78c(a)(10)).

(42) Security-based swap

The term "security-based swap" has the meaning given the term in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

(43) Security-based swap dealer

The term "security-based swap dealer" has the meaning given the term in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

(44) Security future

The term "security future" means a contract of sale for future delivery of a single security or of a narrow-based security index, including any interest therein or based on the value thereof, except an exempted security under section 3(a)(12) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(12)] as in effect on January 11, 1983 (other than any municipal security as defined in section 3(a)(29) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(29)] as in effect on January 11, 1983). The term "security future" does not include any agreement, contract, or transaction excluded from this chapter under section 2(c), 2(d), 2(f), or 2(g) of this title (as in effect on December 21, 2000) or sections 27 to 27f of this title.

(45) Security futures product

The term "security futures product" means a security future or any put, call, straddle, option, or privilege on any security future.

(46) Significant price discovery contract

The term "significant price discovery contract" means an agreement, contract, or transaction subject to section 2(h)(5) of this title.

(47) Swap

(A) In general

Except as provided in subparagraph (B), the term "swap" means any agreement, contract, or transaction—

(i) that is a put, call, cap, floor, collar, or similar option of any kind that is for the purchase or sale, or based on the value, of 1 or more interest or other rates, currencies, commodities, securities, instruments of indebtedness, indices, quantitative measures, or other financial or economic interests or property of any kind;

(ii) that provides for any purchase, sale, payment, or delivery (other than a dividend on an equity security) that is dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence;

(iii) that provides on an executory basis for the exchange, on a fixed or contingent basis, of 1 or more payments based on the value or level of 1 or more interest or other rates, currencies, commodities, securities, instruments of indebtedness, indices, quantitative measures, or other financial or economic interests or property of any kind, or any interest therein or based on the value thereof, and that transfers, as between the parties to the transaction, in whole or in part, the financial risk associated with a future change in any such value or level without also conveying a current or future direct or indirect ownership interest in an asset (including any enterprise or investment pool) or liability that incorporates the financial risk so transferred, including any agreement, contract, or transaction commonly known as—

(I) an interest rate swap;

(II) a rate floor;

(III) a rate cap;

(IV) a rate collar;

(V) a cross-currency rate swap;

(VI) a basis swap;
(VII) a currency swap;
(VIII) a foreign exchange swap;
(IX) a total return swap;
(X) an equity index swap;
(XI) an equity swap;
(XII) a debt index swap;
(XIII) a debt swap;
(XIV) a credit spread;
(XV) a credit default swap;
(XVI) a credit swap;
(XVII) a weather swap;
(XVIII) an energy swap;
(XIX) a metal swap;
(XX) an agricultural swap;
(XXI) an emissions swap; and
(XXII) a commodity swap;

(iv) that is an agreement, contract, or transaction that is, or in the future becomes, commonly known to the trade as a swap;

(v) including any security-based swap agreement which meets the definition of "swap agreement" as defined in section 206A of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note) of which a material term is based on the price, yield, value, or volatility of any security or any group or index of securities, or any interest therein; or

(vi) that is any combination or permutation of, or option on, any agreement, contract, or transaction described in any of clauses (i) through (v).

(B) Exclusions

The term "swap" does not include—

(i) any contract of sale of a commodity for future delivery (or option on such a contract), leverage contract authorized under section 23 of this title, security futures product, or agreement, contract, or transaction described in section 2(c)(2)(C)(i) of this title or section 2(c)(2)(D)(i) of this title;

(ii) any sale of a nonfinancial commodity or security for deferred shipment or delivery, so long as the transaction is intended to be physically settled;

(iii) any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest therein or based on the value thereof, that is subject to—

(I) the Securities Act of 1933 (15 U.S.C. 77a et seq.); and
(II) the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

(iv) any put, call, straddle, option, or privilege relating to a foreign currency entered into on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a));

(v) any agreement, contract, or transaction providing for the purchase or sale of 1 or more securities on a fixed basis that is subject to—

(I) the Securities Act of 1933 (15 U.S.C. 77a et seq.); and
(II) the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

(vi) any agreement, contract, or transaction providing for the purchase or sale of 1 or more securities on a contingent basis that is subject to the Securities Act of 1933 (15 U.S.C. 77a et seq.) and the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), unless the agreement, contract, or transaction predicates the purchase or sale on the occurrence of a bona fide contingency

that might reasonably be expected to affect or be affected by the creditworthiness of a party other than a party to the agreement, contract, or transaction;

(vii) any note, bond, or evidence of indebtedness that is a security, as defined in section 2(a)(1) of the Securities Act of 1933 (15 U.S.C. 77b(a)(1));

(viii) any agreement, contract, or transaction that is—

(I) based on a security; and

(II) entered into directly or through an underwriter (as defined in section 2(a)(11) of the Securities Act of 1933 (15 U.S.C. 77b(a)(11)) [5] by the issuer of such security for the purposes of raising capital, unless the agreement, contract, or transaction is entered into to manage a risk associated with capital raising;

(ix) any agreement, contract, or transaction a counterparty of which is a Federal Reserve bank, the Federal Government, or a Federal agency that is expressly backed by the full faith and credit of the United States; and

(x) any security-based swap, other than a security-based swap as described in subparagraph (D).

(C) Rule of construction regarding master agreements

(i) In general

Except as provided in clause (ii), the term "swap" includes a master agreement that provides for an agreement, contract, or transaction that is a swap under subparagraph (A), together with each supplement to any master agreement, without regard to whether the master agreement contains an agreement, contract, or transaction that is not a swap pursuant to subparagraph (A).

(ii) Exception

For purposes of clause (i), the master agreement shall be considered to be a swap only with respect to each agreement, contract, or transaction covered by the master agreement that is a swap pursuant to subparagraph (A).

(D) Mixed swap

The term "security-based swap" includes any agreement, contract, or transaction that is as described in section 3(a)(68)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(68)(A)) and also is based on the value of 1 or more interest or other rates, currencies, commodities, instruments of indebtedness, indices, quantitative measures, other financial or economic interest or property of any kind (other than a single security or a narrow-based security index), or the occurrence, non-occurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence (other than an event described in subparagraph (A)(iii)).

(E) Treatment of foreign exchange swaps and forwards

(i) In general

Foreign exchange swaps and foreign exchange forwards shall be considered swaps under this paragraph unless the Secretary makes a written determination under section 1b of this title that either foreign exchange swaps or foreign exchange forwards or both—

(I) should be not be regulated as swaps under this chapter; and

(II) are not structured to evade the Dodd-Frank Wall Street Reform and Consumer Protection Act in violation of any rule promulgated by the Commission pursuant to section 721(c) of that Act [15 U.S.C. 8321(b)].

(ii) Congressional notice; effectiveness

The Secretary shall submit any written determination under clause (i) to the appropriate committees of Congress, including the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Representatives. Any such written determination by the Secretary shall not be effective until it is submitted to the appropriate committees of Congress.

(iii) Reporting

Notwithstanding a written determination by the Secretary under clause (i), all foreign exchange swaps and foreign exchange forwards shall be reported to either a swap data repository, or, if there is no swap data repository that would accept such swaps or forwards, to the Commission pursuant to section 6r of this title within such time period as the Commission may by rule or regulation prescribe.

(iv) Business standards

Notwithstanding a written determination by the Secretary pursuant to clause (i), any party to a foreign exchange swap or forward that is a swap dealer or major swap participant shall conform to the business conduct standards contained in section 6s(h) of this title.

(v) Secretary

For purposes of this subparagraph, the term "Secretary" means the Secretary of the Treasury.

(F) Exception for certain foreign exchange swaps and forwards

(i) Registered entities

Any foreign exchange swap and any foreign exchange forward that is listed and traded on or subject to the rules of a designated contract market or a swap execution facility, or that is cleared by a derivatives clearing organization, shall not be exempt from any provision of this chapter or amendments made by the Wall Street Transparency and Accountability Act of 2010 prohibiting fraud or manipulation.

(ii) Retail transactions

Nothing in subparagraph (E) shall affect, or be construed to affect, the applicability of this chapter or the jurisdiction of the Commission with respect to agreements, contracts, or transactions in foreign currency pursuant to section 2(c)(2) of this title.

(48) Swap data repository

The term "swap data repository" means any person that collects and maintains information or records with respect to transactions or positions in, or the terms and conditions of, swaps entered into by third parties for the purpose of providing a centralized recordkeeping facility for swaps.

(49) Swap dealer

(A) In general

The term "swap dealer" means any person who—

(i) holds itself out as a dealer in swaps;

(ii) makes a market in swaps;

(iii) regularly enters into swaps with counterparties as an ordinary course of business for its own account; or

(iv) engages in any activity causing the person to be commonly known in the trade as a dealer or market maker in swaps,

provided however, in no event shall an insured depository institution be considered to be a swap dealer to the extent it offers to enter into a swap with a

customer in connection with originating a loan with that customer.

(B) Inclusion

A person may be designated as a swap dealer for a single type or single class or category of swap or activities and considered not to be a swap dealer for other types, classes, or categories of swaps or activities.

(C) Exception

The term "swap dealer" does not include a person that enters into swaps for such person's own account, either individually or in a fiduciary capacity, but not as a part of a regular business.

(D) De minimis exception

The Commission shall exempt from designation as a swap dealer an entity that engages in a de minimis quantity of swap dealing in connection with transactions with or on behalf of its customers. The Commission shall promulgate regulations to establish factors with respect to the making of this determination to exempt.

(50) Swap execution facility

The term "swap execution facility" means a trading system or platform in which multiple participants have the ability to execute or trade swaps by accepting bids and offers made by multiple participants in the facility or system, through any means of interstate commerce, including any trading facility, that—

(A) facilitates the execution of swaps between persons; and

(B) is not a designated contract market.

(51) Trading facility

(A) In general

The term "trading facility" means a person or group of persons that constitutes, maintains, or provides a physical or electronic facility or system in which multiple participants have the ability to execute or trade agreements, contracts, or transactions—

(i) by accepting bids or offers made by other participants that are open to multiple participants in the facility or system; or

(ii) through the interaction of multiple bids or multiple offers within a system with a pre-determined non-discretionary automated trade matching and execution algorithm.

(B) Exclusions

The term "trading facility" does not include—

(i) a person or group of persons solely because the person or group of persons constitutes, maintains, or provides an electronic facility or system that enables participants to negotiate the terms of and enter into bilateral transactions as a result of communications exchanged by the parties and not from interaction of multiple bids and multiple offers within a predetermined, nondiscretionary automated trade matching and execution algorithm;

(ii) a government securities dealer or government securities broker, to the extent that the dealer or broker executes or trades agreements, contracts, or transactions in government securities, or assists persons in communicating about, negotiating, entering into, executing, or trading an agreement, contract, or transaction in government securities (as the terms "government securities dealer", "government securities broker", and "government securities" are defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a))); or

(iii) facilities on which bids and offers, and acceptances of bids and offers effected on the facility, are not binding.

Any person, group of persons, dealer, broker, or facility described in clause (i) or (ii) is excluded from the meaning of the term "trading facility" for the purposes of this chapter without any prior specific approval, certification, or other action by the Commission.

(C) Special rule

A person or group of persons that would not otherwise constitute a trading facility shall not be considered to be a trading facility solely as a result of the submission to a derivatives clearing organization of transactions executed on or through the person or group of persons.

(Sept. 21, 1922, ch. 369, §1a, as added Pub. L. 102–546, title IV, §404(a), Oct. 28, 1992, 106 Stat. 3625; amended Pub. L. 106–554, §1(a)(5) [title I, §§101, 123(a)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–366, 2763A–405; Pub. L. 110–234, title XIII, §§13105(j), 13201(a), 13203(a), (b), May 22, 2008, 122 Stat. 1435, 1439; Pub. L. 110–246, §4(a), title XIII, §§13105(j), 13201(a), 13203(a), (b), June 18, 2008, 122 Stat. 1664, 2197, 2201; Pub. L. 111–203, title VII, §§721(a), 741(b)(10), July 21, 2010, 124 Stat. 1658, 1732.)

References in Text

The Employee Retirement Income Security Act of 1974, referred to in pars. (12)(B)(v) and (18)(A)(vi), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, which is classified principally to chapter 18 (§1001 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

The Securities Act of 1933, referred to in pars. (17)(B)(ii)(I)(bb) and (47)(B)(iii)(I), (v)(I), (vi), is title I of act May 27, 1933, ch. 38, 48 Stat. 74, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 77a of Title 15 and Tables.

The Investment Company Act of 1940, referred to in par. (18)(A)(iii), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, which is classified generally to subchapter I (§80a–1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80a–51 of Title 15 and Tables.

The Investment Advisers Act of 1940, referred to in par. (18)(A)(vi)(II)(aa), (B)(ii), is title II of act Aug. 22, 1940, ch. 686, 54 Stat. 847, which is classified generally to subchapter II (§80b–1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80b–20 of Title 15 and Tables.

The Securities Exchange Act of 1934, referred to in pars. (18)(A)(viii)(I) and (47)(B)(iii)(II), (v)(II), (vi), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§78a et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

Subsec. (i) of section 17 of the Securities Exchange Act of 1934, referred to in par. (18)(A)(viii)(III), was struck out and subsec. (j) was redesignated (i) by Pub. L. 111–203, title VI, §617(a), July 21, 2010, 124 Stat. 1616.

Section 25A of the Federal Reserve Act, referred to in pars. (21)(B) and (39)(A)(iv), (vii), popularly known as the Edge Act, is classified to subchapter II (§611 et seq.) of chapter 6 of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 611 of Title 12 and Tables.

Section 225 of the Federal Reserve Act, referred to in par. (39)(A)(iv), probably should be a reference to section 25 of the Federal Reserve Act, which is classified to subchapter I (§601 et seq.) of chapter 6 of Title 12, Banks and Banking.

Section 2 of the Bank Holding Company Act of 1965, referred to in par. (39)(A)(v), probably should be a reference to section 2 of the Bank Holding Company Act of 1956, act May 9, 1956, ch. 240, 70 Stat. 133, which is classified to section 1841 of Title 12, Banks and Banking.

Section 25 of the Federal Reserve Act, referred to in par. (39)(A)(vii), is classified to subchapter I (§601 et seq.) of chapter 6 of Title 12, Banks and Banking.

The Farm Credit Act of 1971, referred to in par. (39)(D), is Pub. L. 92–181, Dec. 10, 1971, 85 Stat. 583, which is classified principally to chapter 23 (§2001 et seq.) of Title 12, Banks and

Banking. For complete classification of this Act to the Code, see Short Title note set out under section 2001 of Title 12 and Tables.

Section 206A of the Gramm-Leach-Bliley Act, referred to in par. (47)(A)(v), is section 206A of Pub. L. 106–102 which is set out as a note under section 78c of Title 15, Commerce and Trade.

The Dodd-Frank Wall Street Reform and Consumer Protection Act, referred to in par. (47)(E)(i)(II), is Pub. L. 111–203, July 21, 2010, 124 Stat. 1376, which enacted chapter 53 (§5301 et seq.) of Title 12, Banks and Banking, and chapters 108 (§8201 et seq.) and 109 (§8301 et seq.) of Title 15, Commerce and Trade, and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of Title 12 and Tables.

The Wall Street Transparency and Accountability Act of 2010, referred to in par. (47)(F)(i), is title VII of Pub. L. 111–203, July 21, 2010, 124 Stat. 1641, which enacted chapter 109 (§8301 et seq.) of Title 15, Commerce and Trade, and enacted and amended numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title note set out under section 8301 of Title 15 and Tables.

Codification

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

Amendments

2010—Pub. L. 111–203, §721(a)(1), redesignated pars. (2), (3), and (4), (5) to (17), (18) to (23), (24) to (28), (29), (30), (31) to (33), and (34) as (6), (8), and (9), (11) to (23), (26) to (31), (34) to (38), (40), (41), (44) to (46), and (51), respectively.

Pars. (2), (3). Pub. L. 111–203, §721(a)(2), added pars. (2) and (3). Former pars. (2) and (3) redesignated (6) and (8), respectively.

Par. (4). Pub. L. 111–203, §721(a)(4), which directed amendment of par. (9), as redesignated by Pub. L. 111–203, §721(a)(1), by substituting "except onions (as provided by section 13–1 of this title) and motion picture box office receipts (or any index, measure, value, or data related to such receipts), and all services, rights, and interests (except motion picture box office receipts, or any index, measure, value or data related to such receipts) in which contracts for future delivery are presently or in the future dealt in." for "except onions as provided in section 13–1 of this title, and all services, rights, and interests in which contracts for future delivery are presently or in the future dealt in.", was executed by making the substitution in par. (4). Amendment was executed before amendment by Pub. L. 111–203, §721(a)(1), to reflect the probable intent of Congress, notwithstanding effective date provisions in sections 721(f) and 754 of Pub. L. 111–203. See Effective Date of 2010 Amendment notes below.

Pub. L. 111–203, §721(a)(2), added par. (4). Former par. (4) redesignated (9).

Par. (5). Pub. L. 111–203, §721(a)(2), added par. (5). Former par. (5) redesignated (11).

Par. (7). Pub. L. 111–203, §721(a)(3), added par. (7). Former par. (7) redesignated (13).

Par. (10). Pub. L. 111–203, §721(a)(5), added par. (10). Former par. (10) redesignated (16).

Par. (11). Pub. L. 111–203, §721(a)(6), added par. (11) and struck out former par. (11). Prior to amendment, text read as follows: "The term 'commodity pool operator' means any person engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility, except that the term does not include such persons not within the intent of the definition of the term as the Commission may specify by rule, regulation, or order."

Par. (12)(A)(i)(I). Pub. L. 111–203, §721(a)(7)(A)(i), substituted ", security futures product, or swap" for "made or to be made on or subject to the rules of a contract market or derivatives transaction execution facility".

Par. (12)(A)(i)(II) to (IV). Pub. L. 111–203, §721(a)(7)(A)(ii), (iii), added subcl. (II) and redesignated former subcls. (II) and (III) as (III) and (IV), respectively.

Par. (12)(A)(iii), (iv). Pub. L. 111–203, §721(a)(7)(A)(iv), (B), (C), added cls. (iii) and (iv).

Par. (17)(A). Pub. L. 111–203, §721(a)(8), substituted "paragraph (18)(A)" for "paragraph (12)(A)" in introductory provisions.

Par. (18)(A)(iv)(II). Pub. L. 111–203, §741(b)(10), which directed amendment of par. (19)(A)(iv)(II) by inserting before semicolon at end "provided, however, that for purposes of section 2(c)(2)(B)(vi) of this title and section 2(c)(2)(C)(vii) of this title, the term 'eligible contract participant' shall not include a commodity pool in which any participant is not otherwise an eligible contract participant", was executed by making the insertion in par. (18)(A)(iv)(II) to reflect the probable intent of Congress.

Par. (18)(A)(vii). Pub. L. 111–203, §721(a)(9)(A)(i), substituted "paragraph (17)(A)" for "paragraph (11)(A)" and "$50,000,000" for "$25,000,000" in concluding provisions.

Par. (18)(A)(xi). Pub. L. 111–203, §721(a)(9)(A)(ii), substituted "amounts invested on a discretionary basis, the aggregate of which is" for "total assets in an amount" in introductory provisions.

Par. (22). Pub. L. 111–203, §721(a)(10), added par. (22) and struck out former par. (22). Prior to amendment, text read as follows: "The term 'floor broker' means any person who, in or surrounding any pit, ring, post, or other place provided by a contract market or derivatives transaction execution facility for the meeting of persons similarly engaged, shall purchase or sell for any other person any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility."

Par. (23). Pub. L. 111–203, §721(a)(11), added par. (23) and struck out former par. (23). Prior to amendment, text read as follows: "The term 'floor trader' means any person who, in or surrounding any pit, ring, post, or other place provided by a contract market or derivatives transaction execution facility for the meeting of persons similarly engaged, purchases, or sells solely for such person's own account, any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility."

Pars. (24), (25). Pub. L. 111–203, §721(a)(12), added pars. (24) and (25). Former pars. (24) and (25) redesignated (34) and (35), respectively.

Par. (28). Pub. L. 111–203, §721(a)(13), added par. (28) and struck out former par. (28) which defined "futures commission merchant".

Par. (30)(B). Pub. L. 111–203, §721(a)(14), substituted "State" for "state".

Par. (31). Pub. L. 111–203, §721(a)(15), added par. (31) and struck out former par. (31). Prior to amendment, text read as follows: "The term 'introducing broker' means any person (except an individual who elects to be and is registered as an associated person of a futures commission merchant) engaged in soliciting or in accepting orders for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility who does not accept any money, securities, or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom."

Pars. (32), (33). Pub. L. 111–203, §721(a)(16), added pars. (32) and (33). Former pars. (32) and (33) redesignated (45) and (46), respectively.

Par. (39). Pub. L. 111–203, §721(a)(17), added par. (39).

Par. (40)(B) to (F). Pub. L. 111–203, §721(a)(18), added subpars. (D) and (E), redesignated former subpars. (C), (D), and (E) as (B), (C), and (F), respectively, and struck out former subpar. (B) which read as follows: "a derivatives transaction execution facility registered under section 7a of this title;".

Pars. (42), (43). Pub. L. 111–203, §721(a)(19), added pars. (42) and (43).

Par. (46). Pub. L. 111–203, §721(a)(20), substituted "subject to section 2(h)(5) of this title" for "subject to section 2(h)(7) of this title".

Pars. (47) to (50). Pub. L. 111–203, §721(a)(21), added pars. (47) to (50).

Par. (51)(A)(i). Pub. L. 111–203, §721(a)(22), substituted "participants" for "partipants".

2008—Par. (12)(A)(x). Pub. L. 110–246, §13203(a), inserted "(other than an electronic trading facility with respect to a significant price discovery contract)" after "registered entity".

Par. (29)(E). Pub. L. 110–246, §13203(b), added subpar. (E).

Par. (33). Pub. L. 110–246, §13201(a), added par. (33). Former par. (33) redesignated (34).

Par. (33)(A). Pub. L. 110–246, §13105(j), substituted "transactions—" for "transactions by accepting bids and offers made by other participants that are open to multiple participants

in the facility or system." in introductory provisions and added cls. (i) and (ii).

Par. (34). Pub. L. 110–246, §13201(a)(1), redesignated par. (33) as (34).

2000—Par. (1). Pub. L. 106–554, §1(a)(5) [title I, §101(2)], added par. (1). Former par. (1) redesignated (2).

Par. (2). Pub. L. 106–554, §1(a)(5) [title I, §101(3)], added par. (2) and struck out heading and text of former par. (2). Text read as follows: "The term 'board of trade' means any exchange or association, whether incorporated or unincorporated, of persons who are engaged in the business of buying or selling any commodity or receiving the same for sale on consignment."

Pub. L. 106–554, §1(a)(5) [title I, §101(1)], redesignated par. (1) as (2). Former par. (2) redesignated (3).

Pars. (3), (4). Pub. L. 106–554, §1(a)(5) [title I, §101(1)], redesignated pars. (2) and (3) as (3) and (4), respectively. Former par. (4) redesignated (5).

Par. (5). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(1)(A)], inserted "or derivatives transaction execution facility" after "contract market".

Pub. L. 106–554, §1(a)(5) [title I, §101(1)], redesignated par. (4) as (5). Former par. (5) redesignated (6).

Par. (6). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(1)(A)], inserted "or derivatives transaction execution facility" after "contract market" in subpars. (A)(i)(I) and (B)(vi).

Pub. L. 106–554, §1(a)(5) [title I, §101(1)], redesignated par. (5) as (6). Former par. (6) redesignated (7).

Pars. (7), (8). Pub. L. 106–554, §1(a)(5) [title I, §101(1)], redesignated pars. (6) and (7) as (7) and (8), respectively. Former par. (8) redesignated (16).

Pars. (9) to (15). Pub. L. 106–554, §1(a)(5) [title I, §101(4)], added pars. (9) to (15). Former pars. (9) to (12) and (13) to (15) redesignated (17) to (20) and (22) to (24), respectively.

Par. (16). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(1)(A)], inserted "or derivatives transaction execution facility" after "contract market" in two places.

Pub. L. 106–554, §1(a)(5) [title I, §101(1)], redesignated par. (8) as (16). Former par. (16) redesignated (28).

Par. (17). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(1)(A)], inserted "or derivatives transaction execution facility" after "contract market" in two places.

Pub. L. 106–554, §1(a)(5) [title I, §101(1)], redesignated par. (9) as (17).

Pars. (18), (19). Pub. L. 106–554, §1(a)(5) [title I, §101(1)], redesignated pars. (10) and (11) as (18) and (19), respectively.

Par. (20). Pub. L. 106–554, §1(a)(5) [title I, §101(1)], redesignated par. (12) as (20).

Par. (20)(A). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(1)(A)], inserted "or derivatives transaction execution facility" after "contract market".

Par. (21). Pub. L. 106–554, §1(a)(5) [title I, §101(5)], added par. (21).

Par. (22). Pub. L. 106–554, §1(a)(5) [title I, §101(1)], redesignated par. (13) as (22).

Par. (23). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(1)(A)], inserted "or derivatives transaction execution facility" after "contract market".

Pub. L. 106–554, §1(a)(5) [title I, §101(1)], redesignated par. (14) as (23).

Par. (24). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(1)(B)], substituted "registered entity" for "contract market" wherever appearing in heading and text and inserted concluding provisions.

Pub. L. 106–554, §1(a)(5) [title I, §101(6)], added par. (24) and struck out heading and text of former par. (24). Text read as follows: "The term 'member of a contract market' means an individual, association, partnership, corporation, or trust owning or holding membership in, or admitted to membership representation on, a contract market or given members' trading privileges thereon."

Pub. L. 106–554, §1(a)(5) [title I, §101(1)], redesignated par. (15) as (24).

Pars. (25) to (27). Pub. L. 106–554, §1(a)(5) [title I, §101(6)], added pars. (25) to (27).

Par. (28). Pub. L. 106–554, §1(a)(5) [title I, §101(1)], redesignated par. (16) as (28).

Pars. (29) to (33). Pub. L. 106–554, §1(a)(5) [title I, §101(7)], added pars. (29) to (33).

Effective Date of 2010 Amendment

Pub. L. 111–203, title VII, §721(f), July 21, 2010, 124 Stat. 1672, provided that: "Notwithstanding any other provision of this Act [see Tables for classification], the

amendments made by subsection (a)(4) [amending this section] shall take effect on June 1, 2010."

Pub. L. 111–203, title VII, §754, July 21, 2010, 124 Stat. 1754, provided that: "Unless otherwise provided in this title [see Tables for classification], the provisions of this subtitle [subtitle A (§§711–754) of title VII of Pub. L. 111–203, see Tables for classification] shall take effect on the later of 360 days after the date of the enactment of this subtitle [July 21, 2010] or, to the extent a provision of this subtitle requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of this subtitle."

Effective Date of 2008 Amendment

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of this title.

Amendment by sections 13201(a) and 13203(a), (b) of Pub. L. 110–246 effective June 18, 2008, see section 13204(a) of Pub. L. 110–246, set out as a note under section 2 of this title.

Effective Date

Pub. L. 102–546, title IV, §403, Oct. 28, 1992, 106 Stat. 3625, provided that: "Except as otherwise specifically provided in this Act [enacting this section and section 12e of this title, amending sections 2, 2a, 4, 4a, 6 to 6c, 6e to 6g, 6j, 6p, 7 to 9a, 10a, 12, 12a, 12c, 13 to 13c, 15, 16, 18, 19, 21, and 25 of this title, repealing section 26 of this title, enacting provisions set out as notes under sections 1a, 4a, 6c, 6e, 6j, 6p, 7a, 13, 16a, 21, and 22 of this title, and repealing provisions set out as a note under section 4a of this title], this Act and the amendments made by this Act shall become effective on the date of enactment of this Act [Oct. 28, 1992]."

Other Authority

Pub. L. 111–203, title VII, §743, July 21, 2010, 124 Stat. 1735, provided that: "Unless otherwise provided by the amendments made by this subtitle [subtitle A (§§711–754) of title VII of Pub. L. 111–203, see Tables for classification], the amendments made by this subtitle do not divest any appropriate Federal banking agency, the Commodity Futures Trading Commission, the Securities and Exchange Commission, or other Federal or State agency of any authority derived from any other applicable law."

[For definitions of "appropriate Federal banking agency" and "State" as used in section 743 of Pub. L. 111–203, set out above, see section 5301 of Title 12, Banks and Banking.]

[1] So in original. Probably should be followed by a semicolon.

[2] See References in Text note below.

[3] So in original. The semicolon probably should be preceded by an additional closing parenthesis.

[4] See References in Text note below.

[5] So in original. A third closing parenthesis probably should appear.

§1b. Requirements of Secretary of the Treasury regarding exemption of foreign exchange swaps and foreign exchange forwards from definition of the term "swap"

(a) Required considerations

In determining whether to exempt foreign exchange swaps and foreign exchange forwards from the definition of the term "swap", the Secretary of the Treasury (referred to in this section as the "Secretary") shall consider—

(1) whether the required trading and clearing of foreign exchange swaps and foreign exchange forwards would create systemic risk, lower transparency, or threaten the financial stability of the United States;

(2) whether foreign exchange swaps and foreign exchange forwards are already subject to a regulatory scheme that is materially comparable to that established by this chapter for other classes of swaps;

(3) the extent to which bank regulators of participants in the foreign exchange market provide adequate supervision, including capital and margin requirements;

(4) the extent of adequate payment and settlement systems; and

(5) the use of a potential exemption of foreign exchange swaps and foreign exchange forwards to evade otherwise applicable regulatory requirements.

(b) Determination

If the Secretary makes a determination to exempt foreign exchange swaps and foreign exchange forwards from the definition of the term "swap", the Secretary shall submit to the appropriate committees of Congress a determination that contains—

(1) an explanation regarding why foreign exchange swaps and foreign exchange forwards are qualitatively different from other classes of swaps in a way that would make the foreign exchange swaps and foreign exchange forwards ill-suited for regulation as swaps; and

(2) an identification of the objective differences of foreign exchange swaps and foreign exchange forwards with respect to standard swaps that warrant an exempted status.

(c) Effect of determination

A determination by the Secretary under subsection (b) shall not exempt any foreign exchange swaps and foreign exchange forwards traded on a designated contract market or swap execution facility from any applicable antifraud and antimanipulation provision under this chapter.[1]

(Sept. 21, 1922, ch. 369, §1b, as added Pub. L. 111–203, title VII, §722(h), July 21, 2010, 124 Stat. 1674.)

References in Text

This chapter, referred to in subsec. (c), was in the original "this title", and was translated as reading "this Act", meaning act Sept. 21, 1922, ch. 369, 42 Stat. 998, which is classified generally to this chapter, to reflect the probable intent of Congress, because act Sept. 21, 1922, does not contain titles.

Effective Date

Section effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 1a of this title.

[1] *See References in Text note below.*

§2. Jurisdiction of Commission; liability of principal for act of agent; Commodity Futures Trading Commission; transaction in interstate commerce

(a) Jurisdiction of Commission; Commodity Futures Trading Commission

(1) Jurisdiction of Commission

(A) In general

The Commission shall have exclusive jurisdiction, except to the extent otherwise provided in the Wall Street Transparency and Accountability Act of 2010 (including an amendment made by that Act) and subparagraphs (C), (D), and (I) of this paragraph and subsections (c) and (f), with respect to accounts, agreements (including any transaction which is of the character of, or is commonly known to the trade as, an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty", or "decline guaranty"), and transactions involving swaps or contracts of sale of a commodity for future delivery (including significant price discovery contracts), traded or executed on a contract market designated pursuant to section 7 of this title or a swap execution facility pursuant to section 7b–3 of this title or any other board of trade, exchange, or market, and transactions subject to regulation by the Commission pursuant to section 23 of this title. Except as hereinabove provided, nothing contained in this section shall (I) supersede or limit the jurisdiction at any time conferred on the Securities and Exchange Commission or other regulatory authorities under the laws of the United States or of any State, or (II) restrict the Securities and Exchange Commission and such other authorities from carrying out their duties and responsibilities in accordance with such laws. Nothing in this section shall supersede or limit the jurisdiction conferred on courts of the United States or any State.

(B) Liability of principal for act of agent

The act, omission, or failure of any official, agent, or other person acting for any individual, association, partnership, corporation, or trust within the scope of his employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust, as well as of such official, agent, or other person.

(C) Designation of boards of trade as contract markets; contracts for future delivery; security futures products; filing with Board of Governors of Federal Reserve System; judicial review

Notwithstanding any other provision of law—

(i)(I) Except as provided in subclause (II), this chapter shall not apply to and the Commission shall have no jurisdiction to designate a board of trade as a contract market for any transaction whereby any party to such transaction acquires any put, call, or other option on one or more securities (as defined in section 77b(1) [1] of title 15 or section 3(a)(10) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(10)] on January 11, 1983), including any group or index of such securities, or any interest therein or based on the value thereof.

(II) This chapter shall apply to and the Commission shall have jurisdiction with respect to accounts, agreements, and transactions involving, and may permit the listing for trading pursuant to section 7a–2(c) of this title of, a put, call, or other option on 1 or more securities (as defined in section 77b(a)(1) of title 15 or section 3(a)(10) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(10)] on January 11, 1983), including any group or index of such securities, or any interest therein or based on the value thereof, that is exempted by the Securities and Exchange Commission pursuant to section 36(a)(1) of the Securities Exchange Act of 1934 [15 U.S.C. 78mm(a)(1)] with the condition that the Commission exercise concurrent jurisdiction over such put, call, or other option; provided, however, that nothing in this paragraph shall be construed to affect the jurisdiction and authority of the Securities and Exchange Commission over such put, call, or other option.

(ii) This chapter shall apply to and the Commission shall have exclusive jurisdiction with respect to accounts, agreements (including any transaction which is of the character of, or is commonly known to the trade as, an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance

guaranty", or "decline guaranty") and transactions involving, and may designate a board of trade as a contract market in, or register a derivatives transaction execution facility that trades or executes, contracts of sale (or options on such contracts) for future delivery of a group or index of securities (or any interest therein or based upon the value thereof): *Provided, however*, That no board of trade shall be designated as a contract market with respect to any such contracts of sale (or options on such contracts) for future delivery, and no derivatives transaction execution facility shall trade or execute such contracts of sale (or options on such contracts) for future delivery, unless the board of trade or the derivatives transaction execution facility, and the applicable contract, meet the following minimum requirements:

(I) Settlement of or delivery on such contract (or option on such contract) shall be effected in cash or by means other than the transfer or receipt of any security, except an exempted security under section 77c of title 15 or section 3(a)(12) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(12)] as in effect on January 11, 1983, (other than any municipal security, as defined in section 3(a)(29) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(29)] on January 11, 1983);

(II) Trading in such contract (or option on such contract) shall not be readily susceptible to manipulation of the price of such contract (or option on such contract), nor to causing or being used in the manipulation of the price of any underlying security, option on such security or option on a group or index including such securities; and

(III) Such group or index of securities shall not constitute a narrow-based security index.

(iii) If, in its discretion, the Commission determines that a stock index futures contract, notwithstanding its conformance with the requirements in clause (ii) of this subparagraph, can reasonably be used as a surrogate for trading a security (including a security futures product), it may, by order, require such contract and any option thereon be traded and regulated as security futures products as defined in section 3(a)(56) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(56)] and section 1a of this title subject to all rules and regulations applicable to security futures products under this chapter and the securities laws as defined in section 3(a)(47) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(47)].

(iv) No person shall offer to enter into, enter into, or confirm the execution of any contract of sale (or option on such contract) for future delivery of any security, or interest therein or based on the value thereof, except an exempted security under or [2] section 3(a)(12) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(12)] as in effect on January 11, 1983 (other than any municipal security as defined in section 3(a)(29) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(29)] on January 11, 1983), or except as provided in clause (ii) of this subparagraph or subparagraph (D), any group or index of such securities or any interest therein or based on the value thereof.

(v)(I) Notwithstanding any other provision of this chapter, any contract market in a stock index futures contract (or option thereon) other than a security futures product, or any derivatives transaction execution facility on which such contract or option is traded, shall file with the Board of Governors of the Federal Reserve System any rule establishing or changing the levels of margin (initial and maintenance) for such stock index futures contract (or option thereon) other than security futures products.

(II) The Board may at any time request any contract market or derivatives transaction execution facility to set the margin for any stock index futures contract (or option thereon), other than for any security futures product, at

such levels as the Board in its judgment determines are appropriate to preserve the financial integrity of the contract market or derivatives transaction execution facility, or its clearing system, or to prevent systemic risk. If the contract market or derivatives transaction execution facility fails to do so within the time specified by the Board in its request, the Board may direct the contract market or derivatives transaction execution facility to alter or supplement the rules of the contract market or derivatives transaction execution facility as specified in the request.

(III) Subject to such conditions as the Board may determine, the Board may delegate any or all of its authority, relating to margin for any stock index futures contract (or option thereon), other than security futures products, under this clause to the Commission.

(IV) It shall be unlawful for any futures commission merchant to, directly or indirectly, extend or maintain credit to or for, or collect margin from any customer on any security futures product unless such activities comply with the regulations prescribed pursuant to section 7(c)(2)(B) of the Securities Exchange Act of 1934 [15 U.S.C. 78g(c)(2)(B)].

(V) Nothing in this clause shall supersede or limit the authority granted to the Commission in section 12a(9) of this title to direct a contract market or registered derivatives transaction execution facility, on finding an emergency to exist, to raise temporary margin levels on any futures contract, or option on the contract covered by this clause, or on any security futures product.

(VI) Any action taken by the Board, or by the Commission acting under the delegation of authority under subclause III,[3] under this clause directing a contract market to alter or supplement a contract market rule shall be subject to review only in the Court of Appeals where the party seeking review resides or has its principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit. The review shall be based on the examination of all information before the Board or the Commission, as the case may be, at the time the determination was made. The court reviewing the action of the Board or the Commission shall not enter a stay or order of mandamus unless the court has determined, after notice and a hearing before a panel of the court, that the agency action complained of was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

(D) Jurisdiction and authority of Securities and Exchange Commission over security futures; requirements for security futures trading; periodic or special examinations by Commission representatives

(i) Notwithstanding any other provision of this chapter, the Securities and Exchange Commission shall have jurisdiction and authority over security futures as defined in section 3(a)(55) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(55)], section 77b(a)(16) of title 15, section 80a–2(a)(52) of title 15, and section 80b–2(a)(27) of title 15, options on security futures, and persons effecting transactions in security futures and options thereon, and this chapter shall apply to and the Commission shall have jurisdiction with respect to accounts, agreements (including any transaction which is of the character of, or is commonly known to the trade as, an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty", or "decline guaranty"), contracts, and transactions involving, and may designate a board of trade as a contract market in, or register a derivatives transaction execution facility that trades or executes, a security futures product as defined in section 1a of this title: *Provided, however,* That, except as provided in clause (vi) of this subparagraph, no board of trade shall be designated as a contract market with respect to, or registered as a derivatives transaction execution facility for, any such contracts of sale for

future delivery unless the board of trade and the applicable contract meet the following criteria:

(I) Except as otherwise provided in a rule, regulation, or order issued pursuant to clause (v) of this subparagraph, any security underlying the security future, including each component security of a narrow-based security index, is registered pursuant to section 12 of the Securities Exchange Act of 1934 [15 U.S.C. 78l].

(II) If the security futures product is not cash settled, the board of trade on which the security futures product is traded has arrangements in place with a clearing agency registered pursuant to section 17A of the Securities Exchange Act of 1934 [15 U.S.C. 78q–1] for the payment and delivery of the securities underlying the security futures product.

(III) Except as otherwise provided in a rule, regulation, or order issued pursuant to clause (v) of this subparagraph, the security future is based upon common stock and such other equity securities as the Commission and the Securities and Exchange Commission jointly determine appropriate.

(IV) The security futures product is cleared by a clearing agency that has in place provisions for linked and coordinated clearing with other clearing agencies that clear security futures products, which permits the security futures product to be purchased on a designated contract market, registered derivatives transaction execution facility, national securities exchange registered under section 6(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78f(a)], or national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78o–3(a)] and offset on another designated contract market, registered derivatives transaction execution facility, national securities exchange registered under section 6(a) of the Securities Exchange Act of 1934, or national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934.

(V) Only futures commission merchants, introducing brokers, commodity trading advisors, commodity pool operators or associated persons subject to suitability rules comparable to those of a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78o–3(a)] solicit, accept any order for, or otherwise deal in any transaction in or in connection with the security futures product.

(VI) The security futures product is subject to a prohibition against dual trading in section 6j of this title and the rules and regulations thereunder or the provisions of section 11(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78k(a)] and the rules and regulations thereunder, except to the extent otherwise permitted under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.] and the rules and regulations thereunder.

(VII) Trading in the security futures product is not readily susceptible to manipulation of the price of such security futures product, nor to causing or being used in the manipulation of the price of any underlying security, option on such security, or option on a group or index including such securities;

(VIII) The board of trade on which the security futures product is traded has procedures in place for coordinated surveillance among such board of trade, any market on which any security underlying the security futures product is traded, and other markets on which any related security is traded to detect manipulation and insider trading, except that, if the board of trade is an alternative trading system, a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78o–3(a)] or national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78f(a)] of which such alternative trading system is a member has in place such procedures.

(IX) The board of trade on which the security futures product is traded has in place audit trails necessary or appropriate to facilitate the coordinated surveillance required in subclause (VIII), except that, if the board of trade is an alternative trading system, a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78o–3(a)] or national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78f(a)] of which such alternative trading system is a member has rules to require such audit trails.

(X) The board of trade on which the security futures product is traded has in place procedures to coordinate trading halts between such board of trade and markets on which any security underlying the security futures product is traded and other markets on which any related security is traded, except that, if the board of trade is an alternative trading system, a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78o–3(a)] or national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78f(a)] of which such alternative trading system is a member has rules to require such coordinated trading halts.

(XI) The margin requirements for a security futures product comply with the regulations prescribed pursuant to section 7(c)(2)(B) of the Securities Exchange Act of 1934 [15 U.S.C. 78g(c)(2)(B)], except that nothing in this subclause shall be construed to prevent a board of trade from requiring higher margin levels for a security futures product when it deems such action to be necessary or appropriate.

(ii) It shall be unlawful for any person to offer, to enter into, to execute, to confirm the execution of, or to conduct any office or business anywhere in the United States, its territories or possessions, for the purpose of soliciting, or accepting any order for, or otherwise dealing in, any transaction in, or in connection with, a security futures product unless—

(I) the transaction is conducted on or subject to the rules of a board of trade that—

(aa) has been designated by the Commission as a contract market in such security futures product; or

(bb) is a registered derivatives transaction execution facility for the security futures product that has provided a certification with respect to the security futures product pursuant to clause (vii);

(II) the contract is executed or consummated by, through, or with a member of the contract market or registered derivatives transaction execution facility; and

(III) the security futures product is evidenced by a record in writing which shows the date, the parties to such security futures product and their addresses, the property covered, and its price, and each contract market member or registered derivatives transaction execution facility member shall keep the record for a period of 3 years from the date of the transaction, or for a longer period if the Commission so directs, which record shall at all times be open to the inspection of any duly authorized representative of the Commission.

(iii)(I) Except as provided in subclause (II) but notwithstanding any other provision of this chapter, no person shall offer to enter into, enter into, or confirm the execution of any option on a security future.

(II) After 3 years after December 21, 2000, the Commission and the Securities and Exchange Commission may by order jointly determine to permit trading of

options on any security future authorized to be traded under the provisions of this chapter and the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.].

(iv)(I) All relevant records of a futures commission merchant or introducing broker registered pursuant to section 6f(a)(2) of this title, floor broker or floor trader exempt from registration pursuant to section 6f(a)(3) of this title, associated person exempt from registration pursuant to section 6k(6) of this title, or board of trade designated as a contract market in a security futures product pursuant to section 7b–1 of this title shall be subject to such reasonable periodic or special examinations by representatives of the Commission as the Commission deems necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter, and the Commission, before conducting any such examination, shall give notice to the Securities and Exchange Commission of the proposed examination and consult with the Securities and Exchange Commission concerning the feasibility and desirability of coordinating the examination with examinations conducted by the Securities and Exchange Commission in order to avoid unnecessary regulatory duplication or undue regulatory burdens for the registrant or board of trade.

(II) The Commission shall notify the Securities and Exchange Commission of any examination conducted of any futures commission merchant or introducing broker registered pursuant to section 6f(a)(2) of this title, floor broker or floor trader exempt from registration pursuant to section 6f(a)(3) of this title, associated person exempt from registration pursuant to section 6k(6) of this title, or board of trade designated as a contract market in a security futures product pursuant to section 7b–1 of this title, and, upon request, furnish to the Securities and Exchange Commission any examination report and data supplied to or prepared by the Commission in connection with the examination.

(III) Before conducting an examination under subclause (I), the Commission shall use the reports of examinations, unless the information sought is unavailable in the reports, of any futures commission merchant or introducing broker registered pursuant to section 6f(a)(2) of this title, floor broker or floor trader exempt from registration pursuant to section 6f(a)(3) of this title, associated person exempt from registration pursuant to section 6k(6) of this title, or board of trade designated as a contract market in a security futures product pursuant to section 7b–1 of this title that is made by the Securities and Exchange Commission, a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–3(a)), or a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a)).

(IV) Any records required under this subsection for a futures commission merchant or introducing broker registered pursuant to section 6f(a)(2) of this title, floor broker or floor trader exempt from registration pursuant to section 6f(a)(3) of this title, associated person exempt from registration pursuant to section 6k(6) of this title, or board of trade designated as a contract market in a security futures product pursuant to section 7b–1 of this title, shall be limited to records with respect to accounts, agreements, contracts, and transactions involving security futures products.

(v)(I) The Commission and the Securities and Exchange Commission, by rule, regulation, or order, may jointly modify the criteria specified in subclause (I) or (III) of clause (i), including the trading of security futures based on securities other than equity securities, to the extent such modification fosters the development of fair and orderly markets in security futures products, is necessary or appropriate in the public interest, and is consistent with the protection of investors.

(II) The Commission and the Securities and Exchange Commission, by order, may jointly exempt any person from compliance with the criterion specified in clause (i)(IV) to the extent such exemption fosters the development of fair and orderly markets in security futures products, is necessary or appropriate in the public interest, and is consistent with the protection of investors.

(vi)(I) Notwithstanding clauses (i) and (vii), until the compliance date, a board of trade shall not be required to meet the criterion specified in clause (i)(IV).

(II) The Commission and the Securities and Exchange Commission shall jointly publish in the Federal Register a notice of the compliance date no later than 165 days before the compliance date.

(III) For purposes of this clause, the term "compliance date" means the later of —

(aa) 180 days after the end of the first full calendar month period in which the average aggregate comparable share volume for all security futures products based on single equity securities traded on all designated contract markets and registered derivatives transaction execution facilities equals or exceeds 10 percent of the average aggregate comparable share volume of options on single equity securities traded on all national securities exchanges registered pursuant to section 6(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78f(a)] and any national securities associations registered pursuant to section 15A(a) of such Act [15 U.S.C. 78o–3(a)]; or

(bb) 2 years after the date on which trading in any security futures product commences under this chapter.

(vii) It shall be unlawful for a board of trade to trade or execute a security futures product unless the board of trade has provided the Commission with a certification that the specific security futures product and the board of trade, as applicable, meet the criteria specified in subclauses (I) through (XI) of clause (i), except as otherwise provided in clause (vi).

(E) Obligation to address security futures products traded on foreign exchanges

(i) To the extent necessary or appropriate in the public interest, to promote fair competition, and consistent with promotion of market efficiency, innovation, and expansion of investment opportunities, the protection of investors, and the maintenance of fair and orderly markets, the Commission and the Securities and Exchange Commission shall jointly issue such rules, regulations, or orders as are necessary and appropriate to permit the offer and sale of a security futures product traded on or subject to the rules of a foreign board of trade to United States persons.

(ii) The rules, regulations, or orders adopted under clause (i) shall take into account, as appropriate, the nature and size of the markets that the securities underlying the security futures product reflects.

(F) Security futures products traded on foreign boards of trade

(i) Nothing in this chapter is intended to prohibit a futures commission merchant from carrying security futures products traded on or subject to the rules of a foreign board of trade in the accounts of persons located outside of the United States.

(ii) Nothing in this chapter is intended to prohibit any eligible contract participant located in the United States from purchasing or carrying securities futures products traded on or subject to the rules of a foreign board of trade, exchange, or market to the same extent such person may be authorized to purchase or carry other securities traded on a foreign board of trade, exchange, or market so long as any underlying security for such security futures products is

traded principally on, by, or through any exchange or market located outside the United States.

(G)(i) Nothing in this paragraph shall limit the jurisdiction conferred on the Securities and Exchange Commission by the Wall Street Transparency and Accountability Act of 2010 with regard to security-based swap agreements as defined pursuant to section 3(a)(78) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(78)], and security-based swaps.

(ii) In addition to the authority of the Securities and Exchange Commission described in clause (i), nothing in this subparagraph shall limit or affect any statutory authority of the Commission with respect to an agreement, contract, or transaction described in clause (i).

(H) Notwithstanding any other provision of law, the Wall Street Transparency and Accountability Act of 2010 shall not apply to, and the Commodity Futures Trading Commission shall have no jurisdiction under such Act (or any amendments to this chapter made by such Act) with respect to, any security other than a security-based swap.

(I)(i) Nothing in this chapter shall limit or affect any statutory authority of the Federal Energy Regulatory Commission or a State regulatory authority (as defined in section 796(21) of title 16) with respect to an agreement, contract, or transaction that is entered into pursuant to a tariff or rate schedule approved by the Federal Energy Regulatory Commission or a State regulatory authority and is—

(I) not executed, traded, or cleared on a registered entity or trading facility; or

(II) executed, traded, or cleared on a registered entity or trading facility owned or operated by a regional transmission organization or independent system operator.

(ii) In addition to the authority of the Federal Energy Regulatory Commission or a State regulatory authority described in clause (i), nothing in this subparagraph shall limit or affect—

(I) any statutory authority of the Commission with respect to an agreement, contract, or transaction described in clause (i); or

(II) the jurisdiction of the Commission under subparagraph (A) with respect to an agreement, contract, or transaction that is executed, traded, or cleared on a registered entity or trading facility that is not owned or operated by a regional transmission organization or independent system operator (as defined by sections [4] 796(27) and (28) of title 16).

(2) Establishment of Commodity Futures Trading Commission; composition; terms of Commissioners

(A) There is hereby established, as an independent agency of the United States Government, a Commodity Futures Trading Commission. The Commission shall be composed of five Commissioners who shall be appointed by the President, by and with the advice and consent of the Senate. In nominating persons for appointment, the President shall—

(i) select persons who shall each have demonstrated knowledge in futures trading or its regulation, or the production, merchandising, processing or distribution of one or more of the commodities or other goods and articles, services, rights, and interests covered by this chapter; and

(ii) seek to ensure that the demonstrated knowledge of the Commissioners is balanced with respect to such areas.

Not more than three of the members of the Commission shall be members of the same political party. Each Commissioner shall hold office for a term of five years and until his successor is appointed and has qualified, except that he shall not so continue to serve beyond the expiration of the next session of Congress

subsequent to the expiration of said fixed term of office, and except (i) any Commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and (ii) the terms of office of the Commissioners first taking office after the enactment of this paragraph shall expire as designated by the President at the time of nomination, one at the end of one year, one at the end of two years, one at the end of three years, one at the end of four years, and one at the end of five years.

(B) The President shall appoint, by and with the advice and consent of the Senate, a member of the Commission as Chairman, who shall serve as Chairman at the pleasure of the President. An individual may be appointed as Chairman at the same time that person is appointed as a Commissioner. The Chairman shall be the chief administrative officer of the Commission and shall preside at hearings before the Commission. At any time, the President may appoint, by and with the advice and consent of the Senate, a different Chairman, and the Commissioner previously appointed as Chairman may complete that Commissioner's term as a Commissioner.

(3) Vacancies

A vacancy in the Commission shall not impair the right of the remaining Commissioners to exercise all the powers of the Commission.

(4) General Counsel

The Commission shall have a General Counsel, who shall be appointed by the Commission and serve at the pleasure of the Commission. The General Counsel shall report directly to the Commission and serve as its legal advisor. The Commission shall appoint such other attorneys as may be necessary, in the opinion of the Commission, to assist the General Counsel, represent the Commission in all disciplinary proceedings pending before it, represent the Commission in courts of law whenever appropriate, assist the Department of Justice in handling litigation concerning the Commission in courts of law, and perform such other legal duties and functions as the Commission may direct.

(5) Executive Director

The Commission shall have an Executive Director, who shall be appointed by the Commission and serve at the pleasure of the Commission. The Executive Director shall report directly to the Commission and perform such functions and duties as the Commission may prescribe.

(6) Powers and Functions of Chairman

(A) Except as otherwise provided in this paragraph and in paragraphs (4) and (5) of this subsection, the executive and administrative functions of the Commission, including functions of the Commission with respect to the appointment and supervision of personnel employed under the Commission, the distribution of business among such personnel and among administrative units of the Commission, and the use and expenditure of funds, according to budget categories, plans, programs, and priorities established and approved by the Commission, shall be exercised solely by the Chairman.

(B) In carrying out any of his functions under the provisions of this paragraph, the Chairman shall be governed by general policies, plans, priorities, and budgets approved by the Commission and by such regulatory decisions, findings, and determination as the Commission may by law be authorized to make.

(C) The appointment by the Chairman of the heads of major administrative units under the Commission shall be subject to the approval of the Commission.

(D) Personnel employed regularly and full time in the immediate offices of Commissioners other than the Chairman shall not be affected by the provisions of this paragraph.

(E) There are hereby reserved to the Commission its functions with respect to revising budget estimates and with respect to determining the distribution of appropriated funds according to major programs and purposes.

(F) The Chairman may from time to time make such provisions as he shall deem appropriate authorizing the performance by any officer, employee, or administrative unit under his jurisdiction of any functions of the Chairman under this paragraph.

(7) Appointment and compensation

(A) In general

The Commission may appoint and fix the compensation of such officers, attorneys, economists, examiners, and other employees as may be necessary for carrying out the functions of the Commission under this chapter.

(B) Rates of pay

Rates of basic pay for all employees of the Commission may be set and adjusted by the Commission without regard to chapter 51 or subchapter III of chapter 53 of title 5.

(C) Comparability

(i) In general

The Commission may provide additional compensation and benefits to employees of the Commission if the same type of compensation or benefits are provided by any agency referred to in section 1833b(a) of title 12 or could be provided by such an agency under applicable provisions of law (including rules and regulations).

(ii) Consultation

In setting and adjusting the total amount of compensation and benefits for employees, the Commission shall consult with, and seek to maintain comparability with, the agencies referred to in section 1833b(a) of title 12.

(8) Conflict of interest

No Commissioner or employee of the Commission shall accept employment or compensation from any person, exchange, or clearinghouse subject to regulation by the Commission under this chapter during his term of office, nor shall he participate, directly or indirectly, in any registered entity operations or transactions of a character subject to regulation by the Commission.

(9) Liaison with Department of Agriculture; communications with Department of the Treasury, Federal Reserve Board, and Securities and Exchange Commission; application by a board of trade for designation as a contract market for future delivery of securities

(A) The Commission shall, in cooperation with the Secretary of Agriculture, maintain a liaison between the Commission and the Department of Agriculture. The Secretary shall take such steps as may be necessary to enable the Commission to obtain information and utilize such services and facilities of the Department of Agriculture as may be necessary in order to maintain effectively such liaison. In addition, the Secretary shall appoint a liaison officer, who shall be an employee of the Office of the Secretary, for the purpose of maintaining a liaison between the Department of Agriculture and the Commission. The Commission shall furnish such liaison officer appropriate office space within the offices of the Commission and shall allow such liaison officer to attend and observe all deliberations and proceedings of the Commission.

(B)(i) The Commission shall maintain communications with the Department of the Treasury, the Board of Governors of the Federal Reserve System, and the Securities and Exchange Commission for the purpose of keeping such agencies

fully informed of Commission activities that relate to the responsibilities of those agencies, for the purpose of seeking the views of those agencies on such activities, and for considering the relationships between the volume and nature of investment and trading in contracts of sale of a commodity for future delivery and in securities and financial instruments under the jurisdiction of such agencies.

(ii) When a board of trade applies for designation or registration as a contract market or derivatives transaction execution facility involving transactions for future delivery of any security issued or guaranteed by the United States or any agency thereof, the Commission shall promptly deliver a copy of such application to the Department of the Treasury and the Board of Governors of the Federal Reserve System. The Commission may not designate or register a board of trade as a contract market or derivatives transaction execution facility based on such application until forty-five days after the date the Commission delivers the application to such agencies or until the Commission receives comments from each of such agencies on the application, whichever period is shorter. Any comments received by the Commission from such agencies shall be included as part of the public record of the Commission's designation proceeding. In designating, registering, or refusing, suspending, or revoking the designation or registration of, a board of trade as a contract market or derivatives transaction execution facility involving transactions for future delivery referred to in this clause or in considering any possible action under this chapter (including without limitation emergency action under section 12a(9) of this title) with respect to such transactions, the Commission shall take into consideration all comments it receives from the Department of the Treasury and the Board of Governors of the Federal Reserve System and shall consider the effect that any such designation, registration, suspension, revocation, or action may have on the debt financing requirements of the United States Government and the continued efficiency and integrity of the underlying market for government securities.

(iii) The provisions of this subparagraph shall not create any rights, liabilities, or obligations upon which actions may be brought against the Commission.

(10) Transmittal of budget requests and legislative recommendations to congressional committees

(A) Whenever the Commission submits any budget estimate or request to the President or the Office of Management and Budget, it shall concurrently transmit copies of that estimate or request to the House and Senate Appropriations Committees and the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry.

(B) Whenever the Commission transmits any legislative recommendations, or testimony, or comments on legislation to the President or the Office of Management and Budget, it shall concurrently transmit copies thereof to the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry. No officer or agency of the United States shall have any authority to require the Commission to submit its legislative recommendations, or testimony, or comments on legislation to any officer or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress. In instances in which the Commission voluntarily seeks to obtain the comments or review of any officer or agency of the United States, the Commission shall include a description of such actions in its legislative recommendations, testimony, or comments on legislation which it transmits to the Congress.

(C) Whenever the Commission issues for official publication any opinion, release, rule, order, interpretation, or other determination on a matter, the Commission shall provide that any dissenting, concurring, or separate opinion by any

Commissioner on the matter be published in full along with the Commission opinion, release, rule, order, interpretation, or determination.

(11) Seal

The Commission shall have an official seal, which shall be judicially noticed.

(12) Rules and regulations

The Commission is authorized to promulgate such rules and regulations as it deems necessary to govern the operating procedures and conduct of the business of the Commission.

(13) Public availability of swap transaction data

(A) Definition of real-time public reporting

In this paragraph, the term "real-time public reporting" means to report data relating to a swap transaction, including price and volume, as soon as technologically practicable after the time at which the swap transaction has been executed.

(B) Purpose

The purpose of this section is to authorize the Commission to make swap transaction and pricing data available to the public in such form and at such times as the Commission determines appropriate to enhance price discovery.

(C) General rule

The Commission is authorized and required to provide by rule for the public availability of swap transaction and pricing data as follows:

(i) With respect to those swaps that are subject to the mandatory clearing requirement described in subsection (h)(1) (including those swaps that are excepted from the requirement pursuant to subsection (h)(7)), the Commission shall require real-time public reporting for such transactions.

(ii) With respect to those swaps that are not subject to the mandatory clearing requirement described in subsection (h)(1), but are cleared at a registered derivatives clearing organization, the Commission shall require real-time public reporting for such transactions.

(iii) With respect to swaps that are not cleared at a registered derivatives clearing organization and which are reported to a swap data repository or the Commission under subsection (h)(6), the Commission shall require real-time public reporting for such transactions, in a manner that does not disclose the business transactions and market positions of any person.

(iv) With respect to swaps that are determined to be required to be cleared under subsection (h)(2) but are not cleared, the Commission shall require real-time public reporting for such transactions.

(D) Registered entities and public reporting

The Commission may require registered entities to publicly disseminate the swap transaction and pricing data required to be reported under this paragraph.

(E) Rulemaking required

With respect to the rule providing for the public availability of transaction and pricing data for swaps described in clauses (i) and (ii) of subparagraph (C), the rule promulgated by the Commission shall contain provisions—

(i) to ensure such information does not identify the participants;

(ii) to specify the criteria for determining what constitutes a large notional swap transaction (block trade) for particular markets and contracts;

(iii) to specify the appropriate time delay for reporting large notional swap transactions (block trades) to the public; and

(iv) that take into account whether the public disclosure will materially reduce market liquidity.

(F) Timeliness of reporting

Parties to a swap (including agents of the parties to a swap) shall be responsible for reporting swap transaction information to the appropriate registered entity in a timely manner as may be prescribed by the Commission.

(G) Reporting of swaps to registered swap data repositories

Each swap (whether cleared or uncleared) shall be reported to a registered swap data repository.

(14) Semiannual and annual public reporting of aggregate swap data

(A) In general

In accordance with subparagraph (B), the Commission shall issue a written report on a semiannual and annual basis to make available to the public information relating to—

(i) the trading and clearing in the major swap categories; and

(ii) the market participants and developments in new products.

(B) Use; consultation

In preparing a report under subparagraph (A), the Commission shall—

(i) use information from swap data repositories and derivatives clearing organizations; and

(ii) consult with the Office of the Comptroller of the Currency, the Bank for International Settlements, and such other regulatory bodies as may be necessary.

(C) Authority of the Commission

The Commission may, by rule, regulation, or order, delegate the public reporting responsibilities of the Commission under this paragraph in accordance with such terms and conditions as the Commission determines to be appropriate and in the public interest.

(15) Energy and Environmental Markets Advisory Committee

(A) Establishment

(i) In general

An Energy and Environmental Markets Advisory Committee is hereby established.

(ii) Membership

The Committee shall have 9 members.

(iii) Activities

The Committee's objectives and scope of activities shall be—

(I) to conduct public meetings;

(II) to submit reports and recommendations to the Commission (including dissenting or minority views, if any); and

(III) otherwise to serve as a vehicle for discussion and communication on matters of concern to exchanges, firms, end users, and regulators regarding energy and environmental markets and their regulation by the Commission.

(B) Requirements

(i) In general

The Committee shall hold public meetings at such intervals as are necessary to carry out the functions of the Committee, but not less frequently than 2 times per year.

(ii) Members

Members shall be appointed to 3-year terms, but may be removed for cause by vote of the Commission.

(C) Appointment

The Commission shall appoint members with a wide diversity of opinion and who represent a broad spectrum of interests, including hedgers and consumers.

(D) Reimbursement

Members shall be entitled to per diem and travel expense reimbursement by the Commission.

(E) FACA

The Committee shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

(b) Transaction in interstate commerce

For the purposes of this chapter (but not in any wise limiting the foregoing definition of interstate commerce) a transaction in respect to any article shall be considered to be in interstate commerce if such article is part of that current of commerce usual in the commodity trade whereby commodities and commodity products and by-products thereof are sent from one State, with the expectation that they will end their transit, after purchase, in another, including in addition to cases within the above general description, all cases where purchase or sale is either for shipment to another State, or for manufacture within the State and the shipment outside the State of the products resulting from such manufacture. Articles normally in such current of commerce shall not be considered out of such commerce through resort being had to any means or device intended to remove transactions in respect thereto from the provisions of this chapter. For the purpose of this paragraph the word "State" includes Territory, the District of Columbia, possession of the United States, and foreign nation.

(c) Agreements, contracts, and transactions in foreign currency, government securities, and certain other commodities

(1) In general

Except as provided in paragraph (2), nothing in this chapter (other than section,[5] 7a–1,[5] or 16(e)(2)(B) of this title) governs or applies to an agreement, contract, or transaction in—

(A) foreign currency;
(B) government securities;
(C) security warrants;
(D) security rights;
(E) resales of installment loan contracts;
(F) repurchase transactions in an excluded commodity; or
(G) mortgages or mortgage purchase commitments.

(2) Commission jurisdiction

(A) Agreements, contracts, and transactions traded on an organized exchange

This chapter applies to, and the Commission shall have jurisdiction over, an agreement, contract, or transaction described in paragraph (1) that is—

(i) a contract of sale of a commodity for future delivery (or an option on such a contract), or an option on a commodity (other than foreign currency or a security or a group or index of securities), that is executed or traded on an organized exchange;

(ii) a swap; or

(iii) an option on foreign currency executed or traded on an organized exchange that is not a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78f(a)].

(B) Agreements, contracts, and transactions in retail foreign currency

(i) This chapter applies to, and the Commission shall have jurisdiction over, an agreement, contract, or transaction in foreign currency that—

(I) is a contract of sale of a commodity for future delivery (or an option on such a contract) or an option (other than an option executed or traded on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a))); and

(II) is offered to, or entered into with, a person that is not an eligible contract participant, unless the counterparty, or the person offering to be the counterparty, of the person is—

(aa) a United States financial institution;

(bb)(AA) a broker or dealer registered under section 15(b) (except paragraph (11) thereof) or 15C of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b), 78o–5); or

(BB) an associated person of a broker or dealer registered under section 15(b) (except paragraph (11) thereof) or 15C of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b), 78o–5) concerning the financial or securities activities of which the broker or dealer makes and keeps records under section 15C(b) or 17(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–5(b), 78q(h));

(cc)(AA) a futures commission merchant that is primarily or substantially engaged in the business activities described in section 1a of this title, is registered under this chapter, is not a person described in item (bb) of this subclause, and maintains adjusted net capital equal to or in excess of the dollar amount that applies for purposes of clause (ii) of this subparagraph; or

(BB) an affiliated person of a futures commission merchant that is primarily or substantially engaged in the business activities described in section 1a of this title, is registered under this chapter, and is not a person described in item (bb) of this subclause, if the affiliated person maintains adjusted net capital equal to or in excess of the dollar amount that applies for purposes of clause (ii) of this subparagraph and is not a person described in such item (bb), and the futures commission merchant makes and keeps records under section 6f(c)(2)(B) of this title concerning the futures and other financial activities of the affiliated person;

(dd) a financial holding company (as defined in section 1841 of title 12); or

(ff) [6] a retail foreign exchange dealer that maintains adjusted net capital equal to or in excess of the dollar amount that applies for purposes of clause (ii) of this subparagraph and is registered in such capacity with the Commission, subject to such terms and conditions as the Commission shall prescribe, and is a member of a futures association registered under section 21 of this title.

(ii) The dollar amount that applies for purposes of this clause is—

(I) $10,000,000, beginning 120 days after the date of the enactment of this clause;

(II) $15,000,000, beginning 240 days after such date of enactment; and

(III) $20,000,000, beginning 360 days after such date of enactment.

(iii) Notwithstanding items (cc) and (gg) of clause (i)(II) of this subparagraph, agreements, contracts, or transactions described in clause (i) of this subparagraph, and accounts or pooled investment vehicles described in clause (vi), shall be subject to subsection (a)(1)(B) of this section and sections 6(b), 6b, 6c(b), 6o, 9, and 13b of this title (except to the extent that sections 9 and 13b of this title prohibit manipulation of the market price of any commodity in interstate commerce, or for future delivery on or subject to the rules of any

market), 13a–1, 13a–2, 12(a), 13c(a), and 13c(b) of this title if the agreements, contracts, or transactions are offered, or entered into, by a person that is registered as a futures commission merchant or retail foreign exchange dealer, or an affiliated person of a futures commission merchant registered under this chapter that is not also a person described in any of item (aa), (bb), (ee),[1] or (ff) of clause (i)(II) of this subparagraph.

(iv)(I) Notwithstanding items (cc) and (gg) [1] of clause (i)(II), a person, unless registered in such capacity as the Commission by rule, regulation, or order shall determine and a member of a futures association registered under section 21 of this title, shall not—

(aa) solicit or accept orders from any person that is not an eligible contract participant in connection with agreements, contracts, or transactions described in clause (i) entered into with or to be entered into with a person who is not described in item (aa), (bb), (ee),[1] or (ff) of clause (i)(II);

(bb) exercise discretionary trading authority or obtain written authorization to exercise discretionary trading authority over any account for or on behalf of any person that is not an eligible contract participant in connection with agreements, contracts, or transactions described in clause (i) entered into with or to be entered into with a person who is not described in item (aa), (bb), (ee),[1] or (ff) of clause (i)(II); or

(cc) operate or solicit funds, securities, or property for any pooled investment vehicle that is not an eligible contract participant in connection with agreements, contracts, or transactions described in clause (i) entered into with or to be entered into with a person who is not described in item (aa), (bb), (ee),[1] or (ff) of clause (i)(II).

(II) Subclause (I) of this clause shall not apply to—

(aa) any person described in any of item (aa), (bb), (ee),[1] or (ff) of clause (i)(II);

(bb) any such person's associated persons; or

(cc) any person who would be exempt from registration if engaging in the same activities in connection with transactions conducted on or subject to the rules of a contract market or a derivatives transaction execution facility.

(III) Notwithstanding items (cc) and (gg) [1] of clause (i)(II), the Commission may make, promulgate, and enforce such rules and regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions of, or to accomplish any of the purposes of, this chapter in connection with the activities of persons subject to subclause (I).

(IV) Subclause (III) of this clause shall not apply to—

(aa) any person described in any of item (aa) through (ff) of clause (i)(II);

(bb) any such person's associated persons; or

(cc) any person who would be exempt from registration if engaging in the same activities in connection with transactions conducted on or subject to the rules of a contract market or a derivatives transaction execution facility.

(v) Notwithstanding items (cc) and (gg) [1] of clause (i)(II), the Commission may make, promulgate, and enforce such rules and regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions of, or to accomplish any of the purposes of, this chapter in connection with agreements, contracts, or transactions described in clause (i) which are offered, or entered into, by a person described in item (cc) or (gg) [1] of clause (i)(II).

(vi) This chapter applies to, and the Commission shall have jurisdiction over, an account or pooled investment vehicle that is offered for the purpose of trading,

or that trades, any agreement, contract, or transaction in foreign currency described in clause (i).

(C)(i)(I) This subparagraph shall apply to any agreement, contract, or transaction in foreign currency that is—

(aa) offered to, or entered into with, a person that is not an eligible contract participant (except that this subparagraph shall not apply if the counterparty, or the person offering to be the counterparty, of the person that is not an eligible contract participant is a person described in any of item (aa), (bb), (ee),[1] or (ff) of subparagraph (B)(i)(II)); and

(bb) offered, or entered into, on a leveraged or margined basis, or financed by the offeror, the counterparty, or a person acting in concert with the offeror or counterparty on a similar basis.

(II) Subclause (I) of this clause shall not apply to—

(aa) a security that is not a security futures product; or

(bb) a contract of sale that—

(AA) results in actual delivery within 2 days; or

(BB) creates an enforceable obligation to deliver between a seller and buyer that have the ability to deliver and accept delivery, respectively, in connection with their line of business.

(ii)(I) Agreements, contracts, or transactions described in clause (i) of this subparagraph, and accounts or pooled investment vehicles described in clause (vii), shall be subject to subsection (a)(1)(B) of this section and sections 6(b), 6b, 6c(b), 6o, 9, and 13b of this title (except to the extent that sections 9 and 13b of this title prohibit manipulation of the market price of any commodity in interstate commerce, or for future delivery on or subject to the rules of any market), 13a–1, 13a–2, 12(a), 13c(a), and 13c(b) of this title.

(II) Subclause (I) of this clause shall not apply to—

(aa) any person described in any of item (aa), (bb), (ee),[1] or (ff) of subparagraph (B)(i)(II); or

(bb) any such person's associated persons.

(III) The Commission may make, promulgate, and enforce such rules and regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions of or to accomplish any of the purposes of this chapter in connection with agreements, contracts, or transactions described in clause (i) of this subparagraph if the agreements, contracts, or transactions are offered, or entered into, by a person that is not described in item (aa) through (ff) of subparagraph (B)(i)(II).

(iii)(I) A person, unless registered in such capacity as the Commission by rule, regulation, or order shall determine and a member of a futures association registered under section 21 of this title, shall not—

(aa) solicit or accept orders from any person that is not an eligible contract participant in connection with agreements, contracts, or transactions described in clause (i) of this subparagraph entered into with or to be entered into with a person who is not described in item (aa), (bb), (ee),[1] or (ff) of subparagraph (B)(i)(II);

(bb) exercise discretionary trading authority or obtain written authorization to exercise written trading authority over any account for or on behalf of any person that is not an eligible contract participant in connection with agreements, contracts, or transactions described in clause (i) of this subparagraph entered into with or to be entered into with a person who is not described in item (aa), (bb), (ee),[1] or (ff) of subparagraph (B)(i)(II); or

(cc) operate or solicit funds, securities, or property for any pooled investment vehicle that is not an eligible contract participant in connection with agreements, contracts, or transactions described in clause (i) of this subparagraph entered into with or to be entered into with a person who is not described in item (aa), (bb), (ee),[1] or (ff) of subparagraph (B)(i)(II).

(II) Subclause (I) of this clause shall not apply to—

(aa) any person described in item (aa), (bb), (ee),[1] or (ff) of subparagraph (B)(i)(II);

(bb) any such person's associated persons; or

(cc) any person who would be exempt from registration if engaging in the same activities in connection with transactions conducted on or subject to the rules of a contract market or a derivatives transaction execution facility.

(III) The Commission may make, promulgate, and enforce such rules and regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions of, or to accomplish any of the purposes of, this chapter in connection with the activities of persons subject to subclause (I).

(IV) Subclause (III) of this clause shall not apply to—

(aa) any person described in item (aa) through (ff) of subparagraph (B)(i)(II);

(bb) any such person's associated persons; or

(cc) any person who would be exempt from registration if engaging in the same activities in connection with transactions conducted on or subject to the rules of a contract market or a derivatives transaction execution facility.

(iv) Sections 6(b) and 6b of this title shall apply to any agreement, contract, or transaction described in clause (i) of this subparagraph as if the agreement, contract, or transaction were a contract of sale of a commodity for future delivery.

(v) This subparagraph shall not be construed to limit any jurisdiction that the Commission may otherwise have under any other provision of this chapter over an agreement, contract, or transaction that is a contract of sale of a commodity for future delivery.

(vi) This subparagraph shall not be construed to limit any jurisdiction that the Commission or the Securities and Exchange Commission may otherwise have under any other provision of this chapter with respect to security futures products and persons effecting transactions in security futures products.

(vii) This chapter applies to, and the Commission shall have jurisdiction over, an account or pooled investment vehicle that is offered for the purpose of trading, or that trades, any agreement, contract, or transaction in foreign currency described in clause (i).

(D) Retail commodity transactions

(i) Applicability

Except as provided in clause (ii), this subparagraph shall apply to any agreement, contract, or transaction in any commodity that is—

(I) entered into with, or offered to (even if not entered into with), a person that is not an eligible contract participant or eligible commercial entity; and

(II) entered into, or offered (even if not entered into), on a leveraged or margined basis, or financed by the offeror, the counterparty, or a person acting in concert with the offeror or counterparty on a similar basis.

(ii) Exceptions

This subparagraph shall not apply to—

(I) an agreement, contract, or transaction described in paragraph (1) or subparagraphs [7] (A), (B), or (C), including any agreement, contract, or transaction specifically excluded from subparagraph (A), (B), or (C);

(II) any security;

(III) a contract of sale that—

(aa) results in actual delivery within 28 days or such other longer period as the Commission may determine by rule or regulation based upon the typical commercial practice in cash or spot markets for the commodity involved; or

(bb) creates an enforceable obligation to deliver between a seller and a buyer that have the ability to deliver and accept delivery, respectively, in connection with the line of business of the seller and buyer; or

(IV) an agreement, contract, or transaction that is listed on a national securities exchange registered under section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a)); or

(V) an identified banking product, as defined in section 27(b) of this title.

(iii) Enforcement

Sections 6(a), 6(b), and 6b of this title apply to any agreement, contract, or transaction described in clause (i), as if the agreement, contract, or transaction was a contract of sale of a commodity for future delivery.

(iv) Eligible commercial entity

For purposes of this subparagraph, an agricultural producer, packer, or handler shall be considered to be an eligible commercial entity for any agreement, contract, or transaction for a commodity in connection with the line of business of the agricultural producer, packer, or handler.

(E) Prohibition

(i) Definition of Federal regulatory agency

In this subparagraph, the term "Federal regulatory agency" means—

(I) the Commission;

(II) the Securities and Exchange Commission;

(III) an appropriate Federal banking agency;

(IV) the National Credit Union Association; and

(V) the Farm Credit Administration.

(ii) Prohibition

(I) In general

Except as provided in subclause (II), a person described in subparagraph (B)(i)(II) for which there is a Federal regulatory agency shall not offer to, or enter into with, a person that is not an eligible contract participant, any agreement, contract, or transaction in foreign currency described in subparagraph (B)(i)(I) except pursuant to a rule or regulation of a Federal regulatory agency allowing the agreement, contract, or transaction under such terms and conditions as the Federal regulatory agency shall prescribe.

(II) Effective date

With regard to persons described in subparagraph (B)(i)(II) for which a Federal regulatory agency has issued a proposed rule concerning agreements, contracts, or transactions in foreign currency described in subparagraph (B)(i)(I) prior to July 21, 2010, subclause (I) shall take effect 90 days after July 21, 2010.

(iii) Requirements of rules and regulations

(I) In general

The rules and regulations described in clause (ii) shall prescribe appropriate requirements with respect to—

(aa) disclosure;

(bb) recordkeeping;

(cc) capital and margin;

(dd) reporting;

(ee) business conduct;

(ff) documentation; and

(gg) such other standards or requirements as the Federal regulatory agency shall determine to be necessary.

(II) Treatment

The rules or regulations described in clause (ii) shall treat all agreements, contracts, and transactions in foreign currency described in subparagraph (B)(i)(I), and all agreements, contracts, and transactions in foreign currency that are functionally or economically similar to agreements, contracts, or transactions described in subparagraph (B)(i)(I), similarly.

(d) Swaps

Nothing in this chapter (other than subparagraphs (A), (B), (C), (D), (G), and (H) of subsection (a)(1), subsections (f) and (g), sections 1a, 2(a)(13), 2(c)(2)(A)(ii), 2(e), 2(h), 6(c), 6a, 6b, and 6b–1 of this title, subsections (a), (b), and (g) of section 6c of this title, sections 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 6r, 6s, 6t, 7, 7a–1, 7a–2, 7b, and 7b–3 of this title, sections 9 and 13b of this title, sections 13a–1, 13a–2, 12, 12a, and 13 of this title, subsections (e)(2), (f), and (h) of section 16 of this title, subsections (a) and (b) of section 13c of this title, sections 21, 24, 24a, and 25(a)(4) of this title, and any other provision of this chapter that is applicable to registered entities or Commission registrants) governs or applies to a swap.

(e) Limitation on participation

It shall be unlawful for any person, other than an eligible contract participant, to enter into a swap unless the swap is entered into on, or subject to the rules of, a board of trade designated as a contract market under section 7 of this title.

(f) Exclusion for qualifying hybrid instruments

(1) In general

Nothing in this chapter (other than section 16(e)(2)(B) of this title) governs or is applicable to a hybrid instrument that is predominantly a security.

(2) Predominance

A hybrid instrument shall be considered to be predominantly a security if—

(A) the issuer of the hybrid instrument receives payment in full of the purchase price of the hybrid instrument, substantially contemporaneously with delivery of the hybrid instrument;

(B) the purchaser or holder of the hybrid instrument is not required to make any payment to the issuer in addition to the purchase price paid under subparagraph (A), whether as margin, settlement payment, or otherwise, during the life of the hybrid instrument or at maturity;

(C) the issuer of the hybrid instrument is not subject by the terms of the instrument to mark-to-market margining requirements; and

(D) the hybrid instrument is not marketed as a contract of sale of a commodity for future delivery (or option on such a contract) subject to this chapter.

(3) Mark-to-market margining requirements

For the purposes of paragraph (2)(C), mark-to-market margining requirements do not include the obligation of an issuer of a secured debt instrument to increase the amount of collateral held in pledge for the benefit of the purchaser of the

secured debt instrument to secure the repayment obligations of the issuer under the secured debt instrument.

(g) Application of commodity futures laws

(1) No provision of this chapter shall be construed as implying or creating any presumption that—

(A) any agreement, contract, or transaction that is excluded from this chapter under subsection (c), (d), (e), (f), or (g) of this section or title IV of the Commodity Futures Modernization Act of 2000 [7 U.S.C. 27 to 27f], or exempted under subsection (h) of this section or section 6(c) of this title; or

(B) any agreement, contract, or transaction, not otherwise subject to this chapter, that is not so excluded or exempted,

is or would otherwise be subject to this chapter.

(2) No provision of, or amendment made by, the Commodity Futures Modernization Act of 2000 shall be construed as conferring jurisdiction on the Commission with respect to any such agreement, contract, or transaction, except as expressly provided in section 7a–1 of this title.

(h) Clearing requirement

(1) In general

(A) Standard for clearing

It shall be unlawful for any person to engage in a swap unless that person submits such swap for clearing to a derivatives clearing organization that is registered under this chapter or a derivatives clearing organization that is exempt from registration under this chapter if the swap is required to be cleared.

(B) Open access

The rules of a derivatives clearing organization described in subparagraph (A) shall—

(i) prescribe that all swaps (but not contracts of sale of a commodity for future delivery or options on such contracts) submitted to the derivatives clearing organization with the same terms and conditions are economically equivalent within the derivatives clearing organization and may be offset with each other within the derivatives clearing organization; and

(ii) provide for non-discriminatory clearing of a swap (but not a contract of sale of a commodity for future delivery or option on such contract) executed bilaterally or on or through the rules of an unaffiliated designated contract market or swap execution facility.

(2) Commission review

(A) Commission-initiated review

(i) The Commission on an ongoing basis shall review each swap, or any group, category, type, or class of swaps to make a determination as to whether the swap or group, category, type, or class of swaps should be required to be cleared.

(ii) The Commission shall provide at least a 30-day public comment period regarding any determination made under clause (i).

(B) Swap submissions

(i) A derivatives clearing organization shall submit to the Commission each swap, or any group, category, type, or class of swaps that it plans to accept for clearing, and provide notice to its members (in a manner to be determined by the Commission) of the submission.

(ii) Any swap or group, category, type, or class of swaps listed for clearing by a derivative clearing organization as of July 21, 2010, shall be considered submitted to the Commission.

(iii) The Commission shall—

(I) make available to the public submissions received under clauses (i) and (ii);

(II) review each submission made under clauses (i) and (ii), and determine whether the swap, or group, category, type, or class of swaps described in the submission is required to be cleared; and

(III) provide at least a 30-day public comment period regarding its determination as to whether the clearing requirement under paragraph (1)(A) shall apply to the submission.

(C) Deadline

The Commission shall make its determination under subparagraph (B)(iii) not later than 90 days after receiving a submission made under subparagraphs (B)(i) and (B)(ii), unless the submitting derivatives clearing organization agrees to an extension for the time limitation established under this subparagraph.

(D) Determination

(i) In reviewing a submission made under subparagraph (B), the Commission shall review whether the submission is consistent with section 7a–1(c)(2) of this title.

(ii) In reviewing a swap, group of swaps, or class of swaps pursuant to subparagraph (A) or a submission made under subparagraph (B), the Commission shall take into account the following factors:

(I) The existence of significant outstanding notional exposures, trading liquidity, and adequate pricing data.

(II) The availability of rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear the contract on terms that are consistent with the material terms and trading conventions on which the contract is then traded.

(III) The effect on the mitigation of systemic risk, taking into account the size of the market for such contract and the resources of the derivatives clearing organization available to clear the contract.

(IV) The effect on competition, including appropriate fees and charges applied to clearing.

(V) The existence of reasonable legal certainty in the event of the insolvency of the relevant derivatives clearing organization or 1 or more of its clearing members with regard to the treatment of customer and swap counterparty positions, funds, and property.

(iii) In making a determination under subparagraph (A) or (B)(iii) that the clearing requirement shall apply, the Commission may require such terms and conditions to the requirement as the Commission determines to be appropriate.

(E) Rules

Not later than 1 year after July 21, 2010, the Commission shall adopt rules for a derivatives clearing organization's submission for review, pursuant to this paragraph, of a swap, or a group, category, type, or class of swaps, that it seeks to accept for clearing. Nothing in this subparagraph limits the Commission from making a determination under subparagraph (B)(iii) for swaps described in subparagraph (B)(ii).

(3) Stay of clearing requirement

(A) In general

After making a determination pursuant to paragraph (2)(B), the Commission, on application of a counterparty to a swap or on its own initiative, may stay the clearing requirement of paragraph (1) until the Commission completes a review of the terms of the swap (or the group, category, type, or class of swaps) and the clearing arrangement.

(B) Deadline

The Commission shall complete a review undertaken pursuant to subparagraph (A) not later than 90 days after issuance of the stay, unless the derivatives clearing organization that clears the swap, or group, category, type, or class of swaps agrees to an extension of the time limitation established under this subparagraph.

(C) Determination

Upon completion of the review undertaken pursuant to subparagraph (A), the Commission may—

(i) determine, unconditionally or subject to such terms and conditions as the Commission determines to be appropriate, that the swap, or group, category, type, or class of swaps must be cleared pursuant to this subsection if it finds that such clearing is consistent with paragraph (2)(D); or

(ii) determine that the clearing requirement of paragraph (1) shall not apply to the swap, or group, category, type, or class of swaps.

(D) Rules

Not later than 1 year after July 21, 2010, the Commission shall adopt rules for reviewing, pursuant to this paragraph, a derivatives clearing organization's clearing of a swap, or a group, category, type, or class of swaps, that it has accepted for clearing.

(4) Prevention of evasion

(A) In general

The Commission shall prescribe rules under this subsection (and issue interpretations of rules prescribed under this subsection) as determined by the Commission to be necessary to prevent evasions of the mandatory clearing requirements under this chapter.

(B) Duty of Commission to investigate and take certain actions

To the extent the Commission finds that a particular swap, group, category, type, or class of swaps would otherwise be subject to mandatory clearing but no derivatives clearing organization has listed the swap, group, category, type, or class of swaps for clearing, the Commission shall—

(i) investigate the relevant facts and circumstances;

(ii) within 30 days issue a public report containing the results of the investigation; and

(iii) take such actions as the Commission determines to be necessary and in the public interest, which may include requiring the retaining of adequate margin or capital by parties to the swap, group, category, type, or class of swaps.

(C) Effect on authority

Nothing in this paragraph—

(i) authorizes the Commission to adopt rules requiring a derivatives clearing organization to list for clearing a swap, group, category, type, or class of swaps if the clearing of the swap, group, category, type, or class of swaps would threaten the financial integrity of the derivatives clearing organization; and

(ii) affects the authority of the Commission to enforce the open access provisions of paragraph (1)(B) with respect to a swap, group, category, type, or

class of swaps that is listed for clearing by a derivatives clearing organization.

(5) Reporting transition rules

Rules adopted by the Commission under this section shall provide for the reporting of data, as follows:

(A) Swaps entered into before July 21, 2010, shall be reported to a registered swap data repository or the Commission no later than 180 days after the effective date of this subsection.

(B) Swaps entered into on or after July 21, 2010, shall be reported to a registered swap data repository or the Commission no later than the later of—

(i) 90 days after such effective date; or

(ii) such other time after entering into the swap as the Commission may prescribe by rule or regulation.

(6) Clearing transition rules

(A) Swaps entered into before July 21, 2010, are exempt from the clearing requirements of this subsection if reported pursuant to paragraph (5)(A).

(B) Swaps entered into before application of the clearing requirement pursuant to this subsection are exempt from the clearing requirements of this subsection if reported pursuant to paragraph (5)(B).

(7) Exceptions

(A) In general

The requirements of paragraph (1)(A) shall not apply to a swap if 1 of the counterparties to the swap—

(i) is not a financial entity;

(ii) is using swaps to hedge or mitigate commercial risk; and

(iii) notifies the Commission, in a manner set forth by the Commission, how it generally meets its financial obligations associated with entering into non-cleared swaps.

(B) Option to clear

The application of the clearing exception in subparagraph (A) is solely at the discretion of the counterparty to the swap that meets the conditions of clauses (i) through (iii) of subparagraph (A).

(C) Financial entity definition

(i) In general

For the purposes of this paragraph, the term "financial entity" means—

(I) a swap dealer;

(II) a security-based swap dealer;

(III) a major swap participant;

(IV) a major security-based swap participant;

(V) a commodity pool;

(VI) a private fund as defined in section 80b–2(a) of title 15;

(VII) an employee benefit plan as defined in paragraphs (3) and (32) of section 1002 of title 29;

(VIII) a person predominantly engaged in activities that are in the business of banking, or in activities that are financial in nature, as defined in section 1843(k) of title 12.

(ii) Exclusion

The Commission shall consider whether to exempt small banks, savings associations, farm credit system institutions, and credit unions, including—

(I) depository institutions with total assets of $10,000,000,000 or less;

(II) farm credit system institutions with total assets of $10,000,000,000 or less; or

(III) credit unions with total assets of $10,000,000,000 or less.

(iii) Limitation

Such definition shall not include an entity whose primary business is providing financing, and uses derivatives for the purpose of hedging underlying commercial risks related to interest rate and foreign currency exposures, 90 percent or more of which arise from financing that facilitates the purchase or lease of products, 90 percent or more of which are manufactured by the parent company or another subsidiary of the parent company.

(D) Treatment of affiliates

(i) In general

An affiliate of a person that qualifies for an exception under subparagraph (A) (including affiliate entities predominantly engaged in providing financing for the purchase of the merchandise or manufactured goods of the person) may qualify for the exception only if the affiliate—

(I) enters into the swap to hedge or mitigate the commercial risk of the person or other affiliate of the person that is not a financial entity, and the commercial risk that the affiliate is hedging or mitigating has been transferred to the affiliate;

(II) is directly and wholly-owned by another affiliate qualified for the exception under this subparagraph or an entity that is not a financial entity;

(III) is not indirectly majority-owned by a financial entity;

(IV) is not ultimately owned by a parent company that is a financial entity; and

(V) does not provide any services, financial or otherwise, to any affiliate that is a nonbank financial company supervised by the Board of Governors (as defined under section 5311 of title 12).

(ii) Limitation on qualifying affiliates

The exception in clause (i) shall not apply if the affiliate is—

(I) a swap dealer;

(II) a security-based swap dealer;

(III) a major swap participant;

(IV) a major security-based swap participant;

(V) a commodity pool;

(VI) a bank holding company;

(VII) a private fund, as defined in section 80b–2(a) of title 15;

(VIII) an employee benefit plan or government [8] plan, as defined in paragraphs (3) and (32) of section 1002 of title 29;

(IX) an insured depository institution;

(X) a farm credit system institution;

(XI) a credit union;

(XII) a nonbank financial company supervised by the Board of Governors (as defined under section 5311 of title 12); or

(XIII) an entity engaged in the business of insurance and subject to capital requirements established by an insurance governmental authority of a State, a territory of the United States, the District of Columbia, a country other than the United States, or a political subdivision of a country other than the United States that is engaged in the supervision of insurance companies under insurance law.

(iii) Limitation on affiliates' affiliates

Unless the Commission determines, by order, rule, or regulation, that it is in the public interest, the exception in clause (i) shall not apply with respect to an affiliate if the affiliate is itself affiliated with—

(I) a major security-based swap participant;
(II) a security-based swap dealer;
(III) a major swap participant; or
(IV) a swap dealer.

(iv) Conditions on transactions

With respect to an affiliate that qualifies for the exception in clause (i)—

(I) the affiliate may not enter into any swap other than for the purpose of hedging or mitigating commercial risk; and

(II) neither the affiliate nor any person affiliated with the affiliate that is not a financial entity may enter into a swap with or on behalf of any affiliate that is a financial entity or otherwise assume, net, combine, or consolidate the risk of swaps entered into by any such financial entity, except one that is an affiliate that qualifies for the exception under clause (i).

(v) Transition rule for affiliates

An affiliate, subsidiary, or a wholly owned entity of a person that qualifies for an exception under subparagraph (A) and is predominantly engaged in providing financing for the purchase or lease of merchandise or manufactured goods of the person shall be exempt from the margin requirement described in section 6s(e) of this title and the clearing requirement described in paragraph (1) with regard to swaps entered into to mitigate the risk of the financing activities for not less than a 2-year period beginning on July 21, 2010.

(vi) Risk management program

Any swap entered into by an affiliate that qualifies for the exception in clause (i) shall be subject to a centralized risk management program of the affiliate, which is reasonably designed both to monitor and manage the risks associated with the swap and to identify each of the affiliates on whose behalf a swap was entered into.

(E) Election of counterparty

(i) Swaps required to be cleared

With respect to any swap that is subject to the mandatory clearing requirement under this subsection and entered into by a swap dealer or a major swap participant with a counterparty that is not a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant, the counterparty shall have the sole right to select the derivatives clearing organization at which the swap will be cleared.

(ii) Swaps not required to be cleared

With respect to any swap that is not subject to the mandatory clearing requirement under this subsection and entered into by a swap dealer or a major swap participant with a counterparty that is not a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant, the counterparty—

(I) may elect to require clearing of the swap; and

(II) shall have the sole right to select the derivatives clearing organization at which the swap will be cleared.

(F) Abuse of exception

The Commission may prescribe such rules or issue interpretations of the rules as the Commission determines to be necessary to prevent abuse of the exceptions described in this paragraph. The Commission may also request information from those persons claiming the clearing exception as necessary to prevent abuse of the exceptions described in this paragraph.

(8) Trade execution

(A) In general

With respect to transactions involving swaps subject to the clearing requirement of paragraph (1), counterparties shall—

(i) execute the transaction on a board of trade designated as a contract market under section 7 of this title; or

(ii) execute the transaction on a swap execution facility registered under 7b–3 [9] of this title or a swap execution facility that is exempt from registration under section 7b–3(f) of this title.

(B) Exception

The requirements of clauses (i) and (ii) of subparagraph (A) shall not apply if no board of trade or swap execution facility makes the swap available to trade or for swap transactions subject to the clearing exception under paragraph (7).

(i) Applicability

The provisions of this chapter relating to swaps that were enacted by the Wall Street Transparency and Accountability Act of 2010 (including any rule prescribed or regulation promulgated under that Act), shall not apply to activities outside the United States unless those activities—

(1) have a direct and significant connection with activities in, or effect on, commerce of the United States; or

(2) contravene such rules or regulations as the Commission may prescribe or promulgate as are necessary or appropriate to prevent the evasion of any provision of this chapter that was enacted by the Wall Street Transparency and Accountability Act of 2010.

(j) Committee approval by Board

Exemptions from the requirements of subsection (h)(1) to clear a swap and subsection (h)(8) to execute a swap through a board of trade or swap execution facility shall be available to a counterparty that is an issuer of securities that are registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l) or that is required to file reports pursuant to section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o[d]) only if an appropriate committee of the issuer's board or governing body has reviewed and approved its decision to enter into swaps that are subject to such exemptions.

(Sept. 21, 1922, ch. 369, §2, 42 Stat. 998; June 15, 1936, ch. 545, §§2, 3, 49 Stat. 1491; Apr. 7, 1938, ch. 108, 52 Stat. 205; Oct. 9, 1940, ch. 786, §1, 54 Stat. 1059; Aug. 28, 1954, ch. 1041, title VII, §710(a), 68 Stat. 913; July 26, 1955, ch. 382, §1, 69 Stat. 375; Pub. L. 90–258, §1, Feb. 19, 1968, 82 Stat. 26; Pub. L. 90–418, July 23, 1968, 82 Stat. 413; Pub. L. 93–463, title I, §101(a), title II, §§201, 202, Oct. 23, 1974, 88 Stat. 1389, 1395; Pub. L. 95–405, §2, Sept. 30, 1978, 92 Stat. 865; Pub. L. 97–444, title I, §101, title II, §§201, 202, Jan. 11, 1983, 96 Stat. 2294, 2297, 2298; Pub. L. 99–641, title I, §110(1), Nov. 10, 1986, 100 Stat. 3561; Pub. L. 102–546, title II, §§209(b)(1), 215, 226, title IV, §404(b), title V, §501, Oct. 28, 1992, 106 Stat. 3606, 3611, 3618, 3628; Pub. L. 106–554, §1(a)(5) [title I, §§102—105(b), 106, 107, 123(a)(2), title II, §251(a), (b), (i), (j)], Dec. 21, 2000, 114 Stat. 2763, 2763A–376 to 2763A–379, 2763A–382, 2763A–405, 2763A–436, 2763A–441, 2763A–445; Pub. L. 107–171, title X, §10702(a), May 13, 2002, 116 Stat. 516; Pub. L. 110–234, title XIII, §§13101(a), 13201(b), 13203(c)–(f), May 22, 2008, 122 Stat. 1427, 1436, 1439; Pub. L. 110–246, §4(a), title XIII, §§13101(a), 13201(b), 13203(c)–(f), June 18, 2008, 122 Stat. 1664, 2189, 2198, 2201; Pub. L. 111–203, title VII, §§717(a), 721(e)(1), 722(a), (c)–(e), 723(a), (b), 727, 734(b)(1), 741(b)(8), (9), 742(a), (c), 751, July 21, 2010, 124 Stat. 1651, 1671–1673, 1675, 1681, 1696, 1718, 1731–1733, 1749; Pub. L. 114–113, div. O, title VII, §705(a), Dec. 18, 2015, 129 Stat. 3025.)

References in Text

The Wall Street Transparency and Accountability Act of 2010, referred to in subsecs. (a)(1)(A), (G)(i), (H) and (i), is title VII of Pub. L. 111–203, July 21, 2010, 124 Stat. 1641, which enacted chapter 109 (§8301 et seq.) of Title 15, Commerce and Trade, and enacted and amended numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title note set out under section 8301 of Title 15 and Tables.

Section 77b(1) of title 15, referred to in subsec. (a)(1)(C)(i)(I), was redesignated section 77b(a)(1) of title 15 by Pub. L. 104–290, title I, §106(a)(1), Oct. 11, 1996, 110 Stat. 3424.

The Securities Exchange Act of 1934, referred to in subsec. (a)(1)(D)(i)(VI), (iii)(II), is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified principally to chapter 2B (§78a et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

The Federal Advisory Committee Act, referred to in subsec. (a)(15)(E), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, which is set out in the Appendix to Title 5, Government Organization and Employees.

The date of the enactment of this clause and such date of enactment, referred to in subsec. (c)(2)(B)(ii), are the date of enactment of Pub. L. 110–246, which was approved June 18, 2008.

Item (ee) of subsec. (c)(2)(B)(i)(II), referred to in subsec. (c)(2)(B)(iii), (iv)(I), (II)(aa), (C)(i)(I)(aa), (ii)(II)(aa), (iii)(I), (II)(aa), was redesignated item (dd) by Pub. L. 111–203, title VII, §742(c)(1)(C), July 21, 2010, 124 Stat. 1733.

Item (gg) of subsec. (c)(2)(B)(i)(II), referred to in subsec. (c)(2)(B)(iii), (iv)(I), (III), (v), was redesignated item (ff) by Pub. L. 111–203, title VII, §742(c)(1)(C), July 21, 2010, 124 Stat. 1733.

The Commodity Futures Modernization Act of 2000, referred to in subsec. (g)(1)(A), (2), is H.R. 5660, as enacted by Pub. L. 106–554, §1(a)(5), Dec. 21, 2000, 114 Stat. 2763, 2763A–365. Title IV of the Act, known as the Legal Certainty for Bank Products Act of 2000, is classified to sections 27 to 27f of this title. For complete classification of this Act to the Code, see Short Title of 2000 Amendment note set out under section 1 of this title, and Tables.

For the effective date of this subsection and such effective date, referred to in subsec. (h)(5)(A), (B)(i), see Effective Date of 2010 Amendment note below.

Codification

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

Subsec. (a)(1)(B) of this section was formerly classified to section 4 of this title. Subsec. (a)(1)(C) of this section was formerly classified to section 2a of this title. Subsec. (a)(2) to (11) of this section was formerly classified to section 4a of this title. Subsec. (b) of this section was formerly classified to section 3 of this title.

Amendments

2015—Subsec. (h)(7)(D). Pub. L. 114–113 added cls. (i) to (iv) and (vi), redesignated former cl. (iii) as (v), and struck out former cls. (i) and (ii) which related to application of exception to affiliates and prohibition relating to certain affiliates, respectively.

2010—Subsec. (a)(1)(A). Pub. L. 111–203, §734(b)(1)(A), which directed amendment of subpar. (A) by striking "or 7a", could not be executed because of prior amendment by Pub. L. 111–203, §722(a)(1). See below.

Pub. L. 111–203, §722(a)(1), inserted "the Wall Street Transparency and Accountability Act of 2010 (including an amendment made by that Act) and" after "otherwise provided in" and substituted "(C), (D), and (I)" for "(C) and (D)", "(c) and (f)" for "(c) through (i) of this section", "swaps or contracts of sale" for "contracts of sale", and "pursuant to section 7 of this title or a swap execution facility pursuant to section 7b–3 of this title" for "or derivatives transaction execution facility registered pursuant to section 7 or 7a of this title".

Subsec. (a)(1)(C)(i). Pub. L. 111–203, §717(a), designated existing provisions as subcl. (I), substituted "Except as provided in subclause (II), this" for "This", and added subcl. (II).

Subsec. (a)(1)(G), (H). Pub. L. 111–203, §722(a)(2), added subpars. (G) and (H).

Subsec. (a)(1)(I). Pub. L. 111–203, §722(e), added subpar. (I).

Subsec. (a)(13), (14). Pub. L. 111–203, §727, added pars. (13) and (14).

Subsec. (a)(15). Pub. L. 111–203, §751, added par. (15).

Subsec. (c)(1). Pub. L. 111–203, §742(a)(1), substituted ", 7a–1, or 16(e)(2)(B) of this title)" for "7a (to the extent provided in section 7a(g) of this title), 7a–1, 7a–3, or 16(e)(2)(B) of this title)".

Subsec. (c)(2)(A)(ii), (iii). Pub. L. 111–203, §722(c), added cl. (ii) and redesignated former cl. (ii) as (iii).

Subsec. (c)(2)(B). Pub. L. 111–203, §741(b)(8)(A), struck out "(dd)," before "(ee)," wherever appearing.

Subsec. (c)(2)(B)(i)(II)(aa). Pub. L. 111–203, §742(c)(1)(A), inserted "United States" before "financial institution".

Subsec. (c)(2)(B)(i)(II)(cc). Pub. L. 111–203, §721(e)(1)(A), substituted "section 1a" for "section 1a(20)" in two places.

Subsec. (c)(2)(B)(i)(II)(dd). Pub. L. 111–203, §742(c)(1)(B)–(D), redesignated item (ee) as (dd), substituted "; or" for semicolon at end, and struck out former item (dd) which read as follows: "an insurance company described in section 1a(18)(A)(ii) of this title, or a regulated subsidiary or affiliate of such an insurance company;".

Pub. L. 111–203, §721(e)(1)(B), substituted "section 1a(18)(A)(ii)" for "section 1a(12)(A)(ii)".

Subsec. (c)(2)(B)(i)(II)(ee) to (gg). Pub. L. 111–203, §742(c)(1)(B), (C), redesignated items (ee) and (gg) as (dd) and (ff), respectively, and struck out former item (ff) which read as follows: "an investment bank holding company (as defined in section 17(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(i))); or".

Subsec. (c)(2)(B)(iii). Pub. L. 111–203, §741(b)(8)(B), inserted ", and accounts or pooled investment vehicles described in clause (vi)," before "shall be subject to".

Subsec. (c)(2)(B)(vi). Pub. L. 111–203, §741(b)(8)(C), added cl. (vi).

Subsec. (c)(2)(C). Pub. L. 111–203, §741(b)(9)(A), struck out "(dd)," before "(ee)," wherever appearing.

Subsec. (c)(2)(C)(ii)(I). Pub. L. 111–203, §741(b)(9)(B), inserted ", and accounts or pooled investment vehicles described in clause (vii)," before "shall be subject to".

Subsec. (c)(2)(C)(vii). Pub. L. 111–203, §741(b)(9)(C), added cl. (vii).

Subsec. (c)(2)(D). Pub. L. 111–203, §742(a)(2), added subpar. (D).

Subsec. (c)(2)(E). Pub. L. 111–203, §742(c)(2), added subpar. (E).

Subsecs. (d), (e). Pub. L. 111–203, §723(a)(1)(A), (2), added subsecs. (d) and (e) and struck out former subsecs. (d) and (e) which related to excluded derivative transactions and excluded electronic trading facilities, respectively.

Subsec. (g). Pub. L. 111–203, §723(a)(1), redesignated subsec. (i) as (g) and struck out former subsec. (g) which related to excluded swap transactions.

Subsec. (g)(2). Pub. L. 111–203, §734(b)(1)(B), substituted "section 7a–1 of this title" for "section 7a of this title (to the extent provided in section 7a(g) of this title), 7a–1 of this title, or 7a–3 of this title".

Subsec. (h). Pub. L. 111–203, §723(a)(1)(A), (3), added subsec. (h) and struck out former subsec. (h) which related to legal certainty for certain transactions in exempt commodities.

Subsec. (i). Pub. L. 111–203, §723(a)(1)(B), which directed redesignation of subsec. (i) as (g), was executed by redesignating the subsec. (i) added by Pub. L. 106–554, §1(a)(5) [title I, §107], relating to application of commodity futures laws, as (g), to reflect the probable intent of Congress. Another subsec. (i), relating to applicability of certain swaps provisions, was added by Pub. L. 111–203, §722(d). See below.

Pub. L. 111–203, §722(d), added subsec. (i) relating to applicability of certain swaps provisions.

Subsec. (j). Pub. L. 111–203, §723(b), added subsec. (j).

2008—Subsec. (a)(1)(A). Pub. L. 110–246, §13203(c), inserted "(including significant price discovery contracts)" after "future delivery".

Subsec. (c)(2)(B), (C). Pub. L. 110–246, §13101(a), added subpars. (B) and (C) and struck out former subpars. (B) and (C) which related to: in subpar. (B), applicability of chapter to an agreement, contract, or transaction in foreign currency that was a contract of sale of a commodity for future delivery or an option on such a contract and was offered to, or entered into with, a person who was not an eligible contract participant, unless the counterparty, or the person offering to be the counterparty, of the person was a financial institution, a registered broker or dealer or a registered futures commission merchant, an

associated person of a registered broker or dealer or an affiliated person of a registered futures commission merchant, an insurance company or a regulated subsidiary or affiliate of such an insurance company, a financial holding company, or an investment bank holding company; and, in subpar. (C), applicability of sections 6b, 6c(b), 9, 12(a), 13a–1, 13a–2, 13b, and 15 of this title to agreements, contracts, or transactions described in former subpar. (B).

Subsec. (h)(3). Pub. L. 110–246, §13203(d), substituted "paragraphs (4) and (7)" for "paragraph (4)" in introductory provisions.

Subsec. (h)(4)(B). Pub. L. 110–246, §13203(e)(1), inserted "and, for a significant price discovery contract, requiring large trader reporting," after "proscribing fraud".

Subsec. (h)(4)(D), (E). Pub. L. 110–246, §13203(e)(2), (3), added subpars. (D) and (E) and struck out former subpar. (D) which read as follows: "such rules and regulations as the Commission may prescribe if necessary to ensure timely dissemination by the electronic trading facility of price, trading volume, and other trading data to the extent appropriate, if the Commission determines that the electronic trading facility performs a significant price discovery function for transactions in the cash market for the commodity underlying any agreement, contract, or transaction executed or traded on the electronic trading facility."

Subsec. (h)(5)(B)(iii)(I). Pub. L. 110–246, §13203(f), inserted "or to make the determination described in subparagraph (B) of paragraph (7)" after "paragraph (4)".

Subsec. (h)(7). Pub. L. 110–246, §13201(b), added par. (7).

2002—Subsec. (a)(7) to (12). Pub. L. 107–171 added par. (7) and redesignated former pars. (7) to (11) as (8) to (12), respectively.

2000—Pub. L. 106–554, §1(a)(5) [title I, §123(a)(2)(A)], inserted section catchline.

Subsec. (a). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(2)(A)], inserted headings for subsec. (a) and par. (1).

Subsec. (a)(1)(A). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(2)(B)(i)(II)], substituted "contract market designated or derivatives transaction execution facility registered pursuant to section 7 or 7a of this title" for "contract market designated pursuant to section 7 of this title".

Pub. L. 106–554, §1(a)(5) [title I, §123(a)(2)(B)(i)(I)], which directed substitution of "subparagraphs (C) and (D) of this paragraph and subsections (c) through (i) of this section" for "subparagraph (B) of this subparagraph", was executed by making the substitution for "subparagraph (B) of this paragraph" to reflect the probable intent of Congress.

Pub. L. 106–554, §1(a)(5) [title I, §123(a)(2)(A)], inserted heading and struck out "(i)" before "The Commission shall have".

Subsec. (a)(1)(A)(ii). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(2)(B)(i)(III)], struck out cl. (ii) which read as follows: "Nothing in this chapter shall be deemed to govern or in any way be applicable to transactions in foreign currency, security warrants, security rights, resales of installment loan contracts, repurchase options, government securities, or mortgages and mortgage purchase commitments, unless such transactions involve the sale thereof for future delivery conducted on a board of trade."

Subsec. (a)(1)(B). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(2)(B)(i)(IV)], redesignated subsec. (a)(1)(A)(iii) as subsec. (a)(1)(B) and inserted heading. Former subsec. (a)(1)(B) redesignated (a)(1)(C).

Subsec. (a)(1)(C). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(2)(B)(ii)(I)], redesignated subpar. (B) as (C).

Subsec. (a)(1)(C)(i). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(2)(B)(ii)(III)], adjusted margins.

Subsec. (a)(1)(C)(ii). Pub. L. 106–554, §1(a)(5) [title II, §251(a)(1)(A)(iii)], substituted "or the derivatives transaction execution facility, and the applicable contract, meet" for "making such application demonstrates and the Commission expressly finds that the specific contract (or option on such contract) with respect to which the application has been made meets" in introductory provisions.

Pub. L. 106–554, §1(a)(5) [title II, §251(a)(1)(A)(ii)], which directed insertion of ", and no derivatives transaction execution facility shall trade or execute such contracts of sale (or options on such contracts) for future delivery," after "contracts) for future delivery", was executed by making the insertion in the proviso in introductory provisions to reflect the probable intent of Congress.

Pub. L. 106–554, §1(a)(5) [title II, §251(a)(1)(A)(i)], inserted "or register a derivatives transaction execution facility that trades or executes," after "contract market in," in introductory provisions.

Pub. L. 106–554, §1(a)(5) [title I, §123(a)(2)(B)(ii)(III)], adjusted margins.

Subsec. (a)(1)(C)(ii)(III). Pub. L. 106–554, §1(a)(5) [title II, §251(a)(1)(A)(iv)], added subcl. (III) and struck out former subcl. (III) which read as follows: "Such group or index of securities shall be predominately composed of the securities of unaffiliated issuers and shall be a widely published measure of, and shall reflect, the market for all publicly traded equity or debt securities or a substantial segment thereof, or shall be comparable to such measure."

Subsec. (a)(1)(C)(iii). Pub. L. 106–554, §1(a)(5) [title II, §251(a)(1)(B), (C)], added cl. (iii) and struck out former cl. (iii) which read as follows: "Upon application by a board of trade for designation as a contract market with respect to any contract of sale (or option on such contract) for future delivery involving a group or index of securities, the Commission shall provide an opportunity for public comment on whether such contracts (or options on such contracts) meet the minimum requirements set forth in clause (ii) of this subparagraph."

Pub. L. 106–554, §1(a)(5) [title I, §123(a)(2)(B)(ii)(III)], adjusted margins.

Subsec. (a)(1)(C)(iv). Pub. L. 106–554, §1(a)(5) [title II, §251(a)(1)(C), (D)], redesignated cl. (v) as (iv) and struck out former cl. (iv) which related to consultation by the Commission with, and the authority of, the Securities and Exchange Commission with respect to approval of any application by a Board of Trade for designation as a contract market with respect to any contract of sale (or option of such contract) for future delivery of a group or index of securities.

Pub. L. 106–554, §1(a)(5) [title I, §123(a)(2)(B)(ii)(III)], adjusted margins.

Subsec. (a)(1)(C)(v). Pub. L. 106–554, §1(a)(5) [title II, §251(b)(2)], redesignated cl. (vi) as (v), added subcls. (I) to (V), and struck out former subcls. (I) to (IV) which required any contract market in a stock index futures contract (or option thereon) to file with the Board of Governors of the Federal Reserve System any rule establishing or changing the levels of margin for the stock index futures contract (or option thereon), authorized the Board to request any contract market to set the margins at certain levels, authorized the Board to delegate its authority under this clause to the Commission, and preserved the authority of the Commission to raise temporary emergency margin levels.

Pub. L. 106–554, §1(a)(5) [title II, §251(a)(1)(D)], redesignated cl. (v) as (iv).

Pub. L. 106–554, §1(a)(5) [title I, §123(a)(2)(B)(ii)(II), (III)], struck out "section 77c of title 15" after "exempted security under", inserted "or subparagraph (D)" after "subparagraph", and adjusted margins.

Subsec. (a)(1)(C)(vi). Pub. L. 106–554, §1(a)(5) [title II, §251(b)(2)], redesignated cl. (vi) as (v).

Pub. L. 106–554, §1(a)(5) [title II, §251(b)(1)], redesignated subcl. (V) as (VI).

Subsec. (a)(1)(D). Pub. L. 106–554, §1(a)(5) [title II, §251(a)(2)], added subpar. (D).

Subsec. (a)(1)(E). Pub. L. 106–554, §1(a)(5) [title II, §251(i)], added subpar. (E).

Subsec. (a)(1)(F). Pub. L. 106–554, §1(a)(5) [title II, §251(j)], added subpar. (F).

Subsec. (a)(2) to (6). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(2)(E)], adjusted margins.

Subsec. (a)(7). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(2)(C), (E)], substituted "registered entity" for "contract market" and adjusted margins.

Subsec. (a)(8). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(2)(E)], adjusted margins.

Subsec. (a)(8)(B)(ii). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(2)(D)(iii)], in last sentence, substituted "designating, registering, or refusing, suspending, or revoking the designation or registration of, a board of trade as a contract market or derivatives transaction execution facility involving transactions for future delivery referred to in this clause or in considering any possible action under this chapter (including without limitation emergency action under section 12a(9) of this title)" for "designating, or refusing, suspending, or revoking the designation of, a board of trade as a contract market involving transactions for future delivery referred to in this clause or in considering possible emergency action under section 12a(9) of this title" and "designation, registration, suspension, revocation, or action" for "designation, suspension, revocation, or emergency action".

Pub. L. 106–554, §1(a)(5) [title I, §123(a)(2)(D)(ii)], substituted "designate or register a board of trade as a contract market or derivatives transaction execution facility" for "designate a board of trade as a contract market" in second sentence.

Pub. L. 106–554, §1(a)(5) [title I, §123(a)(2)(D)(i)], substituted "designation or registration as a contract market or derivatives transaction execution facility" for "designation as a contract market" in first sentence.

Subsec. (a)(9). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(2)(E)], adjusted margins.

Subsec. (c). Pub. L. 106–554, §1(a)(5) [title I, §102], added subsec. (c).
Subsec. (d). Pub. L. 106–554, §1(a)(5) [title I, §103], added subsec. (d).
Subsec. (e). Pub. L. 106–554, §1(a)(5) [title I, §104], added subsec. (e).
Subsec. (f). Pub. L. 106–554, §1(a)(5) [title I, §105(a)], added subsec. (f).
Subsec. (g). Pub. L. 106–554, §1(a)(5) [title I, §105(b)], added subsec. (g).
Subsec. (h). Pub. L. 106–554, §1(a)(5) [title I, §106], added subsec. (h).
Subsec. (i). Pub. L. 106–554, §1(a)(5) [title I, §107], added subsec. (i).

1992—Subsec. (a)(1)(A). Pub. L. 102–546, §404(b)(2)–(7), redesignated cls. (i) and (ii) of former third sentence as subcls. (I) and (II), respectively, designated former fifth sentence as cl. (ii), designated former eighth sentence as cl. (iii), and struck out former sixth, seventh, and ninth through last sentences, which included definitions of "future delivery", "board of trade", "interstate commerce", "cooperative association of producers", "member of a contract market", "futures commission merchant", "introducing broker", "floor broker", "the Commission", "commodity trading advisor", and "commodity pool operator". See section 1a of this title.

Pub. L. 102–546, §404(b)(1), which directed the substitution of "(i) The Commission" for the words "For the purposes" and all that followed through "; *Provided*, That the Commission", was executed by making the substitution for the first and second sentences and the third sentence through the words ": *Provided*, That the Commission", to reflect the probable intent of Congress. Prior to amendment, the first, second, and third sentences included definitions of "contract of sale", "person", and "commodity". See section 1a of this title.

Subsec. (a)(1)(B)(iv)(I). Pub. L. 102–546, §209(b)(1)(A), made technical amendment to reference to section 9 of this title appearing in penultimate sentence to reflect change in reference to corresponding section of original act.

Subsec. (a)(1)(B)(iv)(II). Pub. L. 102–546, §209(b)(1)(B), substituted "section 8(b)" for "section 8".

Subsec. (a)(1)(B)(vi). Pub. L. 102–546, §501, added cl. (vi).

Subsec. (a)(2)(A). Pub. L. 102–546, §215, substituted second and third sentences for "The Commission shall be composed of five Commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate. In nominating persons for appointment, the President shall seek to establish and maintain a balanced Commission, including, but not limited to, persons of demonstrated knowledge in futures trading or its regulation and persons of demonstrated knowledge in the production, merchandising, processing or distribution of one or more of the commodities or other goods and articles, services, rights and interests covered by this chapter."

Subsec. (a)(9)(C). Pub. L. 102–546, §226, added subpar. (C).

1986—Subsec. (a)(1)(B)(iv)(I). Pub. L. 99–641 substituted "Securities and Exchange Commission" for "Securities Exchange Commission" before "otherwise agree".

1983—Subsec. (a)(1). Pub. L. 97–444, §101, designated existing provisions as subpar. (A), inserted in third sentence, first proviso, ", except to the extent otherwise provided in subparagraph (B) of this paragraph," after "exclusive jurisdiction", and added subpar. (B).

Subsec. (a)(1)(A). Pub. L. 97–444, §201, inserted definition of "introducing broker" and, in revising definition of "commodity training advisor", included any person advising others through electronic media; substituted provision respecting advising others "as to the value of or the advisability of trading in any contract of sale of a commodity for future delivery made or to be made on or subject to the rules of a contract market, any commodity option authorized under section 6c of this title, or any leverage transaction authorized under section 23 of this title, or who, for compensation or profit, and as part of a regular business, issues or promulgates analyses or reports concerning any of the foregoing" for provision respecting advising others "as to the value of commodities or as to the advisability of trading in any commodity for future delivery on or subject to the rules of any market, or who for compensation or profit, and as part of a regular business, issues or promulgates analyses or reports concerning commodities"; excluded in item (i) any person acting as an employee of any bank or trust company; substituted in cl. (ii) "news reporter, news columnist, or news editor of the print or electronic media" for "newspaper reporter, newspaper columnist, newspaper editor"; substituted in cl. (iv) "the publisher or producer of any print or electronic data of general and regular dissemination, including its employees" for "the publisher of any bona fide newspaper magazine, or business or financial publication

of general and regular circulation including their employees"; inserted item (v); redesignated as items (vi) and (vii) former items (v) and (vi); and authorized Commission to effectuate purposes of definition by rule or regulation by including within definition any person advising as to the value of commodities or issuing reports or analyses concerning commodities.

Subsec. (a)(7). Pub. L. 97–444, §202, struck out "(A)" after "(7)" and struck out subpar. (B) which prohibited any representative activities before the Commission for a one year period upon termination of employment occurring on a day more than four months after Sept. 30, 1978, of any Commissioner or employee of the Commission having a GS–16 or higher classified position excepted from the competitive service because of its confidential or policymaking character.

1978—Subsec. (a)(1). Pub. L. 95–405, §2(1), substituted "section 23 of this title" for "section 15a of this title".

Subsec. (a)(2). Pub. L. 95–405, §2(2)–(5), designated existing provisions as subpar. (A) and substituted "five Commissioners" for "a chairman and four other Commissioners", "(i)" for "(A)", and "(ii)" for "(B)", and added subpar. (B).

Subsec. (a)(5). Pub. L. 95–405, §2(6), struck out ", by and with the advice and consent of the Senate," after "by the Commission".

Subsec. (a)(6)(A). Pub. L. 95–405, §2(7), inserted "according to budget categories, plans, programs, and priorities established and approved by the Commission," after "expenditure of funds,".

Subsec. (a)(6)(B). Pub. L. 95–405, §2(8), substituted ", plans, priorities, and budgets approved by the Commission" for "of the Commission".

Subsec. (a)(7). Pub. L. 95–405, §2(9), (10), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (a)(8). Pub. L. 95–405, §2(11)–(13), designated existing provisions as subpar. (A), substituted "maintain" for "establish a separate office within the Department of Agriculture to be staffed with employees of the Commission for the purpose of maintaining", and added subpar. (B).

Subsec. (a)(9)(A), (B). Pub. L. 95–405, §2(14), (15), substituted "Senate Committee on Agriculture, Nutrition, and Forestry" for "Senate Committee on Agriculture and Forestry".

1974—Subsec. (a). Pub. L. 93–463, §101(a), designated existing provisions as par. (1), substituted "Commodity Futures Trading Commission established under paragraph (2) of this subsection" for "Commodity Exchange Commission, consisting of the Secretary of Agriculture, the Secretary of Commerce, and the Attorney General, or an official or employee of each of the executive departments concerned, designated by the Secretary of Agriculture, the Secretary of Commerce, and the Attorney General, respectively; and the Secretary of Agriculture or his designee shall serve as Chairman", and added pars. (2) to (11).

Subsec. (a)(1). Pub. L. 93–463, §§201, 202, struck out "onions," after "eggs," in definition of "commodity" and inserted provisions to that definition to include as commodities all other goods and articles, except onions as provided in section 13–1 of this title, and all services, rights, and interests in which contracts for the future delivery are presently or in the future dealt in, and inserted definitions for "commodity trading advisor" and "commodity pool operator".

1968—Subsec. (a). Pub. L. 90–418 extended definition of "commodity" in third sentence to include frozen concentrated orange juice.

Pub. L. 90–258, §1(c), provided in last sentence for representation on the Commission of Secretary of Agriculture, Secretary of Commerce, and Attorney General by an official or employee designated from executive department concerned and for service of Secretary of Agriculture or his designee as Chairman.

Pub. L. 90–258, §1(b), substituted in definition of "floor broker" in penultimate sentence "purchase or sell for any other person" for "engage in executing for others any order for the purchase or sale of" and struck out provision for receipt or acceptance of any commission or other compensation for services as a floor broker.

Pub. L. 90–258, §1(a), extended definition of "commodity" in third sentence to include livestock and livestock products.

1955—Subsec. (a). Act July 26, 1955, extended "commodity" to onions.

1954—Subsec. (a). Act Aug. 28, 1954, extended "commodity" to wool.

1940—Subsec. (a). Act Oct. 9, 1940, extended "commodity" to fats and oils (including lard, tallow, cottonseed oil, peanut oil, soybean oil, and all other fats and oils), cottonseed meal, cottonseed, peanuts, soybeans and soybean meal.

1938—Subsec. (a). Act Apr. 7, 1938, extended "commodity" to wool tops.

1936—Subsec. (a). Act June 15, 1936, substituted "commodity", "any commodity", or "commodities", as the case may require, for "grain" wherever appearing, and "any cash commodity" for "cash grain", substituted sentence defining "commodity" for sentence defining "grain", and inserted definitions of "cooperative association of producers,", "member of a contract market", "futures commission merchant", "floor broker", and "the commission."

Subsec. (b). Act June 15, 1936, §2, substituted "commodity" and "commodities", as the case may require, for "grain" wherever appearing.

Effective Date of 2010 Amendment

Amendment by Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as a note under section 1a of this title.

Effective Date of 2008 Amendment

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of this title.

Pub. L. 110–234, title XIII, §13101(b), May 22, 2008, 122 Stat. 1432, and Pub. L. 110–246, §4(a), title XIII, §13101(b), June 18, 2008, 122 Stat. 1664, 2194, provided that: "The following provisions of the Commodity Exchange Act [7 U.S.C. 1 et seq.], as amended by subsection (a) of this section [amending this section], shall be effective 120 days after the date of the enactment of this Act [June 18, 2008] or at such other time as the Commodity Futures Trading Commission shall determine:

"(1) Subparagraphs (B)(i)(II)(gg), (B)(iv), and (C)(iii) of section 2(c)(2) [7 U.S.C. 2(c)(2)].

"(2) The provisions of section 2(c)(2)(B)(i)(II)(cc) [7 U.S.C. 2(c)(2)(B)(i)(II)(cc)] that set forth adjusted net capital requirements, and the provisions of such section that require a futures commission merchant to be primarily or substantially engaged in certain business activities."

[Pub. L. 110–234 and Pub. L. 110–246 enacted identical provisions. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246, set out as a note under section 8701 of this title.]

Pub. L. 110–234, title XIII, §13204, May 22, 2008, 122 Stat. 1441, and Pub. L. 110–246, §4(a), title XIII, §13204, June 18, 2008, 122 Stat. 1664, 2203, provided that:

"(a) In General.—Except as provided in this section, this subtitle [subtitle B (§§13201–13204) of title XIII of Pub. L. 110–246, amending this section and sections 1a, 6a, 6g, 6i, 7a, 7a–2, 7b, 8, and 25 of this title] shall become effective on the date of enactment of this Act [June 18, 2008].

"(b) Significant Price Discovery Standards Rulemaking.—

"(1) The Commodity Futures Trading Commission shall—

"(A) not later than 180 days after the date of the enactment of this Act [June 18, 2008], issue a proposed rule regarding the implementation of section 2(h)(7) of the Commodity Exchange Act [7 U.S.C. 2(h)(7)]; and

"(B) not later than 270 days after the date of enactment of this Act [June 18, 2008], issue a final rule regarding the implementation.

"(2) In its rulemaking pursuant to paragraph (1) of this subsection, the Commission shall include the standards, terms, and conditions under which an electronic trading facility will have the responsibility to notify the Commission that an agreement, contract, or transaction conducted in reliance on the exemption provided in section 2(h)(3) of the Commodity Exchange Act [7 U.S.C. 2(h)(3)] may perform a price discovery function.

"(c) SIGNIFICANT PRICE DISCOVERY DETERMINATIONS.—With respect to any electronic trading facility operating on the effective date of the final rule issued pursuant to subsection (b)(1), the Commission shall complete a review of the agreements, contracts, and transactions of the facility not later than 180 days after that effective date to determine whether any such agreement, contract, or transaction performs a significant price discovery function."

[Pub. L. 110–234 and Pub. L. 110–246 enacted identical provisions. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246, set out as a note under section 8701 of this title.]

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 97–444, title II, §239, Jan. 11, 1983, 96 Stat. 2327, provided that: "This Act [see Short Title of 1983 Amendment note set out under section 1 of this title] shall be effective upon the date of enactment of this Act [Jan. 11, 1983], except that sections 207, 212, and 231 of this Act [amending sections 6d, 6k, and 18 of this title] shall be effective one hundred and twenty days after the date of enactment of this Act, or such earlier date as the Commodity Futures Trading Commission shall prescribe by regulation."

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–405, §28, Sept. 30, 1978, 92 Stat. 878, provided that: "Except as otherwise provided in this Act, the provisions of this Act [see Short Title of 1978 Amendment note set out under section 1 of this title] shall become effective October 1, 1978."

EFFECTIVE DATE OF 1974 AMENDMENT

Pub. L. 93–463, title IV, §418, Oct. 23, 1974, 88 Stat. 1415, provided that:

"(a) Except as otherwise provided specifically in this Act [see Short Title of 1974 Amendment note set out under section 1 of this title], the effective date of this Act shall be the 180th day after enactment [Oct. 23, 1974]. The Commission referred to in section 101 [Commodity Futures Trading Commission] is hereby established effective immediately on enactment of this Act. Sections 102 and 410 [amending sections 5108, 5314, 5315, and 5316 of Title 5, Government Organization and Employees] shall be effective immediately on enactment of this Act. Activities necessary to implement the changes effected by this Act may be carried out after the date of enactment and before as well as after the 180th day thereafter. Activities to be carried out after the date of enactment and before the 180th day thereafter may include, but are not limited to the following: Designation of boards of trade as contract markets, registration of futures commission merchants, floor brokers, and other persons required to be registered under the Act [this chapter], approval or modification of bylaws, rules, regulations, and resolutions of contract markets, and issuance of regulations, effective on or after the 180th day after enactment; appointment and compensation of the members of the Commission; hiring and compensation of staff; and conducting of investigations and hearings. Nothing in this Act shall limit the authority of the Secretary of Agriculture or the Commodity Exchange Commission under the Commodity Exchange Act [7 U.S.C. 1 et seq.], as amended, prior to the 180th day after enactment of this Act.

"(b) Funds appropriated for the administration of the Commodity Exchange Act, as amended [7 U.S.C. 1 et seq.], may be used to implement this Act immediately after the date of enactment of this Act [Oct. 23, 1974]."

EFFECTIVE DATE OF 1968 AMENDMENT

Pub. L. 90–258, §28, Feb. 19, 1968, 82 Stat. 34, provided that: "This Act [enacting sections 12b, 13b, 13c, and 17b of this title and amending this section and sections 6a, 6b, 6d, 6f, 6g, 6i, 7, 7a, 7b, 8, 9, 12, 12–1, 12a, 13, and 13a of this title] shall become effective one hundred and twenty days after enactment [Feb. 19, 1968]."

EFFECTIVE DATE OF 1955 AMENDMENT

Act July 26, 1955, ch. 382, §2, 69 Stat. 375, provided that: "This Act [amending this section] shall take effect sixty days after the date of its enactment [July 26, 1955]."

EFFECTIVE DATE OF 1954 AMENDMENT

Act Aug. 28, 1954, ch. 1041, title VII, §710(b), 68 Stat. 913, which provided that the amendment of this section by act Aug. 28, 1954, was effective 60 days after Aug. 28, 1954, was repealed by Pub. L. 103–130, §3(a), Nov. 1, 1993, 107 Stat. 1369, eff. Dec. 31, 1995.

Effective Date of 1940 Amendment

Act Oct. 9, 1940, ch. 786, §2, 54 Stat. 1059, provided that: "This Act [amending this section] shall take effect sixty days after the date of its enactment [Oct. 9, 1940]."

Effective Date of 1936 Amendment

Amendment by act June 15, 1936, effective 90 days after June 15, 1936, see section 13 of that act, set out as a note under section 1 of this title.

Separability of 1974 Amendment

Pub. L. 93–463, title IV, §413, Oct. 23, 1974, 88 Stat. 1414, provided that: "If any provision of this Act [see Short Title of 1974 Amendment note set out under section 1 of this title] or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and the application of such provisions to other persons or circumstances shall not be affected thereby."

Grandfather Provisions

Pub. L. 111–203, title VII, §723(c), July 21, 2010, 124 Stat. 1682, provided that:

"(1) Legal certainty for certain transactions in exempt commodities.—Not later than 60 days after the date of enactment of this Act [July 21, 2010], a person may submit to the Commodity Futures Trading Commission a petition to remain subject to section 2(h) of the Commodity Exchange Act (7 U.S.C. 2(h)) (as in effect on the day before the date of enactment of this Act).

"(2) Consideration; authority of commodity futures trading commission.—The Commodity Futures Trading Commission—

"(A) shall consider any petition submitted under subparagraph (A) in a prompt manner; and

"(B) may allow a person to continue operating subject to section 2(h) of the Commodity Exchange Act (7 U.S.C. 2(h)) (as in effect on the day before the date of enactment of this Act) for not longer than a 1-year period.

"(3) Agricultural swaps.—

"(A) In general.—Except as provided in subparagraph (B), no person shall offer to enter into, enter into, or confirm the execution of, any swap in an agricultural commodity (as defined by the Commodity Futures Trading Commission).

"(B) Exception.—Notwithstanding subparagraph (A), a person may offer to enter into, enter into, or confirm the execution of, any swap in an agricultural commodity pursuant to section 4(c) of the Commodity Exchange Act (7 U.S.C. 6(c)) or any rule, regulation, or order issued thereunder (including any rule, regulation, or order in effect as of the date of enactment of this Act) by the Commodity Futures Trading Commission to allow swaps under such terms and conditions as the Commission shall prescribe.

"(4) Required reporting.—If the exception described in section 2(h)(8)(B) of the Commodity Exchange Act [7 U.S.C. 2(h)(8)(B)] applies, the counterparties shall comply with any recordkeeping and transaction reporting requirements that may be prescribed by the Commission with respect to swaps subject to section 2(h)(8)(B) of the Commodity Exchange Act."

[For definition of "swap" as used in section 723(c) of Pub. L. 111–203, set out above, see section 5301 of Title 12, Banks and Banking.]

Portfolio Margining and Security Index Issues

Pub. L. 110–234, title XIII, §13106, May 22, 2008, 122 Stat. 1435, and Pub. L. 110–246, §4(a), title XIII, §13106, June 18, 2008, 122 Stat. 1664, 2197, provided that:

"(a) The Secretary of the Treasury, the Chairman of the Board of Governors of the Federal Reserve System, the Chairman of the Securities and Exchange Commission, and the Chairman of the Commodity Futures Trading Commission shall work to ensure that the Securities and Exchange Commission (SEC), the Commodity Futures Trading Commission (CFTC), or both, as appropriate, have taken the actions required under subsection (b).

"(b) The SEC, the CFTC, or both, as appropriate, shall take action under their existing authorities to permit—

"(1) by September 30, 2009, risk-based portfolio margining for security options and security futures products (as defined in section 1a(32) [now 1a(45)] of the Commodity

Exchange Act [7 U.S.C. 1a(32), now 1a(45)]); and

"(2) by June 30, 2009, the trading of futures on certain security indexes by resolving issues related to foreign security indexes."

[Pub. L. 110–234 and Pub. L. 110–246 enacted identical provisions. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246, set out as a note under section 8701 of this title.]

Study Regarding Retail Swaps

Pub. L. 106–554, §1(a)(5) [title I, §105(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–379, provided that:

"(1) In general.—The Board of Governors of the Federal Reserve System, the Secretary of the Treasury, the Commodity Futures Trading Commission, and the Securities and Exchange Commission shall conduct a study of issues involving the offering of swap agreements to persons other than eligible contract participants (as defined in section 1a of the Commodity Exchange Act [7 U.S.C. 1a]).

"(2) Matters to be addressed.—The study shall address—

"(A) the potential uses of swap agreements by persons other than eligible contract participants;

"(B) the extent to which financial institutions are willing to offer swap agreements to persons other than eligible contract participants;

"(C) the appropriate regulatory structure to address customer protection issues that may arise in connection with the offer of swap agreements to persons other than eligible contract participants; and

"(D) such other relevant matters deemed necessary or appropriate to address.

"(3) Report.—Before the end of the 1-year period beginning on the date of the enactment of this Act [Dec. 21, 2000], a report on the findings and conclusions of the study required by paragraph (1) shall be submitted to Congress, together with such recommendations for legislative action as are deemed necessary and appropriate."

Educational Events and Symposia

Pub. L. 106–78, title VI, Oct. 22, 1999, 113 Stat. 1160, provided in part: "That for fiscal year 2000 and thereafter, the Commission [Commodity Futures Trading Commission] is authorized to charge reasonable fees to attendees of Commission sponsored educational events and symposia to cover the Commission's costs of providing those events and symposia, and notwithstanding 31 U.S.C. 3302, said fees shall be credited to this account, to be available without further appropriation."

Similar provisions were contained in the following prior appropriations acts:

Pub. L. 105–277, div. A, §101(a) [title VI], Oct. 21, 1998, 112 Stat. 2681, 2681–24.

Pub. L. 105–86, title VI, Nov. 18, 1997, 111 Stat. 2104.

Pub. L. 104–180, title VI, Aug. 6, 1996, 110 Stat. 1596.

Pub. L. 104–37, title VI, Oct. 21, 1995, 109 Stat. 327.

Pub. L. 103–330, title VI, Sept. 30, 1994, 108 Stat. 2466.

Non-Abatement of Pending Proceedings

Pub. L. 93–463, title IV, §412, Oct. 23, 1974, 88 Stat. 1414, provided that: "Pending proceedings under existing law shall not be abated by reason of any provision of this Act [see Short Title of 1974 Amendment note set out under section 1 of this title] but shall be disposed of pursuant to the applicable provisions of the Commodity Exchange Act, as amended [7 U.S.C. 1 et seq.], in effect prior to the effective date of this Act [see Effective Date of 1974 Amendment note above]."

[1] *See References in Text note below.*

[2] *So in original. The word "or" probably should not appear.*

[3] *So in original. Probably should be subclause "(III)".*

[4] *So in original. Probably should be "section".*

[5] So in original.

[6] So in original. No item (ee) has been enacted.

[7] So in original. Probably should be "subparagraph".

[8] So in original. Probably should be "governmental".

[9] So in original. Probably should be preceded by "section".

§§2a to 4a. Transferred

Codification

Section 2a, act Sept. 21, 1922, ch. 369, §2(a)(1)(C), formerly §2(a)(1)(B), as added Pub. L. 97–444, title I, §101(a)(3), Jan. 11, 1983, 96 Stat. 2294, as amended and renumbered, which related to designation of boards of trade as contract markets and approval by and jurisdiction of Commodity Futures Trading Commission and Securities and Exchange Commission, was transferred to section 2(a)(1)(C) of this title.

Section 3, act Sept. 21, 1922, ch. 369, §2(b), 42 Stat. 998, as amended, which related to transactions in interstate commerce, was transferred to section 2(b) of this title.

Section 4, act Sept. 21, 1922, ch. 369, §2(a)(1)(B), formerly §2(a), 42 Stat. 998, as amended and renumbered, which related to liability of principal for act of agent, was transferred to section 2(a)(1)(B) of this title.

Section 4a, act Sept. 21, 1922, ch. 369, §2(a)(2)–(11), as added Pub. L. 93–463, title I, §101(a)(3), Oct. 23, 1974, 88 Stat. 1389, as amended, which related to the Commodity Futures Trading Commission, was transferred to section 2(a)(2) to (11) of this title.

§5. Findings and purpose

(a) Findings

The transactions subject to this chapter are entered into regularly in interstate and international commerce and are affected with a national public interest by providing a means for managing and assuming price risks, discovering prices, or disseminating pricing information through trading in liquid, fair and financially secure trading facilities.

(b) Purpose

It is the purpose of this chapter to serve the public interests described in subsection (a) through a system of effective self-regulation of trading facilities, clearing systems, market participants and market professionals under the oversight of the Commission. To foster these public interests, it is further the purpose of this chapter to deter and prevent price manipulation or any other disruptions to market integrity; to ensure the financial integrity of all transactions subject to this chapter and the avoidance of systemic risk; to protect all market participants from fraudulent or other abusive sales practices and misuses of customer assets; and to promote responsible innovation and fair competition among boards of trade, other markets and market participants.

(Sept. 21, 1922, ch. 369, §3, as added Pub. L. 106–554, §1(a)(5) [title I, §108], Dec. 21, 2000, 114 Stat. 2763, 2763A–383.)

Prior Provisions

A prior section 5, acts Sept. 21, 1922, ch. 369, §3, 42 Stat. 999; June 15, 1936, ch. 545, §2, 49 Stat. 1491; Pub. L. 97–444, title II, §203, Jan. 11, 1983, 96 Stat. 2298, stated legislative findings, prior to repeal by Pub. L. 106–554, §1(a)(5) [title I, §108], Dec. 21, 2000, 114 Stat. 2763, 2763A–383.

§6. Regulation of futures trading and foreign transactions

(a) Restriction on futures trading

Unless exempted by the Commission pursuant to subsection (c) or by subsection (e), it shall be unlawful for any person to offer to enter into, to enter into, to execute, to confirm the execution of, or to conduct any office or business anywhere in the United States, its territories or possessions, for the purpose of soliciting or accepting any order for, or otherwise dealing in, any transaction in, or in connection with, a contract for the purchase or sale of a commodity for future delivery (other than a contract which is made on or subject to the rules of a board of trade, exchange, or market located outside the United States, its territories or possessions) unless—

(1) such transaction is conducted on or subject to the rules of a board of trade which has been designated or registered by the Commission as a contract market or derivatives transaction execution facility for such commodity;

(2) such contract is executed or consummated by or through a contract market; and

(3) such contract is evidenced by a record in writing which shows the date, the parties to such contract and their addresses, the property covered and its price, and the terms of delivery: *Provided*, That each contract market or derivatives transaction execution facility member shall keep such record for a period of three years from the date thereof, or for a longer period if the Commission shall so direct, which record shall at all times be open to the inspection of any representative of the Commission or the Department of Justice.

(b) Regulation of foreign transactions by United States persons

(1) Foreign boards of trade

(A) Registration

The Commission may adopt rules and regulations requiring registration with the Commission for a foreign board of trade that provides the members of the foreign board of trade or other participants located in the United States with direct access to the electronic trading and order matching system of the foreign board of trade, including rules and regulations prescribing procedures and requirements applicable to the registration of such foreign boards of trade. For purposes of this paragraph, "direct access" refers to an explicit grant of authority by a foreign board of trade to an identified member or other participant located in the United States to enter trades directly into the trade matching system of the foreign board of trade. In adopting such rules and regulations, the commission [1] shall consider—

(i) whether any such foreign board of trade is subject to comparable, comprehensive supervision and regulation by the appropriate governmental authorities in the foreign board of trade's home country; and

(ii) any previous commission [1] findings that the foreign board of trade is subject to comparable comprehensive supervision and regulation by the appropriate government authorities in the foreign board of trade's home country.

(B) Linked contracts

The Commission may not permit a foreign board of trade to provide to the members of the foreign board of trade or other participants located in the United States direct access to the electronic trading and order-matching system of the foreign board of trade with respect to an agreement, contract, or transaction that settles against any price (including the daily or final settlement price) of 1 or more contracts listed for trading on a registered entity, unless the Commission determines that—

(i) the foreign board of trade makes public daily trading information regarding the agreement, contract, or transaction that is comparable to the daily trading information published by the registered entity for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles; and

(ii) the foreign board of trade (or the foreign futures authority that oversees the foreign board of trade)—

(I) adopts position limits (including related hedge exemption provisions) for the agreement, contract, or transaction that are comparable to the position limits (including related hedge exemption provisions) adopted by the registered entity for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles;

(II) has the authority to require or direct market participants to limit, reduce, or liquidate any position the foreign board of trade (or the foreign futures authority that oversees the foreign board of trade) determines to be necessary to prevent or reduce the threat of price manipulation, excessive speculation as described in section 6a of this title, price distortion, or disruption of delivery or the cash settlement process;

(III) agrees to promptly notify the Commission, with regard to the agreement, contract, or transaction that settles against any price (including the daily or final settlement price) of 1 or more contracts listed for trading on a registered entity, of any change regarding—

(aa) the information that the foreign board of trade will make publicly available;

(bb) the position limits that the foreign board of trade or foreign futures authority will adopt and enforce;

(cc) the position reductions required to prevent manipulation, excessive speculation as described in section 6a of this title, price distortion, or disruption of delivery or the cash settlement process; and

(dd) any other area of interest expressed by the Commission to the foreign board of trade or foreign futures authority;

(IV) provides information to the Commission regarding large trader positions in the agreement, contract, or transaction that is comparable to the large trader position information collected by the Commission for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles; and

(V) provides the Commission such information as is necessary to publish reports on aggregate trader positions for the agreement, contract, or transaction traded on the foreign board of trade that are comparable to such reports on aggregate trader positions for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles.

(C) Existing foreign boards of trade

Subparagraphs (A) and (B) shall not be effective with respect to any foreign board of trade to which, prior to July 21, 2010, the Commission granted direct access permission until the date that is 180 days after July 21, 2010.

(2) Persons located in the United States

(A) In general

The Commission may adopt rules and regulations proscribing fraud and requiring minimum financial standards, the disclosure of risk, the filing of reports, the keeping of books and records, the safeguarding of customers' funds, and registration with the Commission by any person located in the United

States, its territories or possessions, who engages in the offer or sale of any contract of sale of a commodity for future delivery that is made or to be made on or subject to the rules of a board of trade, exchange, or market located outside the United States, its territories or possessions.

(B) Different requirements

Rules and regulations described in subparagraph (A) may impose different requirements for such persons depending upon the particular foreign board of trade, exchange, or market involved.

(C) Prohibition

Except as provided in paragraphs (1) and (2), no rule or regulation may be adopted by the Commission under this subsection that—

(i) requires Commission approval of any contract, rule, regulation, or action of any foreign board of trade, exchange, or market, or clearinghouse for such board of trade, exchange, or market; or

(ii) governs in any way any rule or contract term or action of any foreign board of trade, exchange, or market, or clearinghouse for such board of trade, exchange, or market.

(c) Public interest exemptions

(1) In order to promote responsible economic or financial innovation and fair competition, the Commission by rule, regulation, or order, after notice and opportunity for hearing, may (on its own initiative or on application of any person, including any board of trade designated or registered as a contract market or derivatives transaction execution facility for transactions for future delivery in any commodity under section 7 of this title) exempt any agreement, contract, or transaction (or class thereof) that is otherwise subject to subsection (a) (including any person or class of persons offering, entering into, rendering advice or rendering other services with respect to, the agreement, contract, or transaction), either unconditionally or on stated terms or conditions or for stated periods and either retroactively or prospectively, or both, from any of the requirements of subsection (a), or from any other provision of this chapter (except subparagraphs (C)(ii) and (D) of section 2(a)(1) of this title, [2] except that—

(A) unless the Commission is expressly authorized by any provision described in this subparagraph to grant exemptions, with respect to amendments made by subtitle A of the Wall Street Transparency and Accountability Act of 2010—

(i) with respect to—

(I) paragraphs (2), (3), (4), (5), and (7), paragraph (18)(A)(vii)(III), paragraphs (23), (24), (31), (32), (38), (39), (41), (42), (46), (47), (48), and (49) of section 1a of this title, and sections 2(a)(13), 2(c)(1)(D), 6a(a), 6a(b), 6d(c), 6d(d), 6r, 6s, 7a–1(a), 7a–1(b), 7(d), 7(g), 7(h),[3] 7a–1(c), 7a–1(i), 12(e),[4] and 24a of this title; and

(II) section 206(e) [5] of the Gramm-Leach-Bliley Act (Public Law 106–102; 15 U.S.C. 78c note); and

(ii) in sections 721(c) and 742 of the Dodd-Frank Wall Street Reform and Consumer Protection Act; and

(B) the Commission and the Securities and Exchange Commission may by rule, regulation, or order jointly exclude any agreement, contract, or transaction from section 2(a)(1)(D) of this title) [6] if the Commissions determine that the exemption would be consistent with the public interest.

(2) The Commission shall not grant any exemption under paragraph (1) from any of the requirements of subsection (a) unless the Commission determines that—

(A) the requirement should not be applied to the agreement, contract, or transaction for which the exemption is sought and that the exemption would be consistent with the public interest and the purposes of this chapter; and

(B) the agreement, contract, or transaction—

(i) will be entered into solely between appropriate persons; and

(ii) will not have a material adverse effect on the ability of the Commission or any contract market or derivatives transaction execution facility to discharge its regulatory or self-regulatory duties under this chapter.

(3) For purposes of this subsection, the term "appropriate person" shall be limited to the following persons or classes thereof:

(A) A bank or trust company (acting in an individual or fiduciary capacity).

(B) A savings association.

(C) An insurance company.

(D) An investment company subject to regulation under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.).

(E) A commodity pool formed or operated by a person subject to regulation under this chapter.

(F) A corporation, partnership, proprietorship, organization, trust, or other business entity with a net worth exceeding $1,000,000 or total assets exceeding $5,000,000, or the obligations of which under the agreement, contract or transaction are guaranteed or otherwise supported by a letter of credit or keepwell, support, or other agreement by any such entity or by an entity referred to in subparagraph (A), (B), (C), (H), (I), or (K) of this paragraph.

(G) An employee benefit plan with assets exceeding $1,000,000, or whose investment decisions are made by a bank, trust company, insurance company, investment adviser registered under the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 et seq.], or a commodity trading advisor subject to regulation under this chapter.

(H) Any governmental entity (including the United States, any state,[7] or any foreign government) or political subdivision thereof, or any multinational or supranational entity or any instrumentality, agency, or department of any of the foregoing.

(I) A broker-dealer subject to regulation under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) acting on its own behalf or on behalf of another appropriate person.

(J) A futures commission merchant, floor broker, or floor trader subject to regulation under this chapter acting on its own behalf or on behalf of another appropriate person.

(K) Such other persons that the Commission determines to be appropriate in light of their financial or other qualifications, or the applicability of appropriate regulatory protections.

(4) During the pendency of an application for an order granting an exemption under paragraph (1), the Commission may limit the public availability of any information received from the applicant if the applicant submits a written request to limit disclosure contemporaneous with the application, and the Commission determines that—

(A) the information sought to be restricted constitutes a trade secret; or

(B) public disclosure of the information would result in material competitive harm to the applicant.

(5) The Commission may—

(A) promptly following October 28, 1992, or upon application by any person, exercise the exemptive authority granted under paragraph (1) with respect to

classes of hybrid instruments that are predominantly securities or depository instruments, to the extent that such instruments may be regarded as subject to the provisions of this chapter; or

(B) promptly following October 28, 1992, or upon application by any person, exercise the exemptive authority granted under paragraph (1) effective as of October 23, 1974, with respect to classes of swap agreements (as defined in section 101 of title 11) that are not part of a fungible class of agreements that are standardized as to their material economic terms, to the extent that such agreements may be regarded as subject to the provisions of this chapter.

Any exemption pursuant to this paragraph shall be subject to such terms and conditions as the Commission shall determine to be appropriate pursuant to paragraph (1).

(6) If the Commission determines that the exemption would be consistent with the public interest and the purposes of this chapter, the Commission shall, in accordance with paragraphs (1) and (2), exempt from the requirements of this chapter an agreement, contract, or transaction that is entered into—

(A) pursuant to a tariff or rate schedule approved or permitted to take effect by the Federal Energy Regulatory Commission;

(B) pursuant to a tariff or rate schedule establishing rates or charges for, or protocols governing, the sale of electric energy approved or permitted to take effect by the regulatory authority of the State or municipality having jurisdiction to regulate rates and charges for the sale of electric energy within the State or municipality; or

(C) between entities described in section 824(f) of title 16.

(d) Effect of exemption on investigative authority of Commission

The granting of an exemption under this section shall not affect the authority of the Commission under any other provision of this chapter to conduct investigations in order to determine compliance with the requirements or conditions of such exemption or to take enforcement action for any violation of any provision of this chapter or any rule, regulation or order thereunder caused by the failure to comply with or satisfy such conditions or requirements.

(e) Liability of registered persons trading on a foreign board of trade

(1) In general

A person registered with the Commission, or exempt from registration by the Commission, under this chapter may not be found to have violated subsection (a) with respect to a transaction in, or in connection with, a contract of sale of a commodity for future delivery if the person—

(A) has reason to believe that the transaction and the contract is made on or subject to the rules of a foreign board of trade that is—

(i) legally organized under the laws of a foreign country;

(ii) authorized to act as a board of trade by a foreign futures authority; and

(iii) subject to regulation by the foreign futures authority; and

(B) has not been determined by the Commission to be operating in violation of subsection (a).

(2) Rule of construction

Nothing in this subsection shall be construed as implying or creating any presumption that a board of trade, exchange, or market is located outside the United States, or its territories or possessions, for purposes of subsection (a).

(Sept. 21, 1922, ch. 369, §4, 42 Stat. 999; June 15, 1936, ch. 545, §§2, 4, 49 Stat. 1491, 1492; Pub. L. 93–463, title I, §103(a), (f), Oct. 23, 1974, 88 Stat. 1392; Pub. L. 97–444, title II, §204, Jan. 11, 1983, 96 Stat. 2299; Pub. L. 102–546, title V, §502(a), Oct. 28,

1992, 106 Stat. 3629; Pub. L. 106–554, §1(a)(5) [title I, §123(a)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–406; Pub. L. 111–203, title VII, §§721(d), 722(f), 738(a), (b), July 21, 2010, 124 Stat. 1671, 1674, 1726, 1728.)

References in Text

Subtitle A of the Wall Street Transparency and Accountability Act of 2010, referred to in subsec. (c)(1)(A), is subtitle A (§§721–754) of title VII of Pub. L. 111–203, July 21, 2010, 124 Stat. 1641. For complete classification of subtitle A to the Code, see Tables.

Section 12(e) of this title, referred to in subsec. (c)(1)(A)(i)(I), was in the original a reference to section "8e" and has been translated as if the reference had been to section "8(e)" to reflect the probable intent of Congress. Section 8e of act Sept. 21, 1922, which was formerly classified to section 12e of this title, was repealed by Pub. L. 106–554, §1(a)(5) [title I, §123(a)(21)], Dec. 21, 2000, 114 Stat. 2763, 2763A–410.

The Dodd-Frank Wall Street Reform and Consumer Protection Act, referred to in subsec. (c)(1)(A)(ii), is Pub. L. 111–203, July 21, 2010, 124 Stat. 1376. Section 721(c) of the Act is classified to section 8321(b) of Title 15, Commerce and Trade. Section 742 of the Act amended section 2 of this title and provisions set out as a note under section 78c of Title 15. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of Title 12, Banks and Banking, and Tables.

The Investment Company Act of 1940, referred to in subsec. (c)(3)(D), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified generally to subchapter I (§80a–1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80a–51 of Title 15 and Tables.

The Investment Advisers Act of 1940, referred to in subsec. (c)(3)(G), is title II of act Aug. 22, 1940, ch. 686, 54 Stat. 847, as amended, which is classified generally to subchapter II (§80b–1 et seq.) of chapter 2D of Title 15. For complete classification of this Act to the Code, see section 80b–20 of Title 15 and Tables.

The Securities Exchange Act of 1934, referred to in subsec. (c)(3)(I), is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified principally to chapter 2B (§78a et seq.) of Title 15. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

Amendments

2010—Subsec. (a). Pub. L. 111–203, §738(b)(1), inserted "or by subsection (e)" after "Unless exempted by the Commission pursuant to subsection (c)" in introductory provisions.

Subsec. (b). Pub. L. 111–203, §738(a)(1)–(3), designated existing provisions as par. (2), designated the first to third sentences as subpars. (A) to (C), respectively, redesignated former pars. (1) and (2) as cls. (i) and (ii), respectively, of subpar. (C), inserted headings, in subpar. (B), substituted "Rules and regulations described in subparagraph (A)" for "Such rules and regulations", in the introductory provisions of subpar. (C), substituted "Except as provided in paragraphs (1) and (2), no rule or regulation" for "No rule or regulation" and "that—" for "that", and, in subpar. (C)(i), substituted "market; or" for "market, or".

Subsec. (b)(1). Pub. L. 111–203, §738(a)(4), added par. (1).

Subsec. (c)(1). Pub. L. 111–203, §721(d), substituted "except that—" for "except that the Commission and the Securities and Exchange Commission may by rule, regulation, or order jointly exclude any agreement, contract, or transaction from section 2(a)(1)(D) of this title), if the Commission determines that the exemption would be consistent with the public interest." and added subpars. (A) and (B).

Subsec. (c)(6). Pub. L. 111–203, §722(f), added par. (6).

Subsec. (e). Pub. L. 111–203, §738(b)(2), added subsec. (e).

2000—Subsec. (a)(1). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(3)(A)(i)], substituted "designated or registered by the Commission as a contract market or derivatives transaction execution facility for" for "designated by the Commission as a 'contract market' for".

Subsec. (a)(2). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(3)(A)(ii)], struck out "member of such" after "by or through a".

Subsec. (a)(3). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(3)(A)(iii)], inserted "or derivatives transaction execution facility" after "contract market".

Subsec. (c)(1). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(3)(B)(i)], substituted "designated or registered as a contract market or derivatives transaction execution facility" for "designated as a contract market" and "subparagraphs (C)(ii) and (D) of section 2(a)(1) of this title, except that the Commission and the Securities and Exchange Commission may by rule, regulation, or order jointly exclude any agreement, contract, or transaction from section 2(a)(1)(D) of this title" for "section 2a of this title".

Subsec. (c)(2)(B)(ii). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(3)(B)(ii)], inserted "or derivatives transaction execution facility" after "contract market".

1992—Subsec. (a). Pub. L. 102–546, §502(a)(1), substituted "Unless exempted by the Commission pursuant to subsection (c) of this section, it shall be unlawful" for "It shall be unlawful".

Subsecs. (c), (d). Pub. L. 102–546, §502(a)(2), added subsecs. (c) and (d).

1983—Pub. L. 97–444 amended section generally, combining into subsec. (a) existing provisions of this section together with provisions formerly contained in section 6h(1) of this title, relating to the conduct of offices or places of business anywhere in the United States or its territories that are used for dealing in commodities for future delivery unless such dealings are executed or consummated by or through a member of a contract market, and adding subsec. (b).

1974—Pub. L. 93–463 substituted "Commission" for "Secretary of Agriculture" and "United States Department of Agriculture".

1936—Act June 15, 1936, §2, substituted "commodity" for "grain" wherever appearing.

Act June 15, 1936, §4, struck out par. (a) and combined par. (b) with first par.

Effective Date of 2010 Amendment

Amendment by Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as a note under section 1a of this title.

Effective Date of 1983 Amendment

Amendment by Pub. L. 97–444 effective Jan. 11, 1983, see section 239 of Pub. L. 97–444, set out as a note under section 2 of this title.

Effective Date of 1974 Amendment

For effective date of amendment by Pub. L. 93–463, see section 418 of Pub. L. 93–463, set out as a note under section 2 of this title.

Effective Date of 1936 Amendment

Amendment by act June 15, 1936, effective 90 days after June 15, 1936, see section 13 of that act, set out as a note under section 1 of this title.

[1] So in original. Probably should be "Commission".

[2] So in original. A closing parenthesis probably should precede the comma.

[3] So in original. Section 7 of this title does not contain subsecs. (g) and (h).

[4] See References in Text note below.

[5] So in original. Section 206 of the Act does not contain a subsec. (e).

[6] So in original. The closing parenthesis probably should not appear.

[7] So in original. Probably should be capitalized.

§6a. Excessive speculation

(a) Burden on interstate commerce; trading or position limits

(1) In general

Excessive speculation in any commodity under contracts of sale of such commodity for future delivery made on or subject to the rules of contract markets or derivatives transaction execution facilities, or swaps that perform or affect a significant price discovery function with respect to registered entities causing sudden or unreasonable fluctuations or unwarranted changes in the price of such commodity, is an undue and unnecessary burden on interstate commerce in such commodity. For the purpose of diminishing, eliminating, or preventing such burden, the Commission shall, from time to time, after due notice and opportunity for hearing, by rule, regulation, or order, proclaim and fix such limits on the amounts of trading which may be done or positions which may be held by any person, including any group or class of traders, under contracts of sale of such commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility, or swaps traded on or subject to the rules of a designated contract market or a swap execution facility, or swaps not traded on or subject to the rules of a designated contract market or a swap execution facility that performs a significant price discovery function with respect to a registered entity, as the Commission finds are necessary to diminish, eliminate, or prevent such burden. In determining whether any person has exceeded such limits, the positions held and trading done by any persons directly or indirectly controlled by such person shall be included with the positions held and trading done by such person; and further, such limits upon positions and trading shall apply to positions held by, and trading done by, two or more persons acting pursuant to an expressed or implied agreement or understanding, the same as if the positions were held by, or the trading were done by, a single person. Nothing in this section shall be construed to prohibit the Commission from fixing different trading or position limits for different commodities, markets, futures, or delivery months, or for different number of days remaining until the last day of trading in a contract, or different trading limits for buying and selling operations, or different limits for the purposes of paragraphs (1) and (2) of subsection (b) of this section, or from exempting transactions normally known to the trade as "spreads" or "straddles" or "arbitrage" or from fixing limits applying to such transactions or positions different from limits fixed for other transactions or positions. The word "arbitrage" in domestic markets shall be defined to mean the same as "spread" or "straddle". The Commission is authorized to define the term "international arbitrage".

(2) Establishment of limitations

(A) In general

In accordance with the standards set forth in paragraph (1) of this subsection and consistent with the good faith exception cited in subsection (b)(2), with respect to physical commodities other than excluded commodities as defined by the Commission, the Commission shall by rule, regulation, or order establish limits on the amount of positions, as appropriate, other than bona fide hedge positions, that may be held by any person with respect to contracts of sale for future delivery or with respect to options on the contracts or commodities traded on or subject to the rules of a designated contract market.

(B) Timing

(i) Exempt commodities

For exempt commodities, the limits required under subparagraph (A) shall be established within 180 days after July 21, 2010.

(ii) Agricultural commodities

For agricultural commodities, the limits required under subparagraph (A) shall be established within 270 days after July 21, 2010.

(C) Goal

In establishing the limits required under subparagraph (A), the Commission shall strive to ensure that trading on foreign boards of trade in the same commodity will be subject to comparable limits and that any limits to be imposed by the Commission will not cause price discovery in the commodity to shift to trading on the foreign boards of trade.

(3) Specific limitations

In establishing the limits required in paragraph (2), the Commission, as appropriate, shall set limits—

(A) on the number of positions that may be held by any person for the spot month, each other month, and the aggregate number of positions that may be held by any person for all months; and

(B) to the maximum extent practicable, in its discretion—

(i) to diminish, eliminate, or prevent excessive speculation as described under this section;

(ii) to deter and prevent market manipulation, squeezes, and corners;

(iii) to ensure sufficient market liquidity for bona fide hedgers; and

(iv) to ensure that the price discovery function of the underlying market is not disrupted.

(4) Significant price discovery function

In making a determination whether a swap performs or affects a significant price discovery function with respect to regulated markets, the Commission shall consider, as appropriate:

(A) Price linkage

The extent to which the swap uses or otherwise relies on a daily or final settlement price, or other major price parameter, of another contract traded on a regulated market based upon the same underlying commodity, to value a position, transfer or convert a position, financially settle a position, or close out a position.

(B) Arbitrage

The extent to which the price for the swap is sufficiently related to the price of another contract traded on a regulated market based upon the same underlying commodity so as to permit market participants to effectively arbitrage between the markets by simultaneously maintaining positions or executing trades in the swaps on a frequent and recurring basis.

(C) Material price reference

The extent to which, on a frequent and recurring basis, bids, offers, or transactions in a contract traded on a regulated market are directly based on, or are determined by referencing, the price generated by the swap.

(D) Material liquidity

The extent to which the volume of swaps being traded in the commodity is sufficient to have a material effect on another contract traded on a regulated market.

(E) Other material factors

Such other material factors as the Commission specifies by rule or regulation as relevant to determine whether a swap serves a significant price discovery function with respect to a regulated market.

(5) Economically equivalent contracts

(A) Notwithstanding any other provision of this section, the Commission shall establish limits on the amount of positions, including aggregate position limits, as appropriate, other than bona fide hedge positions, that may be held by any person with respect to swaps that are economically equivalent to contracts of sale for future delivery or to options on the contracts or commodities traded on or subject to the rules of a designated contract market subject to paragraph (2).

(B) In establishing limits pursuant to subparagraph (A), the Commission shall—

(i) develop the limits concurrently with limits established under paragraph (2), and the limits shall have similar requirements as under paragraph (3)(B); and

(ii) establish the limits simultaneously with limits established under paragraph (2).

(6) Aggregate position limits

The Commission shall, by rule or regulation, establish limits (including related hedge exemption provisions) on the aggregate number or amount of positions in contracts based upon the same underlying commodity (as defined by the Commission) that may be held by any person, including any group or class of traders, for each month across—

(A) contracts listed by designated contract markets;

(B) with respect to an agreement contract, or transaction that settles against any price (including the daily or final settlement price) of 1 or more contracts listed for trading on a registered entity, contracts traded on a foreign board of trade that provides members or other participants located in the United States with direct access to its electronic trading and order matching system; and

(C) swap contracts that perform or affect a significant price discovery function with respect to regulated entities.

(7) Exemptions

The Commission, by rule, regulation, or order, may exempt, conditionally or unconditionally, any person or class of persons, any swap or class of swaps, any contract of sale of a commodity for future delivery or class of such contracts, any option or class of options, or any transaction or class of transactions from any requirement it may establish under this section with respect to position limits.

(b) Prohibition on trading or positions in excess of limits fixed by Commission

The Commission shall, in such rule, regulation, or order, fix a reasonable time (not to exceed ten days) after the promulgation of the rule, regulation, or order; after which, and until such rule, regulation, or order is suspended, modified, or revoked, it shall be unlawful for any person—

(1) directly or indirectly to buy or sell, or agree to buy or sell, under contracts of sale of such commodity for future delivery on or subject to the rules of the contract market or markets, or swap execution facility or facilities with respect to a significant price discovery contract, to which the rule, regulation, or order applies, any amount of such commodity during any one business day in excess of any trading limit fixed for one business day by the Commission in such rule, regulation, or order for or with respect to such commodity; or

(2) directly or indirectly to hold or control a net long or a net short position in any commodity for future delivery on or subject to the rules of any contract market or swap execution facility with respect to a significant price discovery contract in excess of any position limit fixed by the Commission for or with respect to such commodity: *Provided*, That such position limit shall not apply to a position acquired in good faith prior to the effective date of such rule, regulation, or order.

(c) Applicability to bona fide hedging transactions or positions

(1) No rule, regulation, or order issued under subsection (a) of this section shall apply to transactions or positions which are shown to be bona fide hedging transactions or positions as such terms shall be defined by the Commission by rule,

regulation, or order consistent with the purposes of this chapter. Such terms may be defined to permit producers, purchasers, sellers, middlemen, and users of a commodity or a product derived therefrom to hedge their legitimate anticipated business needs for that period of time into the future for which an appropriate futures contract is open and available on an exchange. To determine the adequacy of this chapter and the powers of the Commission acting thereunder to prevent unwarranted price pressures by large hedgers, the Commission shall monitor and analyze the trading activities of the largest hedgers, as determined by the Commission, operating in the cattle, hog, or pork belly markets and shall report its findings and recommendations to the Senate Committee on Agriculture, Nutrition, and Forestry and the House Committee on Agriculture in its annual reports for at least two years following January 11, 1983.

(2) For the purposes of implementation of subsection (a)(2) for contracts of sale for future delivery or options on the contracts or commodities, the Commission shall define what constitutes a bona fide hedging transaction or position as a transaction or position that—

(A)(i) represents a substitute for transactions made or to be made or positions taken or to be taken at a later time in a physical marketing channel;

(ii) is economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise; and

(iii) arises from the potential change in the value of—

(I) assets that a person owns, produces, manufactures, processes, or merchandises or anticipates owning, producing, manufacturing, processing, or merchandising;

(II) liabilities that a person owns or anticipates incurring; or

(III) services that a person provides, purchases, or anticipates providing or purchasing; or

(B) reduces risks attendant to a position resulting from a swap that—

(i) was executed opposite a counterparty for which the transaction would qualify as a bona fide hedging transaction pursuant to subparagraph (A); or

(ii) meets the requirements of subparagraph (A).

(d) Persons subject to regulation; applicability to transactions made by or on behalf of United States

This section shall apply to a person that is registered as a futures commission merchant, an introducing broker, or a floor broker under authority of this chapter only to the extent that transactions made by such person are made on behalf of or for the account or benefit of such person. This section shall not apply to transactions made by, or on behalf of, or at the direction of, the United States, or a duly authorized agency thereof.

(e) Rulemaking power and penalties for violation

Nothing in this section shall prohibit or impair the adoption by any contract market, derivatives transaction execution facility, or by any other board of trade licensed, designated, or registered by the Commission or by any electronic trading facility of any bylaw, rule, regulation, or resolution fixing limits on the amount of trading which may be done or positions which may be held by any person under contracts of sale of any commodity for future delivery traded on or subject to the rules of such contract market or derivatives transaction execution facility or on an electronic trading facility, or under options on such contracts or commodities traded on or subject to the rules of such contract market, derivatives transaction execution facility, or electronic trading facility or such board of trade: *Provided*, That if the Commission shall have fixed limits under this section for any contract or under section 6c of this title for any commodity option, then the limits fixed by the bylaws, rules, regulations, and resolutions adopted by such contract market, derivatives

transaction execution facility, or electronic trading facility or such board of trade shall not be higher than the limits fixed by the Commission. It shall be a violation of this chapter for any person to violate any bylaw, rule, regulation, or resolution of any contract market, derivatives transaction execution facility, or other board of trade licensed, designated, or registered by the Commission or electronic trading facility with respect to a significant price discovery contract fixing limits on the amount of trading which may be done or positions which may be held by any person under contracts of sale of any commodity for future delivery or under options on such contracts or commodities, if such bylaw, rule, regulation, or resolution has been approved by the Commission or certified by a registered entity pursuant to section 7a–2(c)(1) of this title: *Provided*, That the provisions of section 13(a)(5) of this title shall apply only to those who knowingly violate such limits.

(Sept. 21, 1922, ch. 369, §4a, as added June 15, 1936, ch. 545, §5, 49 Stat. 1492; amended July 24, 1956, ch. 690, §1, 70 Stat. 630; Pub. L. 90–258, §§2–4, Feb. 19, 1968, 82 Stat. 26, 27; Pub. L. 93–463, title IV, §§403, 404, Oct. 23, 1974, 88 Stat. 1413; Pub. L. 94–16, §4, Apr. 16, 1975, 89 Stat. 78; Pub. L. 97–444, title II, §205, Jan. 11, 1983, 96 Stat. 2299; Pub. L. 102–546, title IV, §402(1)(A), (2), Oct. 28, 1992, 106 Stat. 3624; Pub. L. 106–554, §1(a)(5) [title I, §123(a)(4)], Dec. 21, 2000, 114 Stat. 2763, 2763A–407; Pub. L. 110–234, title XIII, §§13105(a), 13203(g), May 22, 2008, 122 Stat. 1434, 1439; Pub. L. 110–246, §4(a), title XIII, §§13105(a), 13203(g), June 18, 2008, 122 Stat. 1664, 2196, 2201; Pub. L. 111–203, title VII, §737(a)–(c), July 21, 2010, 124 Stat. 1722, 1725.)

Codification

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

Amendments

2010—Subsec. (a). Pub. L. 111–203, §737(a)(1)–(3), designated existing provisions as par. (1), inserted heading, substituted "swaps that perform or affect a significant price discovery function with respect to registered entities" for "on electronic trading facilities with respect to a significant price discovery contract", inserted ", including any group or class of traders," after "held by any person", and substituted "swaps traded on or subject to the rules of a designated contract market or a swap execution facility, or swaps not traded on or subject to the rules of a designated contract market or a swap execution facility that performs a significant price discovery function with respect to a registered entity," for "on an electronic trading facility with respect to a significant price discovery contract,".

Subsec. (a)(2) to (7). Pub. L. 111–203, §737(a)(4), added pars. (2) to (7).

Subsec. (b)(1). Pub. L. 111–203, §737(b)(1), substituted "or swap execution facility or facilities" for "or derivatives transaction execution facility or facilities or electronic trading facility".

Subsec. (b)(2). Pub. L. 111–203, §737(b)(2), which directed substitution of "or swap execution facility" for "or derivatives transaction execution facility or facilities or electronic trading facility", was executed by making the substitution for "or derivatives transaction execution facility or electronic trading facility" to reflect the probable intent of Congress.

Subsec. (c). Pub. L. 111–203, §737(c), designated existing provisions as par. (1) and added par. (2).

2008—Subsec. (a). Pub. L. 110–246, §13203(g)(1), inserted ", or on electronic trading facilities with respect to a significant price discovery contract" after "execution facilities" in first sentence and ", or on an electronic trading facility with respect to a significant price discovery contract," after "execution facility" in second sentence.

Subsec. (b)(1). Pub. L. 110–246, §13203(g)(2)(A), inserted "or electronic trading facility with respect to a significant price discovery contract" after "facility or facilities".

Subsec. (b)(2). Pub. L. 110–246, §13203(g)(2)(B), inserted "or electronic trading facility with respect to a significant price discovery contract" after "execution facility".

Subsec. (e). Pub. L. 110–246, §13203(g)(3), in first sentence, inserted "or by any electronic trading facility" after "registered by the Commission", inserted "or on an electronic trading facility" after "derivatives transaction execution facility" the second place it appeared, and

inserted "or electronic trading facility" before "or such board of trade" in two places, and, in second sentence, inserted "or electronic trading facility with respect to a significant price discovery contract" after "registered by the Commission".

Pub. L. 110–246, §13105(a), inserted "or certified by a registered entity pursuant to section 7a–2(c)(1) of this title" after "approved by the Commission" and substituted "section 13(a)(5)" for "section 13(c)".

2000—Subsec. (a). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(4)(A)], inserted "or derivatives transaction execution facilities" after "contract markets" in first sentence and "or derivatives transaction execution facility" after "contract market" in second sentence.

Subsec. (b)(1). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(4)(B)(i)], inserted ", or derivatives transaction execution facility or facilities," after "markets".

Subsec. (b)(2). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(4)(B)(ii)], inserted "or derivatives transaction execution facility" after "contract market".

Subsec. (e). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(4)(C)], substituted "contract market, derivatives transaction execution facility, or" for "contract market or" wherever appearing, "licensed, designated, or registered" for "licensed or designated" in two places, and "contract market or derivatives transaction execution facility, or" for "contract market, or".

1992—Subsec. (a). Pub. L. 102–546, §402(1)(A), (2)(A), (C), redesignated par. (1) as subsec. (a), substituted "Commission" for "commission" wherever appearing except in last sentence, and substituted "paragraphs (1) and (2) of subsection (b) of this section" for "subparagraphs (A) and (B) of paragraph (2)".

Subsec. (b). Pub. L. 102–546, §402(1)(A), (2)(C), (D), redesignated par. (2) as subsec. (b) and subpars. (A) and (B) as pars. (1) and (2), respectively, and substituted "Commission" for "commission" wherever appearing.

Subsec. (c). Pub. L. 102–546, §402(2)(B), (C), redesignated par. (3) as subsec. (c) and substituted "subsection (a)" for "paragraph (1)".

Subsecs. (d), (e). Pub. L. 102–546, §402(2)(C), redesignated pars. (4) and (5) as subsecs. (d) and (e), respectively.

1983—Par. (1). Pub. L. 97–444, §205(1), (2), substituted "by rule, regulation, or order, proclaim" for "by order, proclaim" and inserted "or for different number of days remaining until the last day of trading in a contract," after "delivery months".

Par. (2). Pub. L. 97–444, §205(1), (3), substituted "after the promulgation of the rule, regulation, or order" for "after the order's promulgation" in provisions before subpar. (A) and substituted "rule, regulation, or order" for "order" in provisions before subpar. (A) and in subpars. (A) and (B).

Par. (3). Pub. L. 97–444, §205(4), substituted "No rule, regulation, or order issued under paragraph (1) of this section shall apply to transactions or positions which are shown to be bona fide hedging transactions or positions as such terms shall be defined by the Commission by rule, regulation, or order consistent with the purposes of this chapter" for "No order issued under paragraph (1) of this section shall apply to transactions or positions which are shown to be bona fide hedging transactions or positions as such terms shall be defined by the Commission within one hundred and eighty days after the effective date of the Commodity Futures Trading Commission Act of 1974 by order consistent with the purposes of this chapter" and inserted "Such terms may be defined to permit producers, purchasers, sellers, middlemen, and users of a commodity or a product derived therefrom to hedge their legitimate anticipated business needs for that period of time into the future for which an appropriate futures contract is open and available on an exchange. To determine the adequacy of this chapter and the powers of the Commission acting thereunder to prevent unwarranted price pressures by large hedgers, the Commission shall monitor and analyze the trading activities of the largest hedgers, as determined by the Commission, operating in the cattle, hog, or pork belly markets and shall report its findings and recommendations to the Senate Committee on Agriculture, Nutrition, and Forestry and the House Committee on Agriculture in its annual reports for at least two years following January 11, 1983."

Par. (4). Pub. L. 97–444, §205(5), substituted "a futures commission merchant, an introducing broker, or a floor broker" for "a futures commission merchant or as floor broker".

Par. (5). Pub. L. 97–444, §205(6), added par. (5).

1975—Par. (3). Pub. L. 94–16 substituted "one hundred and eighty days" for "ninety days".

1974—Par. (1). Pub. L. 93–463, §403, inserted "or 'arbitrage' " after "or 'straddles' ", inserted definition of "arbitrage", and authorized Commission to define "international arbitrage".

Par. (3). Pub. L. 93–463, §404, directed Commission to define "bona fide hedging transactions or positions" within 90 days after the effective date of the Commodity Futures Trading Commission Act of 1974 and struck out provisions which enumerated the factors to be taken into account in determining whether a hedging transaction or position was a bona fide transaction or position.

1968—Par. (1). Pub. L. 90–258, §2, substituted in second sentence "amounts of trading" for "amount of trading", inserted "which may be done or positions which may be held by any person" before "under contracts of sale", and struck out "which may be done" after "rules of any contract market", inserted third sentence providing for inclusion of controlled positions and trading in determining whether prescribed position or trading limits have been exceeded and for application of such position and trading limits to activities of two or more persons acting pursuant to agreement or understanding as if the activities of a single person, and included in fourth, formerly third, sentence references to position limits and to positions, substituted "normally" for "commonly", and struck out "trading" from "from fixing trading limits" and "from trading limits".

Par. (2)(B). Pub. L. 90–258, §3, substituted prohibition against holding of net long or net short positions in excess of any position limit fixed by the Commission for former prohibition of purchases or sales which result in net long or net short positions in excess of trading limits fixed by the Commission and provided that the position limit shall not apply to a position acquired in good faith prior to the effective date of the order.

Par. (3). Pub. L. 90–258, §4, included references to positions, made hedging applicable to short and long positions, substituted "contract market" for "board of trade", and required the activities to be those of the same person to constitute hedging.

1956—Par. (3)(C). Act July 24, 1956, added subpar. (C).

Effective Date of 2010 Amendment

Pub. L. 111–203, title VII, §737(d), July 21, 2010, 124 Stat. 1725, provided that: "This section [amending this section] and the amendments made by this section shall become effective on the date of the enactment of this section [July 21, 2010]."

Effective Date of 2008 Amendment

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of this title.

Amendment by section 13203(g) of Pub. L. 110–246 effective June 18, 2008, see section 13204(a) of Pub. L. 110–246, set out as a note under section 2 of this title.

Effective Date of 1983 Amendment

Amendment by Pub. L. 97–444 effective Jan. 11, 1983, see section 239 of Pub. L. 97–444, set out as a note under section 2 of this title.

Effective Date of 1974 Amendment

Pub. L. 93–463, title IV, §404, Oct. 23, 1974, 88 Stat. 1413, provided that the amendment of par. (3) which struck out provisions that enumerated the factors to be taken into account in determining whether a hedging transaction or position was a bona fide transaction or position, was effective immediately upon the enactment of Pub. L. 93–463, which was approved Oct. 23, 1974.

Amendment by Pub. L. 93–463 of par. (1) and that part of par. (3) directing the Commission to define "bona fide hedging transactions or positions" effective so as to allow implementation of all changes effected by this amendment to be carried out after Oct. 23, 1974, and before as well as after the 180th day thereafter, see section 418 of Pub. L. 93–463, set out as a note under section 2 of this title.

Effective Date of 1968 Amendment

Amendment by Pub. L. 90–258 effective 120 days after Feb. 19, 1968, see section 28 of Pub. L. 90–258, set out as a note under section 2 of this title.

Effective Date of 1956 Amendment

Act July 24, 1956, ch. 690, §2, 70 Stat. 630, provided that: "This Act [amending this section] shall take effect sixty days after the date of its enactment [July 24, 1956]."

Effective Date

For effective date of section, see section 13 of act June 15, 1936, set out as an Effective Date of 1936 Amendment note under section 1 of this title.

Regulations Defining Bona Fide Hedging Transactions and Positions

Pub. L. 93–463, title IV, §404, Oct. 23, 1974, 88 Stat. 1413, provided in part: "That notwithstanding any other provision of law, the Secretary of Agriculture, immediately upon the enactment of the Commodity Futures Trading Commission Act of 1974 [which was approved on Oct. 23, 1974], is authorized and directed to promulgate regulations defining bona fide hedging transactions and positions: *And provided further*, That until the Secretary issues such regulations defining bona fide hedging transactions and positions and such regulations are in full force and effect, such terms shall continue to be defined as set forth in the Commodity Exchange Act [par. (3) of this section] prior to its amendment by the Commodity Futures Trading Commission Act of 1974 [Pub. L. 93–463]."

§6b. Contracts designed to defraud or mislead

(a) Unlawful actions

It shall be unlawful—

(1) for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity in interstate commerce or for future delivery that is made, or to be made, on or subject to the rules of a designated contract market, for or on behalf of any other person; or

(2) for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, or swap, that is made, or to be made, for or on behalf of, or with, any other person, other than on or subject to the rules of a designated contract market—

(A) to cheat or defraud or attempt to cheat or defraud the other person;

(B) willfully to make or cause to be made to the other person any false report or statement or willfully to enter or cause to be entered for the other person any false record;

(C) willfully to deceive or attempt to deceive the other person by any means whatsoever in regard to any order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to any order or contract for or, in the case of paragraph (2), with the other person; or

(D)(i) to bucket an order if the order is either represented by the person as an order to be executed, or is required to be executed, on or subject to the rules of a designated contract market; or

(ii) to fill an order by offset against the order or orders of any other person, or willfully and knowingly and without the prior consent of the other person to become the buyer in respect to any selling order of the other person, or become the seller in respect to any buying order of the other person, if the order is either represented by the person as an order to be executed, or is required to be executed, on or subject to the rules of a designated contract market unless the order is executed in accordance with the rules of the designated contract market.

(b) Clarification

Subsection (a)(2) of this section shall not obligate any person, in or in connection with a transaction in a contract of sale of a commodity for future delivery, or swap, with another person, to disclose to the other person nonpublic information that may be material to the market price, rate, or level of the commodity or transaction, except as necessary to make any statement made to the other person in or in connection with the transaction not misleading in any material respect.

(c) Buying and selling orders for commodity

Nothing in this section or in any other section of this chapter shall be construed to prevent a futures commission merchant or floor broker who shall have in hand, simultaneously, buying and selling orders at the market for different principals for a like quantity of a commodity for future delivery in the same month executing such buying and selling orders at the market price: *Provided*, That any such execution shall take place on the floor of the exchange where such orders are to be executed at public outcry across the ring and shall be duly reported, recorded, and cleared in the same manner as other orders executed on such exchange: *And provided further*, That such transactions shall be made in accordance with such rules and regulations as the Commission may promulgate regarding the manner of the execution of such transactions.

(d) Inapplicability to transactions on foreign exchanges

Nothing in this section shall apply to any activity that occurs on a board of trade, exchange, or market, or clearinghouse for such board of trade, exchange, or market, located outside the United States, or territories or possessions of the United States, involving any contract of sale of a commodity for future delivery that is made, or to be made, on or subject to the rules of such board of trade, exchange, or market.

(e) Contracts of sale on group or index of securities

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any registered entity, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery (or option on such a contract), or any swap, on a group or index of securities (or any interest therein or based on the value thereof)—

(1) to employ any device, scheme, or artifice to defraud;

(2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

(3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

(Sept. 21, 1922, ch. 369, §4b, as added June 15, 1936, ch. 545, §5, 49 Stat. 1493; amended Pub. L. 90–258, §5, Feb. 19, 1968, 82 Stat. 27; Pub. L. 93–463, title IV, §405, Oct. 23, 1974, 88 Stat. 1413; Pub. L. 99–641, title I, §101, Nov. 10, 1986, 100 Stat. 3557; Pub. L. 102–546, title IV, §402(3), Oct. 28, 1992, 106 Stat. 3624; Pub. L. 106–554, §1(a)(5) [title I, §123(a)(5)], Dec. 21, 2000, 114 Stat. 2763, 2763A–407; Pub. L. 110–234, title XIII, §13102, May 22, 2008, 122 Stat. 1432; Pub. L. 110–246, §4(a), title XIII, §13102, June 18, 2008, 122 Stat. 1664, 2194; Pub. L. 111–203, title VII, §741(b)(1), July 21, 2010, 124 Stat. 1730.)

Codification

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

Amendments

2010—Subsec. (a)(2). Pub. L. 111–203, §741(b)(1)(A), substituted "or swap," for "or other agreement, contract, or transaction subject to paragraphs (1) and (2) of section 7a(g) of this title,".

Subsec. (b). Pub. L. 111–203, §741(b)(1)(B), substituted "or swap," for "or other agreement, contract or transaction subject to paragraphs (1) and (2) of section 7a(g) of this title,".

Subsec. (e). Pub. L. 111–203, §741(b)(1)(C), added subsec. (e).

2008—Pub. L. 110–246, §13102, inserted section catchline, added subsecs. (a) and (b), redesignated former subsecs. (b) and (c) as (c) and (d), respectively, and struck out former subsec. (a) which related to contracts designed to defraud or mislead and bucketing orders.

2000—Subsec. (a)(1). Pub. L. 106–554 substituted "registered entity" for "contract market" in two places.

1992—Pub. L. 102–546 designated first par. as subsec. (a), redesignated cls. (a) to (c) as subpars. (A) to (C), respectively, and subpars. (A) to (D) as cls. (i) to (iv), respectively, and designated second and third undesignated pars. as subsecs. (b) and (c), respectively.

1986—Pub. L. 99–641 struck out "on or subject to the rules of any contract market," after "to be made" in cl. (2) of first par. and added concluding paragraph that this section not apply to activity on board of trade, exchange, market, or clearinghouse located outside United States involving contract of sale of commodity for future delivery.

1974—Pub. L. 93–463 substituted "a commodity" for "cotton" in provisions following subpar. (D) and inserted requirement that execution of buying and selling orders for commodities held simultaneously by the same merchant or broker be carried out in accordance with such rules and regulations as the Commission may promulgate regarding the manner of the execution of such transactions.

1968—Pub. L. 90–258 relocated cl. (1) designation in first par. to follow "unlawful" rather than to precede "any contract of sale", provided in such cl. (1) for orders to make or making of contracts of sale "made, or to be made on or subject to the rules of any contract market, for or on behalf of any other person" and in cl. (2) "for any person, in or in connection with any order to make, or the making of," any contract of sale of any commodity for future delivery for or on behalf of any "other" person; and inserted "other" before "person" in subpar. (A) and in subpars. (B) and (C) where appearing for first time, respectively.

Effective Date of 2010 Amendment

Amendment by Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as a note under section 1a of this title.

Effective Date of 2008 Amendment

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of this title.

Effective Date of 1974 Amendment

For effective date of amendment by Pub. L. 93–463, see section 418 of Pub. L. 93–463, set out as a note under section 2 of this title.

Effective Date of 1968 Amendment

Amendment by Pub. L. 90–258 effective 120 days after Feb. 19, 1968, see section 28 of Pub. L. 90–258, set out as a note under section 2 of this title.

Effective Date

For effective date of section, see section 13 of act June 15, 1936, set out as an Effective Date of 1936 Amendment note under section 1 of this title.

§6b–1. Enforcement authority

(a) Commodity Futures Trading Commission

Except as provided in subsections (b), (c), and (d), the Commission shall have exclusive authority to enforce the provisions of subtitle A of the Wall Street Transparency and Accountability Act of 2010 with respect to any person.

(b) Prudential regulators

The prudential regulators shall have exclusive authority to enforce the provisions of section 6s(e) of this title with respect to swap dealers or major swap participants for which they are the prudential regulator.

(c) Referrals

(1) Prudential regulators

If the prudential regulator for a swap dealer or major swap participant has cause to believe that the swap dealer or major swap participant, or any affiliate or division of the swap dealer or major swap participant, may have engaged in conduct that constitutes a violation of the nonprudential requirements of this chapter (including section 6s of this title or rules adopted by the Commission under that section), the prudential regulator may promptly notify the Commission in a written report that includes—

(A) a request that the Commission initiate an enforcement proceeding under this chapter; and

(B) an explanation of the facts and circumstances that led to the preparation of the written report.

(2) Commission

If the Commission has cause to believe that a swap dealer or major swap participant that has a prudential regulator may have engaged in conduct that constitutes a violation of any prudential requirement of section 6s of this title or rules adopted by the Commission under that section, the Commission may notify the prudential regulator of the conduct in a written report that includes—

(A) a request that the prudential regulator initiate an enforcement proceeding under this chapter or any other Federal law (including regulations); and

(B) an explanation of the concerns of the Commission, and a description of the facts and circumstances, that led to the preparation of the written report.

(d) Backstop enforcement authority

(1) Initiation of enforcement proceeding by prudential regulator

If the Commission does not initiate an enforcement proceeding before the end of the 90-day period beginning on the date on which the Commission receives a written report under subsection (c)(1), the prudential regulator may initiate an enforcement proceeding.

(2) Initiation of enforcement proceeding by Commission

If the prudential regulator does not initiate an enforcement proceeding before the end of the 90-day period beginning on the date on which the prudential regulator receives a written report under subsection (c)(2), the Commission may initiate an enforcement proceeding.

(Sept. 21, 1922, ch. 369, §4b–1, as added Pub. L. 111–203, title VII, §741(a), July 21, 2010, 124 Stat. 1729.)

References in Text

Subtitle A of the Wall Street Transparency and Accountability Act of 2010, referred to in subsec. (a), is subtitle A (§§711–754) of title VII of Pub. L. 111–203, July 21, 2010, 124 Stat. 1641, which enacted sections 1b, 6b–1, 6r to 6t, 7b–3, 24a, and 26 of this title and subchapter I (§8301 et seq.) of chapter 109 and section 78c–2 of Title 15, Commerce and Trade, amended sections 1a, 2, 6 to 6b, 6c, 6d, 6m, 6q, 6s, 7 to 7b, 8 to 9a, 12, 12a, 13, 13–1, 13a–1, 13b, 15, 16, 21, 24, 25, 27 to 27b, 27e, and 27f of this title, section 761 of Title 11, Bankruptcy, sections 4421 and 4422 of Title 12, Banks and Banking, and sections 78f, 78o, and 78s of Title 15, enacted provisions set out as notes under sections 1a, 2, 6a, 7a–1, 7a–3, and 9 of this title, and amended provisions set out as a note under section 78c of Title 15. For complete classification of subtitle A to the Code, see Tables.

Effective Date

Section effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 1a of this title.

§6c. Prohibited transactions

(a) In general

(1) Prohibition

It shall be unlawful for any person to offer to enter into, enter into, or confirm the execution of a transaction described in paragraph (2) involving the purchase or sale of any commodity for future delivery (or any option on such a transaction or option on a commodity) or swap if the transaction is used or may be used to—

(A) hedge any transaction in interstate commerce in the commodity or the product or byproduct of the commodity;

(B) determine the price basis of any such transaction in interstate commerce in the commodity; or

(C) deliver any such commodity sold, shipped, or received in interstate commerce for the execution of the transaction.

(2) Transaction

A transaction referred to in paragraph (1) is a transaction that—

(A)(i) is, of the character of, or is commonly known to the trade as, a "wash sale" or "accommodation trade"; or

(ii) is a fictitious sale; or

(B) is used to cause any price to be reported, registered, or recorded that is not a true and bona fide price.

(3) Contract of sale

It shall be unlawful for any employee or agent of any department or agency of the Federal Government or any Member of Congress or employee of Congress (as such terms are defined under section 2 of the STOCK Act) or any judicial officer or judicial employee (as such terms are defined, respectively, under section 2 of the STOCK Act) who, by virtue of the employment or position of the Member, officer, employee or agent, acquires information that may affect or tend to affect the price of any commodity in interstate commerce, or for future delivery, or any swap, and which information has not been disseminated by the department or agency of the Federal Government holding or creating the information or by Congress or by the judiciary in a manner which makes it generally available to the trading public, or disclosed in a criminal, civil, or administrative hearing, or in a congressional, administrative, or Government Accountability Office report, hearing, audit, or investigation, to use the information in his personal capacity and for personal gain to enter into, or offer to enter into—

(A) a contract of sale of a commodity for future delivery (or option on such a contract);

(B) an option (other than an option executed or traded on a national securities exchange registered pursuant to section 78f(a) of title 15); or

(C) a swap.

(4) Nonpublic information

(A) Imparting of nonpublic information

It shall be unlawful for any employee or agent of any department or agency of the Federal Government or any Member of Congress or employee of Congress

or any judicial officer or judicial employee who, by virtue of the employment or position of the Member, officer, employee or agent, acquires information that may affect or tend to affect the price of any commodity in interstate commerce, or for future delivery, or any swap, and which information has not been disseminated by the department or agency of the Federal Government holding or creating the information or by Congress or by the judiciary in a manner which makes it generally available to the trading public, or disclosed in a criminal, civil, or administrative hearing, or in a congressional, administrative, or Government Accountability Office report, hearing, audit, or investigation, to impart the information in his personal capacity and for personal gain with intent to assist another person, directly or indirectly, to use the information to enter into, or offer to enter into—

(i) a contract of sale of a commodity for future delivery (or option on such a contract);

(ii) an option (other than an option executed or traded on a national securities exchange registered pursuant to section 78f(a) of title 15); or

(iii) a swap.

(B) Knowing use

It shall be unlawful for any person who receives information imparted by any employee or agent of any department or agency of the Federal Government or any Member of Congress or employee of Congress or any judicial officer or judicial employee as described in subparagraph (A) to knowingly use such information to enter into, or offer to enter into—

(i) a contract of sale of a commodity for future delivery (or option on such a contract);

(ii) an option (other than an option executed or traded on a national securities exchange registered pursuant to section 78f(a) of title 15); or

(iii) a swap.

(C) Theft of nonpublic information

It shall be unlawful for any person to steal, convert, or misappropriate, by any means whatsoever, information held or created by any department or agency of the Federal Government or by Congress or by the judiciary that may affect or tend to affect the price of any commodity in interstate commerce, or for future delivery, or any swap, where such person knows, or acts in reckless disregard of the fact, that such information has not been disseminated by the department or agency of the Federal Government holding or creating the information or by Congress or by the judiciary in a manner which makes it generally available to the trading public, or disclosed in a criminal, civil, or administrative hearing, or in a congressional, administrative, or Government Accountability Office report, hearing, audit, or investigation, and to use such information, or to impart such information with the intent to assist another person, directly or indirectly, to use such information to enter into, or offer to enter into—

(i) a contract of sale of a commodity for future delivery (or option on such a contract);

(ii) an option (other than an option executed or traded on a national securities exchange registered pursuant to section 78f(a) of title 15); or

(iii) a swap, provided, however, that nothing in this subparagraph shall preclude a person that has provided information concerning, or generated by, the person, its operations or activities, to any employee or agent of any department or agency of the Federal Government, to Congress, any Member of Congress, any employee of Congress, any judicial officer, or any judicial employee, voluntarily or as required by law, from using such information to enter into, or offer to enter into, a contract of sale, option, or swap described in clauses [1] (i), (ii), or (iii).

(5) Disruptive practices

It shall be unlawful for any person to engage in any trading, practice, or conduct on or subject to the rules of a registered entity that—

(A) violates bids or offers;

(B) demonstrates intentional or reckless disregard for the orderly execution of transactions during the closing period; or

(C) is, is of the character of, or is commonly known to the trade as, "spoofing" (bidding or offering with the intent to cancel the bid or offer before execution).

(6) Rulemaking authority

The Commission may make and promulgate such rules and regulations as, in the judgment of the Commission, are reasonably necessary to prohibit the trading practices described in paragraph (5) and any other trading practice that is disruptive of fair and equitable trading.

(7) Use of swaps to defraud

It shall be unlawful for any person to enter into a swap knowing, or acting in reckless disregard of the fact, that its counterparty will use the swap as part of a device, scheme, or artifice to defraud any third party.

(b) Regulated option trading

No person shall offer to enter into, enter into or confirm the execution of, any transaction involving any commodity regulated under this chapter which is of the character of, or is commonly known to the trade as, an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty", or "decline guaranty", contrary to any rule, regulation, or order of the Commission prohibiting any such transaction or allowing any such transaction under such terms and conditions as the Commission shall prescribe. Any such order, rule, or regulation may be made only after notice and opportunity for hearing, and the Commission may set different terms and conditions for different markets.

(c) Regulations for elimination of pilot status of commodity option transactions; terms and conditions of options trading

Not later than 90 days after November 10, 1986, the Commission shall issue regulations—

(1) to eliminate the pilot status of its program for commodity option transactions involving the trading of options on contract markets, including any numerical restrictions on the number of commodities or option contracts for which a contract market may be designated; and

(2) otherwise to continue to permit the trading of such commodity options under such terms and conditions that the Commission from time to time may prescribe.

(d) Dealer options exempt from subsections (b) and (c) prohibitions; requirements

Notwithstanding the provisions of subsection (c) of this section—

(1) any person domiciled in the United States who on May 1, 1978, was in the business of granting an option on a physical commodity, other than a commodity specifically set forth in section 2(a) of this title prior to October 23, 1974, and was in the business of buying, selling, producing, or otherwise using that commodity, may continue to grant or issue options on that commodity in accordance with Commission regulations in effect on August 17, 1978, until thirty days after the effective date of regulations issued by the Commission under clause (2) of this subsection: *Provided*, That if such person files an application for registration under the regulations issued under clause (2) of this subsection within thirty days after the effective date of such regulations, that person may continue to grant or issue options pending a final determination by the Commission on the application; and

(2) the Commission shall issue regulations that permit grantors and futures commission merchants to offer to enter into, enter into, or confirm the execution of, any commodity option transaction on a physical commodity subject to the provisions of subsection (b) of this section, other than a commodity specifically set forth in section 2(a) of this title prior to October 23, 1974, if—

(A) the grantor is a person domiciled in the United States who—

(i) is in the business of buying, selling, producing, or otherwise using the underlying commodity;

(ii) at all times has a net worth of at least $5,000,000 certified annually by an independent public accountant using generally accepted accounting principles;

(iii) notifies the Commission and every futures commission merchant offering the grantor's option if the grantor knows or has reason to believe that the grantor's net worth has fallen below $5,000,000;

(iv) segregates daily, exclusively for the benefit of purchasers, money, exempted securities (within the meaning of section 78c(a)(12) of title 15), commercial paper, bankers' acceptances, commercial bills, or unencumbered warehouse receipts, equal to an amount by which the value of each transaction exceeds the amount received or to be received by the grantor for such transaction;

(v) provides an identification number for each transaction; and

(vi) provides confirmation of all orders for such transactions executed, including the execution price and a transaction identification number;

(B) the futures commission merchant is a person who—

(i) has evidence that the grantor meets the requirements specified in subclause (A) of this clause;

(ii) treats and deals with all money, securities, or property received from its customers as payment of the purchase price in connection with such transactions, as belonging to such customers until the expiration of the term of the option, or, if the customer exercises the option, until all rights of the customer under the commodity option transaction have been fulfilled;

(iii) records each transaction in its customer's name by the transaction identification number provided by the grantor;

(iv) provides a disclosure statement to its customers, under regulations of the Commission, that discloses, among other things, all costs, including any markups or commissions involved in such transaction; and

(C) the grantor and futures commission merchant comply with any additional uniform and reasonable terms and conditions the Commission may prescribe, including registration with the Commission.

The Commission may permit persons not domiciled in the United States to grant options under this subsection, other than options on a commodity specifically set forth in section 2(a) of this title prior to October 23, 1974, under such additional rules, regulations, and orders as the Commission may adopt to provide protection to purchasers that are substantially the equivalent of those applicable to grantors domiciled in the United States. The Commission may terminate the right of any person to grant, offer, or sell options under this subsection only after a hearing, including a finding that the continuation of such right is contrary to the public interest: *Provided*, That pending the completion of such termination proceedings, the Commission may suspend the right to grant, offer, or sell options of any person whose activities in the Commission's judgment present a substantial risk to the public interest.

(e) Rules and regulations

The Commission may adopt rules and regulations, after public notice and opportunity for a hearing on the record, prohibiting the granting, issuance, or sale of options permitted under subsection (d) of this section if the Commission determines that such options are contrary to the public interest.

(f) Nonapplicability to foreign currency options

Nothing in this chapter shall be deemed to govern or in any way be applicable to any transaction in an option on foreign currency traded on a national securities exchange.

(g) Oral orders

The Commission shall adopt rules requiring that a contemporaneous written record be made, as practicable, of all orders for execution on the floor or subject to the rules of each contract market or derivatives transaction execution facility placed by a member of the contract market or derivatives transaction execution facility who is present on the floor at the time such order is placed.

(Sept. 21, 1922, ch. 369, §4c, as added June 15, 1936, ch. 545, §5, 49 Stat. 1494; amended Pub. L. 93–463, title I, §103(a), title IV, §402, Oct. 23, 1974, 88 Stat. 1392, 1412; Pub. L. 95–405, §3, Sept. 30, 1978, 92 Stat. 867; Pub. L. 97–444, title I, §102, title II, §206, Jan. 11, 1983, 96 Stat. 2296, 2301; Pub. L. 99–641, title I, §102, Nov. 10, 1986, 100 Stat. 3557; Pub. L. 102–546, title II, §203(a), title IV, §402(4), Oct. 28, 1992, 106 Stat. 3600, 3624; Pub. L. 106–554, §1(a)(5) [title I, §§109, 123(a)(6)], Dec. 21, 2000, 114 Stat. 2763, 2763A–383, 2763A–407; Pub. L. 111–203, title VII, §§741(b)(2), 746, 747, July 21, 2010, 124 Stat. 1731, 1737, 1739; Pub. L. 112–105, §5, Apr. 4, 2012, 126 Stat. 293.)

References in Text

Section 2 of the STOCK Act, referred to in subsec. (a)(3), is section 2 of Pub. L. 112–105, which is set out as a note under section 101 of the Ethics in Government Act of 1978, Pub. L. 95–521, in the Appendix to Title 5, Government Organization and Employees.

Amendments

2012—Subsec. (a)(3). Pub. L. 112–105, §5(1), inserted in introductory provisions "or any Member of Congress or employee of Congress (as such terms are defined under section 2 of the STOCK Act) or any judicial officer or judicial employee (as such terms are defined, respectively, under section 2 of the STOCK Act)" after "any department or agency of the Federal Government", "Member, officer," after "position of the", and "or by Congress or by the judiciary" after "creating the information".

Subsec. (a)(4)(A). Pub. L. 112–105, §5(2)(A), inserted in introductory provisions "or any Member of Congress or employee of Congress or any judicial officer or judicial employee" after "any department or agency of the Federal Government", "Member, officer," after "position of the", and "or by Congress or by the judiciary" after "creating the information".

Subsec. (a)(4)(B). Pub. L. 112–105, §5(2)(B), inserted "or any Member of Congress or employee of Congress or any judicial officer or judicial employee" after "Federal Government" in introductory provisions.

Subsec. (a)(4)(C). Pub. L. 112–105, §5(2)(C)(i), inserted "or by Congress or by the judiciary" in two places in introductory provisions.

Subsec. (a)(4)(C)(iii). Pub. L. 112–105, §5(2)(C)(ii), inserted "to Congress, any Member of Congress, any employee of Congress, any judicial officer, or any judicial employee," after "Federal Government,".

2010—Subsec. (a)(1). Pub. L. 111–203, §741(b)(2), inserted "or swap" before "if the transaction is used or may be used".

Subsec. (a)(3), (4). Pub. L. 111–203, §746, added pars. (3) and (4).

Subsec. (a)(5) to (7). Pub. L. 111–203, §747, added pars. (5) to (7).

2000—Pub. L. 106–554, §1(a)(5) [title I, §109], inserted section catchline.

Subsec. (a). Pub. L. 106–554, §1(a)(5) [title I, §109], added subsec. (a) and struck out former subsec. (a) which read as follows: "It shall be unlawful for any person to offer to enter into, enter into, or confirm the execution of, any transaction involving any commodity, which is or

may be used for (1) hedging any transaction in interstate commerce in such commodity or the products or byproducts thereof, or (2) determining the price basis of any such transaction in interstate commerce in such commodity, or (3) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof—

"(A) if such transaction is, is of the character of, or is commonly known to the trade as, a 'wash sale,' 'cross trade,' or 'accommodation trade,' or is a fictitious sale; or

"(B) if such transaction is used to cause any price to be reported, registered, or recorded which is not a true and bona fide price.

Nothing in this section shall be construed to prevent the exchange of futures in connection with cash commodity transactions or of futures for cash commodities, or of transfer trades or office trades if made in accordance with board of trade rules applying to such transactions and such rules shall have been approved by the Commission."

Subsec. (g). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(6)], inserted "or derivatives transaction execution facility" after "contract market" in two places.

1992—Subsec. (d)(2). Pub. L. 102–546, §402(4), made technical amendments to references to section 78c(a)(12) of title 15 in subpar. (A)(iv) and to section 2(a) of this title in concluding provisions.

Subsec. (g). Pub. L. 102–546, §203(a), added subsec. (g).

1986—Subsec. (c). Pub. L. 99–641, amended subsec. (c) generally, substituting provisions relating to regulations to eliminate pilot status of program for commodity option transactions for provisions relating to commodity option transactions, pilot program and permanent authorization, conditions ending prohibition, and excepted persons.

1983—Subsec. (a)(B), (C). Pub. L. 97–444, §206(1), redesignated par. (C) as (B). Former par. (B), relating to transactions involving any commodity specifically set forth in section 2(a) of this title, prior to October 23, 1974, if such transactions were of the character of, or were commonly known to the trade as, an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty", or "decline guaranty", was struck out.

Subsec. (b). Pub. L. 97–444, §206(2), in revising section generally, struck out references to any transaction subject to provisions of subsection (a) of this section and to any commodity not specifically set forth in section 2(a) of this title, prior to October 23, 1974, and struck out "within one year after the effective date of the Commodity Futures Trading Commission Act of 1974 unless the Commission determines and notifies the Senate Committee on Agriculture, Nutrition, and Forestry and the House Committee on Agriculture that it is unable to prescribe such terms and conditions within such period of time:" after "such terms and conditions as the Commission shall prescribe".

Subsec. (c). Pub. L. 97–444, §206(3), inserted "With respect to any commodity regulated under this chapter and specifically set forth in section 2(a) of this title prior to October 23, 1974, the Commission may, pursuant to the procedures set forth in this subsection, establish a pilot program for a period not to exceed three years to permit such commodity option transactions. The Commission may authorize commodity option transactions during the pilot program in as many commodities as will provide an adequate test of the trading of such option transactions. After completion of the pilot program, the Commission may authorize commodity option transactions without regard to the restrictions in the pilot program after the Commission transmits to the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry the documentation required under clause (1) of the first sentence of this subsection and the expiration of thirty calendar days of continuous session of Congress after the date of such transmittal."

Subsec. (d)(1). Pub. L. 97–444, §206(4)(A), inserted ", other than a commodity specifically set forth in section 2(a) of this title prior to October 23, 1974," after "physical commodity".

Subsec. (d)(2). Pub. L. 97–444, §206(4)(B), inserted ", other than a commodity specifically set forth in section 2(a) of this title prior to October 23, 1974," after "subsection (b) of this section" in provisions preceding subpar. (A).

Pub. L. 97–444, §206(4)(C), inserted ", other than options on a commodity specifically set forth in section 2(a) of this title prior to October 23, 1974," after "The Commission may permit persons not domiciled in the United States to grant options under this subsection" in provisions following par. (2).

Subsec. (f). Pub. L. 97–444, §102, added subsec. (f).

1978—Subsec. (a). Pub. L. 95–405, §3(1), in provisions following par. (C) substituted "have been approved" for "not have been disapproved".

Subsec. (b). Pub. L. 95–405, §3(2), substituted "Senate Committee on Agriculture, Nutrition, and Forestry" for "Senate Committee on Agriculture and Forestry".

Subsecs. (c) to (e). Pub. L. 95–405, §3(3), added subsecs. (c) to (e).

1974—Subsec. (a). Pub. L. 93–463, §§103(a), 402(a), (b), (d), designated existing provisions as subsec. (a), in par. (B) of subsec. (a) as so designated inserted "if such transaction involves any commodity specifically set forth in section 2(a) of this title, prior to the enactment of the Commodity Futures Trading Commission Act of 1974, and" and "option", and in provisions following par. (C), struck out provisions prohibiting a construction of this section or section 6b of this title which would impair any State law applicable to any transaction enumerated or described in this section or section 6b of this title and substituted "Commission" for "Secretary of Agriculture".

Subsec. (b). Pub. L. 93–463, §402(c), added subsec. (b).

Effective Date of 2010 Amendment

Amendment by Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as a note under section 1a of this title.

Effective Date of 1992 Amendment

Pub. L. 102–546, title II, §203(b), Oct. 28, 1992, 106 Stat. 3600, provided that: "The Commission shall adopt the rules required by the amendment made under subsection (a) [amending this section] within two hundred and seventy days after the date of enactment of this Act [Oct. 28, 1992]."

Effective Date of 1983 Amendment

Amendment by Pub. L. 97–444 effective Jan. 11, 1983, see section 239 of Pub. L. 97–444, set out as a note under section 2 of this title.

Effective Date of 1978 Amendment

Amendment by Pub. L. 95–405 effective Oct. 1, 1978, see section 28 of Pub. L. 95–405, set out as a note under section 2 of this title.

Effective Date of 1974 Amendment

For effective date of amendment by Pub. L. 93–463, see section 418 of Pub. L. 93–463, set out as a note under section 2 of this title.

Effective Date

For effective date of section, see section 13 of act June 15, 1936, set out as an Effective Date of 1936 Amendment note under section 1 of this title.

[1] *So in original. Probably should be "clause".*

§6d. Dealing by unregistered futures commission merchants or introducing brokers prohibited; duties in handling customer receipts; conflict-of-interest systems and procedures; Chief Compliance Officer; rules to avoid duplicative regulations; swap requirements; portfolio margining accounts

(a) Futures commission merchant registration requirements; duties of merchants in handling customer receipts

It shall be unlawful for any person to be a futures commission merchant unless—

(1) such person shall have registered, under this chapter, with the Commission as such futures commission merchant and such registration shall not have expired

nor been suspended nor revoked; and

(2) such person shall, whether a member or nonmember of a contract market or derivatives transaction execution facility, treat and deal with all money, securities, and property received by such person to margin, guarantee, or secure the trades or contracts of any customer of such person, or accruing to such customer as the result of such trades or contracts, as belonging to such customer. Such money, securities, and property shall be separately accounted for and shall not be commingled with the funds of such commission merchant or be used to margin or guarantee the trades or contracts, or to secure or extend the credit, of any customer or person other than the one for whom the same are held: *Provided, however*, That such money, securities, and property of the customers of such futures commission merchant may, for convenience, be commingled and deposited in the same account or accounts with any bank or trust company or with the clearing house organization of such contract market or derivatives transaction execution facility, and that such share thereof as in the normal course of business shall be necessary to margin, guarantee, secure, transfer, adjust, or settle the contracts or trades of such customers, or resulting market positions, with the clearinghouse organization of such contract market or derivatives transaction execution facility or with any member of such contract market or derivatives transaction execution facility, may be withdrawn and applied to such purposes, including the payment of commissions, brokerage, interest, taxes, storage, and other charges, lawfully accruing in connection with such contracts and trades: *Provided further*, That in accordance with such terms and conditions as the Commission may prescribe by rule, regulation, or order, such money, securities, and property of the customers of such futures commission merchant may be commingled and deposited as provided in this section with any other money, securities, and property received by such futures commission merchant and required by the Commission to be separately accounted for and treated and dealt with as belonging to the customers of such futures commission merchant: *Provided further*, That such money may be invested in obligations of the United States, in general obligations of any State or of any political subdivision thereof, and in obligations fully guaranteed as to principal and interest by the United States, such investments to be made in accordance with such rules and regulations and subject to such conditions as the Commission may prescribe.

(b) Duties of clearing agencies, depositories, and others in handling customer receipts

It shall be unlawful for any person, including but not limited to any clearing agency of a contract market or derivatives transaction execution facility and any depository, that has received any money, securities, or property for deposit in a separate account as provided in paragraph (2) of this section,[1] to hold, dispose of, or use any such money, securities, or property as belonging to the depositing futures commission merchant or any person other than the customers of such futures commission merchant.

(c) Conflicts of interest

The Commission shall require that futures commission merchants and introducing brokers implement conflict-of-interest systems and procedures that—

(1) establish structural and institutional safeguards to ensure that the activities of any person within the firm relating to research or analysis of the price or market for any commodity are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of persons whose involvement in trading or clearing activities might potentially bias the judgment or supervision of the persons; and

(2) address such other issues as the Commission determines to be appropriate.

(d) Designation of Chief Compliance Officer

Each futures commission merchant shall designate an individual to serve as its Chief Compliance Officer and perform such duties and responsibilities as shall be set forth in regulations to be adopted by the Commission or rules to be adopted by a futures association registered under section 21 of this title.

(e) Rules to avoid duplicative regulation of dual registrants

Consistent with this chapter, the Commission, in consultation with the Securities and Exchange Commission, shall issue such rules, regulations, or orders as are necessary to avoid duplicative or conflicting regulations applicable to any futures commission merchant registered with the Commission pursuant to section 6f(a) of this title (except paragraph (2) thereof), that is also registered with the Securities and Exchange Commission pursuant to section 78o(b) of title 15 (except paragraph (11) thereof), involving the application of—

(1) section 78h, section 78o(c)(3), and section 78q of title 15 and the rules and regulations thereunder related to the treatment of customer funds, securities, or property, maintenance of books and records, financial reporting or other financial responsibility rules (as defined in section 78c(a)(40) of title 15), involving security futures products; and

(2) similar provisions of this chapter and the rules and regulations thereunder involving security futures products.

(f) Swaps

(1) Registration requirement

It shall be unlawful for any person to accept any money, securities, or property (or to extend any credit in lieu of money, securities, or property) from, for, or on behalf of a swaps customer to margin, guarantee, or secure a swap cleared by or through a derivatives clearing organization (including money, securities, or property accruing to the customer as the result of such a swap), unless the person shall have registered under this chapter with the Commission as a futures commission merchant, and the registration shall not have expired nor been suspended nor revoked.

(2) Cleared swaps

(A) Segregation required

A futures commission merchant shall treat and deal with all money, securities, and property of any swaps customer received to margin, guarantee, or secure a swap cleared by or though a derivatives clearing organization (including money, securities, or property accruing to the swaps customer as the result of such a swap) as belonging to the swaps customer.

(B) Commingling prohibited

Money, securities, and property of a swaps customer described in subparagraph (A) shall be separately accounted for and shall not be commingled with the funds of the futures commission merchant or be used to margin, secure, or guarantee any trades or contracts of any swaps customer or person other than the person for whom the same are held.

(3) Exceptions

(A) Use of funds

(i) In general

Notwithstanding paragraph (2), money, securities, and property of swap customers of a futures commission merchant described in paragraph (2) may, for convenience, be commingled and deposited in the same account or accounts with any bank or trust company or with a derivatives clearing organization.

(ii) Withdrawal

Notwithstanding paragraph (2), such share of the money, securities, and property described in clause (i) as in the normal course of business shall be necessary to margin, guarantee, secure, transfer, adjust, or settle a cleared swap with a derivatives clearing organization, or with any member of the derivatives clearing organization, may be withdrawn and applied to such purposes, including the payment of commissions, brokerage, interest, taxes, storage, and other charges, lawfully accruing in connection with the cleared swap.

(B) Commission action

Notwithstanding paragraph (2), in accordance with such terms and conditions as the Commission may prescribe by rule, regulation, or order, any money, securities, or property of the swaps customers of a futures commission merchant described in paragraph (2) may be commingled and deposited in customer accounts with any other money, securities, or property received by the futures commission merchant and required by the Commission to be separately accounted for and treated and dealt with as belonging to the swaps customer of the futures commission merchant.

(4) Permitted investments

Money described in paragraph (2) may be invested in obligations of the United States, in general obligations of any State or of any political subdivision of a State, and in obligations fully guaranteed as to principal and interest by the United States, or in any other investment that the Commission may by rule or regulation prescribe, and such investments shall be made in accordance with such rules and regulations and subject to such conditions as the Commission may prescribe.

(5) Commodity contract

A swap cleared by or through a derivatives clearing organization shall be considered to be a commodity contract as such term is defined in section 761 of title 11, with regard to all money, securities, and property of any swaps customer received by a futures commission merchant or a derivatives clearing organization to margin, guarantee, or secure the swap (including money, securities, or property accruing to the customer as the result of the swap).

(6) Prohibition

It shall be unlawful for any person, including any derivatives clearing organization and any depository institution, that has received any money, securities, or property for deposit in a separate account or accounts as provided in paragraph (2) to hold, dispose of, or use any such money, securities, or property as belonging to the depositing futures commission merchant or any person other than the swaps customer of the futures commission merchant.

(g) Introducing broker registration requirements

It shall be unlawful for any person to be an introducing broker unless such person shall have registered under this chapter with the Commission as an introducing broker and such registration shall not have expired nor been suspended nor revoked.

(h) Contracts held in portfolio margining accounts

Notwithstanding subsection (a)(2) or the rules and regulations thereunder, and pursuant to an exemption granted by the Commission under section 6(c) of this title or pursuant to a rule or regulation, a futures commission merchant that is registered pursuant to section 6f(a)(1) of this title and also registered as a broker or dealer pursuant to section 78(o)(b)(1) of title 15 may, pursuant to a portfolio margining program approved by the Securities and Exchange Commission pursuant to section 78s(b) of title 15, hold in a portfolio margining account carried as a securities

account subject to section 78(o)(c)(3) of title 15 and the rules and regulations thereunder, a contract for the purchase or sale of a commodity for future delivery or an option on such a contract, and any money, securities or other property received from a customer to margin, guarantee or secure such a contract, or accruing to a customer as the result of such a contract. The Commission shall consult with the Securities and Exchange Commission to adopt rules to ensure that such transactions and accounts are subject to comparable requirements to the extent practical for similar products.

(Sept. 21, 1922, ch. 369, §4d, as added June 15, 1936, ch. 545, §5, 49 Stat. 1494; amended Pub. L. 90–258, §6, Feb. 19, 1968, 82 Stat. 27; Pub. L. 93–463, title I, §103(a), Oct. 23, 1974, 88 Stat. 1392; Pub. L. 95–405, §4, Sept. 30, 1978, 92 Stat. 869; Pub. L. 97–444, title II, §207, Jan. 11, 1983, 96 Stat. 2302; Pub. L. 106–554, §1(a)(5) [title I, §123(a)(6), title II, §251(f)], Dec. 21, 2000, 114 Stat. 2763, 2763A–407, 2763A–443; Pub. L. 111–203, title VII, §§713(b), 724(a), 732, 749(a), July 21, 2010, 124 Stat. 1646, 1682, 1712, 1746.)

Amendments

2010—Subsec. (a). Pub. L. 111–203, §749(a)(1)(A), in introductory provisions, substituted "be a" for "engage as" and struck out "or introducing broker in soliciting orders or accepting orders for the purchase or sale of any commodity for future delivery, or involving any contracts of sale of any commodity for future delivery, on or subject to the rules of any contract market or derivatives transaction execution facility" after "merchant".

Subsec. (a)(1). Pub. L. 111–203, §749(a)(1)(B), struck out "or introducing broker" after "merchant".

Subsec. (a)(2). Pub. L. 111–203, §749(a)(1)(C), struck out "if a futures commission merchant," after "such person shall,".

Subsecs. (c) to (e). Pub. L. 111–203, §732, added subsecs. (c) and (d) and redesignated former subsec. (c) as (e).

Subsec. (f). Pub. L. 111–203, §724(a), which directed amendment of section by adding subsec. (f) at end, was executed by making the addition after subsec. (e) to reflect the probable intent of Congress and the addition of subsec. (h) by section 713(b) of Pub. L. 111–203.

Subsec. (g). Pub. L. 111–203, §749(a)(2), which directed amendment of section by adding subsec. (g) at end, was executed by making the addition after subsec. (f) to reflect the probable intent of Congress and the addition of subsec. (h) by section 713(b) of Pub. L. 111–203.

Subsec. (h). Pub. L. 111–203, §713(b), added subsec. (h).

2000—Pub. L. 106–554, §1(a)(5) [title II, §251(f)], designated first undesignated par. as subsec. (a), designated second undesignated par. as subsec. (b), and added subsec. (c).

Pub. L. 106–554, §1(a)(5) [title I, §123(a)(6)], inserted "or derivatives transaction execution facility" after "contract market" wherever appearing.

1983—Pub. L. 97–444, §207(1), inserted reference to introducing brokers in provisions preceding par. (1).

Par. (1). Pub. L. 97–444, §207(2), inserted "or introducing broker" after "futures commission merchant".

Par. (2). Pub. L. 97–444, §207(3), inserted "if a futures commission merchant," after "such person shall,".

1978—Pub. L. 95–405 in par. (2) inserted provisions authorizing Commission to prescribe terms and conditions under which funds and property commingled and deposited as permitted by par. (2) may be commingled and deposited with other funds and property received by a futures commission merchant and required by Commission to be separately accounted for and treated as belonging to its customers.

1974—Pub. L. 93–463 substituted "Commission" for "Secretary of Agriculture" in pars. (1) and (2).

1968—Pub. L. 90–258 struck out from second proviso of first par. authorization for investment of customer funds in investment securities of the kind national banking associations may buy or in loans secured by negotiable warehouse receipts conveying or

securing title to readily marketable commodities to the extent of the current loan value of such receipts and added second par., making it unlawful for any person, including a clearing agency of a contract market or any depository, to treat customer funds as belonging to any person other than the customer, respectively.

Effective Date of 2010 Amendment

Amendment by Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as a note under section 1a of this title.

Effective Date of 1983 Amendment

Amendment by Pub. L. 97–444 effective 120 days after Jan. 11, 1983, or such earlier date as the Commission shall prescribe by regulation, see section 239 of Pub. L. 97–444, set out as a note under section 2 of this title.

Effective Date of 1978 Amendment

Amendment by Pub. L. 95–405 effective Oct. 1, 1978, see section 28 of Pub. L. 95–405, set out as a note under section 2 of this title.

Effective Date of 1974 Amendment

For effective date of amendment by Pub. L. 93–463, see section 418 of Pub. L. 93–463, set out as a note under section 2 of this title.

Effective Date of 1968 Amendment

Amendment by Pub. L. 90–258 effective 120 days after Feb. 19, 1968, see section 28 of Pub. L. 90–258, set out as a note under section 2 of this title.

Effective Date

For effective date of section, see section 13 of act June 15, 1936, set out as an Effective Date of 1936 Amendment note under section 1 of this title.

[1] *So in original. Probably means subsection (a)(2) of this section.*

§6e. Dealings by unregistered floor trader or broker prohibited

It shall be unlawful for any person to act as floor trader in executing purchases and sales, or as floor broker in executing any orders for the purchase or sale, of any commodity for future delivery, or involving any contracts of sale of any commodity for future delivery, on or subject to the rules of any contract market or derivatives transaction execution facility unless such person shall have registered, under this chapter, with the Commission as such floor trader or floor broker and such registration shall not have expired nor been suspended nor revoked.

(Sept. 21, 1922, ch. 369, §4e, as added June 15, 1936, ch. 545, §5, 49 Stat. 1495; amended Pub. L. 93–463, title I, §103(a), Oct. 23, 1974, 88 Stat. 1392; Pub. L. 102–546, title II, §207(a), Oct. 28, 1992, 106 Stat. 3604; Pub. L. 106–554, §1(a)(5) [title I, §123(a)(6)], Dec. 21, 2000, 114 Stat. 2763, 2763A–407.)

Amendments

2000—Pub. L. 106–554 inserted "or derivatives transaction execution facility" after "contract market".

1992—Pub. L. 102–546 amended section generally. Prior to amendment, section read as follows: "It shall be unlawful for any person to act as floor broker in executing any orders for the purchase or sale of any commodity for future delivery, or involving any contracts of sale of any commodity for future delivery, on or subject to the rules of any contract market unless such person shall have registered, under this chapter, with the Commission as such floor broker and such registration shall not have expired nor been suspended nor revoked."

1974—Pub. L. 93–463 substituted "Commission" for "Secretary of Agriculture".

Effective Date of 1992 Amendment

Pub. L. 102–546, title II, §207(c), Oct. 28, 1992, 106 Stat. 3604, provided that: "The amendments made by this section [amending this section and sections 6f, 6g, 12a, and 13a–2 of this title] shall become effective one hundred and eighty days after the date of enactment of this Act [Oct. 28, 1992], and the Commodity Futures Trading Commission shall issue any regulations necessary to implement the amendments made by this section no later than one hundred and eighty days after the date of enactment of this Act."

Effective Date of 1974 Amendment

For effective date of amendment by Pub. L. 93–463, see section 418 of Pub. L. 93–463, set out as a note under section 2 of this title.

Effective Date

For effective date of section, see section 13 of act June 15, 1936, set out as an Effective Date of 1936 Amendment note under section 1 of this title.

§6f. Registration and financial requirements; risk assessment

(a) Registration of futures commission merchants, introducing brokers, and floor brokers and traders

(1) Any person desiring to register as a futures commission merchant, introducing broker, floor broker, or floor trader hereunder shall be registered upon application to the Commission. The application shall be made in such form and manner as prescribed by the Commission, giving such information and facts as the Commission may deem necessary concerning the business in which the applicant is or will be engaged, including in the case of an application of a futures commission merchant or an introducing broker, the names and addresses of the managers of all branch offices, and the names of such officers and partners, if a partnership, and of such officers, directors, and stockholders, if a corporation, as the Commission may direct. Such person, when registered hereunder, shall likewise continue to report and furnish to the Commission the above-mentioned information and such other information pertaining to such person's business as the Commission may require. Each registration shall expire on December 31 of the year for which issued or at such other time, not less than one year from the date of issuance, as the Commission may by rule, regulation, or order prescribe, and shall be renewed upon application therefor unless the registration has been suspended (and the period of such suspension has not expired) or revoked pursuant to the provisions of this chapter.

(2) Notwithstanding paragraph (1), and except as provided in paragraph (3), any broker or dealer that is registered with the Securities and Exchange Commission shall be registered as a futures commission merchant or introducing broker, as applicable, if—

(A) the broker or dealer limits its solicitation of orders, acceptance of orders, or execution of orders, or placing of orders on behalf of others involving any contracts of sale of any commodity for future delivery, on or subject to the rules of any contract market or registered derivatives transaction execution facility to security futures products;

(B) the broker or dealer files written notice with the Commission in such form as the Commission, by rule, may prescribe containing such information as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors;

(C) the registration of the broker or dealer is not suspended pursuant to an order of the Securities and Exchange Commission; and

(D) the broker or dealer is a member of a national securities association registered pursuant to section 78o–3(a) of title 15.

The registration shall be effective contemporaneously with the submission of notice, in written or electronic form, to the Commission.

(3) A floor broker or floor trader shall be exempt from the registration requirements of section 6e of this title and paragraph (1) of this subsection if—

(A) the floor broker or floor trader is a broker or dealer registered with the Securities and Exchange Commission;

(B) the floor broker or floor trader limits its solicitation of orders, acceptance of orders, or execution of orders, or placing of orders on behalf of others involving any contracts of sale of any commodity for future delivery, on or subject to the rules of any contract market to security futures products; and

(C) the registration of the floor broker or floor trader is not suspended pursuant to an order of the Securities and Exchange Commission.

(4)(A) A broker or dealer that is registered as a futures commission merchant or introducing broker pursuant to paragraph (2), or that is a floor broker or floor trader exempt from registration pursuant to paragraph (3), shall be exempt from the following provisions of this chapter and the rules thereunder:

(i) Subsections (b), (d), (e), and (g) of section 6c of this title.

(ii) Sections 6d, 6e, and 6h of this title.

(iii) Subsections (b) and (c) of this section.

(iv) Section 6j of this title.

(v) Section 6k(1) of this title.

(vi) Section 6p of this title.

(vii) Section 13a–2 of this title.

(viii) Subsections (d) and (g) of section 12 of this title.

(ix) Section 20 of this title.

(B)(i) Except as provided in clause (ii) of this subparagraph, but notwithstanding any other provision of this chapter, the Commission, by rule, regulation, or order, may conditionally or unconditionally exempt any broker or dealer subject to the registration requirement of paragraph (2), or any broker or dealer exempt from registration pursuant to paragraph (3), from any provision of this chapter or of any rule or regulation thereunder, to the extent the exemption is necessary or appropriate in the public interest and is consistent with the protection of investors.

(ii) The Commission shall, by rule or regulation, determine the procedures under which an exemptive order under this section shall be granted and may, in its sole discretion, decline to entertain any application for an order of exemption under this section.

(C)(i) A broker or dealer that is registered as a futures commission merchant or introducing broker pursuant to paragraph (2) or an associated person thereof, or that is a floor broker or floor trader exempt from registration pursuant to paragraph (3), shall not be required to become a member of any futures association registered under section 21 of this title.

(ii) No futures association registered under section 21 of this title shall limit its members from carrying an account, accepting an order, or transacting business with a broker or dealer that is registered as a futures commission merchant or introducing broker pursuant to paragraph (2) or an associated person thereof, or that is a floor broker or floor trader exempt from registration pursuant to paragraph (3).

(b) Financial requirements for futures commission merchants and introducing brokers

Notwithstanding any other provisions of this chapter, no person desiring to register as futures commission merchant or as introducing broker shall be so registered unless he meets such minimum financial requirements as the Commission

may by regulation prescribe as necessary to insure his meeting his obligation as a registrant, and each person so registered shall at all times continue to meet such prescribed minimum financial requirements: *Provided*, That such minimum financial requirements will be considered met if the applicant for registration or registrant is a member of a contract market or derivatives transaction execution facility and conforms to minimum financial standards and related reporting requirements set by such contract market or derivatives transaction execution facility in its bylaws, rules, regulations, or resolutions and approved by the Commission as adequate to effectuate the purposes of this subsection.

(c) Risk assessment for holding company systems

(1) As used in this subsection:

(i) The term "affiliated person" means any person directly or indirectly controlling, controlled by, or under common control with a futures commission merchant, as the Commission, by rule or regulation, may determine will effectuate the purposes of this subsection.

(ii) The term "Federal banking agency" shall have the same meaning as the term "appropriate Federal banking agency" in section 1813(q) of title 12.

(2)(A) Each registered futures commission merchant shall obtain such information and make and keep such records as the Commission, by rule or regulation, prescribes concerning the registered futures commission merchant's policies, procedures, or systems for monitoring and controlling financial and operational risks to it resulting from the activities of any of its affiliated persons, other than a natural person.

(B) The records required under subparagraph (A) shall describe, in the aggregate, each of the futures and other financial activities conducted by, and the customary sources of capital and funding of, those of its affiliated persons whose business activities are reasonably likely to have a material impact on the financial or operational condition of the futures commission merchant, including its adjusted net capital, its liquidity, or its ability to conduct or finance its operations.

(C) The Commission, by rule or regulation, may require summary reports of such information to be filed by the futures commission merchant with the Commission no more frequently than quarterly.

(3)(A),[1] If, as a result of adverse market conditions or based on reports provided to the Commission pursuant to paragraph (2) or other available information, the Commission reasonably concludes that the Commission has concerns regarding the financial or operational condition of any registered futures commission merchant, the Commission may require the futures commission merchant to make reports concerning the futures and other financial activities of any of such person's affiliated persons, other than a natural person, whose business activities are reasonably likely to have a material impact on the financial or operational condition of the futures commission merchant.

(B) The Commission, in requiring reports pursuant to this paragraph, shall specify the information required, the period for which it is required, the time and date on which the information must be furnished, and whether the information is to be furnished directly to the Commission or to a contract market or derivatives transaction execution facility or other self-regulatory organization with primary responsibility for examining the registered futures commission merchant's financial and operational condition.

(4)(A) in [2] developing and implementing reporting requirements pursuant to paragraph (2) with respect to affiliated persons subject to examination by or reporting requirements of a Federal banking agency, the Commission shall consult with and consider the views of each such Federal banking agency. If a Federal banking agency comments in writing on a proposed rule of the Commission under

this subsection that has been published for comment, the Commission shall respond in writing to the written comment before adopting the proposed rule. The Commission shall, at the request of the Federal banking agency, publish the comment and response in the Federal Register at the time of publishing the adopted rule.

(B)(i) Except as provided in clause (ii), a registered futures commission merchant shall be considered to have complied with a recordkeeping or reporting requirement adopted pursuant to paragraph (2) concerning an affiliated person that is subject to examination by, or reporting requirements of, a Federal banking agency if the futures commission merchant utilizes for the recordkeeping or reporting requirement copies of reports filed by the affiliated person with the Federal banking agency pursuant to section 161 of title 12, section 9 of the Federal Reserve Act (12 U.S.C. 321 et seq.), section 1817(a) of title 12, section 1467a(b) of title 12, or section 1844 of title 12.

(ii) The Commission may, by rule adopted pursuant to paragraph (2), require any futures commission merchant filing the reports with the Commission to obtain, maintain, or report supplemental information if the Commission makes an explicit finding that the supplemental information is necessary to inform the Commission regarding potential risks to the futures commission merchant. Prior to requiring any such supplemental information, the Commission shall first request the Federal banking agency to expand its reporting requirements to include the information.

(5) Prior to making a request pursuant to paragraph (3) for information with respect to an affiliated person that is subject to examination by or reporting requirements of a Federal banking agency, the Commission shall—

(A) notify the agency of the information required with respect to the affiliated person; and

(B) consult with the agency to determine whether the information required is available from the agency and for other purposes, unless the Commission determines that any delay resulting from the consultation would be inconsistent with ensuring the financial and operational condition of the futures commission merchant or the stability or integrity of the futures markets.

(6) Nothing in this subsection shall be construed to permit the Commission to require any futures commission merchant to obtain, maintain, or furnish any examination report of any Federal banking agency or any supervisory recommendations or analysis contained in the report.

(7) No information provided to or obtained by the Commission from any Federal banking agency pursuant to a request under paragraph (5) regarding any affiliated person that is subject to examination by or reporting requirements of a Federal banking agency may be disclosed to any other person (other than as provided in section 12 of this title or section 12a(6) of this title), without the prior written approval of the Federal banking agency.

(8) The Commission shall notify a Federal banking agency of any concerns of the Commission regarding significant financial or operational risks resulting from the activities of any futures commission merchant to any affiliated person thereof that is subject to examination by or reporting requirements of the Federal banking agency.

(9) The Commission, by rule, regulation, or order, may exempt any person or class of persons under such terms and conditions and for such periods as the Commission shall provide in the rule, regulation, or order, from this subsection and the rules and regulations issued under this subsection. In granting the exemption, the Commission shall consider, among other factors—

(A) whether information of the type required under this subsection is available from a supervisory agency (as defined in section 3401(7) of title 12), a State insurance commission or similar State agency, the Securities and Exchange Commission, or a similar foreign regulator;

(B) the primary business of any affiliated person;

(C) the nature and extent of domestic or foreign regulation of the affiliated person's activities;

(D) the nature and extent of the registered futures commission merchant's commodity futures and options activities; and

(E) with respect to the registered futures commission merchant and its affiliated persons, on a consolidated basis, the amount and proportion of assets devoted to, and revenues derived from activities in the United States futures markets.

(10) Information required to be provided pursuant to this subsection shall be subject to section 12 of this title. Except as specifically provided in section 12 of this title and notwithstanding any other provision of law, the Commission shall not be compelled to disclose any information required to be reported under this subsection, or any information supplied to the Commission by any domestic or foreign regulatory agency that relates to the financial or operational condition of any affiliated person of a registered futures commission merchant.

(11) Nothing in paragraphs (1) through (10) shall be construed to supersede or to limit in any way the authority or powers of the Commission pursuant to any other provision of this chapter or regulations issued under this chapter.

(Sept. 21, 1922, ch. 369, §4f, as added June 15, 1936, ch. 545, §5, 49 Stat. 1495; amended Pub. L. 90–258, §7, Feb. 19, 1968, 82 Stat. 28; Pub. L. 93–463, title I, §103(a), Oct. 23, 1974, 88 Stat. 1392; Pub. L. 95–405, §5, Sept. 30, 1978, 92 Stat. 869; Pub. L. 97–444, title II, §208, Jan. 11, 1983, 96 Stat. 2302; Pub. L. 102–546, title II, §§207(b)(1), 229, Oct. 28, 1992, 106 Stat. 3604, 3619; Pub. L. 106–554, §1(a)(5) [title I, §123(a)(6), title II, §252(b), (c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–407, 2763A–447; Pub. L. 110–246, title XIII, §13105(b), May 22, 2008, 122 Stat. 1434; Pub. L. 110–246, §4(a), title XIII, §13105(b), June 18, 2008, 122 Stat. 1664, 2196.)

References in Text

Section 9 of the Federal Reserve Act, referred to in subsec. (c)(4)(B)(i), is section 9 of act Dec. 23, 1913, ch. 6, 38 Stat. 251, as amended, which is classified generally to subchapter VIII (§321 et seq.) of chapter 3 of Title 12, Banks and Banking.

Codification

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

Amendments

2008—Subsec. (c)(4)(B)(i). Pub. L. 110–246, §13105(b), substituted "complied" for "compiled".

2000—Subsec. (a). Pub. L. 106–554, §1(a)(5) [title II, §252(b)], designated existing provisions as par. (1) and added pars. (2) and (3).

Subsec. (a)(4). Pub. L. 106–554, §1(a)(5) [title II, §252(c)], added par. (4).

Subsecs. (b), (c)(3)(B). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(6)], inserted "or derivatives transaction execution facility" after "contract market" wherever appearing.

1992—Subsec. (a). Pub. L. 102–546, §§207(b)(1), 229(1), redesignated par. (1) as subsec. (a) and substituted "floor broker, or floor trader" for "or floor broker".

Subsec. (b). Pub. L. 102–546, §229(1), (2), redesignated par. (2) as subsec. (b) and substituted "this subsection" for "this paragraph (2)".

Subsec. (c). Pub. L. 102–546, §229(3), added subsec. (c).

1983—Par. (1). Pub. L. 97–444, §208(1), made grammatical changes, made registration provisions applicable to introducing brokers, and substituted "revoked pursuant to the provisions of this chapter" for "revoked after notice and hearing as prescribed in this chapter".

Par. (2). Pub. L. 97–444, §208(2), made financial requirements applicable to introducing brokers.

1978—Par. (1). Pub. L. 95–405 substituted "Each registration shall expire on December 31 of the year for which issued or at such other time, not less than one year from the date of issuance, as the Commission may by rule, regulation, or order prescribe" for "All registrations shall expire on the 31st day of December of the year for which issued".

1974—Pub. L. 93–463 substituted "Commission" for "Secretary of Agriculture".

1968—Par. (1). Pub. L. 90–258, §7(a), substituted "this chapter" for "section 6g of this title".

Par. (2). Pub. L. 90–258, §7(b), substituted provisions that prescribed financial requirements for registration as futures commission merchant be met and continued at all times and that such requirements will be considered met by membership in a contract market and compliance with its minimum financial standards and related reporting requirements for former provisions for display of futures commission merchants' registration certificates.

Effective Date of 2008 Amendment

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of this title.

Effective Date of 1992 Amendment

Amendment by section 207(b)(1) of Pub. L. 102–546 effective 180 days after Oct. 28, 1992, with Commodity Futures Trading Commission to issue any regulations necessary to implement such amendment no later than 180 days after Oct. 28, 1992, see section 207(c) of Pub. L. 102–546, set out as a note under section 6e of this title.

Effective Date of 1983 Amendment

Amendment by Pub. L. 97–444 effective Jan. 11, 1983, see section 239 of Pub. L. 97–444, set out as a note under section 2 of this title.

Effective Date of 1978 Amendment

Amendment by Pub. L. 95–405 effective Oct. 1, 1978, see section 28 of Pub. L. 95–405, set out as a note under section 2 of this title.

Effective Date of 1974 Amendment

For effective date of amendment by Pub. L. 93–463, see section 418 of Pub. L. 93–463, set out as a note under section 2 of this title.

Effective Date of 1968 Amendment

Amendment by Pub. L. 90–258 effective 120 days after Feb. 19, 1968, see section 28 of Pub. L. 90–258, set out as a note under section 2 of this title.

Effective Date

For effective date of section, see section 13 of act June 15, 1936, set out as an Effective Date of 1936 Amendment note under section 1 of this title.

[1] *So in original. The comma probably should not appear.*

[2] *So in original. Probably should be capitalized.*

§6g. Reporting and recordkeeping

(a) In general

Every person registered hereunder as futures commission merchant, introducing broker, floor broker, or floor trader shall make such reports as are required by the Commission regarding the transactions and positions of such person, and the transactions and positions of the customer thereof, in commodities for future delivery on any board of trade in the United States or elsewhere, and in any significant price discovery contract traded or executed on an electronic trading facility or any agreement, contract, or transaction that is treated by a derivatives clearing organization, whether registered or not registered, as fungible with a significant price discovery contract; shall keep books and records pertaining to such

transactions and positions in such form and manner and for such period as may be required by the Commission; and shall keep such books and records open to inspection by any representative of the Commission or the United States Department of Justice.

(b) Daily trading records: registered entities

Every registered entity shall maintain daily trading records. The daily trading records shall include such information as the Commission shall prescribe by rule.

(c) Daily trading records: floor brokers, introducing brokers, and futures commission merchants

Floor brokers, introducing brokers, and futures commission merchants shall maintain daily trading records for each customer in such manner and form as to be identifiable with the trades referred to in subsection (b).

(d) Daily trading records: form and reports

Daily trading records shall be maintained in a form suitable to the Commission for such period as may be required by the Commission. Reports shall be made from the records maintained at such times and at such places and in such form as the Commission may prescribe by rule, order, or regulation in order to protect the public interest and the interest of persons trading in commodity futures.

(e) Disclosure of information

Before the beginning of trading each day, the exchange shall, insofar as is practicable and under terms and conditions specified by the Commission, make public the volume of trading on each type of contract for the previous day and such other information as the Commission deems necessary in the public interest and prescribes by rule, order, or regulation.

(f) Authority of Commission to make separate determinations unimpaired

Nothing contained in this section shall be construed to prohibit the Commission from making separate determinations for different registered entities when such determinations are warranted in the judgment of the Commission.

(Sept. 21, 1922, ch. 369, §4g, as added June 15, 1936, ch. 545, §5, 49 Stat. 1496; amended Pub. L. 90–258, §8, Feb. 19, 1968, 82 Stat. 28; Pub. L. 93–463, title I, §103(a), (f), title IV, §415, Oct. 23, 1974, 88 Stat. 1392, 1415; Pub. L. 95–405, §6, Sept. 30, 1978, 92 Stat. 869; Pub. L. 97–444, title II, §209, Jan. 11, 1983, 96 Stat. 2302; Pub. L. 102–546, title II, §207(b)(1), title IV, §402(5), Oct. 28, 1992, 106 Stat. 3604, 3624; Pub. L. 106–554, §1(a)(5) [title I, §123(a)(7)], Dec. 21, 2000, 114 Stat. 2763, 2763A–407; Pub. L. 110–234, title XIII, §13202(a), May 22, 2008, 122 Stat. 1438; Pub. L. 110–246, §4(a), title XIII, §13202(a), June 18, 2008, 122 Stat. 1664, 2200.)

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–246, §13202(a), inserted ", and in any significant price discovery contract traded or executed on an electronic trading facility or any agreement, contract, or transaction that is treated by a derivatives clearing organization, whether registered or not registered, as fungible with a significant price discovery contract" after "elsewhere".

2000—Subsec. (b). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(7)(A)], substituted "registered entity" for "clearinghouse and contract market".

Subsec. (f). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(7)(B)], substituted "registered entities" for "clearinghouses, contract markets, and exchanges".

1992—Subsec. (a). Pub. L. 102–546, §§207(b)(1), 402(5)(A), redesignated par. (1) as subsec. (a) and substituted "floor broker, or floor trader" for "or floor broker".

Subsec. (b). Pub. L. 102–546, §402(5)(A), redesignated par. (2) as subsec. (b).

Subsec. (c). Pub. L. 102–546, §402(5), redesignated par. (3) as subsec. (c) and substituted "subsection (b)" for "paragraph (2)".

Subsecs. (d) to (f). Pub. L. 102–546, §402(5)(A), redesignated pars. (4) to (6) as subsecs. (d) to (f), respectively.

1983—Par. (1). Pub. L. 97–444, §209(1), made reporting and recordkeeping requirements applicable to introducing brokers.

Par. (2). Pub. L. 97–444, §209(2), made customer daily trading records requirement applicable to introducing brokers.

1978—Par. (3). Pub. L. 95–405 substituted "Floor brokers" for "Brokers".

1974—Par. (1). Pub. L. 93–463, §§103(a), (f), 415, designated existing provisions as par. (1) and substituted "Commission" for "Secretary of Agriculture" and "United States Department of Agriculture".

Pars. (2) to (6). Pub. L. 93–463, §415, added pars. (2) to (6).

1968—Pub. L. 90–258 rephrased existing provisions to express reporting and recordkeeping requirements as a positive obligation of futures commission merchants and floor brokers, rather than as a ground for revoking or suspending registration and struck out provisions for revocation or suspension of registration. See section 9 of this title.

Effective Date of 2008 Amendment

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of this title.

Amendment by section 13202(a) of Pub. L. 110–246 effective June 18, 2008, see section 13204(a) of Pub. L. 110–246, set out as a note under section 2 of this title.

Effective Date of 1992 Amendment

Amendment by section 207(b)(1) of Pub. L. 102–546 effective 180 days after Oct. 28, 1992, with Commodity Futures Trading Commission to issue any regulations necessary to implement such amendment no later than 180 days after Oct. 28, 1992, see section 207(c) of Pub. L. 102–546, set out as a note under section 6e of this title.

Effective Date of 1983 Amendment

Amendment by Pub. L. 97–444 effective Jan. 11, 1983, see section 239 of Pub. L. 97–444, set out as a note under section 2 of this title.

Effective Date of 1978 Amendment

Amendment by Pub. L. 95–405 effective Oct. 1, 1978, see section 28 of Pub. L. 95–405, set out as a note under section 2 of this title.

Effective Date of 1974 Amendment

For effective date of amendment by Pub. L. 93–463 see section 418 of Pub. L. 93–463, set out as a note under section 2 of this title.

Effective Date of 1968 Amendment

Amendment by Pub. L. 90–258 effective 120 days after Feb. 19, 1968, see section 28 of Pub. L. 90–258, set out as a note under section 2 of this title.

Effective Date

For effective date of section, see section 13 of act June 15, 1936, set out as an Effective Date of 1936 Amendment note under section 1 of this title.

§6h. False self-representation as registered entity member prohibited

It shall be unlawful for any person falsely to represent such person to be a member of a registered entity or the representative or agent of such member, or to be a registrant under this chapter or the representative or agent of any registrant, in soliciting or handling any order or contract for the purchase or sale of any

commodity in interstate commerce or for future delivery, or falsely to represent in connection with the handling of any such order or contract that the same is to be or has been executed on, or by or through a member of, any registered entity.

(Sept. 21, 1922, ch. 369, §4h, as added June 15, 1936, ch. 545, §5, 49 Stat. 1496; amended Pub. L. 97–444, title II, §210, Jan. 11, 1983, 96 Stat. 2302; Pub. L. 106–554, §1(a)(5) [title I, §123(a)(8)], Dec. 21, 2000, 114 Stat. 2763, 2763A–407.)

Amendments

2000—Pub. L. 106–554 substituted "registered entity" for "contract market" in two places.

1983—Pub. L. 97–444 struck out provisions formerly designated as par. (1) relating to conduct of offices or places of business anywhere in the United States or its territories that were used for dealing in commodities for future delivery unless such dealings were executed or consummated by or through a member of a contract market, which provisions were transferred to section 6(a) of this title, and broadened remaining provisions, formerly designated as par. (2), to prohibit false representations that a person is registered with the Commission in any capacity, and not only as a futures commission merchant, as previously provided.

Effective Date of 1983 Amendment

Amendment by Pub. L. 97–444 effective Jan. 11, 1983, see section 239 of Pub. L. 97–444, set out as a note under section 2 of this title.

Effective Date

For effective date of section, see section 13 of act June 15, 1936, set out as an Effective Date of 1936 Amendment note under section 1 of this title.

§6i. Reports of deals equal to or in excess of trading limits; books and records; cash and controlled transactions

It shall be unlawful for any person to make any contract for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility, or any significant price discovery contract traded or executed on an electronic trading facility or any agreement, contract, or transaction that is treated by a derivatives clearing organization, whether registered or not registered, as fungible with a significant price discovery contract—

(1) if such person shall directly or indirectly make such contracts with respect to any commodity or any future of such commodity during any one day in an amount equal to or in excess of such amount as shall be fixed from time to time by the Commission, and

(2) if such person shall directly or indirectly have or obtain a long or short position in any commodity or any future of such commodity equal to or in excess of such amount as shall be fixed from time to time by the Commission,

unless such person files or causes to be filed with the properly designated officer of the Commission such reports regarding any transactions or positions described in clauses (1) and (2) hereof as the Commission may by rule or regulation require and unless, in accordance with rules and regulations of the Commission, such person shall keep books and records of all such transactions and positions and transactions and positions in any such commodity traded on or subject to the rules of any other board of trade or electronic trading facility, and of cash or spot transactions in, and inventories and purchase and sale commitments of such commodity. Such books and records shall show complete details concerning all such transactions, positions, inventories, and commitments, including the names and addresses of all persons having any interest therein, and shall be open at all times to inspection by any representative of the Commission or the Department of Justice. For the purposes of

this section, the futures and cash or spot transactions and positions of any person shall include such transactions and positions of any persons directly or indirectly controlled by such person.

(Sept. 21, 1922, ch. 369, §4i, as added June 15, 1936, ch. 545, §5, 49 Stat. 1496; amended Pub. L. 90–258, §9, Feb. 19, 1968, 82 Stat. 28; Pub. L. 93–463, title I, §103(a), (f), Oct. 23, 1974, 88 Stat. 1392; Pub. L. 97–444, title II, §211, Jan. 11, 1983, 96 Stat. 2303; Pub. L. 106–554, §1(a)(5) [title I, §123(a)(9)], Dec. 21, 2000, 114 Stat. 2763, 2763A–407; Pub. L. 110–234, title XIII, §13202(b), May 22, 2008, 122 Stat. 1439; Pub. L. 110–246, §4(a), title XIII, §13202(b), June 18, 2008, 122 Stat. 1664, 2201.)

Codification

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

Amendments

2008—Pub. L. 110–246, §13202(b), in introductory provisions, inserted ", or any significant price discovery contract traded or executed on an electronic trading facility or any agreement, contract, or transaction that is treated by a derivatives clearing organization, whether registered or not registered, as fungible with a significant price discovery contract" after "derivatives transaction execution facility" and, in concluding provisions, inserted "or electronic trading facility" after "board of trade".

2000—Pub. L. 106–554 inserted "or derivatives transaction execution facility" after "contract market" in introductory provisions.

1983—Pub. L. 97–444 amended section generally by substantially restating provisions and inserting requirement that persons whose transactions and positions in any cash commodity or commodity future are equal to or in excess of amounts fixed by the Commission, must keep books and records of such transactions and positions as well as books and records of any such commodity traded on or subject to rules of any other board of trade, whether or not such person is required to file reports with the Commission concerning such transactions and positions.

1974—Pub. L. 93–463 substituted "Commission" for "Secretary of Agriculture" and "United States Department of Agriculture".

1968—Pub. L. 90–258 required recordkeeping of positions and of cash or spot transactions in commodities entered into, and inventories and purchase and sale commitments of commodities held, in any month in which reports are required to be kept, including details concerning positions, inventories, and commitments, and included controlled transactions and positions in the futures and cash or spot transactions and positions of any person.

Effective Date of 2008 Amendment

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of this title.

Amendment by section 13202(b) of Pub. L. 110–246 effective June 18, 2008, see section 13204(a) of Pub. L. 110–246, set out as a note under section 2 of this title.

Effective Date of 1983 Amendment

Amendment by Pub. L. 97–444 effective Jan. 11, 1983, see section 239 of Pub. L. 97–444, set out as a note under section 2 of this title.

Effective Date of 1974 Amendment

For effective date of amendment by Pub. L. 93–463, see section 418 of Pub. L. 93–463, set out as a note under section 2 of this title.

Effective Date of 1968 Amendment

Amendment by Pub. L. 90–258 effective 120 days after Feb. 19, 1968, see section 28 of Pub. L. 90–258, set out as a note under section 2 of this title.

Effective Date

For effective date of section, see section 13 of act June 15, 1936, set out as an Effective Date of 1936 Amendment note under section 1 of this title.

§6j. Restrictions on dual trading in security futures products on designated contract markets and registered derivatives transaction execution facilities

(a) Issuance of regulations

The Commission shall issue regulations to prohibit the privilege of dual trading in security futures products on each contract market and registered derivatives transaction execution facility. The regulations issued by the Commission under this section—

(1) shall provide that the prohibition of dual trading thereunder shall take effect upon issuance of the regulations; and

(2) shall provide exceptions, as the Commission determines appropriate, to ensure fairness and orderly trading in security futures product markets, including —

(A) exceptions for spread transactions and the correction of trading errors;

(B) allowance for a customer to designate in writing not less than once annually a named floor broker to execute orders for such customer, notwithstanding the regulations to prohibit the privilege of dual trading required under this section; and

(C) other measures reasonably designed to accommodate unique or special characteristics of individual boards of trade or contract markets, to address emergency or unusual market conditions, or otherwise to further the public interest consistent with the promotion of market efficiency, innovation, and expansion of investment opportunities, the protection of investors, and with the purposes of this section.

(b) "Dual trading" defined

As used in this section, the term "dual trading" means the execution of customer orders by a floor broker during the same trading session in which the floor broker executes any trade in the same contract market or registered derivatives transaction execution facility for—

(1) the account of such floor broker;

(2) an account for which such floor broker has trading discretion; or

(3) an account controlled by a person with whom such floor broker has a relationship through membership in a broker association.

(c) "Broker association" defined

As used in this section, the term "broker association" shall include two or more contract market members or registered derivatives transaction execution facility members with floor trading privileges of whom at least one is acting as a floor broker, who—

(1) engage in floor brokerage activity on behalf of the same employer,

(2) have an employer and employee relationship which relates to floor brokerage activity,

(3) share profits and losses associated with their brokerage or trading activity, or

(4) regularly share a deck of orders.

(Sept. 21, 1922, ch. 369, §4j, as added Pub. L. 93–463, title II, §203, Oct. 23, 1974, 88 Stat. 1396; amended Pub. L. 94–16, §2, Apr. 16, 1975, 89 Stat. 77; Pub. L. 102–546, title I, §§101, 102(a), Oct. 28, 1992, 106 Stat. 3591, 3594; Pub. L. 106–554, §1(a)(5) [title II, §251(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–442.)

Amendments

2000—Pub. L. 106–554 amended section generally. Prior to amendment, section required Commission to issue regulations to prohibit the privilege of dual trading on contract markets, allowed for certain exemptions, required Commission to make determinations relating to trading by floor brokers and futures commission merchants, and restricted trading among members of broker associations.

1992—Subsec. (a). Pub. L. 102–546, §101(a)(3), added subsec. (a).

Subsec. (b). Pub. L. 102–546, §101(a)(1), (2), redesignated par. (1) as subsec. (b) and substituted "If, in addition to the regulations issued pursuant to subsection (a) of this section, the Commission has reason to believe that dual trading-related or facilitated abuses are not being or cannot be effectively addressed by subsection (a) of this section, the Commission shall" for "The Commission shall within nine months after the effective date of the Commodity Futures Trading Commission Act of 1974, and subsequently when it determines that changes are required,".

Subsec. (c). Pub. L. 102–546, §101(a)(1), redesignated par. (2) as subsec. (c).

Subsec. (d). Pub. L. 102–546, §102(a), added subsec. (d).

1975—Pub. L. 94–16 substituted "nine months" for "six months" in pars. (1) and (2).

Effective Date of 1992 Amendment

Pub. L. 102–546, title I, §102(b), Oct. 28, 1992, 106 Stat. 3594, provided that: "The amendment made by subsection (a) [amending this section] shall become effective two hundred and seventy days after the date of enactment of this Act [Oct. 28, 1992]."

Effective Date

For effective date of section, see section 418 of Pub. L. 93–463, set out as an Effective Date of 1974 Amendment note under section 2 of this title.

§6k. Registration of associates of futures commission merchants, commodity pool operators, and commodity trading advisors; required disclosure of disqualifications; exemptions for associated persons

(1) It shall be unlawful for any person to be associated with a futures commission merchant as a partner, officer, or employee, or to be associated with an introducing broker as a partner, officer, employee, or agent (or any person occupying a similar status or performing similar functions), in any capacity that involves (i) the solicitation or acceptance of customers' orders (other than in a clerical capacity) or (ii) the supervision of any person or persons so engaged, unless such person is registered with the Commission under this chapter as an associated person of such futures commission merchant or of such introducing broker and such registration shall not have expired, been suspended (and the period of suspension has not expired), or been revoked. It shall be unlawful for a futures commission merchant or introducing broker to permit such a person to become or remain associated with the futures commission merchant or introducing broker in any such capacity if such futures commission merchant or introducing broker knew or should have known that such person was not so registered or that such registration had expired, been suspended (and the period of suspension has not expired), or been revoked. Any individual who is registered as a floor broker, futures commission merchant, or introducing broker (and such registration is not suspended or revoked) need not also register under this paragraph.

(2) It shall be unlawful for any person to be associated with a commodity pool operator as a partner, officer, employee, consultant, or agent (or any person occupying a similar status or performing similar functions), in any capacity that involves (i) the solicitation of funds, securities, or property for a participation in a commodity pool or (ii) the supervision of any person or persons so engaged, unless such person is registered with the Commission under this chapter as an associated person of such commodity pool operator and such registration shall not have

expired, been suspended (and the period of suspension has not expired), or been revoked. It shall be unlawful for a commodity pool operator to permit such a person to become or remain associated with the commodity pool operator in any such capacity if the commodity pool operator knew or should have known that such person was not so registered or that such registration had expired, been suspended (and the period of suspension has not expired), or been revoked. Any individual who is registered as a floor broker, futures commission merchant, introducing broker, commodity pool operator, or as an associated person of another category of registrant under this section (and such registration is not suspended or revoked) need not also register under this paragraph. The Commission may exempt any person or class of persons from having to register under this paragraph by rule, regulation, or order.

(3) It shall be unlawful for any person to be associated with a commodity trading advisor as a partner, officer, employee, consultant, or agent (or any person occupying a similar status or performing similar functions), in any capacity which involves (i) the solicitation of a client's or prospective client's discretionary account or (ii) the supervision of any person or persons so engaged, unless such person is registered with the Commission under this chapter as an associated person of such commodity trading advisor and such registration shall not have expired, been suspended (and the period of suspension has not expired), or been revoked. It shall be unlawful for a commodity trading advisor to permit such a person to become or remain associated with the commodity trading advisor in any such capacity if the commodity trading advisor knew or should have known that such person was not so registered or that such registration had expired, been suspended (and the period of suspension has not expired), or been revoked. Any individual who is registered as a floor broker, futures commission merchant, introducing broker, commodity trading advisor, or as an associated person of another category of registrant under this section (and such registration is not suspended or revoked) need not also register under this paragraph. The Commission may exempt any person or class of persons from having to register under this paragraph by rule, regulation, or order.

(4) Any person desiring to be registered as an associated person of a futures commission merchant, of an introducing broker, of a commodity pool operator, or of a commodity trading advisor shall make application to the Commission in the form and manner prescribed by the Commission, giving such information and facts as the Commission may deem necessary concerning the applicant. Such person, when registered hereunder, shall likewise continue to report and furnish to the Commission such information as the Commission may require. Such registration shall expire at such time as the Commission may by rule, regulation, or order prescribe.

(5) It shall be unlawful for any registrant to permit a person to become or remain an associated person of such registrant, if the registrant knew or should have known of facts regarding such associated person that are set forth as statutory disqualifications in section 12a(2) of this title, unless such registrant has notified the Commission of such facts and the Commission has determined that such person should be registered or temporarily licensed.

(6) Any associated person of a broker or dealer that is registered with the Securities and Exchange Commission, and who limits its solicitation of orders, acceptance of orders, or execution of orders, or placing of orders on behalf of others involving any contracts of sale of any commodity for future delivery or any option on such a contract, on or subject to the rules of any contract market or registered derivatives transaction execution facility to security futures products, shall be exempt from the following provisions of this chapter and the rules thereunder:

(A) Subsections (b), (d), (e), and (g) of section 6c of this title.

(B) Sections 6d, 6e, and 6h of this title.

(C) Subsections (b) and (c) of section 6f of this title.

(D) Section 6j of this title.
(E) Paragraph (1) of this section.
(F) Section 6p of this title.
(G) Section 13a–2 of this title.
(H) Subsections (d) and (g) of section 12 of this title.
(I) Section 20 of this title.

(Sept. 21, 1922, ch. 369, §4k, as added Pub. L. 93–463, title II, §204(a), Oct. 23, 1974, 88 Stat. 1396; amended Pub. L. 95–405, §7, Sept. 30, 1978, 92 Stat. 869; Pub. L. 97–444, title II, §212, Jan. 11, 1983, 96 Stat. 2303; Pub. L. 106–554, §1(a)(5) [title II, §252(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–448; Pub. L. 110–234, title XIII, §13105(c), May 22, 2008, 122 Stat. 1434; Pub. L. 110–246, §4(a), title XIII, §13105(c), June 18, 2008, 122 Stat. 1664, 2196.)

Codification

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

Amendments

2008—Pars. (5), (6). Pub. L. 110–246, §13105(c), redesignated par. (5) relating to exempting associated persons or dealers from provisions of this chapter as (6).

2000—Par. (5). Pub. L. 106–554, §1(a)(5) [title II, §252(d)], which directed amendment of this section by "inserting after paragraph (4), as added by subsection (c) of this section" a new par. (5) relating to exempting associated persons or dealers from provisions of this chapter, was executed by adding that par. (5) at the end. Section 1(a)(5)[title II, §252(c)] did not add a par. (4) to this section.

1983—Par. (1). Pub. L. 97–444 amended par. (1) generally to apply to introducing brokers and persons associated with introducing brokers.

Par. (2). Pub. L. 97–444 added par. (2). Former par. (2) redesignated (4).

Par. (3). Pub. L. 97–444 added par. (3). Former par. (3), which empowered Commission to authorize a registered futures association to perform any portion of the registration functions under this section, in accordance with rules approved by the Commission, and subject to the provisions of this chapter applicable to registrations granted by the Commission, was struck out.

Par. (4). Pub. L. 97–444 redesignated former par. (2) as (4) and substituted "Any person desiring to be registered as an associated person of a futures commission merchant, of an introducing broker, of a commodity pool operator, or of a commodity trading advisor shall make application to the Commission in the form and manner prescribed by the Commission, giving such information and facts as the Commission may deem necessary concerning the applicant. Such person, when registered hereunder, shall likewise continue to report and furnish to the Commission such information as the Commission may require. Such registration shall expire at such time as the Commission may by rule, regulation, or order prescribe" for "Any such person desiring to be registered shall make application to the Commission in the form and manner prescribed by the Commission, giving such information and facts as the Commission may deem necessary concerning the applicant. Such person, when registered hereunder, shall likewise continue to report and furnish to the Commission such information as the Commission may require. Such registration shall expire two years after the effective date thereof or at such other time, not less than one year from the date of issuance thereof, as the Commission may by rule, regulation, or order prescribe and shall be renewed upon application therefor, unless the registration has been suspended (and the period of such suspension has not expired) or revoked after notice and hearing as prescribed in section 9 of this title: *Provided*, That upon initial registration, unless the Commission otherwise prescribes by rule, regulation, or order, the effective period of such registration shall be not more than two years nor less than one year from the effective date thereof".

Par. (5). Pub. L. 97–444 added par. (5).

1978—Par. (2). Pub. L. 95–405, §7(1), inserted provisions authorizing the Commission to prescribe the period of registration of not less than one year for associated persons.

Par. (3). Pub. L. 95–405, §7(2), added par. (3).

Effective Date of 2008 Amendment

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of this title.

Effective Date of 1983 Amendment

Amendment by Pub. L. 97–444 effective 120 days after Jan. 11, 1983, or such earlier date as the Commission shall prescribe by regulation, see section 239 of Pub. L. 97–444, set out as a note under section 2 of this title.

Effective Date of 1978 Amendment

Amendment by Pub. L. 95–405 effective Oct. 1, 1978, see section 28 of Pub. L. 95–405, set out as a note under section 2 of this title.

Effective Date

For effective date of section, see section 418 of Pub. L. 93–463, set out as an Effective Date of 1974 Amendment note under section 2 of this title.

§6*l*. Commodity trading advisors and commodity pool operators; Congressional finding

It is hereby found that the activities of commodity trading advisors and commodity pool operators are affected with a national public interest in that, among other things—

(1) their advice, counsel, publications, writings, analyses, and reports are furnished and distributed, and their contracts, solicitations, subscriptions, agreements, and other arrangements with clients take place and are negotiated and performed by the use of the mails and other means and instrumentalities of interstate commerce;

(2) their advice, counsel, publications, writings, analyses, and reports customarily relate to and their operations are directed toward and cause the purchase and sale of commodities for future delivery on or subject to the rules of contract markets or derivatives transaction execution facilities; and

(3) the foregoing transactions occur in such volume as to affect substantially transactions on contract markets or derivatives transaction execution facilities.

(Sept. 21, 1922, ch. 369, §4l, as added Pub. L. 93–463, title II, §205(a), Oct. 23, 1974, 88 Stat. 1397; Pub. L. 106–554, §1(a)(5) [title I, §123(a)(10)], Dec. 21, 2000, 114 Stat. 2763, 2763A–408.)

Amendments

2000—Pars. (2), (3). Pub. L. 106–554 inserted "or derivatives transaction execution facilities" after "contract markets".

Effective Date

For effective date of section, see section 418 of Pub. L. 93–463, set out as an Effective Date of 1974 Amendment note under section 2 of this title.

§6m. Use of mails or other means or instrumentalities of interstate commerce by commodity trading advisors and commodity pool operators; relation to other law

(1) It shall be unlawful for any commodity trading advisor or commodity pool operator, unless registered under this chapter, to make use of the mails or any means or instrumentality of interstate commerce in connection with his business as such commodity trading advisor or commodity pool operator: *Provided*, That the

provisions of this section shall not apply to any commodity trading advisor who, during the course of the preceding twelve months, has not furnished commodity trading advice to more than fifteen persons and who does not hold himself out generally to the public as a commodity trading advisor. The provisions of this section shall not apply to any commodity trading advisor who is a (1) dealer, processor, broker, or seller in cash market transactions of any commodity specifically set forth in section 2(a) of this title prior to October 23, 1974, (or products thereof) or (2) nonprofit, voluntary membership, general farm organization, who provides advice on the sale or purchase of any commodity specifically set forth in section 2(a) of this title prior to October 23, 1974; if the advice by the person described in clause (1) or (2) of this sentence as a commodity trading advisor is solely incidental to the conduct of that person's business: *Provided*, That such person shall be subject to proceedings under section 18 of this title.

(2) Nothing in this chapter shall relieve any person of any obligation or duty, or affect the availability of any right or remedy available to the Securities and Exchange Commission or any private party arising under the Securities Act of 1933 [15 U.S.C. 77a et seq.] or the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.] governing the issuance, offer, purchase, or sale of securities of a commodity pool, or of persons engaged in transactions with respect to such securities, or reporting by a commodity pool.

(3) Exception.—

(A) In general.—Paragraph (1) shall not apply to any commodity trading advisor that is registered with the Securities and Exchange Commission as an investment adviser whose business does not consist primarily of acting as a commodity trading advisor, as defined in section 1a of this title, and that does not act as a commodity trading advisor to any commodity pool that is engaged primarily in trading commodity interests.

(B) Engaged primarily.—For purposes of subparagraph (A), a commodity trading advisor or a commodity pool shall be considered to be "engaged primarily" in the business of being a commodity trading advisor or commodity pool if it is or holds itself out to the public as being engaged primarily, or proposes to engage primarily, in the business of advising on commodity interests or investing, reinvesting, owning, holding, or trading in commodity interests, respectively.

(C) Commodity interests.—For purposes of this paragraph, commodity interests shall include contracts of sale of a commodity for future delivery, options on such contracts, security futures, swaps, leverage contracts, foreign exchange, spot and forward contracts on physical commodities, and any monies held in an account used for trading commodity interests.

(Sept. 21, 1922, ch. 369, §4m, as added Pub. L. 93–463, title II, §205(a), Oct. 23, 1974, 88 Stat. 1398; amended Pub. L. 95–405, §8, Sept. 30, 1978, 92 Stat. 870; Pub. L. 97–444, title I, §103, Jan. 11, 1983, 96 Stat. 2296; Pub. L. 106–554, §1(a)(5) [title II, §251(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–443; Pub. L. 111–203, title VII, §§721(e)(2), 749(b), July 21, 2010, 124 Stat. 1671, 1747.)

References in Text

The Securities Act of 1933, referred to in par. (2), is title I of act May 27, 1933, ch. 38, 48 Stat. 74, as amended, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 77a of Title 15 and Tables.

The Securities Exchange Act of 1934, referred to in par. (2), is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified principally to chapter 2B (§78a et seq.) of Title 15. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

Amendments

2010—Par. (3). Pub. L. 111–203, §749(b), inserted heading, designated existing provisions as subpar. (A) and inserted heading, substituted "Paragraph (1)" for "Subsection (1) of this

section" and "to any commodity pool that is engaged primarily in trading commodity interests." for "to any investment trust, syndicate, or similar form of enterprise that is engaged primarily in trading in any commodity for future delivery on or subject to the rules of any contract market or registered derivatives transaction execution facility.", and added subpars. (B) and (C).

Pub. L. 111–203, §721(e)(2), substituted "section 1a" for "section 1a(6)".

2000—Par. (3). Pub. L. 106–554 added par. (3).

1983—Pub. L. 97–444 designated existing provisions as par. (1) and added par. (2).

1978—Pub. L. 95–405 inserted provisions relating to applicability of this section to commodity trading advisors who are dealers, processors, brokers, or sellers in cash market transactions of specifically listed commodities or nonprofit, voluntary membership, general farm organizations who provide advice on sale or purchase of specifically listed commodities if the advice by the person described in cl. (1) or (2) of this sentence is incidental solely to the conduct to the person's business and that such person be subject to proceedings under section 18 of this title.

Effective Date of 2010 Amendment

Amendment by Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as a note under section 1a of this title.

Effective Date of 1983 Amendment

Amendment by Pub. L. 97–444 effective Jan. 11, 1983, see section 239 of Pub. L. 97–444, set out as a note under section 2 of this title.

Effective Date of 1978 Amendment

Amendment by Pub. L. 95–405 effective Oct. 1, 1978, see section 28 of Pub. L. 95–405, set out as a note under section 2 of this title.

Effective Date

For effective date of section, see section 418 of Pub. L. 93–463, set out as an Effective Date of 1974 Amendment note under section 2 of this title.

§6n. Registration of commodity trading advisors and commodity pool operators; application; expiration and renewal; record keeping and reports; disclosure; statements of account

(1) Any commodity trading advisor or commodity pool operator, or any person who contemplates becoming a commodity trading advisor or commodity pool operator, may register under this chapter by filing an application with the Commission. Such application shall contain such information, in such form and detail, as the Commission may, by rules and regulations, prescribe as necessary or appropriate in the public interest, including the following:

(A) the name and form of organization, including capital structure, under which the applicant engages or intends to engage in business; the name of the State under the laws of which he is organized; the location of his principal business office and branch offices, if any; the names and addresses of all partners, officers, directors, and persons performing similar functions or, if the applicant be an individual, of such individual; and the number of employees;

(B) the education, the business affiliations for the past ten years, and the present business affiliations of the applicant and of his partners, officers, directors, and persons performing similar functions and of any controlling person thereof;

(C) the nature of the business of the applicant, including the manner of giving advice and rendering of analyses or reports;

(D) the nature and scope of the authority of the applicant with respect to clients' funds and accounts;

(E) the basis upon which the applicant is or will be compensated; and

(F) such other information as the Commission may require to determine whether the applicant is qualified for registration.

(2) Each registration under this section shall expire on the 30th day of June of each year, or at such other time, not less than one year from the effective date thereof, as the Commission may by rule, regulation, or order prescribe, and shall be renewed upon application therefor subject to the same requirements as in the case of an original application.

(3)(A) Every commodity trading advisor and commodity pool operator registered under this chapter shall maintain books and records and file such reports in such form and manner as may be prescribed by the Commission. All such books and records shall be kept for a period of at least three years, or longer if the Commission so directs, and shall be open to inspection by any representative of the Commission or the Department of Justice. Upon the request of the Commission, a registered commodity trading advisor or commodity pool operator shall furnish the name and address of each client, subscriber, or participant, and submit samples or copies of all reports, letters, circulars, memorandums, publications, writings, or other literature or advice distributed to clients, subscribers, or participants, or prospective clients, subscribers, or participants.

(B) Unless otherwise authorized by the Commission by rule or regulation, all commodity trading advisors and commodity pool operators shall make a full and complete disclosure to their subscribers, clients, or participants of all futures market positions taken or held by the individual principals of their organization.

(4) Every commodity pool operator shall regularly furnish statements of account to each participant in his operations. Such statements shall be in such form and manner as may be prescribed by the Commission and shall include complete information as to the current status of all trading accounts in which such participant has an interest.

(Sept. 21, 1922, ch. 369, §4n, as added Pub. L. 93–463, title II, §205(a), Oct. 23, 1974, 88 Stat. 1398; amended Pub. L. 95–405, §9, Sept. 30, 1978, 92 Stat. 870; Pub. L. 97–444, title II, §213, Jan. 11, 1983, 96 Stat. 2305.)

Amendments

1983—Par. (5). Pub. L. 97–444 struck out par. (5) which authorized Commission, without hearing, to deny registration to any person as a commodity trading advisor or commodity pool operator if such person was subject to an outstanding order under this chapter denying to such person trading privileges on any contract market, or suspending or revoking the registration of such person as a commodity trading advisor, commodity pool operator, futures commission merchant, or floor broker, or suspending or expelling such person from membership on any contract market.

Par. (6). Pub. L. 97–444 struck out par. (6) which authorized Commission to deny registration or revoke or suspend the registration of any commodity trading advisor or commodity pool operator if the Commission found that such denial, revocation, or suspension was in the public interest and that such person had been guilty of certain specified activities. See section 12a(2), (3), and (4) of this title.

1978—Par. (2). Pub. L. 95–405, §9(1)–(3), redesignated par. (3) as (2) and substituted "Each registration" for "All registrations" and inserted "or at such other time, not less than one year from the effective date thereof, as the Commission may rule, regulation, or order prescribe," after "June of each year,". Former par. (2), which provided that registration under this section becomes effective thirty days after the receipt of such application by the Commission, or within such shorter period of time as the Commission may determine, was struck out.

Pars. (3) to (6). Pub. L. 95–405, §9(1), redesignated pars. (4) to (7) as (3) to (6), respectively. Former par. (3) redesignated (2).

Effective Date of 1983 Amendment

Amendment by Pub. L. 97–444 effective Jan. 11, 1983, see section 239 of Pub. L. 97–444, set out as a note under section 2 of this title.

Effective Date of 1978 Amendment

Amendment by Pub. L. 95–405 effective Oct. 1, 1978, see section 28 of Pub. L. 95–405, set out as a note under section 2 of this title.

Effective Date

For effective date of section, see section 418 of Pub. L. 93–463, set out as an Effective Date of 1974 Amendment note under section 2 of this title.

§6*o*. Fraud and misrepresentation by commodity trading advisors, commodity pool operators, and associated persons

(1) It shall be unlawful for a commodity trading advisor, associated person of a commodity trading advisor, commodity pool operator, or associated person of a commodity pool operator, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly—

(A) to employ any device, scheme, or artifice to defraud any client or participant or prospective client or participant; or

(B) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or participant or prospective client or participant.

(2) It shall be unlawful for any commodity trading advisor, associated person of a commodity trading advisor, commodity pool operator, or associated person of a commodity pool operator registered under this chapter to represent or imply in any manner whatsoever that such person has been sponsored, recommended, or approved, or that such person's abilities or qualifications have in any respect been passed upon, by the United States or any agency or officer thereof. This section shall not be construed to prohibit a statement that a person is registered under this chapter as a commodity trading advisor, associated person of a commodity trading advisor, commodity pool operator, or associated person of a commodity pool operator, if such statement is true in fact and if the effect of such registration is not misrepresented.

(Sept. 21, 1922, ch. 369, §4o, as added Pub. L. 93–463, title II, §205(a), Oct. 23, 1974, 88 Stat. 1399; amended Pub. L. 95–405, §10, Sept. 30, 1978, 92 Stat. 870; Pub. L. 97–444, title II, §214, Jan. 11, 1983, 96 Stat. 2305.)

Amendments

1983—Par. (1). Pub. L. 97–444 made the antifraud prohibition applicable to an associated person of a commodity trading advisor or a commodity pool operator.

Par. (2). Pub. L. 97–444 made the misrepresentation prohibition applicable to an associated person of a commodity training advisor or a commodity pool operator, authorized registration statements of such persons, and substituted "such person" and "such person's abilities" for "he" before "has been sponsored" and "his abilities", respectively.

1978—Par. (1). Pub. L. 95–405 struck out "registered under this chapter" after "pool operator".

Effective Date of 1983 Amendment

Amendment by Pub. L. 97–444 effective Jan. 11, 1983, see section 239 of Pub. L. 97–444, set out as a note under section 2 of this title.

Effective Date of 1978 Amendment

Amendment by Pub. L. 95–405 effective Oct. 1, 1978, see section 28 of Pub. L. 95–405, set out as a note under section 2 of this title.

Effective Date

For effective date of section, see section 418 of Pub. L. 93–463, set out as an Effective Date of 1974 Amendment note under section 2 of this title.

§6*o*–1. Transferred

Codification

Section, Sept. 21, 1922, ch. 369, §4q, formerly §4p, as added Pub. L. 106–554, §1(a)(5) [title I, §121], Dec. 21, 2000, 114 Stat. 2763, 2763A–404, and renumbered, which related to special procedures to encourage and facilitate bona fide hedging by agricultural producers, was transferred to section 6q of this title.

§6p. Standards and examinations

(a) The Commission may specify by rules and regulations appropriate standards with respect to training, experience, and such other qualifications as the Commission finds necessary or desirable to insure the fitness of persons required to be registered with the Commission. In connection therewith, the Commission may prescribe by rules and regulations the adoption of written proficiency examinations to be given to applicants for registration and the establishment of reasonable fees to be charged to such applicants to cover the administration of such examinations. The Commission may further prescribe by rules and regulations that, in lieu of examinations administered by the Commission, futures associations registered under section 21 of this title, contract markets, or derivatives transaction execution facilities may adopt written proficiency examinations to be given to applicants for registration and charge reasonable fees to such applicants to cover the administration of such examinations. Notwithstanding any other provision of this section, the Commission may specify by rules and regulations such terms and conditions as it deems appropriate to protect the public interest wherein exception to any written proficiency examination shall be made with respect to individuals who have demonstrated, through training and experience, the degree of proficiency and skill necessary to protect the interests of customers, clients, pool participants, or other members of the public with whom such individuals deal.

(b) The Commission shall issue regulations to require new registrants, within six months after receiving such registration, to attend a training session, and all other registrants to attend periodic training sessions, to ensure that registrants understand their responsibilities to the public under this chapter, including responsibilities to observe just and equitable principles of trade, any rule or regulation of the Commission, any rule of any appropriate contract market, derivatives transaction execution facility, registered futures association, or other self-regulatory organization, or any other applicable Federal or state [1] law, rule or regulation.

(Sept. 21, 1922, ch. 369, §4p, as added Pub. L. 93–463, title II, §206, Oct. 23, 1974, 88 Stat. 1400; amended Pub. L. 97–444, title II, §215, Jan. 11, 1983, 96 Stat. 2305; Pub. L. 102–546, title II, §210(a), Oct. 28, 1992, 106 Stat. 3607; Pub. L. 106–554, §1(a)(5) [title I, §123(a)(11)], Dec. 21, 2000, 114 Stat. 2763, 2763A–408.)

Codification

Another section 4p of act Sept. 21, 1922, was renumbered section 4q and is classified to section 6q of this title.

Amendments

2000—Subsec. (a). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(11)(A)], substituted "title, contract markets, or derivatives transaction execution facilities" for "title or contract

markets".

Subsec. (b). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(11)(B)], inserted "derivatives transaction execution facility," after "contract market,".

1992—Pub. L. 102–546 designated existing provisions as subsec. (a) and added subsec. (b).

1983—Pub. L. 97–444 substituted "persons required to be registered with the Commission" for "futures commission merchants, floor brokers, and those persons associated with futures commission merchants or floor brokers" in first sentence, "customers, clients, pool participants, or other members of the public with whom such individuals deal" for "the customers of futures commission merchants and floor brokers" in last sentence, and in second and third sentences struck out "as futures commission merchants, floor brokers, and those persons associated with futures commission merchants or floor brokers," after "applicants for registration".

Effective Date of 1983 Amendment

Amendment by Pub. L. 97–444 effective Jan. 11, 1983, see section 239 of Pub. L. 97–444, set out as a note under section 2 of this title.

Effective Date

For effective date of section, see section 418 of Pub. L. 93–463, set out as an Effective Date of 1974 Amendment note under section 2 of this title.

Regulations

Pub. L. 102–546, title II, §210(b), Oct. 28, 1992, 106 Stat. 3607, provided that: "The Commodity Futures Trading Commission shall issue the regulations required by section 4p(b) of the Commodity Exchange Act [7 U.S.C. 6p(b)], as added by subsection (a), no later than one hundred and eighty days after the date of enactment of this Act [Oct. 28, 1992]."

[1] *So in original. Probably should be capitalized.*

§6q. Special procedures to encourage and facilitate bona fide hedging by agricultural producers

(a) Authority

The Commission shall consider issuing rules or orders which—

(1) prescribe procedures under which each contract market is to provide for orderly delivery, including temporary storage costs, of any agricultural commodity enumerated in section 1a(9) of this title which is the subject of a contract for purchase or sale for future delivery;

(2) increase the ease with which domestic agricultural producers may participate in contract markets, including by addressing cost and margin requirements, so as to better enable the producers to hedge price risk associated with their production;

(3) provide flexibility in the minimum quantities of such agricultural commodities that may be the subject of a contract for purchase or sale for future delivery that is traded on a contract market, to better allow domestic agricultural producers to hedge such price risk; and

(4) encourage contract markets to provide information and otherwise facilitate the participation of domestic agricultural producers in contract markets.

(b) Report

Within 1 year after December 21, 2000, the Commission shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report on the steps it has taken to implement this section and on the activities of contract markets pursuant to this section.

(Sept. 21, 1922, ch. 369, §4q, formerly §4p, as added Pub. L. 106–554, §1(a)(5) [title I, §121], Dec. 21, 2000, 114 Stat. 2763, 2763A–404; renumbered §4q, Pub. L. 110–234, title XIII, §13105(d), May 22, 2008, 122 Stat. 1434, and Pub. L. 110–246, §4(a), title XIII, §13105(d), June 18, 2008, 122 Stat. 1664, 2196; Pub. L. 111–203, title VII, §721(e)(3), July 21, 2010, 124 Stat. 1671.)

Codification

Pub. L. 110–234 and Pub. L. 110–246 both renumbered this section as section 4q of act Sept. 21, 1922. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234.

Section was formerly classified to section 6o–1 of this title.

Amendments

2010—Subsec. (a)(1). Pub. L. 111–203 substituted "section 1a(9)" for "section 1a(4)".

Effective Date of 2010 Amendment

Amendment by Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as a note under section 1a of this title.

§6r. Reporting and recordkeeping for uncleared swaps

(a) Required reporting of swaps not accepted by any derivatives clearing organization

(1) In general

Each swap that is not accepted for clearing by any derivatives clearing organization shall be reported to—

(A) a swap data repository described in section 24a of this title; or

(B) in the case in which there is no swap data repository that would accept the swap, to the Commission pursuant to this section within such time period as the Commission may by rule or regulation prescribe.

(2) Transition rule for preenactment swaps

(A) Swaps entered into before July 21, 2010

Each swap entered into before July 21, 2010, the terms of which have not expired as of July 21, 2010, shall be reported to a registered swap data repository or the Commission by a date that is not later than—

(i) 30 days after issuance of the interim final rule; or

(ii) such other period as the Commission determines to be appropriate.

(B) Commission rulemaking

The Commission shall promulgate an interim final rule within 90 days of July 21, 2010, providing for the reporting of each swap entered into before July 21, 2010.

(C) Effective date

The reporting provisions described in this section shall be effective upon the enactment of this section.

(3) Reporting obligations

(A) Swaps in which only 1 counterparty is a swap dealer or major swap participant

With respect to a swap in which only 1 counterparty is a swap dealer or major swap participant, the swap dealer or major swap participant shall report the swap as required under paragraphs (1) and (2).

(B) Swaps in which 1 counterparty is a swap dealer and the other a major swap participant

With respect to a swap in which 1 counterparty is a swap dealer and the other a major swap participant, the swap dealer shall report the swap as required under paragraphs (1) and (2).

(C) Other swaps

With respect to any other swap not described in subparagraph (A) or (B), the counterparties to the swap shall select a counterparty to report the swap as required under paragraphs (1) and (2).

(b) Duties of certain individuals

Any individual or entity that enters into a swap shall meet each requirement described in subsection (c) if the individual or entity did not—

(1) clear the swap in accordance with section 2(h)(1) of this title; or

(2) have the data regarding the swap accepted by a swap data repository in accordance with rules (including timeframes) adopted by the Commission under section 24a of this title.

(c) Requirements

An individual or entity described in subsection (b) shall—

(1) upon written request from the Commission, provide reports regarding the swaps held by the individual or entity to the Commission in such form and in such manner as the Commission may request; and

(2) maintain books and records pertaining to the swaps held by the individual or entity in such form, in such manner, and for such period as the Commission may require, which shall be open to inspection by—

(A) any representative of the Commission;

(B) an appropriate prudential regulator;

(C) the Securities and Exchange Commission;

(D) the Financial Stability Oversight Council; and

(E) the Department of Justice.

(d) Identical data

In prescribing rules under this section, the Commission shall require individuals and entities described in subsection (b) to submit to the Commission a report that contains data that is not less comprehensive than the data required to be collected by swap data repositories under section 24a of this title.

(Sept. 21, 1922, ch. 369, §4r, as added Pub. L. 111–203, title VII, §729, July 21, 2010, 124 Stat. 1701.)

Effective Date

Section effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 1a of this title.

§6s. Registration and regulation of swap dealers and major swap participants

(a) Registration

(1) Swap dealers

It shall be unlawful for any person to act as a swap dealer unless the person is registered as a swap dealer with the Commission.

(2) Major swap participants

It shall be unlawful for any person to act as a major swap participant unless the person is registered as a major swap participant with the Commission.

(b) Requirements

(1) In general

A person shall register as a swap dealer or major swap participant by filing a registration application with the Commission.

(2) Contents

(A) In general

The application shall be made in such form and manner as prescribed by the Commission, and shall contain such information, as the Commission considers necessary concerning the business in which the applicant is or will be engaged.

(B) Continual reporting

A person that is registered as a swap dealer or major swap participant shall continue to submit to the Commission reports that contain such information pertaining to the business of the person as the Commission may require.

(3) Expiration

Each registration under this section shall expire at such time as the Commission may prescribe by rule or regulation.

(4) Rules

Except as provided in subsections (d) and (e), the Commission may prescribe rules applicable to swap dealers and major swap participants, including rules that limit the activities of swap dealers and major swap participants.

(5) Transition

Rules under this section shall provide for the registration of swap dealers and major swap participants not later than 1 year after July 21, 2010.

(6) Statutory disqualification

Except to the extent otherwise specifically provided by rule, regulation, or order, it shall be unlawful for a swap dealer or a major swap participant to permit any person associated with a swap dealer or a major swap participant who is subject to a statutory disqualification to effect or be involved in effecting swaps on behalf of the swap dealer or major swap participant, if the swap dealer or major swap participant knew, or in the exercise of reasonable care should have known, of the statutory disqualification.

(c) Dual registration

(1) Swap dealer

Any person that is required to be registered as a swap dealer under this section shall register with the Commission regardless of whether the person also is a depository institution or is registered with the Securities and Exchange Commission as a security-based swap dealer.

(2) Major swap participant

Any person that is required to be registered as a major swap participant under this section shall register with the Commission regardless of whether the person also is a depository institution or is registered with the Securities and Exchange Commission as a major security-based swap participant.

(d) Rulemakings

(1) In general

The Commission shall adopt rules for persons that are registered as swap dealers or major swap participants under this section.

(2) Exception for prudential requirements

(A) In general

The Commission may not prescribe rules imposing prudential requirements on swap dealers or major swap participants for which there is a prudential regulator.

(B) Applicability

Subparagraph (A) does not limit the authority of the Commission to prescribe rules as directed under this section.

(e) Capital and margin requirements

(1) In general

(A) Swap dealers and major swap participants that are banks

Each registered swap dealer and major swap participant for which there is a prudential regulator shall meet such minimum capital requirements and minimum initial and variation margin requirements as the prudential regulator shall by rule or regulation prescribe under paragraph (2)(A).

(B) Swap dealers and major swap participants that are not banks

Each registered swap dealer and major swap participant for which there is not a prudential regulator shall meet such minimum capital requirements and minimum initial and variation margin requirements as the Commission shall by rule or regulation prescribe under paragraph (2)(B).

(2) Rules

(A) Swap dealers and major swap participants that are banks

The prudential regulators, in consultation with the Commission and the Securities and Exchange Commission, shall jointly adopt rules for swap dealers and major swap participants, with respect to their activities as a swap dealer or major swap participant, for which there is a prudential regulator imposing—

(i) capital requirements; and

(ii) both initial and variation margin requirements on all swaps that are not cleared by a registered derivatives clearing organization.

(B) Swap dealers and major swap participants that are not banks

The Commission shall adopt rules for swap dealers and major swap participants, with respect to their activities as a swap dealer or major swap participant, for which there is not a prudential regulator imposing—

(i) capital requirements; and

(ii) both initial and variation margin requirements on all swaps that are not cleared by a registered derivatives clearing organization.

(C) Capital

In setting capital requirements for a person that is designated as a swap dealer or a major swap participant for a single type or single class or category of swap or activities, the prudential regulator and the Commission shall take into account the risks associated with other types of swaps or classes of swaps or categories of swaps engaged in and the other activities conducted by that person that are not otherwise subject to regulation applicable to that person by virtue of the status of the person as a swap dealer or a major swap participant.

(3) Standards for capital and margin

(A) In general

To offset the greater risk to the swap dealer or major swap participant and the financial system arising from the use of swaps that are not cleared, the requirements imposed under paragraph (2) shall—

(i) help ensure the safety and soundness of the swap dealer or major swap participant; and

(ii) be appropriate for the risk associated with the non-cleared swaps held as a swap dealer or major swap participant.

(B) Rule of construction

(i) In general

Nothing in this section shall limit, or be construed to limit, the authority—

(I) of the Commission to set financial responsibility rules for a futures commission merchant or introducing broker registered pursuant to section 6f(a) of this title (except for section 6f(a)(3) of this title) in accordance with section 6f(b) of this title; or

(II) of the Securities and Exchange Commission to set financial responsibility rules for a broker or dealer registered pursuant to section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)) (except for section 15(b)(11) of that Act (15 U.S.C. 78o(b)(11)) [1] in accordance with section 15(c)(3) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(c)(3)).

(ii) Futures commission merchants and other dealers

A futures commission merchant, introducing broker, broker, or dealer shall maintain sufficient capital to comply with the stricter of any applicable capital requirements to which such futures commission merchant, introducing broker, broker, or dealer is subject to under this chapter or the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

(C) Margin requirements

In prescribing margin requirements under this subsection, the prudential regulator with respect to swap dealers and major swap participants for which it is the prudential regulator and the Commission with respect to swap dealers and major swap participants for which there is no prudential regulator shall permit the use of noncash collateral, as the regulator or the Commission determines to be consistent with—

(i) preserving the financial integrity of markets trading swaps; and

(ii) preserving the stability of the United States financial system.

(D) Comparability of capital and margin requirements

(i) In general

The prudential regulators, the Commission, and the Securities and Exchange Commission shall periodically (but not less frequently than annually) consult on minimum capital requirements and minimum initial and variation margin requirements.

(ii) Comparability

The entities described in clause (i) shall, to the maximum extent practicable, establish and maintain comparable minimum capital requirements and minimum initial and variation margin requirements, including the use of non cash collateral, for—

(I) swap dealers; and

(II) major swap participants.

(4) Applicability with respect to counterparties

The requirements of paragraphs (2)(A)(ii) and (2)(B)(ii), including the initial and variation margin requirements imposed by rules adopted pursuant to paragraphs (2)(A)(ii) and (2)(B)(ii), shall not apply to a swap in which a counterparty qualifies for an exception under section 2(h)(7)(A) of this title, or an exemption issued under section 6(c)(1) of this title from the requirements of section 2(h)(1)(A) of this

title for cooperative entities as defined in such exemption, or satisfies the criteria in section 2(h)(7)(D) of this title.

(f) Reporting and recordkeeping

(1) In general

Each registered swap dealer and major swap participant—

(A) shall make such reports as are required by the Commission by rule or regulation regarding the transactions and positions and financial condition of the registered swap dealer or major swap participant;

(B)(i) for which there is a prudential regulator, shall keep books and records of all activities related to the business as a swap dealer or major swap participant in such form and manner and for such period as may be prescribed by the Commission by rule or regulation; and

(ii) for which there is no prudential regulator, shall keep books and records in such form and manner and for such period as may be prescribed by the Commission by rule or regulation;

(C) shall keep books and records described in subparagraph (B) open to inspection and examination by any representative of the Commission; and

(D) shall keep any such books and records relating to swaps defined in section 1a(47)(A)(v) of this title open to inspection and examination by the Securities and Exchange Commission.

(2) Rules

The Commission shall adopt rules governing reporting and recordkeeping for swap dealers and major swap participants.

(g) Daily trading records

(1) In general

Each registered swap dealer and major swap participant shall maintain daily trading records of the swaps of the registered swap dealer and major swap participant and all related records (including related cash or forward transactions) and recorded communications, including electronic mail, instant messages, and recordings of telephone calls, for such period as may be required by the Commission by rule or regulation.

(2) Information requirements

The daily trading records shall include such information as the Commission shall require by rule or regulation.

(3) Counterparty records

Each registered swap dealer and major swap participant shall maintain daily trading records for each counterparty in a manner and form that is identifiable with each swap transaction.

(4) Audit trail

Each registered swap dealer and major swap participant shall maintain a complete audit trail for conducting comprehensive and accurate trade reconstructions.

(5) Rules

The Commission shall adopt rules governing daily trading records for swap dealers and major swap participants.

(h) Business conduct standards

(1) In general

Each registered swap dealer and major swap participant shall conform with such business conduct standards as prescribed in paragraph (3) and as may be prescribed by the Commission by rule or regulation that relate to—

(A) fraud, manipulation, and other abusive practices involving swaps (including swaps that are offered but not entered into);

(B) diligent supervision of the business of the registered swap dealer and major swap participant;

(C) adherence to all applicable position limits; and

(D) such other matters as the Commission determines to be appropriate.

(2) Responsibilities with respect to special entities

(A) Advising special entities

A swap dealer or major swap participant that acts as an advisor to a special entity regarding a swap shall comply with the requirements of subparagraph (4) with respect to such Special Entity.

(B) Entering of swaps with respect to special entities

A swap dealer that enters into or offers to enter into swap [2] with a Special Entity shall comply with the requirements of subparagraph (5) with respect to such Special Entity.

(C) Special entity defined

For purposes of this subsection, the term "special entity" means—

(i) a Federal agency;

(ii) a State, State agency, city, county, municipality, or other political subdivision of a State;

(iii) any employee benefit plan, as defined in section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002);

(iv) any governmental plan, as defined in section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002); or

(v) any endowment, including an endowment that is an organization described in section 501(c)(3) of title 26.

(3) Business conduct requirements

Business conduct requirements adopted by the Commission shall—

(A) establish a duty for a swap dealer or major swap participant to verify that any counterparty meets the eligibility standards for an eligible contract participant;

(B) require disclosure by the swap dealer or major swap participant to any counterparty to the transaction (other than a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant) of—

(i) information about the material risks and characteristics of the swap;

(ii) any material incentives or conflicts of interest that the swap dealer or major swap participant may have in connection with the swap; and

(iii)(I) for cleared swaps, upon the request of the counterparty, receipt of the daily mark of the transaction from the appropriate derivatives clearing organization; and

(II) for uncleared swaps, receipt of the daily mark of the transaction from the swap dealer or the major swap participant;

(C) establish a duty for a swap dealer or major swap participant to communicate in a fair and balanced manner based on principles of fair dealing and good faith; and

(D) establish such other standards and requirements as the Commission may determine are appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter.

(4) Special requirements for swap dealers acting as advisors

(A) In general

It shall be unlawful for a swap dealer or major swap participant—

(i) to employ any device, scheme, or artifice to defraud any Special Entity or prospective customer who is a Special Entity;

(ii) to engage in any transaction, practice, or course of business that operates as a fraud or deceit on any Special Entity or prospective customer who is a Special Entity; or

(iii) to engage in any act, practice, or course of business that is fraudulent, deceptive or manipulative.

(B) Duty

Any swap dealer that acts as an advisor to a Special Entity shall have a duty to act in the best interests of the Special Entity.

(C) Reasonable efforts

Any swap dealer that acts as an advisor to a Special Entity shall make reasonable efforts to obtain such information as is necessary to make a reasonable determination that any swap recommended by the swap dealer is in the best interests of the Special Entity, including information relating to—

(i) the financial status of the Special Entity;

(ii) the tax status of the Special Entity;

(iii) the investment or financing objectives of the Special Entity; and

(iv) any other information that the Commission may prescribe by rule or regulation.

(5) Special requirements for swap dealers as counterparties to special entities

(A) Any swap dealer or major swap participant that offers to enter or enters into a swap with a Special Entity shall—

(i) comply with any duty established by the Commission for a swap dealer or major swap participant, with respect to a counterparty that is an eligible contract participant within the meaning of subclause (I) or (II) of clause (vii) of section 1a(18) [3] of this title, that requires the swap dealer or major swap participant to have a reasonable basis to believe that the counterparty that is a Special Entity has an independent representative that—

(I) has sufficient knowledge to evaluate the transaction and risks;

(II) is not subject to a statutory disqualification;

(III) is independent of the swap dealer or major swap participant;

(IV) undertakes a duty to act in the best interests of the counterparty it represents;

(V) makes appropriate disclosures;

(VI) will provide written representations to the Special Entity regarding fair pricing and the appropriateness of the transaction; and

(VII) in the case of employee benefit plans subject to the Employee Retirement Income Security act [4] of 1974 [29 U.S.C. 1001 et seq.], is a fiduciary as defined in section 3 of that Act (29 U.S.C. 1002); and

(ii) before the initiation of the transaction, disclose to the Special Entity in writing the capacity in which the swap dealer is acting; and

(B) the Commission may establish such other standards and requirements as the Commission may determine are appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter.

(6) Rules

The Commission shall prescribe rules under this subsection governing business conduct standards for swap dealers and major swap participants.

(7) Applicability

This section shall not apply with respect to a transaction that is—

(A) initiated by a Special Entity on an exchange or swap execution facility; and

(B) one in which the swap dealer or major swap participant does not know the identity of the counterparty to the transaction.

(i) Documentation standards

(1) In general

Each registered swap dealer and major swap participant shall conform with such standards as may be prescribed by the Commission by rule or regulation that relate to timely and accurate confirmation, processing, netting, documentation, and valuation of all swaps.

(2) Rules

The Commission shall adopt rules governing documentation standards for swap dealers and major swap participants.

(j) Duties

Each registered swap dealer and major swap participant at all times shall comply with the following requirements:

(1) Monitoring of trading

The swap dealer or major swap participant shall monitor its trading in swaps to prevent violations of applicable position limits.

(2) Risk management procedures

The swap dealer or major swap participant shall establish robust and professional risk management systems adequate for managing the day-to-day business of the swap dealer or major swap participant.

(3) Disclosure of general information

The swap dealer or major swap participant shall disclose to the Commission and to the prudential regulator for the swap dealer or major swap participant, as applicable, information concerning—

(A) terms and conditions of its swaps;

(B) swap trading operations, mechanisms, and practices;

(C) financial integrity protections relating to swaps; and

(D) other information relevant to its trading in swaps.

(4) Ability to obtain information

The swap dealer or major swap participant shall—

(A) establish and enforce internal systems and procedures to obtain any necessary information to perform any of the functions described in this section; and

(B) provide the information to the Commission and to the prudential regulator for the swap dealer or major swap participant, as applicable, on request.

(5) Conflicts of interest

The swap dealer and major swap participant shall implement conflict-of-interest systems and procedures that—

(A) establish structural and institutional safeguards to ensure that the activities of any person within the firm relating to research or analysis of the price or market for any commodity or swap or acting in a role of providing clearing activities or making determinations as to accepting clearing customers are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of persons whose involvement in pricing, trading, or clearing activities might potentially bias their judgment or supervision and contravene the core principles of open access and the business conduct standards described in this chapter; and

(B) address such other issues as the Commission determines to be appropriate.

(6) Antitrust considerations

Unless necessary or appropriate to achieve the purposes of this chapter, a swap dealer or major swap participant shall not—

(A) adopt any process or take any action that results in any unreasonable restraint of trade; or

(B) impose any material anticompetitive burden on trading or clearing.

(7) Rules

The Commission shall prescribe rules under this subsection governing duties of swap dealers and major swap participants.

(k) Designation of chief compliance officer

(1) In general

Each swap dealer and major swap participant shall designate an individual to serve as a chief compliance officer.

(2) Duties

The chief compliance officer shall—

(A) report directly to the board or to the senior officer of the swap dealer or major swap participant;

(B) review the compliance of the swap dealer or major swap participant with respect to the swap dealer and major swap participant requirements described in this section;

(C) in consultation with the board of directors, a body performing a function similar to the board, or the senior officer of the organization, resolve any conflicts of interest that may arise;

(D) be responsible for administering each policy and procedure that is required to be established pursuant to this section;

(E) ensure compliance with this chapter (including regulations) relating to swaps, including each rule prescribed by the Commission under this section;

(F) establish procedures for the remediation of noncompliance issues identified by the chief compliance officer through any—

(i) compliance office review;

(ii) look-back;

(iii) internal or external audit finding;

(iv) self-reported error; or

(v) validated complaint; and

(G) establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.

(3) Annual reports

(A) In general

In accordance with rules prescribed by the Commission, the chief compliance officer shall annually prepare and sign a report that contains a description of—

(i) the compliance of the swap dealer or major swap participant with respect to this chapter (including regulations); and

(ii) each policy and procedure of the swap dealer or major swap participant of the chief compliance officer (including the code of ethics and conflict of interest policies).

(B) Requirements

A compliance report under subparagraph (A) shall—

(i) accompany each appropriate financial report of the swap dealer or major swap participant that is required to be furnished to the Commission pursuant to this section; and

(ii) include a certification that, under penalty of law, the compliance report is accurate and complete.

(l) Segregation requirements

(1) Segregation of assets held as collateral in uncleared swap transactions

(A) Notification

A swap dealer or major swap participant shall be required to notify the counterparty of the swap dealer or major swap participant at the beginning of a swap transaction that the counterparty has the right to require segregation of the funds or other property supplied to margin, guarantee, or secure the obligations of the counterparty.

(B) Segregation and maintenance of funds

At the request of a counterparty to a swap that provides funds or other property to a swap dealer or major swap participant to margin, guarantee, or secure the obligations of the counterparty, the swap dealer or major swap participant shall—

(i) segregate the funds or other property for the benefit of the counterparty; and

(ii) in accordance with such rules and regulations as the Commission may promulgate, maintain the funds or other property in a segregated account separate from the assets and other interests of the swap dealer or major swap participant.

(2) Applicability

The requirements described in paragraph (1) shall—

(A) apply only to a swap between a counterparty and a swap dealer or major swap participant that is not submitted for clearing to a derivatives clearing organization; and

(B)(i) not apply to variation margin payments; or

(ii) not preclude any commercial arrangement regarding—

(I) the investment of segregated funds or other property that may only be invested in such investments as the Commission may permit by rule or regulation; and

(II) the related allocation of gains and losses resulting from any investment of the segregated funds or other property.

(3) Use of independent third-party custodians

The segregated account described in paragraph (1) shall be—

(A) carried by an independent third-party custodian; and

(B) designated as a segregated account for and on behalf of the counterparty.

(4) Reporting requirement

If the counterparty does not choose to require segregation of the funds or other property supplied to margin, guarantee, or secure the obligations of the counterparty, the swap dealer or major swap participant shall report to the counterparty of the swap dealer or major swap participant on a quarterly basis that the back office procedures of the swap dealer or major swap participant relating to margin and collateral requirements are in compliance with the agreement of the counterparties.

(Sept. 21, 1922, ch. 369, §4s, as added and amended Pub. L. 111–203, title VII, §§724(c), 731, July 21, 2010, 124 Stat. 1684, 1703; Pub. L. 114–1, title III, §302(a), Jan. 12, 2015, 129 Stat. 28.)

References in Text

The Securities Exchange Act of 1934, referred to in subsec. (e)(3)(B)(ii), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§78a et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

The Employee Retirement Income Security Act of 1974, referred to in subsec. (h)(5)(A)(i)(VII), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, which is classified principally to chapter 18 (§1001 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

Amendments

2015—Subsec. (e)(4). Pub. L. 114–1 added par. (4).

2010—Subsec. (l). Pub. L. 111–203, §724(c), added subsec. (l).

Effective Date

Section and amendment by Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 1a of this title.

Implementation

Pub. L. 114–1, title III, §303, Jan. 12, 2015, 129 Stat. 28, provided that: "The amendments made by this title to the Commodity Exchange Act [amending this section] shall be implemented—

"(1) without regard to—

"(A) chapter 35 of title 44, United States Code; and

"(B) the notice and comment provisions of section 553 of title 5, United States Code;

"(2) through the promulgation of an interim final rule, pursuant to which public comment will be sought before a final rule is issued; and

"(3) such that paragraph (1) shall apply solely to changes to rules and regulations, or proposed rules and regulations, that are limited to and directly a consequence of such amendments."

[1] So in original. Probably should be followed by a third closing parenthesis.

[2] So in original. Probably should be preceded by "a".

[3] So in original. Probably should be "section 1a(18)(A)".

[4] So in original. Probably should be "Act".

§6t. Large swap trader reporting

(a) Prohibition

(1) In general

Except as provided in paragraph (2), it shall be unlawful for any person to enter into any swap that the Commission determines to perform a significant price discovery function with respect to registered entities if—

(A) the person directly or indirectly enters into the swap during any 1 day in an amount equal to or in excess of such amount as shall be established periodically by the Commission; and

(B) the person directly or indirectly has or obtains a position in the swap equal to or in excess of such amount as shall be established periodically by the Commission.

(2) Exception

Paragraph (1) shall not apply if—

(A) the person files or causes to be filed with the properly designated officer of the Commission such reports regarding any transactions or positions described in subparagraphs (A) and (B) of paragraph (1) as the Commission may require by rule or regulation; and

(B) in accordance with the rules and regulations of the Commission, the person keeps books and records of all such swaps and any transactions and positions in any related commodity traded on or subject to the rules of any designated contract market or swap execution facility, and of cash or spot transactions in, inventories of, and purchase and sale commitments of, such a commodity.

(b) Requirements

(1) In general

Books and records described in subsection (a)(2)(B) shall—

(A) show such complete details concerning all transactions and positions as the Commission may prescribe by rule or regulation;

(B) be open at all times to inspection and examination by any representative of the Commission; and

(C) be open at all times to inspection and examination by the Securities and Exchange Commission, to the extent such books and records relate to transactions in swaps (as that term is defined in section 1a(47)(A)(v) of this title), and consistent with the confidentiality and disclosure requirements of section 12 of this title.

(2) Jurisdiction

Nothing in paragraph (1) shall affect the exclusive jurisdiction of the Commission to prescribe recordkeeping and reporting requirements for large swap traders under this section.

(c) Applicability

For purposes of this section, the swaps, futures, and cash or spot transactions and positions of any person shall include the swaps, futures, and cash or spot transactions and positions of any persons directly or indirectly controlled by the person.

(d) Significant price discovery function

In making a determination as to whether a swap performs or affects a significant price discovery function with respect to registered entities, the Commission shall consider the factors described in section 6a(a)(3) of this title.

(Sept. 21, 1922, ch. 369, §4t, as added Pub. L. 111–203, title VII, §730, July 21, 2010, 124 Stat. 1702.)

Effective Date

Section effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 1a of this title.

§7. Designation of boards of trade as contract markets

(a) Applications

A board of trade applying to the Commission for designation as a contract market shall submit an application to the Commission that includes any relevant materials

and records the Commission may require consistent with this chapter.

(b) Repealed. Pub. L. 111–203, title VII, §735(a), July 21, 2010, 124 Stat. 1718

(c) Existing contract markets

A board of trade that is designated as a contract market on December 21, 2000, shall be considered to be a designated contract market under this section.

(d) Core principles for contract markets

(1) Designation as contract market

(A) In general

To be designated, and maintain a designation, as a contract market, a board of trade shall comply with—

(i) any core principle described in this subsection; and

(ii) any requirement that the Commission may impose by rule or regulation pursuant to section 12a(5) of this title.

(B) Reasonable discretion of contract market

Unless otherwise determined by the Commission by rule or regulation, a board of trade described in subparagraph (A) shall have reasonable discretion in establishing the manner in which the board of trade complies with the core principles described in this subsection.

(2) Compliance with rules

(A) In general

The board of trade shall establish, monitor, and enforce compliance with the rules of the contract market, including—

(i) access requirements;

(ii) the terms and conditions of any contracts to be traded on the contract market; and

(iii) rules prohibiting abusive trade practices on the contract market.

(B) Capacity of contract market

The board of trade shall have the capacity to detect, investigate, and apply appropriate sanctions to any person that violates any rule of the contract market.

(C) Requirement of rules

The rules of the contract market shall provide the board of trade with the ability and authority to obtain any necessary information to perform any function described in this subsection, including the capacity to carry out such international information-sharing agreements as the Commission may require.

(3) Contracts not readily subject to manipulation

The board of trade shall list on the contract market only contracts that are not readily susceptible to manipulation.

(4) Prevention of market disruption

The board of trade shall have the capacity and responsibility to prevent manipulation, price distortion, and disruptions of the delivery or cash-settlement process through market surveillance, compliance, and enforcement practices and procedures, including—

(A) methods for conducting real-time monitoring of trading; and

(B) comprehensive and accurate trade reconstructions.

(5) Position limitations or accountability

(A) In general

To reduce the potential threat of market manipulation or congestion (especially during trading in the delivery month), the board of trade shall adopt

for each contract of the board of trade, as is necessary and appropriate, position limitations or position accountability for speculators.

(B) Maximum allowable position limitation

For any contract that is subject to a position limitation established by the Commission pursuant to section 6a(a) of this title, the board of trade shall set the position limitation of the board of trade at a level not higher than the position limitation established by the Commission.

(6) Emergency authority

The board of trade, in consultation or cooperation with the Commission, shall adopt rules to provide for the exercise of emergency authority, as is necessary and appropriate, including the authority—

(A) to liquidate or transfer open positions in any contract;

(B) to suspend or curtail trading in any contract; and

(C) to require market participants in any contract to meet special margin requirements.

(7) Availability of general information

The board of trade shall make available to market authorities, market participants, and the public accurate information concerning—

(A) the terms and conditions of the contracts of the contract market; and

(B)(i) the rules, regulations, and mechanisms for executing transactions on or through the facilities of the contract market; and

(ii) the rules and specifications describing the operation of the contract market's—

(I) electronic matching platform; or

(II) trade execution facility.

(8) Daily publication of trading information

The board of trade shall make public daily information on settlement prices, volume, open interest, and opening and closing ranges for actively traded contracts on the contract market.

(9) Execution of transactions

(A) In general

The board of trade shall provide a competitive, open, and efficient market and mechanism for executing transactions that protects the price discovery process of trading in the centralized market of the board of trade.

(B) Rules

The rules of the board of trade may authorize, for bona fide business purposes —

(i) transfer trades or office trades;

(ii) an exchange of—

(I) futures in connection with a cash commodity transaction;

(II) futures for cash commodities; or

(III) futures for swaps; or

(iii) a futures commission merchant, acting as principal or agent, to enter into or confirm the execution of a contract for the purchase or sale of a commodity for future delivery if the contract is reported, recorded, or cleared in accordance with the rules of the contract market or a derivatives clearing organization.

(10) Trade information

The board of trade shall maintain rules and procedures to provide for the recording and safe storage of all identifying trade information in a manner that

enables the contract market to use the information—

(A) to assist in the prevention of customer and market abuses; and

(B) to provide evidence of any violations of the rules of the contract market.

(11) Financial integrity of transactions

The board of trade shall establish and enforce—

(A) rules and procedures for ensuring the financial integrity of transactions entered into on or through the facilities of the contract market (including the clearance and settlement of the transactions with a derivatives clearing organization); and

(B) rules to ensure—

(i) the financial integrity of any—

(I) futures commission merchant; and

(II) introducing broker; and

(ii) the protection of customer funds.

(12) Protection of markets and market participants

The board of trade shall establish and enforce rules—

(A) to protect markets and market participants from abusive practices committed by any party, including abusive practices committed by a party acting as an agent for a participant; and

(B) to promote fair and equitable trading on the contract market.

(13) Disciplinary procedures

The board of trade shall establish and enforce disciplinary procedures that authorize the board of trade to discipline, suspend, or expel members or market participants that violate the rules of the board of trade, or similar methods for performing the same functions, including delegation of the functions to third parties.

(14) Dispute resolution

The board of trade shall establish and enforce rules regarding, and provide facilities for alternative dispute resolution as appropriate for, market participants and any market intermediaries.

(15) Governance fitness standards

The board of trade shall establish and enforce appropriate fitness standards for directors, members of any disciplinary committee, members of the contract market, and any other person with direct access to the facility (including any party affiliated with any person described in this paragraph).

(16) Conflicts of interest

The board of trade shall establish and enforce rules—

(A) to minimize conflicts of interest in the decision-making process of the contract market; and

(B) to establish a process for resolving conflicts of interest described in subparagraph (A).

(17) Composition of governing boards of contract markets

The governance arrangements of the board of trade shall be designed to permit consideration of the views of market participants.

(18) Recordkeeping

The board of trade shall maintain records of all activities relating to the business of the contract market—

(A) in a form and manner that is acceptable to the Commission; and

(B) for a period of at least 5 years.

(19) Antitrust considerations

Unless necessary or appropriate to achieve the purposes of this chapter, the board of trade shall not—

(A) adopt any rule or taking [1] any action that results in any unreasonable restraint of trade; or

(B) impose any material anticompetitive burden on trading on the contract market.

(20) System safeguards

The board of trade shall—

(A) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk, through the development of appropriate controls and procedures, and the development of automated systems, that are reliable, secure, and have adequate scalable capacity;

(B) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allow for the timely recovery and resumption of operations and the fulfillment of the responsibilities and obligations of the board of trade; and

(C) periodically conduct tests to verify that backup resources are sufficient to ensure continued order processing and trade matching, price reporting, market surveillance, and maintenance of a comprehensive and accurate audit trail.

(21) Financial resources

(A) In general

The board of trade shall have adequate financial, operational, and managerial resources to discharge each responsibility of the board of trade.

(B) Determination of adequacy

The financial resources of the board of trade shall be considered to be adequate if the value of the financial resources exceeds the total amount that would enable the contract market to cover the operating costs of the contract market for a 1-year period, as calculated on a rolling basis.

(22) Diversity of board of directors

The board of trade, if a publicly traded company, shall endeavor to recruit individuals to serve on the board of directors and the other decision-making bodies (as determined by the Commission) of the board of trade from among, and to have the composition of the bodies reflect, a broad and culturally diverse pool of qualified candidates.

(23) Securities and Exchange Commission

The board of trade shall keep any such records relating to swaps defined in section 1a(47)(A)(v) of this title open to inspection and examination by the Securities and Exchange Commission.

(e) Current agricultural commodities

(1) Subject to paragraph (2) of this subsection, a contract for purchase or sale for future delivery of an agricultural commodity enumerated in section 1a(9) of this title that is available for trade on a contract market, as of December 21, 2000, may be traded only on a contract market designated under this section.

(2) In order to promote responsible economic or financial innovation and fair competition, the Commission, on application by any person, after notice and public comment and opportunity for hearing, may prescribe rules and regulations to provide for the offer and sale of contracts for future delivery or options on such contracts to be conducted on a derivatives transaction execution facility.

(Sept. 21, 1922, ch. 369, §5, as added Pub. L. 106–554, §1(a)(5) [title I, §110(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–384; amended Pub. L. 111–203, title VII, §§721(e)(4), 735, July 21, 2010, 124 Stat. 1671, 1718.)

Prior Provisions

A prior section 7, acts Sept. 21, 1922, ch. 369, §5, 42 Stat. 1000; June 15, 1936, ch. 545, §§2, 6, 49 Stat. 1491, 1497; Pub. L. 90–258, §§10, 11, Feb. 19, 1968, 82 Stat. 29; Pub. L. 93–463, title I, §103(a), (f), (g), title II, §207, Oct. 23, 1974, 88 Stat. 1392, 1400; Pub. L. 102–546, title II, §§201(c), 209(b)(2), Oct. 28, 1992, 106 Stat. 3597, 3606, related to conditions and requirements for designation of boards of trade as contract markets, prior to repeal by Pub. L. 106–554, §1(a)(5) [title I, §110(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–384.

Amendments

2010—Subsec. (b). Pub. L. 111–203, §735(a), struck out subsec. (b) which related to criteria for designation as a contract market.

Subsec. (d). Pub. L. 111–203, §735(b), added subsec. (d) and struck out former subsec. (d) which related to core principles for contract markets.

Subsec. (e)(1). Pub. L. 111–203, §721(e)(4), substituted "section 1a(9)" for "section 1a(4)".

Effective Date of 2010 Amendment

Amendment by Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as a note under section 1a of this title.

[1] *So in original. Probably should be "take".*

§7a. Repealed. Pub. L. 111–203, title VII, §734(a), July 21, 2010, 124 Stat. 1718

Section, act Sept. 21, 1922, ch. 369, §5a, as added Pub. L. 106–554, §1(a)(5) [title I, §111], Dec. 21, 2000, 114 Stat. 2763, 2763A–387; amended Pub. L. 110–234, title XIII, §13203(h), May 22, 2008, 122 Stat. 1440; Pub. L. 110–246, §4(a), title XIII, §13203(h), June 18, 2008, 122 Stat. 1664, 2202; Pub. L. 111–203, title VII, §721(e)(5), July 21, 2010, 124 Stat. 1671, related to derivatives transaction execution facilities.

A prior section 7a, act Sept. 21, 1922, ch. 369, §5a, as added June 15, 1936, ch. 545, §7, 49 Stat. 1497; amended Pub. L. 90–258, §12, Feb. 19, 1968, 82 Stat. 29; Pub. L. 93–463, title I, §103(a), (e), (f), title II, §§208–210, title IV, §§406, 407, Oct. 23, 1974, 88 Stat. 1392, 1400, 1401, 1413; Pub. L. 95–405, §§11, 12, Sept. 30, 1978, 92 Stat. 870, 871; Pub. L. 97–444, title II, §§216, 217(a), Jan. 11, 1983, 96 Stat. 2306, 2307; Pub. L. 99–641, title I, §110(2), Nov. 10, 1986, 100 Stat. 3561; Pub. L. 102–546, title I, §103, title II, §§201(a), 206(a)(1), 213(a), 217, 222(a), Oct. 28, 1992, 106 Stat. 3594, 3595, 3601, 3609, 3611, 3615, related to duties of contract markets prior to repeal by Pub. L. 106–554, §1(a)(5) [title I, §110(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–384.

Effective Date of Repeal

Repeal effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 1a of this title.

§7a–1. Derivatives clearing organizations

(a) Registration requirement

(1) In general

Except as provided in paragraph (2), it shall be unlawful for a derivatives clearing organization, directly or indirectly, to make use of the mails or any means or

instrumentality of interstate commerce to perform the functions of a derivatives clearing organization with respect to—

(A) a contract of sale of a commodity for future delivery (or an option on the contract of sale) or option on a commodity, in each case, unless the contract or option is—

(i) excluded from this chapter by subsection (a)(1)(C)(i), (c), or (f) of section 2 of this title; or

(ii) a security futures product cleared by a clearing agency registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.); or

(B) a swap.

(2) Exception

Paragraph (1) shall not apply to a derivatives clearing organization that is registered with the Commission.

(b) Voluntary registration

A person that clears 1 or more agreements, contracts, or transactions that are not required to be cleared under this chapter may register with the Commission as a derivatives clearing organization.

(c) Registration of derivatives clearing organizations

(1) Application

A person desiring to register as a derivatives clearing organization shall submit to the Commission an application in such form and containing such information as the Commission may require for the purpose of making the determinations required for approval under paragraph (2).

(2) Core principles for derivatives clearing organizations

(A) Compliance

(i) In general

To be registered and to maintain registration as a derivatives clearing organization, a derivatives clearing organization shall comply with each core principle described in this paragraph and any requirement that the Commission may impose by rule or regulation pursuant to section 12a(5) of this title.

(ii) Discretion of derivatives clearing organization

Subject to any rule or regulation prescribed by the Commission, a derivatives clearing organization shall have reasonable discretion in establishing the manner by which the derivatives clearing organization complies with each core principle described in this paragraph.

(B) Financial resources

(i) In general

Each derivatives clearing organization shall have adequate financial, operational, and managerial resources, as determined by the Commission, to discharge each responsibility of the derivatives clearing organization.

(ii) Minimum amount of financial resources

Each derivatives clearing organization shall possess financial resources that, at a minimum, exceed the total amount that would—

(I) enable the organization to meet its financial obligations to its members and participants notwithstanding a default by the member or participant creating the largest financial exposure for that organization in extreme but plausible market conditions; and

(II) enable the derivatives clearing organization to cover the operating costs of the derivatives clearing organization for a period of 1 year (as calculated on a rolling basis).

(C) Participant and product eligibility

(i) In general

Each derivatives clearing organization shall establish—

(I) appropriate admission and continuing eligibility standards (including sufficient financial resources and operational capacity to meet obligations arising from participation in the derivatives clearing organization) for members of, and participants in, the derivatives clearing organization; and

(II) appropriate standards for determining the eligibility of agreements, contracts, or transactions submitted to the derivatives clearing organization for clearing.

(ii) Required procedures

Each derivatives clearing organization shall establish and implement procedures to verify, on an ongoing basis, the compliance of each participation and membership requirement of the derivatives clearing organization.

(iii) Requirements

The participation and membership requirements of each derivatives clearing organization shall—

(I) be objective;

(II) be publicly disclosed; and

(III) permit fair and open access.

(D) Risk management

(i) In general

Each derivatives clearing organization shall ensure that the derivatives clearing organization possesses the ability to manage the risks associated with discharging the responsibilities of the derivatives clearing organization through the use of appropriate tools and procedures.

(ii) Measurement of credit exposure

Each derivatives clearing organization shall—

(I) not less than once during each business day of the derivatives clearing organization, measure the credit exposures of the derivatives clearing organization to each member and participant of the derivatives clearing organization; and

(II) monitor each exposure described in subclause (I) periodically during the business day of the derivatives clearing organization.

(iii) Limitation of exposure to potential losses from defaults

Each derivatives clearing organization, through margin requirements and other risk control mechanisms, shall limit the exposure of the derivatives clearing organization to potential losses from defaults by members and participants of the derivatives clearing organization to ensure that—

(I) the operations of the derivatives clearing organization would not be disrupted; and

(II) nondefaulting members or participants would not be exposed to losses that nondefaulting members or participants cannot anticipate or control.

(iv) Margin requirements

The margin required from each member and participant of a derivatives clearing organization shall be sufficient to cover potential exposures in normal

market conditions.

(v) Requirements regarding models and parameters

Each model and parameter used in setting margin requirements under clause (iv) shall be—

(I) risk-based; and

(II) reviewed on a regular basis.

(E) Settlement procedures

Each derivatives clearing organization shall—

(i) complete money settlements on a timely basis (but not less frequently than once each business day);

(ii) employ money settlement arrangements to eliminate or strictly limit the exposure of the derivatives clearing organization to settlement bank risks (including credit and liquidity risks from the use of banks to effect money settlements);

(iii) ensure that money settlements are final when effected;

(iv) maintain an accurate record of the flow of funds associated with each money settlement;

(v) possess the ability to comply with each term and condition of any permitted netting or offset arrangement with any other clearing organization;

(vi) regarding physical settlements, establish rules that clearly state each obligation of the derivatives clearing organization with respect to physical deliveries; and

(vii) ensure that each risk arising from an obligation described in clause (vi) is identified and managed.

(F) Treatment of funds

(i) Required standards and procedures

Each derivatives clearing organization shall establish standards and procedures that are designed to protect and ensure the safety of member and participant funds and assets.

(ii) Holding of funds and assets

Each derivatives clearing organization shall hold member and participant funds and assets in a manner by which to minimize the risk of loss or of delay in the access by the derivatives clearing organization to the assets and funds.

(iii) Permissible investments

Funds and assets invested by a derivatives clearing organization shall be held in instruments with minimal credit, market, and liquidity risks.

(G) Default rules and procedures

(i) In general

Each derivatives clearing organization shall have rules and procedures designed to allow for the efficient, fair, and safe management of events during which members or participants—

(I) become insolvent; or

(II) otherwise default on the obligations of the members or participants to the derivatives clearing organization.

(ii) Default procedures

Each derivatives clearing organization shall—

(I) clearly state the default procedures of the derivatives clearing organization;

(II) make publicly available the default rules of the derivatives clearing organization; and

(III) ensure that the derivatives clearing organization may take timely action—

(aa) to contain losses and liquidity pressures; and

(bb) to continue meeting each obligation of the derivatives clearing organization.

(H) Rule enforcement

Each derivatives clearing organization shall—

(i) maintain adequate arrangements and resources for—

(I) the effective monitoring and enforcement of compliance with the rules of the derivatives clearing organization; and

(II) the resolution of disputes;

(ii) have the authority and ability to discipline, limit, suspend, or terminate the activities of a member or participant due to a violation by the member or participant of any rule of the derivatives clearing organization; and

(iii) report to the Commission regarding rule enforcement activities and sanctions imposed against members and participants as provided in clause (ii).

(I) System safeguards

Each derivatives clearing organization shall—

(i) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk through the development of appropriate controls and procedures, and automated systems, that are reliable, secure, and have adequate scalable capacity;

(ii) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allows for—

(I) the timely recovery and resumption of operations of the derivatives clearing organization; and

(II) the fulfillment of each obligation and responsibility of the derivatives clearing organization; and

(iii) periodically conduct tests to verify that the backup resources of the derivatives clearing organization are sufficient to ensure daily processing, clearing, and settlement.

(J) Reporting

Each derivatives clearing organization shall provide to the Commission all information that the Commission determines to be necessary to conduct oversight of the derivatives clearing organization.

(K) Recordkeeping

Each derivatives clearing organization shall maintain records of all activities related to the business of the derivatives clearing organization as a derivatives clearing organization—

(i) in a form and manner that is acceptable to the Commission; and

(ii) for a period of not less than 5 years.

(L) Public information

(i) In general

Each derivatives clearing organization shall provide to market participants sufficient information to enable the market participants to identify and evaluate accurately the risks and costs associated with using the services of the derivatives clearing organization.

(ii) Availability of information

Each derivatives clearing organization shall make information concerning the rules and operating and default procedures governing the clearing and

settlement systems of the derivatives clearing organization available to market participants.

(iii) Public disclosure

Each derivatives clearing organization shall disclose publicly and to the Commission information concerning—

(I) the terms and conditions of each contract, agreement, and transaction cleared and settled by the derivatives clearing organization;

(II) each clearing and other fee that the derivatives clearing organization charges the members and participants of the derivatives clearing organization;

(III) the margin-setting methodology, and the size and composition, of the financial resource package of the derivatives clearing organization;

(IV) daily settlement prices, volume, and open interest for each contract settled or cleared by the derivatives clearing organization; and

(V) any other matter relevant to participation in the settlement and clearing activities of the derivatives clearing organization.

(M) Information-sharing

Each derivatives clearing organization shall—

(i) enter into, and abide by the terms of, each appropriate and applicable domestic and international information-sharing agreement; and

(ii) use relevant information obtained from each agreement described in clause (i) in carrying out the risk management program of the derivatives clearing organization.

(N) Antitrust considerations

Unless necessary or appropriate to achieve the purposes of this chapter, a derivatives clearing organization shall not—

(i) adopt any rule or take any action that results in any unreasonable restraint of trade; or

(ii) impose any material anticompetitive burden.

(O) Governance fitness standards

(i) Governance arrangements

Each derivatives clearing organization shall establish governance arrangements that are transparent—

(I) to fulfill public interest requirements; and

(II) to permit the consideration of the views of owners and participants.

(ii) Fitness standards

Each derivatives clearing organization shall establish and enforce appropriate fitness standards for—

(I) directors;

(II) members of any disciplinary committee;

(III) members of the derivatives clearing organization;

(IV) any other individual or entity with direct access to the settlement or clearing activities of the derivatives clearing organization; and

(V) any party affiliated with any individual or entity described in this clause.

(P) Conflicts of interest

Each derivatives clearing organization shall—

(i) establish and enforce rules to minimize conflicts of interest in the decision-making process of the derivatives clearing organization; and

(ii) establish a process for resolving conflicts of interest described in clause (i).

(Q) Composition of governing boards

Each derivatives clearing organization shall ensure that the composition of the governing board or committee of the derivatives clearing organization includes market participants.

(R) Legal risk

Each derivatives clearing organization shall have a well-founded, transparent, and enforceable legal framework for each aspect of the activities of the derivatives clearing organization.

(3) Orders concerning competition

A derivatives clearing organization may request the Commission to issue an order concerning whether a rule or practice of the applicant is the least anticompetitive means of achieving the objectives, purposes, and policies of this chapter.

(d) Existing derivatives clearing organizations

A derivatives clearing organization shall be deemed to be registered under this section to the extent that the derivatives clearing organization clears agreements, contracts, or transactions for a board of trade that has been designated by the Commission as a contract market for such agreements, contracts, or transactions before December 21, 2000.

(e) Appointment of trustee

(1) In general

If a proceeding under section 7b of this title results in the suspension or revocation of the registration of a derivatives clearing organization, or if a derivatives clearing organization withdraws from registration, the Commission, on notice to the derivatives clearing organization, may apply to the appropriate United States district court where the derivatives clearing organization is located for the appointment of a trustee.

(2) Assumption of jurisdiction

If the Commission applies for appointment of a trustee under paragraph (1)—

(A) the court may take exclusive jurisdiction over the derivatives clearing organization and the records and assets of the derivatives clearing organization, wherever located; and

(B) if the court takes jurisdiction under subparagraph (A), the court shall appoint the Commission, or a person designated by the Commission, as trustee with power to take possession and continue to operate or terminate the operations of the derivatives clearing organization in an orderly manner for the protection of participants, subject to such terms and conditions as the court may prescribe.

(f) Linking of regulated clearing facilities

(1) In general

The Commission shall facilitate the linking or coordination of derivatives clearing organizations registered under this chapter with other regulated clearance facilities for the coordinated settlement of cleared transactions. In order to minimize systemic risk, under no circumstances shall a derivatives clearing organization be compelled to accept the counterparty credit risk of another clearing organization.

(2) Coordination

In carrying out paragraph (1), the Commission shall coordinate with the Federal banking agencies and the Securities and Exchange Commission.

(g) Existing depository institutions and clearing agencies

(1) In general

A depository institution or clearing agency registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) that is required to be registered as a derivatives clearing organization under this section is deemed to be registered under this section to the extent that, before July 21, 2010—

(A) the depository institution cleared swaps as a multilateral clearing organization; or

(B) the clearing agency cleared swaps.

(2) Conversion of depository institutions

A depository institution to which this subsection applies may, by the vote of the shareholders owning not less than 51 percent of the voting interests of the depository institution, be converted into a State corporation, partnership, limited liability company, or similar legal form pursuant to a plan of conversion, if the conversion is not in contravention of applicable State law.

(3) Sharing of information

The Securities and Exchange Commission shall make available to the Commission, upon request, all information determined to be relevant by the Securities and Exchange Commission regarding a clearing agency deemed to be registered with the Commission under paragraph (1).

(h) Exemptions

The Commission may exempt, conditionally or unconditionally, a derivatives clearing organization from registration under this section for the clearing of swaps if the Commission determines that the derivatives clearing organization is subject to comparable, comprehensive supervision and regulation by the Securities and Exchange Commission or the appropriate government authorities in the home country of the organization. Such conditions may include, but are not limited to, requiring that the derivatives clearing organization be available for inspection by the Commission and make available all information requested by the Commission.

(i) Designation of chief compliance officer

(1) In general

Each derivatives clearing organization shall designate an individual to serve as a chief compliance officer.

(2) Duties

The chief compliance officer shall—

(A) report directly to the board or to the senior officer of the derivatives clearing organization;

(B) review the compliance of the derivatives clearing organization with respect to the core principles described in subsection (c)(2);

(C) in consultation with the board of the derivatives clearing organization, a body performing a function similar to the board of the derivatives clearing organization, or the senior officer of the derivatives clearing organization, resolve any conflicts of interest that may arise;

(D) be responsible for administering each policy and procedure that is required to be established pursuant to this section;

(E) ensure compliance with this chapter (including regulations) relating to agreements, contracts, or transactions, including each rule prescribed by the Commission under this section;

(F) establish procedures for the remediation of noncompliance issues identified by the compliance officer through any—

(i) compliance office review;

(ii) look-back;

(iii) internal or external audit finding;
(iv) self-reported error; or
(v) validated complaint; and

(G) establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.

(3) Annual reports

(A) In general

In accordance with rules prescribed by the Commission, the chief compliance officer shall annually prepare and sign a report that contains a description of—

(i) the compliance of the derivatives clearing organization of the compliance officer with respect to this chapter (including regulations); and

(ii) each policy and procedure of the derivatives clearing organization of the compliance officer (including the code of ethics and conflict of interest policies of the derivatives clearing organization).

(B) Requirements

A compliance report under subparagraph (A) shall—

(i) accompany each appropriate financial report of the derivatives clearing organization that is required to be furnished to the Commission pursuant to this section; and

(ii) include a certification that, under penalty of law, the compliance report is accurate and complete.

(k) [1] Reporting requirements

(1) Duty of derivatives clearing organizations

Each derivatives clearing organization that clears swaps shall provide to the Commission all information that is determined by the Commission to be necessary to perform each responsibility of the Commission under this chapter.

(2) Data collection and maintenance requirements

The Commission shall adopt data collection and maintenance requirements for swaps cleared by derivatives clearing organizations that are comparable to the corresponding requirements for—

(A) swaps data reported to swap data repositories; and

(B) swaps traded on swap execution facilities.

(3) Reports on security-based swap agreements to be shared with the Securities and Exchange Commission

(A) In general

A derivatives clearing organization that clears security-based swap agreements (as defined in section 1a(47)(A)(v) of this title) shall, upon request, open to inspection and examination to the Securities and Exchange Commission all books and records relating to such security-based swap agreements, consistent with the confidentiality and disclosure requirements of section 12 of this title.

(B) Jurisdiction

Nothing in this paragraph shall affect the exclusive jurisdiction of the Commission to prescribe recordkeeping and reporting requirements for a derivatives clearing organization that is registered with the Commission.

(4) Information sharing

Subject to section 12 of this title, and upon request, the Commission shall share information collected under paragraph (2) with—

(A) the Board;
(B) the Securities and Exchange Commission;
(C) each appropriate prudential regulator;
(D) the Financial Stability Oversight Council;
(E) the Department of Justice; and
(F) any other person that the Commission determines to be appropriate, including—
(i) foreign financial supervisors (including foreign futures authorities);
(ii) foreign central banks; and
(iii) foreign ministries.

(5) Confidentiality agreement

Before the Commission may share information with any entity described in paragraph (4), the Commission shall receive a written agreement from each entity stating that the entity shall abide by the confidentiality requirements described in section 12 of this title relating to the information on swap transactions that is provided.

(6) Public information

Each derivatives clearing organization that clears swaps shall provide to the Commission (including any designee of the Commission) information under paragraph (2) in such form and at such frequency as is required by the Commission to comply with the public reporting requirements contained in section 2(a)(13) of this title.

(Sept. 21, 1922, ch. 369, §5b, as added Pub. L. 106–554, §1(a)(5) [title I, §112(f)], Dec. 21, 2000, 114 Stat. 2763, 2763A–396; amended Pub. L. 111–203, title VII, §§721(e)(6), 725(a)–(c), (e), (h), July 21, 2010, 124 Stat. 1671, 1685–1687, 1693, 1695; Pub. L. 114–94, div. G, title LXXXVI, §86001(a), Dec. 4, 2015, 129 Stat. 1797.)

References in Text

The Securities Exchange Act of 1934, referred to in subsecs. (a)(1)(A)(ii) and (g)(1), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§78a et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

Prior Provisions

A prior section 5b of act Sept. 21, 1922, was renumbered section 5e, and is classified to section 7b of this title.

Amendments

2015—Subsec. (k)(5). Pub. L. 114–94 amended par. (5) generally. Prior to amendment, text read as follows: "Before the Commission may share information with any entity described in paragraph (4)—

"(A) the Commission shall receive a written agreement from each entity stating that the entity shall abide by the confidentiality requirements described in section 12 of this title relating to the information on swap transactions that is provided; and

"(B) each entity shall agree to indemnify the Commission for any expenses arising from litigation relating to the information provided under section 12 of this title."

2010—Subsec. (a). Pub. L. 111–203, §725(a), added subsec. (a) and struck out former subsec. (a) which related to registration requirement of derivatives clearing organizations.

Pub. L. 111–203, §721(e)(6), substituted "section 1a" for "section 1a(9)" in introductory provisions.

Subsec. (b). Pub. L. 111–203, §725(a), added subsec. (b) and struck out former subsec. (b). Prior to amendment, text read as follows: "A derivatives clearing organization that clears agreements, contracts, or transactions excluded from this chapter by section 2(c), 2(d), 2(f), or 2(g) of this title or sections 27 to 27f of this title, or exempted under section 2(h) or 6(c) of this title, or other over-the-counter derivative instruments (as defined in the Federal

Deposit Insurance Corporation Improvement Act of 1991) may register with the Commission as a derivatives clearing organization."

Subsec. (c)(2). Pub. L. 111–203, §725(c), added par. (2) and struck out former par. (2) which related to core principles for derivatives clearing organizations.

Subsec. (f)(1). Pub. L. 111–203, §725(h), inserted at end "In order to minimize systemic risk, under no circumstances shall a derivatives clearing organization be compelled to accept the counterparty credit risk of another clearing organization."

Subsecs. (g) to (i). Pub. L. 111–203, §725(b), added subsecs. (g) to (i).

Subsec. (k). Pub. L. 111–203, §725(e), added subsec. (k).

Effective Date of 2015 Amendment

Pub. L. 114–94, div. G, title LXXXVI, §86001(d), Dec. 4, 2015, 129 Stat. 1798, provided that: "The amendments made by this section [amending this section, section 24a of this title, and section 78m of Title 15, Commerce and Trade] shall take effect as if enacted as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111–203)."

Effective Date of 2010 Amendment

Amendment by Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as a note under section 1a of this title.

Conflicts of Interest

Pub. L. 111–203, title VII, §725(d), July 21, 2010, 124 Stat. 1692, provided that: "The Commodity Futures Trading Commission shall adopt rules mitigating conflicts of interest in connection with the conduct of business by a swap dealer or a major swap participant with a derivatives clearing organization, board of trade, or a swap execution facility that clears or trades swaps in which the swap dealer or major swap participant has a material debt or material equity investment."

[For definitions of terms used in section 725(d) of Pub. L. 111–203, set out above, see section 5301 of Title 12, Banks and Banking.]

[1] *So in original. No subsec. (j) has been enacted.*

§7a–2. Common provisions applicable to registered entities

(a) Acceptable business practices under core principles

(1) In general

Consistent with the purposes of this chapter, the Commission may issue interpretations, or approve interpretations submitted to the Commission, of sections 7(d) and 7a–1(c)(2) of this title, to describe what would constitute an acceptable business practice under such sections.

(2) Effect of interpretation

An interpretation issued under paragraph (1) may provide the exclusive means for complying with each section described in paragraph (1).

(b) Delegation of functions under core principles

(1) In general

A contract market, derivatives transaction execution facility, or electronic trading facility with respect to a significant price discovery contract may comply with any applicable core principle through delegation of any relevant function to a registered futures association or a registered entity that is not an electronic trading facility.

(2) Responsibility

A contract market, derivatives transaction execution facility, or electronic trading facility that delegates a function under paragraph (1) shall remain responsible for carrying out the function.

(3) Noncompliance

If a contract market, derivatives transaction execution facility, or electronic trading facility that delegates a function under paragraph (1) becomes aware that a delegated function is not being performed as required under this chapter, the contract market, derivatives transaction execution facility, or electronic trading facility shall promptly take steps to address the noncompliance.

(c) New contracts, new rules, and rule amendments

(1) In general

A registered entity may elect to list for trading or accept for clearing any new contract, or other instrument, or may elect to approve and implement any new rule or rule amendment, by providing to the Commission (and the Secretary of the Treasury, in the case of a contract of sale of a government security for future delivery (or option on such a contract) or a rule or rule amendment specifically related to such a contract) a written certification that the new contract or instrument or clearing of the new contract or instrument, new rule, or rule amendment complies with this chapter (including regulations under this chapter).

(2) Rule review

The new rule or rule amendment described in paragraph (1) shall become effective, pursuant to the certification of the registered entity and notice of such certification to its members (in a manner to be determined by the Commission), on the date that is 10 business days after the date on which the Commission receives the certification (or such shorter period as determined by the Commission by rule or regulation) unless the Commission notifies the registered entity within such time that it is staying the certification because there exist novel or complex issues that require additional time to analyze, an inadequate explanation by the submitting registered entity, or a potential inconsistency with this chapter (including regulations under this chapter).

(3) Stay of certification for rules

(A) A notification by the Commission pursuant to paragraph (2) shall stay the certification of the new rule or rule amendment for up to an additional 90 days from the date of the notification.

(B) A rule or rule amendment subject to a stay pursuant to subparagraph (A) shall become effective, pursuant to the certification of the registered entity, at the expiration of the period described in subparagraph (A) unless the Commission—

(i) withdraws the stay prior to that time; or

(ii) notifies the registered entity during such period that it objects to the proposed certification on the grounds that it is inconsistent with this chapter (including regulations under this chapter).

(C) The Commission shall provide a not less than 30-day public comment period, within the 90-day period in which the stay is in effect as described in subparagraph (A), whenever the Commission reviews a rule or rule amendment pursuant to a notification by the Commission under this paragraph.

(4) Prior approval

(A) In general

A registered entity may request that the Commission grant prior approval to any new contract or other instrument, new rule, or rule amendment.

(B) Prior approval required

Notwithstanding any other provision of this section, a designated contract market shall submit to the Commission for prior approval each rule amendment that materially changes the terms and conditions, as determined by the Commission, in any contract of sale for future delivery of a commodity specifically enumerated in section 1a(10) [1] of this title (or any option thereon) traded through its facilities if the rule amendment applies to contracts and delivery months which have already been listed for trading and have open interest.

(C) Deadline

If prior approval is requested under subparagraph (A), the Commission shall take final action on the request not later than 90 days after submission of the request, unless the person submitting the request agrees to an extension of the time limitation established under this subparagraph.

(5) Approval

(A) Rules

The Commission shall approve a new rule, or rule amendment, of a registered entity unless the Commission finds that the new rule, or rule amendment, is inconsistent with this chapter (including regulations).

(B) Contracts and instruments

The Commission shall approve a new contract or other instrument unless the Commission finds that the new contract or other instrument would violate this chapter (including regulations).

(C) Special rule for review and approval of event contracts and swaps contracts

(i) Event contracts

In connection with the listing of agreements, contracts, transactions, or swaps in excluded commodities that are based upon the occurrence, extent of an occurrence, or contingency (other than a change in the price, rate, value, or levels of a commodity described in section 1a(2)(i) [2] of this title), by a designated contract market or swap execution facility, the Commission may determine that such agreements, contracts, or transactions are contrary to the public interest if the agreements, contracts, or transactions involve—

(I) activity that is unlawful under any Federal or State law;
(II) terrorism;
(III) assassination;
(IV) war;
(V) gaming; or
(VI) other similar activity determined by the Commission, by rule or regulation, to be contrary to the public interest.

(ii) Prohibition

No agreement, contract, or transaction determined by the Commission to be contrary to the public interest under clause (i) may be listed or made available for clearing or trading on or through a registered entity.

(iii) Swaps contracts

(I) In general

In connection with the listing of a swap for clearing by a derivatives clearing organization, the Commission shall determine, upon request or on its own motion, the initial eligibility, or the continuing qualification, of a derivatives clearing organization to clear such a swap under those criteria, conditions, or rules that the Commission, in its discretion, determines.

(II) Requirements

Any such criteria, conditions, or rules shall consider—

(aa) the financial integrity of the derivatives clearing organization; and

(bb) any other factors which the Commission determines may be appropriate.

(iv) Deadline

The Commission shall take final action under clauses (i) and (ii) in not later than 90 days from the commencement of its review unless the party seeking to offer the contract or swap agrees to an extension of this time limitation.

(d) Repealed. Pub. L. 111–203, title VII, §745(c), July 21, 2010, 124 Stat. 1737

(e) Reservation of emergency authority

Nothing in this section shall limit or in any way affect the emergency powers of the Commission provided in section 12a(9) of this title.

(f) Rules to avoid duplicative regulation of dual registrants

Consistent with this chapter, each designated contract market and registered derivatives transaction execution facility shall issue such rules as are necessary to avoid duplicative or conflicting rules applicable to any futures commission merchant registered with the Commission pursuant to section 6f(a) of this title (except paragraph (2) thereof), that is also registered with the Securities and Exchange Commission pursuant to section 78o(b) of title 15 (except paragraph (11) thereof) with respect to the application of—

(1) rules of such designated contract market or registered derivatives transaction execution facility of the type specified in section 6d(e) of this title involving security futures products; and

(2) similar rules of national securities associations registered pursuant to section 78o–3(a) of title 15 and national securities exchanges registered pursuant to section 78f(g) of title 15 involving security futures products.

(Sept. 21, 1922, ch. 369, §5c, as added and amended Pub. L. 106–554, §1(a)(5) [title I, §113, title II, §251(h)], Dec. 21, 2000, 114 Stat. 2763, 2763A–399, 2763A–444; Pub. L. 110–234, title XIII, §§13105(e), (f), 13203(i)–(k), May 22, 2008, 122 Stat. 1434, 1440, 1441; Pub. L. 110–246, §4(a), title XIII, §§13105(e), (f), 13203(i)–(k), June 18, 2008, 122 Stat. 1664, 2196, 2202, 2203; Pub. L. 111–203, title VII, §§717(d), 721(e)(7), 745, 749(c), July 21, 2010, 124 Stat. 1652, 1671, 1735, 1747.)

References in Text

This chapter, referred to in subsec. (c)(5)(A), was in the original "this subtitle", and was translated as reading "this Act" to reflect the probable intent of Congress.

Codification

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

Amendments

2010—Subsec. (a)(1). Pub. L. 111–203, §749(c)(1), struck out ", 7a(d)," after "7(d)" and "and section 2(h)(7) of this title with respect to significant price discovery contracts," before "to describe".

Subsec. (a)(2). Pub. L. 111–203, §745(a), added par. (2) and struck out former par. (2). Prior to amendment, text read as follows: "An interpretation issued under paragraph (1) shall not provide the exclusive means for complying with such sections."

Subsec. (c). Pub. L. 111–203, §745(b), added subsec. (c) and struck out former subsec. (c) which related to new contracts, new rules, and rule amendments and Commission approval upon certification of compliance with this chapter.

Subsec. (c)(1). Pub. L. 111–203, §717(d), designated existing provisions as subpar. (A), inserted heading, and added subpar. (B).

Subsec. (c)(2)(B). Pub. L. 111–203, §721(e)(7), substituted "section 1a(9)" for "section 1a(4)".

Subsec. (d). Pub. L. 111–203, §745(c), struck out subsec. (d) which related to violation of core principles.

Subsec. (f)(1). Pub. L. 111–203, §749(c)(2), substituted "section 6d(e) of this title" for "section 6d(c) of this title".

2008—Subsec. (a)(1). Pub. L. 110–246, §13203(i), which directed amendment of par. (1) by inserting ", and section 2(h)(7) of this title with respect to significant price discovery contracts," after ", and 7a–1(d)(2) of this title", was executed by making the insertion after ", and 7a–1(c)(2) of this title" to reflect the probable intent of Congress and the intervening amendment by Pub. L. 110–246, §13105(e). See below.

Pub. L. 110–246, §13105(e), substituted "7a–1(c)(2)" for "7a–1(d)(2)".

Subsec. (b)(1). Pub. L. 110–246, §13203(j)(1), added par. (1) and struck out heading and text of former par. (1). Text read as follows: "A contract market or derivatives transaction execution facility may comply with any applicable core principle through delegation of any relevant function to a registered futures association or another registered entity."

Subsec. (b)(2), (3). Pub. L. 110–246, §13203(j)(2), (3), substituted "contract market, derivatives transaction execution facility, or electronic trading facility" for "contract market or derivatives transaction execution facility" wherever appearing.

Subsec. (d)(1). Pub. L. 110–246, §13203(k), which directed amendment of par. (1) by inserting "or 2(h)(7)(C) of this title with respect to a significant price discovery contract traded or executed on an electronic trading facility," after "7a–1(d)(2)", was executed by making the insertion after "7a–1(c)(2)" in introductory provisions to reflect the probable intent of Congress and the intervening amendment by Pub. L. 110–246, §13105(e). See below.

Pub. L. 110–246, §13105(e), substituted "7a–1(c)(2)" for "7a–1(d)(2)" in introductory provisions.

Subsec. (f)(1). Pub. L. 110–246, §13105(f), substituted "6d(c)" for "6d(3)".

2000—Subsec. (f). Pub. L. 106–554, §1(a)(5) [title II, §251(h)], added subsec. (f).

Effective Date of 2010 Amendment

Amendment by Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as a note under section 1a of this title.

Effective Date of 2008 Amendment

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of this title.

Amendment by section 13203(i)–(k) of Pub. L. 110–246 effective June 18, 2008, see section 13204(a) of Pub. L. 110–246, set out as a note under section 2 of this title.

[1] *So in original. Probably should be "section 1a(9)".*

[2] *So in original. There is no section "1a(2)(i)" in this title.*

§7a–3. Repealed. Pub. L. 111–203, title VII, §734(a), July 21, 2010, 124 Stat. 1718

Section, act Sept. 21, 1922, ch. 369, §5d, as added Pub. L. 106–554, §1(a)(5) [title I, §114], Dec. 21, 2000, 114 Stat. 2763, 2763A–401, related to exempt boards of trade.

Effective Date of Repeal

Repeal effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle

A, see section 754 of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 1a of this title.

§7b. Suspension or revocation of designation as registered entity

The failure of a registered entity to comply with any provision of this chapter, or any regulation or order of the Commission under this chapter, shall be cause for the suspension of the registered entity for a period not to exceed 180 days, or revocation of designation as a registered entity, in accordance with the procedures and subject to the judicial review provided in section 8(b) of this title.

(Sept. 21, 1922, ch. 369, §5e, formerly §5b, as added June 15, 1936, ch. 545, §7, 49 Stat. 1498; amended Pub. L. 90–258, §13, Feb. 19, 1968, 82 Stat. 30; Pub. L. 93–463, title I, §103(a), (b), Oct. 23, 1974, 88 Stat. 1392; Pub. L. 102–546, title II, §209(b)(3), Oct. 28, 1992, 106 Stat. 3607; renumbered §5e and amended Pub. L. 106–554, §1(a)(5) [title I, §§110(1), 115], Dec. 21, 2000, 114 Stat. 2763, 2763A–384, 2763A–402; Pub. L. 110–234, title XIII, §13203(l), May 22, 2008, 122 Stat. 1441; Pub. L. 110–246, §4(a), title XIII, §13203(l), June 18, 2008, 122 Stat. 1664, 2203; Pub. L. 111–203, title VII, §749(d), July 21, 2010, 124 Stat. 1747.)

Codification

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

Amendments

2010—Pub. L. 111–203 struck out "or revocation of the right of an electronic trading facility to rely on the exemption set forth in section 2(h)(3) of this title with respect to a significant price discovery contract," after "or revocation of designation as a registered entity,".

2008—Pub. L. 110–246, §13203(l), inserted ", or revocation of the right of an electronic trading facility to rely on the exemption set forth in section 2(h)(3) of this title with respect to a significant price discovery contract," after "designation as a registered entity".

2000—Pub. L. 106–554, §1(a)(5) [title I, §115], amended section generally. Prior to amendment, section read as follows: "The failure or refusal of any board of trade to comply with any of the provisions of this chapter, or any of the rules, regulations, or orders of the Commission or the commission thereunder, shall be cause for suspending for a period not to exceed six months or revoking the designation of such board of trade as a 'contract market' in accordance with the procedure and subject to the judicial review provided in section 8(b) of this title."

1992—Pub. L. 102–546 substituted reference to section 8(b) of this title for reference to section 8 of this title.

1974—Pub. L. 93–463, §103(a), provided for substitution of "Commission" for "Secretary of Agriculture" except where such words would be stricken by section 103(b), which directed striking the words "the Secretary of Agriculture or" where they appeared in the phrase "the Secretary of Agriculture or the Commission". Because the word "commission" was not capitalized in the text of this section, section 103(b) did not apply to this section and therefore section 103(a) was executed, resulting in the substitution of "the Commission or the commission" for "the Secretary of Agriculture or the commission".

1968—Pub. L. 90–258 substituted "rules, regulations, or orders of the Secretary of Agriculture or the commission" for "rules and regulations of the Secretary of Agriculture".

Effective Date of 2010 Amendment

Amendment by Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as a note under section 1a of this title.

Effective Date of 2008 Amendment

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of this title.

Amendment by section 13203(l) of Pub. L. 110–246 effective June 18, 2008, see section 13204(a) of Pub. L. 110–246, set out as a note under section 2 of this title.

Effective Date of 1974 Amendment

For effective date of amendment by Pub. L. 93–463, see section 418 of Pub. L. 93–463, set out as a note under section 2 of this title.

Effective Date of 1968 Amendment

Amendment by Pub. L. 90–258 effective 120 days after Feb. 19, 1968, see section 28 of Pub. L. 90–258, set out as a note under section 2 of this title.

Effective Date

For effective date of section, see section 13 of act June 15, 1936, set out as an Effective Date of 1936 Amendment note under section 1 of this title.

§7b–1. Designation of securities exchanges and associations as contract markets

(a) Any board of trade that is registered with the Securities and Exchange Commission as a national securities exchange, is a national securities association registered pursuant to section 78o–3(a) of title 15, or is an alternative trading system shall be a designated contract market in security futures products if—

(1) such national securities exchange, national securities association, or alternative trading system lists or trades no other contracts of sale for future delivery, except for security futures products;

(2) such national securities exchange, national securities association, or alternative trading system files written notice with the Commission in such form as the Commission, by rule, may prescribe containing such information as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of customers; and

(3) the registration of such national securities exchange, national securities association, or alternative trading system is not suspended pursuant to an order by the Securities and Exchange Commission.

Such designation shall be effective contemporaneously with the submission of notice, in written or electronic form, to the Commission.

(b)(1) A national securities exchange, national securities association, or alternative trading system that is designated as a contract market pursuant to this section shall be exempt from the following provisions of this chapter and the rules thereunder:

(A) Subsections (c), (e), and (g) of section 6c of this title.

(B) Section 6j of this title.

(C) Section 7 of this title.

(D) Section 7a–2 of this title.

(E) Section 10a of this title.

(F) Section 12(d) of this title.

(G) Section 13(f) [1] of this title.

(H) Section 20 of this title.

(2) An alternative trading system that is a designated contract market under this section shall be required to be a member of a futures association registered under section 21 of this title and shall be exempt from any provision of this chapter that would require such alternative trading system to—

(A) set rules governing the conduct of subscribers other than the conduct of such subscribers' trading on such alternative trading system; or

(B) discipline subscribers other than by exclusion from trading.

(3) To the extent that an alternative trading system is exempt from any provision of this chapter pursuant to paragraph (2) of this subsection, the futures association registered under section 21 of this title of which the alternative trading system is a member shall set rules governing the conduct of subscribers to the alternative trading system and discipline the subscribers.

(4)(A) Except as provided in subparagraph (B), but notwithstanding any other provision of this chapter, the Commission, by rule, regulation, or order, may conditionally or unconditionally exempt any designated contract market in security futures subject to the designation requirement of this section from any provision of this chapter or of any rule or regulation thereunder, to the extent such exemption is necessary or appropriate in the public interest and is consistent with the protection of investors.

(B) The Commission shall, by rule or regulation, determine the procedures under which an exemptive order under this section is granted and may, in its sole discretion, decline to entertain any application for an order of exemption under this section.

(C) An alternative trading system shall not be deemed to be an exchange for any purpose as a result of the designation of such alternative trading system as a contract market under this section.

(Sept. 21, 1922, ch. 369, §5f, as added Pub. L. 106–554, §1(a)(5) [title II, §252(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–445.)

References in Text

Subsec. (f) of section 13 of this title, referred to in subsec. (b)(1)(G), was redesignated subsec. (e) by Pub. L. 110–246, title XIII, §13105(h)(2), June 18, 2008, 122 Stat. 2197.

[1] *See References in Text note below.*

§7b–2. Privacy

(a) Treatment as financial institutions

Notwithstanding section 509(3)(B) of the Gramm-Leach-Bliley Act [15 U.S.C. 6809(3)(B)], any futures commission merchant, commodity trading advisor, commodity pool operator, or introducing broker that is subject to the jurisdiction of the Commission under this chapter with respect to any financial activity shall be treated as a financial institution for purposes of title V of such Act [15 U.S.C. 6801 et seq.] with respect to such financial activity.

(b) Treatment of CFTC as Federal functional regulator

For purposes of title V of such Act [15 U.S.C. 6801 et seq.], the Commission shall be treated as a Federal functional regulator within the meaning of section 509(2) of such Act [15 U.S.C. 6809(2)] and shall prescribe regulations under such title within 6 months after December 21, 2000.

(Sept. 21, 1922, ch. 369, §5g, as added Pub. L. 106–554, §1(a)(5) [title I, §124], Dec. 21, 2000, 114 Stat. 2763, 2763A–411.)

References in Text

The Gramm-Leach-Bliley Act, referred to in text, is Pub. L. 106–102, Nov. 12, 1999, 113 Stat. 1338. Title V of the Act is classified principally to chapter 94 (§6801 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title of

1999 Amendment note set out under section 1811 of Title 12, Banks and Banking, and Tables.

§7b–3. Swap execution facilities

(a) Registration

(1) In general

No person may operate a facility for the trading or processing of swaps unless the facility is registered as a swap execution facility or as a designated contract market under this section.

(2) Dual registration

Any person that is registered as a swap execution facility under this section shall register with the Commission regardless of whether the person also is registered with the Securities and Exchange Commission as a swap execution facility.

(b) Trading and trade processing

(1) In general

Except as specified in paragraph (2), a swap execution facility that is registered under subsection (a) may—

(A) make available for trading any swap; and

(B) facilitate trade processing of any swap.

(2) Agricultural swaps

A swap execution facility may not list for trading or confirm the execution of any swap in an agricultural commodity (as defined by the Commission) except pursuant to a rule or regulation of the Commission allowing the swap under such terms and conditions as the Commission shall prescribe.

(c) Identification of facility used to trade swaps by contract markets

A board of trade that operates a contract market shall, to the extent that the board of trade also operates a swap execution facility and uses the same electronic trade execution system for listing and executing trades of swaps on or through the contract market and the swap execution facility, identify whether the electronic trading of such swaps is taking place on or through the contract market or the swap execution facility.

(d) Rule-writing

(1) The Securities and Exchange Commission and Commodity Futures Trading Commission may promulgate rules defining the universe of swaps that can be executed on a swap execution facility. These rules shall take into account the price and nonprice requirements of the counterparties to a swap and the goal of this section as set forth in subsection (e).

(2) For all swaps that are not required to be executed through a swap execution facility as defined in paragraph (1), such trades may be executed through any other available means of interstate commerce.

(3) The Securities and Exchange Commission and Commodity Futures Trading Commission shall update these rules as necessary to account for technological and other innovation.

(e) Rule of construction

The goal of this section is to promote the trading of swaps on swap execution facilities and to promote pre-trade price transparency in the swaps market.

(f) Core principles for swap execution facilities

(1) Compliance with core principles

(A) In general

To be registered, and maintain registration, as a swap execution facility, the swap execution facility shall comply with—

(i) the core principles described in this subsection; and

(ii) any requirement that the Commission may impose by rule or regulation pursuant to section 12a(5) of this title.

(B) Reasonable discretion of swap execution facility

Unless otherwise determined by the Commission by rule or regulation, a swap execution facility described in subparagraph (A) shall have reasonable discretion in establishing the manner in which the swap execution facility complies with the core principles described in this subsection.

(2) Compliance with rules

A swap execution facility shall—

(A) establish and enforce compliance with any rule of the swap execution facility, including—

(i) the terms and conditions of the swaps traded or processed on or through the swap execution facility; and

(ii) any limitation on access to the swap execution facility;

(B) establish and enforce trading, trade processing, and participation rules that will deter abuses and have the capacity to detect, investigate, and enforce those rules, including means—

(i) to provide market participants with impartial access to the market; and

(ii) to capture information that may be used in establishing whether rule violations have occurred;

(C) establish rules governing the operation of the facility, including rules specifying trading procedures to be used in entering and executing orders traded or posted on the facility, including block trades; and

(D) provide by its rules that when a swap dealer or major swap participant enters into or facilitates a swap that is subject to the mandatory clearing requirement of section 2(h) of this title, the swap dealer or major swap participant shall be responsible for compliance with the mandatory trading requirement under section 2(h)(8) of this title.

(3) Swaps not readily susceptible to manipulation

The swap execution facility shall permit trading only in swaps that are not readily susceptible to manipulation.

(4) Monitoring of trading and trade processing

The swap execution facility shall—

(A) establish and enforce rules or terms and conditions defining, or specifications detailing—

(i) trading procedures to be used in entering and executing orders traded on or through the facilities of the swap execution facility; and

(ii) procedures for trade processing of swaps on or through the facilities of the swap execution facility; and

(B) monitor trading in swaps to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process through surveillance, compliance, and disciplinary practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions.

(5) Ability to obtain information

The swap execution facility shall—

(A) establish and enforce rules that will allow the facility to obtain any necessary information to perform any of the functions described in this section;

(B) provide the information to the Commission on request; and

(C) have the capacity to carry out such international information-sharing agreements as the Commission may require.

(6) Position limits or accountability

(A) In general

To reduce the potential threat of market manipulation or congestion, especially during trading in the delivery month, a swap execution facility that is a trading facility shall adopt for each of the contracts of the facility, as is necessary and appropriate, position limitations or position accountability for speculators.

(B) Position limits

For any contract that is subject to a position limitation established by the Commission pursuant to section 6a(a) of this title, the swap execution facility shall—

(i) set its position limitation at a level no higher than the Commission limitation; and

(ii) monitor positions established on or through the swap execution facility for compliance with the limit set by the Commission and the limit, if any, set by the swap execution facility.

(7) Financial integrity of transactions

The swap execution facility shall establish and enforce rules and procedures for ensuring the financial integrity of swaps entered on or through the facilities of the swap execution facility, including the clearance and settlement of the swaps pursuant to section 2(h)(1) of this title.

(8) Emergency authority

The swap execution facility shall adopt rules to provide for the exercise of emergency authority, in consultation or cooperation with the Commission, as is necessary and appropriate, including the authority to liquidate or transfer open positions in any swap or to suspend or curtail trading in a swap.

(9) Timely publication of trading information

(A) In general

The swap execution facility shall make public timely information on price, trading volume, and other trading data on swaps to the extent prescribed by the Commission.

(B) Capacity of swap execution facility

The swap execution facility shall be required to have the capacity to electronically capture and transmit trade information with respect to transactions executed on the facility.

(10) Recordkeeping and reporting

(A) In general

A swap execution facility shall—

(i) maintain records of all activities relating to the business of the facility, including a complete audit trail, in a form and manner acceptable to the Commission for a period of 5 years;

(ii) report to the Commission, in a form and manner acceptable to the Commission, such information as the Commission determines to be necessary or appropriate for the Commission to perform the duties of the Commission under this chapter; and

(iii) shall keep any such records relating to swaps defined in section 1a(47)(A)(v) of this title open to inspection and examination by the Securities and Exchange Commission." [1]

(B) Requirements

The Commission shall adopt data collection and reporting requirements for swap execution facilities that are comparable to corresponding requirements for derivatives clearing organizations and swap data repositories.

(11) Antitrust considerations

Unless necessary or appropriate to achieve the purposes of this chapter, the swap execution facility shall not—

(A) adopt any rules or taking [2] any actions that result in any unreasonable restraint of trade; or

(B) impose any material anticompetitive burden on trading or clearing.

(12) Conflicts of interest

The swap execution facility shall—

(A) establish and enforce rules to minimize conflicts of interest in its decision-making process; and

(B) establish a process for resolving the conflicts of interest.

(13) Financial resources

(A) In general

The swap execution facility shall have adequate financial, operational, and managerial resources to discharge each responsibility of the swap execution facility.

(B) Determination of resource adequacy

The financial resources of a swap execution facility shall be considered to be adequate if the value of the financial resources exceeds the total amount that would enable the swap execution facility to cover the operating costs of the swap execution facility for a 1-year period, as calculated on a rolling basis.

(14) System safeguards

The swap execution facility shall—

(A) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk, through the development of appropriate controls and procedures, and automated systems, that—

(i) are reliable and secure; and

(ii) have adequate scalable capacity;

(B) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allow for—

(i) the timely recovery and resumption of operations; and

(ii) the fulfillment of the responsibilities and obligations of the swap execution facility; and

(C) periodically conduct tests to verify that the backup resources of the swap execution facility are sufficient to ensure continued—

(i) order processing and trade matching;

(ii) price reporting;

(iii) market surveillance and

(iv) maintenance of a comprehensive and accurate audit trail.

(15) Designation of chief compliance officer

(A) In general

Each swap execution facility shall designate an individual to serve as a chief compliance officer.

(B) Duties

The chief compliance officer shall—

(i) report directly to the board or to the senior officer of the facility;

(ii) review compliance with the core principles in this subsection;

(iii) in consultation with the board of the facility, a body performing a function similar to that of a board, or the senior officer of the facility, resolve any conflicts of interest that may arise;

(iv) be responsible for establishing and administering the policies and procedures required to be established pursuant to this section;

(v) ensure compliance with this chapter and the rules and regulations issued under this chapter, including rules prescribed by the Commission pursuant to this section; and

(vi) establish procedures for the remediation of noncompliance issues found during compliance office reviews, look backs, internal or external audit findings, self-reported errors, or through validated complaints.

(C) Requirements for procedures

In establishing procedures under subparagraph (B)(vi), the chief compliance officer shall design the procedures to establish the handling, management response, remediation, retesting, and closing of noncompliance issues.

(D) Annual reports

(i) In general

In accordance with rules prescribed by the Commission, the chief compliance officer shall annually prepare and sign a report that contains a description of—

(I) the compliance of the swap execution facility with this chapter; and

(II) the policies and procedures, including the code of ethics and conflict of interest policies, of the swap execution facility.

(ii) Requirements

The chief compliance officer shall—

(I) submit each report described in clause (i) with the appropriate financial report of the swap execution facility that is required to be submitted to the Commission pursuant to this section; and

(II) include in the report a certification that, under penalty of law, the report is accurate and complete.

(g) Exemptions

The Commission may exempt, conditionally or unconditionally, a swap execution facility from registration under this section if the Commission finds that the facility is subject to comparable, comprehensive supervision and regulation on a consolidated basis by the Securities and Exchange Commission, a prudential regulator, or the appropriate governmental authorities in the home country of the facility.

(h) Rules

The Commission shall prescribe rules governing the regulation of alternative swap execution facilities under this section.

(Sept. 21, 1922, ch. 369, §5h, as added Pub. L. 111–203, title VII, §733, July 21, 2010, 124 Stat. 1712.)

Effective Date

Section effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of

subtitle A, see section 754 of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 1a of this title.

[1] *So in original. The closing quotation marks probably should not appear.*

[2] *So in original. Probably should be "take".*

§8. Application for designation as contract market or derivatives transaction execution facility; time; suspension or revocation of designation; hearing; review by court of appeals

(a) Any person desiring to be designated or registered as a contract market or derivatives transaction execution facility shall make application to the Commission for the designation or registration and accompany the same with a showing that it complies with the conditions set forth in this chapter, and with a sufficient assurance that it will continue to comply with the the [1] requirements of this chapter. The Commission shall approve or deny an application for designation or registration as a contract market or derivatives transaction execution facility within 180 days of the filing of the application. If the Commission notifies the person that its application is materially incomplete and specifies the deficiencies in the application, the running of the 180-day period shall be stayed from the time of such notification until the application is resubmitted in completed form: *Provided*, That the Commission shall have not less than sixty days to approve or deny the application from the time the application is resubmitted in completed form. If the Commission denies an application, it shall specify the grounds for the denial. In the event of a refusal to designate or register as a contract market or derivatives transaction execution facility any person that has made application therefor, the person shall be afforded an opportunity for a hearing on the record before the Commission, with the right to appeal an adverse decision after such hearing to the court of appeals as provided for in other cases in subsection (b) of this section.

(b) The Commission is authorized to suspend for a period not to exceed 6 months or to revoke the designation or registration of any contract market or derivatives transaction execution facility on a showing that the contract market or derivatives transaction execution facility is not enforcing or has not enforced its rules of government, made a condition of its designation or registration as set forth in sections 7 through 7a–1 of this title or section 7b–1 of this title, or that the contract market or derivatives transaction execution facility or electronic trading facility, or any director, officer, agent, or employee thereof, otherwise is violating or has violated any of the provisions of this chapter or any of the rules, regulations, or orders of the Commission thereunder. Such suspension or revocation shall only be made after a notice to the officers of the contract market or derivatives transaction execution facility or electronic trading facility affected and upon a hearing on the record: *Provided*, That such suspension or revocation shall be final and conclusive, unless within fifteen days after such suspension or revocation by the Commission such person appeals to the court of appeals for the circuit in which it has its principal place of business, by filing with the clerk of such court a written petition praying that the order of the Commission be set aside or modified in the manner stated in the petition, together with a bond in such sum as the court may determine, conditioned that such person will pay the costs of the proceedings if the court so directs. The clerk of the court in which such a petition is filed shall immediately cause a copy thereof to be delivered to the Commission and file in the court the record in such proceedings, as provided in section 2112 of title 28. The testimony and evidence taken or submitted before the Commission, duly filed as aforesaid as a part of the record, shall be considered by the court of appeals as the evidence in the case. Such

a court may affirm or set aside the order of the Commission or may direct it to modify its order. No such order of the Commission shall be modified or set aside by the court of appeals unless it is shown by the person that the order is unsupported by the weight of the evidence or was issued without due notice and a reasonable opportunity having been afforded to such person for a hearing, or infringes the Constitution of the United States, or is beyond the jurisdiction of the Commission.

(Sept. 21, 1922, ch. 369, §6(a), (b), formerly §6(a), 42 Stat. 1001; June 25, 1948, ch. 646, §32(a), 62 Stat. 991; May 24, 1949, ch. 139, §127, 63 Stat. 107; Pub. L. 85–791, §7(a), Aug. 28, 1958, 72 Stat. 944; Pub. L. 90–258, §§14, 15, Feb. 19, 1968, 82 Stat. 30; Pub. L. 93–463, title I, §103(a)–(c), Oct. 23, 1974, 88 Stat. 1392; Pub. L. 95–405, §13(1), (2), Sept. 30, 1978, 92 Stat. 871; Pub. L. 97–444, title II, §218, Jan. 11, 1983, 96 Stat. 2308; Pub. L. 98–620, title IV, §402(3), Nov. 8, 1984, 98 Stat. 3357; renumbered §6(a), (b) and amended Pub. L. 102–546, title II, §209(a)(1)–(3), title IV, §402(1)(B), (9)(A), Oct. 28, 1992, 106 Stat. 3606, 3624, 3625; Pub. L. 106–554, §1(a)(5) [title I, §123(a)(12)(A), (B)], Dec. 21, 2000, 114 Stat. 2763, 2763A–408; Pub. L. 110–234, title XIII, §13203(m), May 22, 2008, 122 Stat. 1441; Pub. L. 110–246, §4(a), title XIII, §13203(m), June 18, 2008, 122 Stat. 1664, 2203; Pub. L. 111–203, title VII, §749(e), July 21, 2010, 124 Stat. 1747.)

Codification

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

Section is comprised of subsecs. (a) and (b) of section 6 of act Sept. 21, 1922. Subsec. (c) of section 6 is classified to section 9 of this title. Subsecs. (d), (e), (f), and (g) of section 6 are classified to sections 13b, 9a, 9b, and 9c of this title, respectively.

Amendments

2010—Subsec. (b). Pub. L. 111–203 struck out ", or to revoke the right of an electronic trading facility to rely on the exemption set forth in section 2(h)(3) of this title with respect to a significant price discovery contract," before "on a showing".

2008—Subsec. (b). Pub. L. 110–246, §13203(m), added first sentence, in second sentence substituted "Such suspension or revocation shall only be made after a notice to the officers of the contract market or derivatives transaction execution facility or electronic trading facility affected and upon a hearing on the record" for "Such suspension or revocation shall only be after a notice to the officers of the contract market or derivatives transaction execution facility affected and upon a hearing on the record", and struck out former first sentence which read as follows: "The Commission is authorized to suspend for a period not to exceed six months or to revoke the designation or registration of any contract market or derivatives transaction execution facility on a showing that such contract market or derivatives transaction execution facility is not enforcing or has not enforced its rules of government made a condition of its designation or registration as set forth in sections 7 through 7a–1 of this title or section 7b–1 of this title or that such contract market or derivatives transaction execution facility, or any director, officer, agent, or employee thereof, otherwise is violating or has violated any of the provisions of this chapter or any of the rules, regulations, or orders of the Commission or the Commission thereunder."

2000—Subsec. (a). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(12)(A)(iv)], substituted "designate or register as a contract market or derivatives transaction execution facility any person that has made application therefor, the person" for "designate as a 'contract market' any board of trade that has made application therefor, such board of trade" in last sentence.

Pub. L. 106–554, §1(a)(5) [title I, §123(a)(12)(A)(iii)], in third sentence, substituted "person" for "board of trade" and "180-day period" for "one-year period".

Pub. L. 106–554, §1(a)(5) [title I, §123(a)(12)(A)(ii)], substituted "designation or registration as a contract market or derivatives transaction execution facility within 180 days" for "designation as a contract market within one year" in second sentence.

Pub. L. 106–554, §1(a)(5) [title I, §123(a)(12)(A)(i)], in first sentence, substituted "person desiring to be designated or registered as a contract market or derivatives transaction execution facility shall make application to the Commission for the designation or

registration" for "board of trade desiring to be designated a 'contract market' shall make application to the Commission for such designation", "conditions set forth in this chapter" for "above conditions", and "the requirements of this chapter" for "above requirements".

Subsec. (b). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(12)(B)(iii)], substituted "person" for "board of trade" in two places in last sentence.

Pub. L. 106–554, §1(a)(5) [title I, §123(a)(12)(B)(ii)], in second sentence, substituted "contract market or derivatives transaction execution facility affected" for "board of trade affected", "person appeals" for "board of trade appeals" and "person will" for "board of trade will".

Pub. L. 106–554, §1(a)(5) [title I, §123(a)(12)(B)(i)], in first sentence, substituted "designation or registration of any contract market or derivatives transaction execution facility on" for "designation of any board of trade as a 'contract market' upon", "contract market or derivatives transaction execution facility" for "board of trade" in two places, and "designation or registration as set forth in sections 7 through 7a–1 of this title or section 7b–1 of this title" for "designation as set forth in section 7 of this title".

1992—Pub. L. 102–546, §209(a)(1), (2), designated first par. as subsec. (a) and redesignated former par. (a) as subsec. (b).

Subsec. (a). Pub. L. 102–546, §209(a)(3), substituted "subsection (b)" for "paragraph (a)".

Subsec. (b). Pub. L. 102–546, §402(9)(A), which directed amendment of first sentence by striking "the Secretary of Agriculture or", could not be executed because of amendment by Pub. L. 93–463, §103(a). See 1974 Amendment note below.

Pub. L. 102–546, §402(1)(B), substituted "Commission" for "commission" wherever appearing.

1984—Par. (a). Pub. L. 98–620 struck out provisions requiring proceedings in such cases in the court of appeals to be made a preferred cause and expedited in every way.

1983—Pub. L. 97–444 required approval or denial of application within one year period of filing of application, stay of such period following notification that application was incomplete and deficient until resubmission of application, minimum period prior to acting upon resubmitted application, and specification of grounds for denial of application.

1978—Pub. L. 95–405, §13(1), in provisions before par. (a) inserted "on the record" after "opportunity for a hearing".

Par. (a). Pub. L. 95–405, §13(2), inserted "on the record" after "upon a hearing".

1974—Pub. L. 93–463, §103(a), substituted "Commission" for "Secretary of Agriculture" in first par.

Par. (a). Pub. L. 93–463, §103(c), struck out "the Secretary of Agriculture, who shall thereupon notify the other members of" after "The clerk of the court in which such a petition is filed shall immediately cause a copy thereof to be delivered to".

Pub. L. 93–463, §103(a), provided for substitution of "Commission" for "Secretary of Agriculture" except where such words would be stricken by section 103(b), which directed striking the words "the Secretary of Agriculture or" where they appeared in the phrase "the Secretary of Agriculture or the Commission". Because the word "commission" was not capitalized in that phrase in par. (a), section 103(b) did not apply to par. (a) and therefore section 103(a) was executed, resulting in the substitution of "the Commission or the commission" for "the Secretary of Agriculture or the commission".

1968—Pub. L. 90–258, §14, inserted provision affording any board of trade refused a contract market designation a hearing before the Commission with right to appeal in adverse decision to the court of appeals as provided for in par. (a) of this section at end of first par.

Par. (a). Pub. L. 90–258, §15, amended par. (a) generally, striking out such parts both of first sentence and of proviso of last sentence as described the commission as made up of the Secretary of Agriculture, Secretary of Commerce, and Attorney General (covered in definition of "Commission" in section 2 of this title, including representation of such officials by their designees), extending grounds for suspension or revocation of designation to include violations of any provisions of this chapter or rules, regulations, or orders of the Secretary of Agriculture or commission, requiring delivery of appeal petitions to Secretary of Agriculture rather than any member of the commission, who would notify the other members, and filing of commission records of proceedings on appeal by the Secretary of Agriculture and not the commission, striking out provisions describing Secretary of Agriculture as Chairman (now

found in section 2 of this title), superseding such part of proviso of seventh sentence as authorized appeals to the commission from Secretary of Agriculture's refusal of a contract market designation by provisions of first par. of this section, and striking out such other part as made decision of court on appeal from commission final and binding on the parties.

1958—Pub. L. 85–791 substituted "thereupon file in the court the record in such proceedings, as provided in section 2112 of title 28" for "forthwith prepare, certify, and file in the court a full and accurate transcript of the record in such proceedings including the notice to the board of trade, a copy of the charges, the evidence, and the report and order" in third notice, and struck out "certified and" after "duly" in fourth sentence.

Change of Name

Act June 25, 1948, as amended by act May 24, 1949, substituted "court of appeals" for "circuit court of appeals" wherever appearing in this section.

Effective Date of 2010 Amendment

Amendment by Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as a note under section 1a of this title.

Effective Date of 2008 Amendment

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of this title.

Amendment by section 13203(m) of Pub. L. 110–246 effective June 18, 2008, see section 13204(a) of Pub. L. 110–246, set out as a note under section 2 of this title.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98–620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98–620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

Effective Date of 1983 Amendment

Amendment by Pub. L. 97–444 effective Jan. 11, 1983, see section 239 of Pub. L. 97–444, set out as a note under section 2 of this title.

Effective Date of 1978 Amendment

Amendment by Pub. L. 95–405 effective Oct. 1, 1978, see section 28 of Pub. L. 95–405, set out as a note under section 2 of this title.

Effective Date of 1974 Amendment

For effective date of amendment by Pub. L. 93–463, see section 418 of Pub. L. 93–463, set out as a note under section 2 of this title.

Effective Date of 1968 Amendment

Amendment by Pub. L. 90–258 effective 120 days after Feb. 19, 1968, see section 28 of Pub. L. 90–258, set out as a note under section 2 of this title.

[1] So in original.

§9. Prohibition regarding manipulation and false information

(1) Prohibition against manipulation

It shall be unlawful for any person, directly or indirectly, to use or employ, or attempt to use or employ, in connection with any swap, or a contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, any manipulative or deceptive device or contrivance, in

contravention of such rules and regulations as the Commission shall promulgate by not later than 1 year after July 21, 2010, provided no rule or regulation promulgated by the Commission shall require any person to disclose to another person nonpublic information that may be material to the market price, rate, or level of the commodity transaction, except as necessary to make any statement made to the other person in or in connection with the transaction not misleading in any material respect.

(A) Special provision for manipulation by false reporting

Unlawful manipulation for purposes of this paragraph shall include, but not be limited to, delivering, or causing to be delivered for transmission through the mails or interstate commerce, by any means of communication whatsoever, a false or misleading or inaccurate report concerning crop or market information or conditions that affect or tend to affect the price of any commodity in interstate commerce, knowing, or acting in reckless disregard of the fact that such report is false, misleading or inaccurate.

(B) Effect on other law

Nothing in this paragraph shall affect, or be construed to affect, the applicability of section 13(a)(2) of this title.

(C) Good faith mistakes

Mistakenly transmitting, in good faith, false or misleading or inaccurate information to a price reporting service would not be sufficient to violate paragraph (1)(A).

(2) Prohibition regarding false information

It shall be unlawful for any person to make any false or misleading statement of a material fact to the Commission, including in any registration application or any report filed with the Commission under this chapter, or any other information relating to a swap, or a contract of sale of a commodity, in interstate commerce, or for future delivery on or subject to the rules of any registered entity, or to omit to state in any such statement any material fact that is necessary to make any statement of a material fact made not misleading in any material respect, if the person knew, or reasonably should have known, the statement to be false or misleading.

(3) Other manipulation

In addition to the prohibition in paragraph (1), it shall be unlawful for any person, directly or indirectly, to manipulate or attempt to manipulate the price of any swap, or of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity.

(4) Enforcement

(A) Authority of Commission

If the Commission has reason to believe that any person (other than a registered entity) is violating or has violated this section, or any other provision of this chapter (including any rule, regulation, or order of the Commission promulgated in accordance with this section or any other provision of this chapter), the Commission may serve upon the person a complaint.

(B) Contents of complaint

A complaint under subparagraph (A) shall—

(i) contain a description of the charges against the person that is the subject of the complaint; and

(ii) have attached or contain a notice of hearing that specifies the date and location of the hearing regarding the complaint.

(C) Hearing

A hearing described in subparagraph (B)(ii)—

(i) shall be held not later than 3 days after service of the complaint described in subparagraph (A);

(ii) shall require the person to show cause regarding why—

(I) an order should not be made—

(aa) to prohibit the person from trading on, or subject to the rules of, any registered entity; and

(bb) to direct all registered entities to refuse all privileges to the person until further notice of the Commission; and

(II) the registration of the person, if registered with the Commission in any capacity, should not be suspended or revoked; and

(iii) may be held before—

(I) the Commission; or

(II) an administrative law judge designated by the Commission, under which the administrative law judge shall ensure that all evidence is recorded in written form and submitted to the Commission.

(5) Subpoena

For the purpose of securing effective enforcement of the provisions of this chapter, for the purpose of any investigation or proceeding under this chapter, and for the purpose of any action taken under section 16(f) of this title, any member of the Commission or any Administrative Law Judge or other officer designated by the Commission (except as provided in paragraph (7)) may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records that the Commission deems relevant or material to the inquiry.

(6) Witnesses

The attendance of witnesses and the production of any such records may be required from any place in the United States, any State, or any foreign country or jurisdiction at any designated place of hearing.

(7) Service

A subpoena issued under this section [1] may be served upon any person who is not to be found within the territorial jurisdiction of any court of the United States in such manner as the Federal Rules of Civil Procedure prescribe for service of process in a foreign country, except that a subpoena to be served on a person who is not to be found within the territorial jurisdiction of any court of the United States may be issued only on the prior approval of the Commission.

(8) Refusal to obey

In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Commission may invoke the aid of any court of the United States within the jurisdiction in which the investigation or proceeding is conducted, or where such person resides or transacts business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, and other records. Such court may issue an order requiring such person to appear before the Commission or member or Administrative Law Judge or other officer designated by the Commission, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question.

(9) Failure to obey

Any failure to obey such order of the court may be punished by the court as a contempt thereof. All process in any such case may be served in the judicial district wherein such person is an inhabitant or transacts business or wherever such person may be found.

(10) Evidence

On the receipt of evidence under paragraph (4)(C)(iii), the Commission may—

(A) prohibit the person that is the subject of the hearing from trading on, or subject to the rules of, any registered entity and require all registered entities to refuse the person all privileges on the registered entities for such period as the Commission may require in the order;

(B) if the person is registered with the Commission in any capacity, suspend, for a period not to exceed 180 days, or revoke, the registration of the person;

(C) assess such person—

(i) a civil penalty of not more than an amount equal to the greater of—

(I) $140,000; or

(II) triple the monetary gain to such person for each such violation; or

(ii) in any case of manipulation or attempted manipulation in violation of this section or section 13(a)(2) of this title, a civil penalty of not more than an amount equal to the greater of—

(I) $1,000,000; or

(II) triple the monetary gain to the person for each such violation; and

(D) require restitution to customers of damages proximately caused by violations of the person.

(11) Orders

(A) Notice

The Commission shall provide to a person described in paragraph (10) and the appropriate governing board of the registered entity notice of the order described in paragraph (10) by—

(i) registered mail;

(ii) certified mail; or

(iii) personal delivery.

(B) Review

(i) In general

A person described in paragraph (10) may obtain a review of the order or such other equitable relief as determined to be appropriate by a court described in clause (ii).

(ii) Petition

To obtain a review or other relief under clause (i), a person may, not later than 15 days after notice is given to the person under clause (i), file a written petition to set aside the order with the United States Court of Appeals—

(I) for the circuit in which the petitioner carries out the business of the petitioner; or

(II) in the case of an order denying registration, the circuit in which the principal place of business of the petitioner is located, as listed on the application for registration of the petitioner.

(C) Procedure

(i) Duty of clerk of appropriate court

The clerk of the appropriate court under subparagraph (B)(ii) shall transmit to the Commission a copy of a petition filed under subparagraph (B)(ii).

(ii) Duty of Commission

In accordance with section 2112 of title 28, the Commission shall file in the appropriate court described in subparagraph (B)(ii) the record theretofore made.

(iii) Jurisdiction of appropriate court

Upon the filing of a petition under subparagraph (B)(ii), the appropriate court described in subparagraph (B)(ii) may affirm, set aside, or modify the order of the Commission.

(Sept. 21, 1922, ch. 369, §6(c), formerly §6(b), 42 Stat. 1002; June 15, 1936, ch. 545, §8, 49 Stat. 1498; June 25, 1948, ch. 646, §32(a), 62 Stat. 991; May 24, 1949, ch. 139, §127, 63 Stat. 107; June 16, 1955, ch. 151, 69 Stat. 160; Pub. L. 85–791, §7(b), Aug. 28, 1958, 72 Stat. 944; Pub. L. 86–507, §1(2), June 11, 1960, 74 Stat. 200; Pub. L. 90–258, §16, Feb. 19, 1968, 82 Stat. 30; Pub. L. 91–452, title II, §202, Oct. 15, 1970, 84 Stat. 928; Pub. L. 93–463, title I, §103(a), (b), (d), (e), title II, §§204(b), 205(b), 212(a)(1), (2), title IV, §408, Oct. 23, 1974, 88 Stat. 1392, 1397, 1400, 1403, 1414; Pub. L. 95–405, §13(3), Sept. 30, 1978, 92 Stat. 871; Pub. L. 97–444, title II, §219, Jan. 11, 1983, 96 Stat. 2308; Pub. L. 99–641, title I, §103, Nov. 10, 1986, 100 Stat. 3557; renumbered §6(c) and amended Pub. L. 102–546, title II, §§209(a)(1), 212(b), 223, title III, §301, title IV, §402(1)(C), (6), (7), (9)(B), Oct. 28, 1992, 106 Stat. 3606, 3609, 3617, 3622, 3624, 3625; Pub. L. 106–554, §1(a)(5) [title I, §123(a)(12)(C)], Dec. 21, 2000, 114 Stat. 2763, 2763A–409; Pub. L. 110–234, title XIII, §13103(a), May 22, 2008, 122 Stat. 1433; Pub. L. 110–246, §4(a), title XIII, §13103(a), June 18, 2008, 122 Stat. 1664, 2195; Pub. L. 111–203, title VII, §§741(b)(3), 753(a), July 21, 2010, 124 Stat. 1731, 1750.)

References in Text

This section, referred to in par. (7), means section 6 of act Sept. 21, 1922, ch. 369, 42 Stat. 1001. For classification of section 6 to the Code, see Codification note below.

Codification

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

Section is comprised of subsec. (c) of section 6 of act Sept. 21, 1922. Prior to amendment by Pub. L. 111–203, a further provision of subsec. (c) was contained in section 15 of this title and, prior to its incorporation into the Code, contained a provision as to finality of judgments and review by the Supreme Court which is covered by section 1254 of Title 28, Judiciary and Judicial Procedure. Subsecs. (a) and (b) of section 6 are classified to section 8 of this title. Subsecs. (d), (e), (f), and (g) of section 6 are classified to sections 13b, 9a, 9b, and 9c of this title, respectively.

Amendments

2010—Pub. L. 111–203, §753(a), amended section generally. Prior to amendment, section related to exclusion of persons from privilege of "registered entities", procedure for exclusion, review by court of appeals, and enforcement powers of Commission.

Pub. L. 111–203, §741(b)(3), in first sentence, inserted "or of any swap," before "or has willfully made".

2008—Pub. L. 110–246, §13103(a), in cl. (3) of third sentence inserted "(A)" after "assess such person" and added subcl. (B).

2000—Pub. L. 106–554 substituted "registered entity" for "contract market" wherever appearing, "registered entities" for "contract markets" wherever appearing, and "privileges" for "trading privileges" in two places.

1992—Pub. L. 102–546, §402(9)(B), which directed amendment of first sentence by striking "the Secretary of Agriculture or", could not be executed because of amendment by Pub. L. 93–463, §103(a). See 1974 Amendment note below.

Pub. L. 102–546, §§209(a)(1), 212(b), 223, 402(1)(C), (6), substituted, in first sentence, "Commission thereunder" for "commission thereunder", in sentence beginning "Upon evidence received", inserted "(1)", substituted "(2) if" for "and, if", "suspend" for "may suspend", "(3)" for "and may", "the higher of $100,000 or triple the monetary gain to such person" for "$100,000", and inserted before period "and (4) require restitution to customers of damages proximately caused by violations of such persons", and in sentence beginning "After the issuance", substituted "offending person" for "offending person.".

1983—Pub. L. 97–444 struck out "as futures commission merchant or any person associated therewith as described in section 6k of this title, commodity trading advisor, commodity pool operator, or as floor broker hereunder" after "such person, if registered"

and also after "such person is registered" and inserted ", or in the case of an order denying registration, the circuit in which the petitioner's principal place of business listed on petitioner's application for registration is located," after "court of appeals of the circuit in which the petitioner is doing business".

1974—Pub. L. 93–463, §§103(e), 204(b), 205(b), 212(a)(1), (2), 408, substituted "it" for "he", inserted "or any person associated therewith as described in section 6k of this title," after "futures commission merchant" wherever appearing, inserted "commodity trading advisor, commodity pool operator" before "or as floor broker" wherever appearing, inserted provision for the assessment of civil penalties of not more than $100,000 for each violation, set a limit of fifteen days after the issuance of an order within which period the person against whom the order was issued must file with the court of appeals his petition that the order be set aside, and substituted "an Administrative Law Judge" and "Administrative Law Judge" for "a referee" and "referee", respectively.

Pub. L. 93–463, §103(a), provided for substitution of "Commission" for "Secretary of Agriculture" except where such words would be stricken by section 103(b), which directed striking the words "the Secretary of Agriculture or" where they appeared in the phrase "the Secretary of Agriculture or the Commission". Section 103(a) was executed wherever the term "Secretary of Agriculture" appeared in this section including in the phrase "the Secretary of Agriculture or the commission" in the first sentence. Because the word "commission" was not capitalized in that phrase in the first sentence, section 103(b) did not apply to that phrase and therefore section 103(a) was executed, resulting in the substitution of "the Commission or the commission" for "the Secretary of Agriculture or the commission".

1968—Pub. L. 90–258 amended first sentence generally, providing for denial of trading privileges to persons other than contract markets and suspension or revocation of registration of futures commission merchants and floor brokers, who are manipulating or have attempted to manipulate prices, for willful, material, misstatements in, or omissions from, reports or registration statements, and for violations of orders of Secretary of Agriculture or commission, and authorizing the Secretary to prohibit such persons from trading on or subject to rules of any contract market.

1960—Pub. L. 86–507 inserted "or by certified mail" after "registered mail".

1958—Pub. L. 85–791 substituted "transmitted by the clerk of the court to the Secretary of Agriculture and thereupon the Secretary of Agriculture shall file in the court the record theretofore made, as provided in section 2112 of Title 28" for "served upon the Secretary of Agriculture by delivering such copy to him and thereupon the Secretary of Agriculture shall forthwith certify and file in the court a transcript of the record theretofore made, including evidence received" in seventh sentence, and substituted "petition" for "transcript" in eighth sentence.

1936—Act June 15, 1936, among other changes, amended section by inserting provisions relating to the service of complaints and penalties for violations of this chapter.

Change of Name

Act June 25, 1948, as amended by act May 24, 1949, substituted "court of appeals" for "circuit court of appeals" wherever appearing in this section.

Effective Date of 2010 Amendment

Amendment by section 741(b)(3) of Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as a note under section 1a of this title.

Pub. L. 111–203, title VII, §753(d), July 21, 2010, 124 Stat. 1754, provided that:

"(1) The amendments made by this section [amending this section and sections 13b and 25 of this title] shall take effect on the date on which the final rule promulgated by the Commodity Futures Trading Commission [see 76 F.R. 41398, effective Aug. 15, 2011] pursuant to this Act [see Tables for classification] takes effect.

"(2) Paragraph (1) shall not preclude the Commission from undertaking prior to the effective date any rulemaking necessary to implement the amendments contained in this section."

Effective Date of 2008 Amendment

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of this title.

Effective Date of 1983 Amendment

Amendment by Pub. L. 97–444 effective Jan. 11, 1983, see section 239 of Pub. L. 97–444, set out as a note under section 2 of this title.

Effective Date of 1974 Amendment

For effective date of amendment by Pub. L. 93–463, see section 418 of Pub. L. 93–463, set out as a note under section 2 of this title.

Effective Date of 1968 Amendment

Amendment by Pub. L. 90–258 effective 120 days after Feb. 19, 1968, see section 28 of Pub. L. 90–258, set out as a note under section 2 of this title.

Effective Date of 1936 Amendment

Amendment by act June 15, 1936, effective 90 days after June 15, 1936, see section 13 of act June 15, 1936, set out as a note under section 1 of this title.

[1] *See References in Text note below.*

§9a. Assessment of money penalties

(1) In determining the amount of the money penalty assessed under section 9 of this title, the Commission shall consider the appropriateness of such penalty to the gravity of the violation.

(2) Unless the person against whom a money penalty is assessed under section 9 of this title shows to the satisfaction of the Commission within fifteen days from the expiration of the period allowed for payment of such penalty that either an appeal as authorized by section 9 of this title has been taken or payment of the full amount of the penalty then due has been made, at the end of such fifteen-day period and until such person shows to the satisfaction of the Commission that payment of such amount with interest thereon to date of payment has been made—

(A) such person shall be prohibited automatically from the privileges of all registered entities; and

(B) if such person is registered with the Commission, such registration shall be suspended automatically.

(3) If a person against whom a money penalty is assessed under section 9 of this title takes an appeal and if the Commission prevails or the appeal is dismissed, unless such person shows to the satisfaction of the Commission that payment of the full amount of the penalty then due has been made by the end of thirty days from the date of entry of judgment on the appeal—

(A) such person shall be prohibited automatically from the privileges of all registered entities; and

(B) if such person is registered with the Commission, such registration shall be suspended automatically.

If the person against whom the money penalty is assessed fails to pay such penalty after the lapse of the period allowed for appeal or after the affirmance of such penalty, the Commission may refer the matter to the Attorney General who shall recover such penalty by action in the appropriate United States district court.

(4) Any designated clearing organization that knowingly or recklessly evades or participates in or facilitates an evasion of the requirements of section 2(h) of this title

shall be liable for a civil money penalty in twice the amount otherwise available for a violation of section 2(h) of this title.

(5) Any swap dealer or major swap participant that knowingly or recklessly evades or participates in or facilitates an evasion of the requirements of section 2(h) of this title shall be liable for a civil money penalty in twice the amount otherwise available for a violation of section 2(h) of this title.

(Sept. 21, 1922, ch. 369, §6(e), formerly §6(d), as added Pub. L. 93–463, title II, §212(a)(3), Oct. 23, 1974, 88 Stat. 1403; renumbered §6(e) and amended Pub. L. 102–546, title II, §209(a)(1), (5), Oct. 28, 1992, 106 Stat. 3606; Pub. L. 106–554, §1(a)(5) [title I, §123(a)(12)(E)], Dec. 21, 2000, 114 Stat. 2763, 2763A–409; Pub. L. 111–203, title VII, §741(b)(11), July 21, 2010, 124 Stat. 1732.)

Codification

Section is comprised of subsec. (e) of section 6 of act Sept. 21, 1922. Subsecs. (a) and (b) of section 6 are classified to section 8 of this title. Subsec. (c) of section 6 is classified to section 9 of this title. Subsecs. (d), (f), and (g) of section 6 are classified to sections 13b, 9b, and 9c of this title, respectively.

Amendments

2010—Pars. (4), (5). Pub. L. 111–203 added pars. (4) and (5).

2000—Pars. (2)(A), (3)(A). Pub. L. 106–554 substituted "the privileges of all registered entities" for "trading on all contract markets".

1992—Pub. L. 102–546 amended section generally. Prior to amendment, section read as follows: "In determining the amount of the money penalty assessed under sections 9 and 15 of this title, the Commission shall consider, in the case of a person whose primary business involves the use of the commodity futures market—the appropriateness of such penalty to the size of the business of the person charged, the extent of such person's ability to continue in business, and the gravity of the violation; and in the case of a person whose primary business does not involve the use of the commodity futures market—the appropriateness of such penalty to the net worth of the person charged, and the gravity of the violation. If the offending person upon whom such penalty is imposed, after the lapse of the period allowed for appeal or after the affirmance of such penalty, shall fail to pay such penalty the Commission shall refer the matter to the Attorney General who shall recover such penalty by action in the appropriate United States district court."

Effective Date of 2010 Amendment

Amendment by Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as a note under section 1a of this title.

Effective Date

For effective date of section, see section 418 of Pub. L. 93–463, set out as an Effective Date of 1974 Amendment note under section 2 of this title.

§9b. Rules prohibiting deceptive and other abusive telemarketing acts or practices

(1) Except as provided in paragraph (2), not later than six months after the effective date of rules promulgated by the Federal Trade Commission under section 6102(a) of title 15, the Commission shall promulgate, or require each registered futures association to promulgate, rules substantially similar to such rules to prohibit deceptive and other abusive telemarketing acts or practices by any person registered or exempt from registration under this chapter in connection with such person's business as a futures commission merchant, introducing broker, commodity

trading advisor, commodity pool operator, leverage transaction merchant, floor broker, or floor trader, or a person associated with any such person.

(2) The Commission is not required to promulgate rules under paragraph (1) if it determines that—

(A) rules adopted by the Commission under this chapter provide protection from deceptive and abusive telemarketing by persons described under paragraph (1) substantially similar to that provided by rules promulgated by the Federal Trade Commission under section 6102(a) of title 15; or

(B) such a rule promulgated by the Commission is not necessary or appropriate in the public interest, or for the protection of customers in the futures and options markets, or would be inconsistent with the maintenance of fair and orderly markets.

If the Commission determines that an exception described in subparagraph (A) or (B) applies, the Commission shall publish in the Federal Register its determination with the reasons for it.

(Sept. 21, 1922, ch. 369, §6(f), as added Pub. L. 103–297, §3(e)(2), Aug. 16, 1994, 108 Stat. 1547.)

Codification

Section is comprised of subsec. (f) of section 6 of act Sept. 21, 1922. Subsecs. (a) and (b) of section 6 are classified to section 8 of this title. Subsec. (c) of section 6 is classified to section 9 of this title. Subsecs. (d), (e), and (g) of section 6 are classified to sections 13b, 9a, and 9c of this title, respectively.

§9c. Notice of investigations and enforcement actions

The Commission shall provide the Securities and Exchange Commission with notice of the commencement of any proceeding and a copy of any order entered by the Commission pursuant to section 9 and 13b of this title against any futures commission merchant or introducing broker registered pursuant to section 6f(a)(2) of this title, any floor broker or floor trader exempt from registration pursuant to section 6f(a)(3) of this title, any associated person exempt from registration pursuant to section 6k(6) of this title, or any board of trade designated as a contract market pursuant to section 7b–1 of this title.

(Sept. 21, 1922, ch. 369, §6(g), as added Pub. L. 106–554, §1(a)(5) [title II, §253(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–449.)

Codification

Section is comprised of subsec. (g) of section 6 of act Sept. 21, 1922. Subsecs. (a) and (b) of section 6 are classified to section 8 of this title. Subsec. (c) of section 6 is classified to section 9 of this title. Subsecs. (d), (e), and (f) of section 6 are classified to sections 13b, 9a, and 9b of this title, respectively.

§10. Repealed. June 25, 1948, ch. 646, §39, 62 Stat. 992, eff. Sept. 1, 1948

Section, acts Sept. 21, 1922, ch. 369, §6(b), 42 Stat. 1001; June 15, 1936, ch. 545, §8(k), 49 Stat. 1499, related to review by Supreme Court on certiorari. See section 1254 of Title 28, Judiciary and Judicial Procedure.

§10a. Cooperative associations and corporations, exclusion from board of trade; rules of board inapplicable to payment of compensation by association

(a) No board of trade which has been designated or registered as a contract market or a derivatives transaction execution facility exclude [1] from membership in, and all privileges on, such board of trade, any association or corporation engaged in cash commodity business having adequate financial responsibility which is organized under the cooperative laws of any State, or which has been recognized as a cooperative association of producers by the United States Government or by any agency thereof, if such association or corporation complies and agrees to comply with such terms and conditions as are or may be imposed lawfully upon other members of such board, and as are or may be imposed lawfully upon a cooperative association of producers engaged in cash commodity business, unless such board of trade is authorized by the commission to exclude such association or corporation from membership and privileges after hearing held upon at least three days' notice subsequent to the filing of complaint by the board of trade: *Provided, however*, That if any such association or corporation shall fail to meet its obligations with any established clearing house or clearing agency of any contract market, such association or corporation shall be ipso facto debarred from further trading on such contract market, except such trading as may be necessary to close open trades and to discharge existing contracts in accordance with the rules of such contract market applicable in such cases. Such commission may prescribe that such association or corporation shall have and retain membership and privileges, with or without imposing conditions, or it may permit such board of trade immediately to bar such association or corporation from membership and privileges. Any order of said commission entered hereunder shall be reviewable by the court of appeals for the circuit in which such association or corporation, or such board of trade, has its principal place of business, on written petition either of such association or corporation, or of such board of trade, under the procedure provided in section 8(b) of this title, but such order shall not be stayed by the court pending review.

(b) No rule of any board of trade designated or registered as a contract market or a derivatives transaction execution facility shall forbid or be construed to forbid the payment of compensation on a commodity-unit basis, or otherwise, by any federated cooperative association to its regional member-associations for services rendered or to be rendered in connection with any organization work, educational activity, or procurement of patronage, provided no part of any such compensation is returned to patrons (whether members or nonmembers) of such cooperative association, or of its regional or local member-associations, otherwise than as a dividend on capital stock or as a patronage dividend out of the net earnings or surplus of such federated cooperative association.

(Sept. 21, 1922, ch. 369, §6a, as added June 15, 1936, ch. 545, §9, 49 Stat. 1499; amended June 25, 1948, ch. 646, §32(a), 62 Stat. 991; May 24, 1949, ch. 139, §127, 63 Stat. 107; Pub. L. 102–546, title II, §209(b)(4), title IV, §402(8), Oct. 28, 1992, 106 Stat. 3607, 3625; Pub. L. 106–554, §1(a)(5) [title I, §123(a)(13)], Dec. 21, 2000, 114 Stat. 2763, 2763A–409.)

Amendments

2000—Subsec. (a). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(13)(A)], substituted "designated or registered as a contract market or a derivatives transaction execution facility" for "designated as a 'contract market' shall".

Subsec. (b). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(13)(B)], substituted "designated or registered as a contract market or a derivatives transaction execution facility" for "designated as a contract market".

1992—Pub. L. 102–546 redesignated subsecs. (1) and (2) as (a) and (b), respectively, and in subsec. (a) substituted reference to section 8(b) of this title for reference to section 8 of this title.

Change of Name

Act June 25, 1948, as amended by act May 24, 1949, substituted "court of appeals" for "circuit court of appeals" wherever appearing.

Effective Date

For effective date of section, see section 13 of act June 15, 1936, set out as an Effective Date of 1936 Amendment note under section 1 of this title.

[1] So in original. Probably should read "shall exclude".

§11. Vacation on request of designation or registration as "registered entity"; redesignation or reregistration

Any person that has been designated or registered a registered entity in the manner provided in this chapter may have such designation or registration vacated and set aside by giving notice in writing to the Commission requesting that its designation or registration as a registered entity be vacated, which notice shall be served at least ninety days prior to the date named therein as the date when the vacation of designation or registration shall take effect. Upon receipt of such notice the Commission shall forthwith order the vacation of the designation or registration of the registered entity, effective upon the day named in the notice, and shall forthwith send a copy of the notice and its order to all other registered entities. From and after the date upon which the vacation became effective the said person can thereafter be designated or registered again a registered entity by making application to the Commission in the manner in this chapter provided for an original application.

(Sept. 21, 1922, ch. 369, §7, 42 Stat. 1002; Pub. L. 93–463, title I, §103(a), (e), Oct. 23, 1974, 88 Stat. 1392; Pub. L. 106–554, §1(a)(5) [title I, §123(a)(17)], Dec. 21, 2000, 114 Stat. 2763, 2763A–409.)

Amendments

2000—Pub. L. 106–554, in first sentence, substituted "person" for "board of trade", inserted "or registered" after "designated", inserted "or registration" after "designation" wherever appearing, and substituted "registered entity" for "contract market" in two places, in second sentence, substituted "designation or registration of the registered entity" for "designation of such board of trade as a contract market" and "registered entities" for "contract markets", and, in last sentence, substituted "person" for "board of trade" and "designated or registered again a registered entity" for "designated again a contract market".

1974—Pub. L. 93–463 substituted "Commission" for "Secretary of Agriculture" and "its order" for "his order".

Effective Date of 1974 Amendment

For effective date of amendment by Pub. L. 93–463, see section 418 of Pub. L. 93–463, set out as a note under section 2 of this title.

§12. Public disclosure

(a) Investigations respecting operations of boards of trade and others subject to this chapter; publication of results; restrictions; information received from foreign futures authorities; undercover operations; notice of investigations and enforcement actions

(1) For the efficient execution of the provisions of this chapter, and in order to provide information for the use of Congress, the Commission may make such investigations as it deems necessary to ascertain the facts regarding the operations of boards of trade and other persons subject to the provisions of this chapter. The Commission may publish from time to time the results of any such investigation and

such general statistical information gathered therefrom as it deems of interest to the public: *Provided*, That except as otherwise specifically authorized in this chapter, the Commission may not publish data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers: *Provided further*, That the Commission may withhold from public disclosure any data or information concerning or obtained in connection with any pending investigation of any person. The Commission shall not be compelled to disclose any information or data obtained from a foreign futures authority if—

(A) the foreign futures authority has in good faith determined and represented to the Commission that disclosure of such information or data by that foreign futures authority would violate the laws applicable to that foreign futures authority; and

(B) the Commission obtains such information pursuant to—

(i) such procedure as the Commission may authorize for use in connection with the administration or enforcement of this chapter; or

(ii) a memorandum of understanding with that foreign futures authority;

except that nothing in this subsection shall prevent the Commission from disclosing publicly any information or data obtained by the Commission from a foreign futures authority when such disclosure is made in connection with a congressional proceeding, an administrative or judicial proceeding commenced by the United States or the Commission, in any receivership proceeding involving a receiver appointed in a judicial proceeding commenced by the United States or the Commission, or in any proceeding under title 11 in which the Commission has intervened or in which the Commission has the right to appear and be heard. Nothing in this subsection shall be construed to authorize the Commission to withhold information or data from Congress. For purposes of section 552 of title 5, this subsection shall be considered a statute described in subsection (b)(3)(B) of section 552.

(2) In conducting investigations authorized under this subsection or any other provision of this chapter, the Commission shall continue, as the Commission determines necessary, to request the assistance of and cooperate with the appropriate Federal agencies in the conduct of such investigations, including undercover operations by such agencies. The Commission and the Department of Justice shall assess the effectiveness of such undercover operations and, within two years of October 28, 1992, shall recommend to Congress any additional undercover or other authority for the Commission that the Commission or the Department of Justice believes to be necessary.

(3) The Commission shall provide the Securities and Exchange Commission with notice of the commencement of any proceeding and a copy of any order entered by the Commission against any futures commission merchant or introducing broker registered pursuant to section 6f(a)(2) of this title, any floor broker or floor trader exempt from registration pursuant to section 6f(a)(3) of this title, any associated person exempt from registration pursuant to section 6k(6) of this title, or any board of trade designated as a contract market pursuant to section 7b–1 of this title.

(b) Business matters; congressional, administrative, judicial, and bankruptcy proceedings

The Commission may disclose publicly any data or information that would separately disclose the market positions, business transactions, trade secrets, or names of customers of any person when such disclosure is made in connection with a congressional proceeding, in an administrative or judicial proceeding brought under this chapter, in any receivership proceeding involving a receiver appointed in a judicial proceeding brought under this chapter, or in any bankruptcy proceeding in which the Commission has intervened or in which the Commission has the right to

appear and be heard under title 11. This subsection shall not apply to the disclosure of data or information obtained by the Commission from a foreign futures authority.

(c) Reports respecting conduct of registered entities or transactions of violators; contents

The Commission may make or issue such reports as it deems necessary, or such opinions or orders as may be required under other provisions of law, relative to the conduct of any registered entity or to the transactions of any person found guilty of violating the provisions of this chapter or the rules, regulations, or orders of the Commission thereunder in proceedings brought under sections 8, 9, 9a, 9b, 9c, and 13b of this title. In any such report or opinion, the Commission may set forth the facts as to any actual transaction or any information referred to in subsection (b) of this section, if such facts or information have previously been disclosed publicly in connection with a congressional proceeding, or in an administrative or judicial proceeding brought under this chapter.

(d) Investigations respecting marketing conditions of commodities and commodity products and byproducts; reports

The Commission, upon its own initiative or in cooperation with existing governmental agencies, shall investigate the marketing conditions of commodities and commodity products and byproducts, including supply and demand for these commodities, cost to the consumer, and handling and transportation charges. It shall also compile and furnish to producers, consumers, and distributors, by means of regular or special reports, or by such other methods as it deems most effective, information respecting the commodity markets, together with information on supply, demand, prices, and other conditions in this and other countries that affect the markets.

(e) Names and addresses of traders of boards of trade previously disclosed; disclosure to Congress and agencies or departments of States or foreign governments or foreign futures authority

The Commission may disclose and make public, where such information has previously been disclosed publicly in accordance with the provisions of this section, the names and addresses of all traders on the boards of trade on the commodity markets with respect to whom the Commission has information, and any other information in the possession of the Commission relating to the amount of commodities purchased or sold by each such trader. Upon the request of any committee of either House of Congress, acting within the scope of its jurisdiction, the Commission shall furnish to such committee the names and addresses of all traders on such boards of trade with respect to whom the Commission has information, and any other information in the possession of the Commission relating to the amount of any commodity purchased or sold by each such trader. Upon the request of any department or agency of the Government of the United States, acting within the scope of its jurisdiction, the Commission may furnish to such department or agency any information in the possession of the Commission obtained in connection with the administration of this chapter. However, any information furnished under this subsection to any Federal department or agency shall not be disclosed by such department or agency except in any action or proceeding under the laws of the United States to which it, the Commission, or the United States is a party. Upon the request of any department or agency of any State or any political subdivision thereof, acting within the scope of its jurisdiction, any foreign futures authority, or any department or agency of any foreign government or any political subdivision thereof, acting within the scope of its jurisdiction, the Commission may furnish to such foreign futures authority, department or agency any information in the possession of the Commission obtained in connection with the administration of this chapter. Any information furnished to any department or agency of any State or

political subdivision thereof shall not be disclosed by such department or agency except in connection with an adjudicatory action or proceeding brought under this chapter or the laws of such State or political subdivision to which such State or political subdivision or any department or agency thereof is a party. The Commission shall not furnish any information to a foreign futures authority or to a department, central bank and ministries, or agency of a foreign government or political subdivision thereof unless the Commission is satisfied that the information will not be disclosed by such foreign futures authority, department, central bank and ministries, or agency except in connection with an adjudicatory action or proceeding brought under the laws of such foreign government or political subdivision to which such foreign government or political subdivision or any department, central bank and ministries, or agency thereof, or foreign futures authority, is a party.

(f) Compliance with subpoena after notice to informant; congressional subpoenas and requests for information excepted

The Commission shall disclose information in its possession pursuant to a subpoena or summons only if—

(1) a copy of the subpoena or summons has been mailed to the last known home or business address of the person who submitted the information that is the subject of the subpoena or summons, if the address is known to the Commission, or, if such mailing would be unduly burdensome, the Commission provides other appropriate notice of the subpoena or summons to such person, and

(2) at least fourteen days have expired from the date of such mailing of the subpoena or summons, or such other notice.

This subsection shall not apply to congressional subpoenas or congressional requests for information.

(g) Requests for information by State agencies or subdivisions; volunteering of information by Commission

The Commission shall provide any registration information maintained by the Commission on any registrant upon reasonable request made by any department or agency of any State or any political subdivision thereof. Whenever the Commission determines that such information may be appropriate for use by any department or agency of a State or political subdivision thereof, the Commission shall provide such information without request.

(h) Omitted

(i) Review and audits by Comptroller General

The Comptroller General of the United States shall conduct reviews and audits of the Commission and make reports thereon. For the purpose of conducting such reviews and audits, the Comptroller General shall be furnished such information regarding the powers, duties, organizations, transactions, operations, and activities of the Commission as the Comptroller General may require and the Comptroller General and the duly authorized representatives of the Comptroller General shall, for the purpose of securing such information, have access to and the right to examine any books, documents, papers, or records of the Commission, except that in reports the Comptroller General shall not include data and information that would separately disclose the business transactions of any person and trade secrets or names of customers, although such data shall be provided upon request by any committee of either House of Congress acting within the scope of its jurisdiction.

(Sept. 21, 1922, ch. 369, §8, 42 Stat. 1003; June 15, 1936, ch. 545, §2, 49 Stat. 1491; Pub. L. 90–258, §19(a), Feb. 19, 1968, 82 Stat. 32; Pub. L. 93–463, title I, §103(a), (e), Oct. 23, 1974, 88 Stat. 1392; Pub. L. 95–405, §16, Sept. 30, 1978, 92 Stat. 873; Pub. L. 97–444, title II, §222, Jan. 11, 1983, 96 Stat. 2309; Pub. L. 102–546, title II, §205, title III, §§304, 305, title IV, §402(7), Oct. 28, 1992, 106 Stat. 3600, 3623, 3624; Pub. L. 106–

554, §1(a)(5) [title I, §123(a)(18), title II, §253(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–410, 2763A–449; Pub. L. 110–234, title XIII, §13105(g), May 22, 2008, 122 Stat. 1434; Pub. L. 110–246, §4(a), title XIII, §13105(g), June 18, 2008, 122 Stat. 1664, 2196; Pub. L. 111–203, title VII, §725(f), July 21, 2010, 124 Stat. 1694.)

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

Section is based on section 8 of Act Sept. 21, 1922, as amended generally by Pub. L. 95–405, §16. Prior to such general amendment, section was comprised of the first paragraph of section 8, and the second, third, and fourth pars. of section 8 were classified to sections 12–1, 12–2, and 12–3 of this title, respectively.

Subsection (h), which required the Commodity Futures Trading Commission to submit an annual report to Congress detailing the operations of the Commission, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 158 of House Document No. 103–7.

AMENDMENTS

2010—Subsec. (e). Pub. L. 111–203, in last sentence, inserted ", central bank and ministries," after "department" wherever appearing and substituted ", is a party." for ". is a party."

2008—Subsec. (a)(1). Pub. L. 110–246, §13105(g), in concluding provisions, struck out "commenced" after "receivership proceeding" and inserted "commenced" after "in a judicial proceeding".

2000—Subsec. (a)(3). Pub. L. 106–554, §1(a)(5) [title II, §253(a)], added par. (3).

Subsec. (c). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(18)], in first sentence, substituted "registered entity" for "board of trade".

1992—Subsec. (a). Pub. L. 102–546, §§205, 304(1), designated existing provisions as par. (1), inserted provisions at end relating to disclosure of information received from foreign futures authorities, and added par. (2).

Subsec. (b). Pub. L. 102–546, §304(2), inserted at end "This subsection shall not apply to the disclosure of data or information obtained by the Commission from a foreign futures authority."

Subsec. (e). Pub. L. 102–546, §305, inserted references to foreign futures authority in fifth and last sentences.

Subsec. (f). Pub. L. 102–546, §402(7), substituted "subpoena" for "subpena" wherever appearing and "subpoenas" for "subpenas" in last sentence.

1983—Subsec. (a). Pub. L. 97–444, §222(1), inserted proviso authorizing Commission to withhold from public disclosure any data or information concerning or obtained in connection with any pending investigation of any person.

Subsec. (b). Pub. L. 97–444, §222(2), inserted references to receivership proceedings involving a receiver appointed in a judicial proceeding brought under this chapter and to bankruptcy proceedings in which the Commission has intervened or in which Commission has right to appear and be heard under title 11.

Subsec. (e). Pub. L. 97–444, §222(3), struck out "of the Executive Branch" after "Upon the request of any department or agency" and inserted "Upon the request of any department or agency of any State or any political subdivision thereof, acting within the scope of its jurisdiction, or any department or agency of any foreign government or any political subdivision thereof, acting within the scope of its jurisdiction, the Commission may furnish to such department or agency any information in the possession of the Commission obtained in connection with the administration of this chapter. Any information furnished to any department or agency of any State or political subdivision thereof shall not be disclosed by such department or agency except in connection with an adjudicatory action or proceeding brought under this chapter or the laws of such State or political subdivision to which such State or political subdivision or any department or agency thereof is a party. The Commission shall not furnish any information to a department or agency of a foreign government or political subdivision thereof unless the Commission is satisfied that the

information will not be disclosed by such department or agency except in connection with an adjudicatory action or proceeding brought under the laws of such foreign government or political subdivision to which such foreign government or political subdivision or any department or agency thereof is a party."

Subsecs. (f), (g). Pub. L. 97–444, §222(5), added subsecs. (f) and (g). Former subsecs. (f) and (g) were redesignated (h) and (i), respectively.

Subsecs. (h), (i). Pub. L. 97–444, §222(4), redesignated former subsecs. (f) and (g) as (h) and (i), respectively.

1978—Pub. L. 95–405 consolidated under this section provisions formerly contained in this section and sections 12–1, 12–2, and 12–3 of this title, generally revised provisions thus consolidated to clarify and expand disclosure to public of traders and their positions on boards of trade, and divided provisions thus consolidated and revised into subsecs. (a) to (g).

1974—Pub. L. 93–463 substituted "Commission" for "Secretary of Agriculture", "it" for "he", "its" for "his", and "It" for "He".

1968—Pub. L. 90–258 authorized investigations to ascertain facts regarding operations of other persons subject to any provisions of this chapter.

1936—Act June 15, 1936, substituted "commodity" for "grain" wherever appearing.

Effective Date of 2010 Amendment

Amendment by Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as a note under section 1a of this title.

Effective Date of 2008 Amendment

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of this title.

Effective Date of 1983 Amendment

Amendment by Pub. L. 97–444 effective Jan. 11, 1983, see section 239 of Pub. L. 97–444, set out as a note under section 2 of this title.

Effective Date of 1978 Amendment

Amendment by Pub. L. 95–405 effective Oct. 1, 1978, see section 28 of Pub. L. 95–405, set out as a note under section 2 of this title.

Effective Date of 1974 Amendment

For effective date of amendment by Pub. L. 93–463, see section 418 of Pub. L. 93–463, set out as a note under section 2 of this title.

Effective Date of 1968 Amendment

Amendment by Pub. L. 90–258 effective 120 days after Feb. 19, 1968, see section 28 of Pub. L. 90–258, set out as a note under section 2 of this title.

Effective Date of 1936 Amendment

Amendment by act June 15, 1936, effective 90 days after June 15, 1936, see section 13 of act June 15, 1936, set out as a note under section 1 of this title.

§§12–1 to 12–3. Omitted

Codification

Sections 12–1 to 12–3 comprised the second, third, and fourth pars., respectively, of section 8 of the Commodity Exchange Act, Sept. 21, 1922, ch. 369, §8, 42 Stat. 1003. Such section 8 was amended generally by Pub. L. 95–405, §16, Sept. 30, 1978, 92 Stat. 873, and is classified in its entirety to section 12 of this title.

Section 12–1, as added Dec. 19, 1947, ch. 523, 61 Stat. 941; amended Feb. 19, 1968, Pub. L. 90–258, §19(b), 82 Stat. 32; Oct. 23, 1974, Pub. L. 93–463, title I, §103(a), (e), (f), 88 Stat. 1392, related to disclosure of names of traders on commodity markets by Commission. See section 12(e) of this title.

Section 12–2, as added Oct. 23, 1974, Pub. L. 93–463, title I, §105, 88 Stat. 1392, required an annual report to Congress. See Codification note under section 12 of this title.

Section 12–3, as added Oct. 23, 1974, Pub. L. 93–463, title I, §105, 88 Stat. 1392, related to reviews and audits by Comptroller General. See section 12(i) of this title.

§12a. Registration of commodity dealers and associated persons; regulation of registered entities

The Commission is authorized—

(1) to register futures commission merchants, associated persons of futures commission merchants, introducing brokers, associated persons of introducing brokers, commodity trading advisors, associated persons of commodity trading advisors, commodity pool operators, associated persons of commodity pool operators, floor brokers, and floor traders upon application in accordance with rules and regulations and in the form and manner to be prescribed by the Commission, which may require the applicant, and such persons associated with the applicant as the Commission may specify, to be fingerprinted and to submit, or cause to be submitted, such fingerprints to the Attorney General for identification and appropriate processing, and in connection therewith to fix and establish from time to time reasonable fees and charges for registrations and renewals thereof: *Provided*, That notwithstanding any provision of this chapter, the Commission may grant a temporary license to any applicant for registration with the Commission pursuant to such rules, regulations, or orders as the Commission may adopt, except that the term of any such temporary license shall not exceed six months from the date of its issuance;

(2) upon notice, but without a hearing and pursuant to such rules, regulations, or orders as the Commission may adopt, to refuse to register, to register conditionally, or to suspend or place restrictions upon the registration of, any person and with such a hearing as may be appropriate to revoke the registration of any person—

(A) if a prior registration of such person in any capacity has been suspended (and the period of such suspension has not expired) or has been revoked;

(B) if registration of such person in any capacity has been refused under the provisions of paragraph (3) of this section within five years preceding the filing of the application for registration or at any time thereafter;

(C) if such person is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction (except that registration may not be revoked solely on the basis of such temporary order, judgment, or decree), including an order entered pursuant to an agreement of settlement to which the Commission or any Federal or State agency or other governmental body is a party, from (i) acting as a futures commission merchant, introducing broker, floor broker, floor trader, commodity trading advisor, commodity pool operator, associated person of any registrant under this chapter, securities broker, securities dealer, municipal securities broker, municipal securities dealer, transfer agent, clearing agency, securities information processor, investment adviser, investment company, or affiliated person or employee of any of the foregoing or (ii) engaging in or continuing any activity where such activity involves embezzlement, theft, extortion, fraud, fraudulent conversion, misappropriation of funds, securities or property, forgery, counterfeiting, false pretenses, bribery, gambling, or any transaction in or advice concerning contracts of sale of a commodity for future delivery, concerning matters subject

to Commission regulation under section 6c or 23 of this title, or concerning securities;

(D) if such person has been convicted within ten years preceding the filing of the application for registration or at any time thereafter of any felony that (i) involves any transactions or advice concerning any contract of sale of a commodity for future delivery, or any activity subject to Commission regulation under section 6c or 23 of this title, or concerning a security, (ii) arises out of the conduct of the business of a futures commission merchant, introducing broker, floor broker, floor trader, commodity trading advisor, commodity pool operator, associated person of any registrant under this chapter, securities broker, securities dealer, municipal securities broker, municipal securities dealer, transfer agent, clearing agency, securities information processor, investment adviser, investment company, or an affiliated person or employee of any of the foregoing, (iii) involves embezzlement, theft, extortion, fraud, fraudulent conversion, misappropriation of funds, securities or property, forgery, counterfeiting, false pretenses, bribery, or gambling, or (iv) involves the violation of section 152, 1001, 1341, 1342, 1343, 1503, 1623, 1961, 1962, 1963, or 2314, or chapter 25, 47, 95, or 96 of title 18, or section 7201 or 7206 of title 26;

(E) if such person, within ten years preceding the filing of the application or at any time thereafter, has been found in a proceeding brought by the Commission or any Federal or State agency or other governmental body, or by agreement of settlement to which the Commission or any Federal or State agency or other governmental body is a party, (i) to have violated any provision of this chapter, the Securities Act of 1933 [15 U.S.C. 77a et seq.], the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], the Public Utility Holding Company Act of 1935,[1] the Trust Indenture Act of 1939 [15 U.S.C. 77aaa et seq.], the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 et seq.], the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.], the Securities Investors [2] Protection Act of 1970 [15 U.S.C. 78aaa et seq.], the Foreign Corrupt Practices Act of 1977, chapter 96 of title 18, or any similar statute of a State or foreign jurisdiction, or any rule, regulation, or order under any such statutes, or the rules of the Municipal Securities Rulemaking Board where such violation involves embezzlement, theft, extortion, fraud, fraudulent conversion, misappropriation of funds, securities or property, forgery, counterfeiting, false pretenses, bribery, or gambling, or (ii) to have willfully aided, abetted, counseled, commanded, induced, or procured such violation by any other person;

(F) if such person is subject to an outstanding order of the Commission denying privileges on any registered entity to such person, denying, suspending, or revoking such person's membership in any registered entity or registered futures association, or barring or suspending such person from being associated with a registrant under this chapter or with a member of a registered entity or with a member of a registered futures association;

(G) if, as to any of the matters set forth in this paragraph and paragraph (3), such person willfully made any materially false or misleading statement or omitted to state any material fact in such person's application or any update thereto; or

(H) if refusal, suspension, or revocation of the registration of any principal of such person would be warranted because of a statutory disqualification listed in this paragraph:

Provided, That such person may appeal from a decision to refuse registration, condition registration, suspend, revoke or to place restrictions upon registration made pursuant to the provisions of this paragraph in the manner provided in section 9 of this title; and

Provided, further, That for the purposes of paragraphs (2) and (3) of this section, "principal" shall mean, if the person is a partnership, any general partner or, if the person is a corporation, any officer, director, or beneficial owner of at least 10 per centum of the voting shares of the corporation, and any other person that the Commission by rule, regulation, or order determines has the power, directly or indirectly, through agreement or otherwise, to exercise a controlling influence over the activities of such person which are subject to regulation by the Commission;

(3) to refuse to register or to register conditionally any person, if it is found, after opportunity for hearing, that—

(A) such person has been found by the Commission or by any court of competent jurisdiction to have violated, or has consented to findings of a violation of, any provision of this chapter, or any rule, regulation, or order thereunder (other than a violation set forth in paragraph (2) of this section), or to have willfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of any such provision;

(B) such person has been found by any court of competent jurisdiction or by any Federal or State agency or other governmental body, or by agreement of settlement to which any Federal or State agency or other governmental body is a party, (i) to have violated any provision of the Securities Act of 1933 [15 U.S.C. 77a et seq.], the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], the Public Utility Holding Company Act of 1935,[1] the Trust Indenture Act of 1939 [15 U.S.C. 77aaa et seq.], the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 et seq.], the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.], the Securities Investors [3] Protection Act of 1970 [15 U.S.C. 78aaa et seq.], the Foreign Corrupt Practices Act of 1977, or any similar statute of a State or foreign jurisdiction, or any rule, regulation, or order under any such statutes, or the rules of the Municipal Securities Rulemaking Board or (ii) to have willfully aided, abetted, counseled, commanded, induced, or procured such violation by any other person;

(C) such person failed reasonably to supervise another person, who is subject to such person's supervision, with a view to preventing violations of this chapter, or of any of the statutes set forth in subparagraph (B) of this paragraph, or of any of the rules, regulations, or orders thereunder, and the person subject to supervision committed such a violation: *Provided*, That no person shall be deemed to have failed reasonably to supervise another person, within the meaning of this subparagraph if (i) there have been established procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect, insofar as practicable, any such violation by such other person and (ii) such person has reasonably discharged the duties and obligations incumbent upon that person, as supervisor, by reason of such procedures and system, without reasonable cause to believe that such procedures and system were not being complied with;

(D) such person pleaded guilty to or was convicted of a felony other than a felony of the type specified in paragraph (2)(D) of this section, or was convicted of a felony of the type specified in paragraph (2)(D) of this section more than ten years preceding the filing of the application;

(E) such person pleaded guilty to or was convicted of any misdemeanor which (i) involves any transaction or advice concerning any contract of sale of a commodity for future delivery or any activity subject to Commission regulation under section 6c or 23 of this title or concerning a security, (ii) arises out of the conduct of the business of a futures commission merchant, introducing broker, floor broker, floor trader, commodity trading advisor, commodity pool operator, associated person of any registrant under this chapter, securities broker, securities dealer, municipal securities broker, municipal securities dealer, transfer agent, clearing agency, securities information processor, investment adviser,

investment company, or an affiliated person or employee of any of the foregoing, (iii) involves embezzlement, theft, extortion, fraud, fraudulent conversion, misappropriation of funds, securities or property, forgery, counterfeiting, false pretenses, bribery, or gambling, (iv) involves the violation of section 152, 1341, 1342, or 1343 or chapter 25, 47, 95, or 96 of title 18, or section 7203, 7204, 7205, or 7207 of title 26;

(F) such person was debarred by any agency of the United States from contracting with the United States;

(G) such person willfully made any materially false or misleading statement or willfully omitted to state any material fact in such person's application or any update thereto, in any report required to be filed with the Commission by this chapter or the regulations thereunder, in any proceeding before the Commission or in any registration disqualification proceeding;

(H) such person has pleaded nolo contendere to criminal charges of felonious conduct, or has been convicted in a State court, in a United States military court, or in a foreign court of conduct which would constitute a felony under Federal law if the offense had been committed under Federal jurisdiction;

(I) in the case of an applicant for registration in any capacity for which there are minimum financial requirements prescribed under this chapter or under the rules or regulations of the Commission, such person has not established that such person meets such minimum financial requirements;

(J) such person is subject to an outstanding order denying, suspending, or expelling such person from membership in a registered entity, a registered futures association, any other self-regulatory organization, or any foreign regulatory body that the Commission recognizes as having a comparable regulatory program or barring or suspending such person from being associated with any member or members of such registered entity, association, self-regulatory organization, or foreign regulatory body;

(K) such person has been found by any court of competent jurisdiction or by any Federal or State agency or other governmental body, or by agreement of settlement to which any Federal or State agency or other governmental body is a party, (i) to have violated any statute or any rule, regulation, or order thereunder which involves embezzlement, theft, extortion, fraud, fraudulent conversion, misappropriation of funds, securities or property, forgery, counterfeiting, false pretenses, bribery, or gambling or (ii) to have willfully aided, abetted, counseled, commanded, induced or procured such violation by any other person;

(L) such person has associated with such person any other person and knows, or in the exercise of reasonable care should know, of facts regarding such other person that are set forth as statutory disqualifications in paragraph (2) of this section, unless such person has notified the Commission of such facts and the Commission has determined that such other person should be registered or temporarily licensed;

(M) there is other good cause; or

(N) any principal, as defined in paragraph (2) of this section, of such person has been or could be refused registration:

Provided, That pending final determination under this paragraph, registration shall not be granted: *Provided further*, That such person may appeal from a decision to refuse registration or to condition registration made pursuant to this paragraph in the manner provided in section 9 of this title;

(4) in accordance with the procedure provided for in section 9 of this title, to suspend, revoke, or place restrictions upon the registration of any person registered under this chapter if cause exists under paragraph (3) of this section which would warrant a refusal of registration of such person, and to suspend or

revoke the registration of any futures commission merchant or introducing broker who shall knowingly accept any order for the purchase or sale of any commodity for future delivery on or subject to the rules of any registered entity from any person if such person has been denied trading privileges on any registered entity by order of the Commission under section 9 of this title and the period of denial specified in such order shall not have expired: *Provided*, That such person may appeal from a decision to suspend, revoke, or place restrictions upon registration made pursuant to this paragraph in the manner provided in section 9 of this title;

(5) to make and promulgate such rules and regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of this chapter;

(6) to communicate to the proper committee or officer of any registered entity, registered futures association, or self-regulatory organization as defined in section 3(a)(26) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(26)], notwithstanding the provisions of section 12 of this title, the full facts concerning any transaction or market operation, including the names of parties thereto, which in the judgment of the Commission disrupts or tends to disrupt any market or is otherwise harmful or against the best interests of producers, consumers, or investors, or which is necessary or appropriate to effectuate the purposes of this chapter: *Provided*, That any information furnished by the Commission under this paragraph shall not be disclosed by such registered entity, registered futures association, or self-regulatory organization except in any self-regulatory action or proceeding;

(7) to alter or supplement the rules of a registered entity insofar as necessary or appropriate by rule or regulation or by order, if after making the appropriate request in writing to a registered entity that such registered entity effect on its own behalf specified changes in its rules and practices, and after appropriate notice and opportunity for hearing, the Commission determines that such registered entity has not made the changes so required, and that such changes are necessary or appropriate for the protection of persons producing, handling, processing, or consuming any commodity traded for future delivery on such registered entity, or the product or byproduct thereof, or for the protection of traders or to insure fair dealing in commodities traded for future delivery on such registered entity. Such rules, regulations, or orders may specify changes with respect to such matters as—

(A) terms or conditions in contracts of sale to be executed on or subject to the rules of such registered entity;

(B) the form or manner of execution of purchases and sales for future delivery;

(C) other trading requirements;

(D) margin requirements, provided that the rules, regulations, or orders shall—

(i) be limited to protecting the financial integrity of the derivatives clearing organization;

(ii) be designed for risk management purposes to protect the financial integrity of transactions; and

(iii) not set specific margin amounts;

(E) safeguards with respect to the financial responsibility of members;

(F) the manner, method, and place of soliciting business, including the content of such solicitations; and

(G) the form and manner of handling, recording, and accounting for customers' orders, transactions, and accounts;

(8) to make and promulgate such rules and regulations with respect to those persons registered under this chapter, who are not members of a registered entity, as in the judgment of the Commission are reasonably necessary to protect the

public interest and promote just and equitable principles of trade, including but not limited to the manner, method, and place of soliciting business, including the content of such solicitation;

(9) to direct the registered entity, whenever it has reason to believe that an emergency exists, to take such action as in the Commission's judgment is necessary to maintain or restore orderly trading in or liquidation of any futures contract, including, but not limited to, the setting of temporary emergency margin levels on any futures contract, and the fixing of limits that may apply to a market position acquired in good faith prior to the effective date of the Commission's action. The term "emergency" as used herein shall mean, in addition to threatened or actual market manipulations and corners, any act of the United States or a foreign government affecting a commodity or any other major market disturbance which prevents the market from accurately reflecting the forces of supply and demand for such commodity. Any action taken by the Commission under this paragraph shall be subject to review only in the United States Court of Appeals for the circuit in which the party seeking review resides or has its principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit. Such review shall be based upon an examination of all the information before the Commission at the time the determination was made. The court reviewing the Commission's action shall not enter a stay or order of mandamus unless it has determined, after notice and hearing before a panel of the court, that the agency action complained of was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. Nothing herein shall be deemed to limit the meaning or interpretation given by a registered entity to the terms "market emergency", "emergency", or equivalent language in its own bylaws, rules, regulations, or resolutions;

(10) to authorize any person to perform any portion of the registration functions under this chapter, in accordance with rules, notwithstanding any other provision of law, adopted by such person and submitted to the Commission for approval or, if applicable, for review pursuant to section 21(j) of this title, and subject to the provisions of this chapter applicable to registrations granted by the Commission; and

(11)(A) by written notice served on the person and pursuant to such rules, regulations, and orders as the Commission may adopt, to suspend or modify the registration of any person registered under this chapter who is charged (in any information, indictment, or complaint authorized by a United States attorney or an appropriate official of any State) with the commission of or participation in a crime involving a violation of this chapter, or a violation of any other provision of Federal or State law that would reflect on the honesty or the fitness of the person to act as a fiduciary (including an offense specified in subparagraph (D) or (E) of paragraph (2)) that is punishable by imprisonment for a term exceeding one year, if the Commission determines that continued registration of the person may pose a threat to the public interest or may threaten to impair public confidence in any market regulated by the Commission.

(B) Prior to the suspension or modification of the registration of a person under this paragraph, the person shall be afforded an opportunity for a hearing at which the Commission shall have the burden of showing that the continued registration of the person does, or is likely to, pose a threat to the public interest or threaten to impair public confidence in any market regulated by the Commission.

(C) Any notice of suspension or modification issued under this paragraph shall remain in effect until such information, indictment, or complaint is disposed of or until terminated by the Commission.

(D) On disposition of such information, indictment, or complaint, the Commission may issue and serve on such person an order pursuant to paragraph (2) or (4) to suspend, restrict, or revoke the registration of such person.

(E) A finding of not guilty or other disposition of the charge shall not preclude the Commission from thereafter instituting any other proceedings under this chapter.

(F) A person aggrieved by an order issued under this paragraph may obtain review of such order in the same manner and on the same terms and conditions as are provided in section 8(b) of this title.

(Sept. 21, 1922, ch. 369, §8a, as added June 15, 1936, ch. 545, §10, 49 Stat. 1500; amended Aug. 5, 1955, ch. 574, 69 Stat. 535; Pub. L. 90–258, §§20–23, Feb. 19, 1968, 82 Stat. 32, 33; Pub. L. 93–463, title I, §103(a), title II, §§204(c), 205(c), 213–215, Oct. 23, 1974, 88 Stat. 1392, 1397, 1400, 1404; Pub. L. 95–405, §17, Sept. 30, 1978, 92 Stat. 874; Pub. L. 97–444, title I, §104, title II, §§223–225, Jan. 11, 1983, 96 Stat. 2297, 2310–2315; Pub. L. 102–546, title II, §§207(b)(3), (4), 208, 209(b)(6), 227, title IV, §402(10), Oct. 28, 1992, 106 Stat. 3604, 3607, 3618, 3625; Pub. L. 106–554, §1(a)(5) [title I, §123(a)(19)], Dec. 21, 2000, 114 Stat. 2763, 2763A–410; Pub. L. 111–203, title VII, §736, July 21, 2010, 124 Stat. 1722.)

References in Text

The Securities Act of 1933, referred to in pars. (2)(E) and (3)(B), is title I of act May 27, 1933, ch. 38, 48 Stat. 74, as amended, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 77a of Title 15 and Tables.

The Securities Exchange Act of 1934, referred to in pars. (2)(E) and (3)(B), is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified principally to chapter 2B (§78a et seq.) of Title 15. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

The Public Utility Holding Company Act of 1935, referred to in pars. (2)(E) and (3)(B), is title I of act Aug. 26, 1935, ch. 687, 49 Stat. 803, as amended, which was classified generally to chapter 2C (§79 et seq.) of Title 15, Commerce and Trade, prior to repeal by Pub. L. 109–58, title XII, §1263, Aug. 8, 2005, 119 Stat. 974. For complete classification of this Act to the Code, see Tables.

The Trust Indenture Act of 1939, referred to in pars. (2)(E) and (3)(B), is title III of act May 27, 1933, ch. 38, as added Aug. 3, 1939, ch. 411, 53 Stat. 1149, as amended, which is classified generally to subchapter III (§77aaa et seq.) of chapter 2A of Title 15. For complete classification of this Act to the Code, see section 77aaa of Title 15 and Tables.

The Investment Advisers Act of 1940, referred to in pars. (2)(E) and (3)(B), is title II of act Aug. 22, 1940, ch. 686, 54 Stat. 847, as amended, which is classified generally to subchapter II (§80b–1 et seq.) of chapter 2D of Title 15. For complete classification of this Act to the Code, see section 80b–20 of Title 15 and Tables.

The Investment Company Act of 1940, referred to in pars. (2)(E) and (3)(B), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified generally to subchapter I (§80a–1 et seq.) of chapter 2D of Title 15. For complete classification of this Act to the Code, see section 80a–51 of Title 15 and Tables.

The Securities Investor Protection Act of 1970, referred to in pars. (2)(E) and (3)(B), is Pub. L. 91–598, Dec. 30, 1970, 84 Stat. 1636, as amended, which is classified generally to chapter 2B–1 (§78aaa et seq.) of Title 15. For complete classification of this Act to the Code, see section 78aaa of Title 15 and Tables.

The Foreign Corrupt Practices Act of 1977, referred to in pars. (2)(E) and (3)(B), is title I of Pub. L. 95–213, Dec. 19, 1977, 91 Stat. 1494, as amended, which enacted sections 78dd–1 to 78dd–3 of Title 15, Commerce and Trade, and amended sections 78m and 78ff of Title 15. For complete classification of this Act to the Code, see Short Title of 1977 Amendment note set out under section 78a of Title 15 and Tables.

Amendments

2010—Par. (7)(C). Pub. L. 111–203, §736(1), struck out ", excepting the setting of levels of margin" after "requirements".

Par. (7)(D) to (G). Pub. L. 111–203, §736(2), (3), added subpar. (D) and redesignated former subpars. (D) to (F) as (E) to (G), respectively.

2000—Pub. L. 106–554, §1(a)(5) [title I, §123(a)(19)(A)], substituted "registered entity" for "contract market" wherever appearing.

Par. (2)(F). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(19)(B)], substituted "privileges" for "trading privileges".

1992—Par. (1). Pub. L. 102–546, §207(b)(3), substituted "floor brokers, and floor traders" for "and floor brokers".

Par. (2). Pub. L. 102–546, §209(b)(6)(A), made technical amendment to reference to sections 9 and 15 of this title in concluding provisions to reflect change in reference to corresponding section of original act.

Par. (2)(C)(i). Pub. L. 102–546, §207(b)(4), inserted "floor trader," after "floor broker,".

Par. (2)(C)(ii). Pub. L. 102–546, §208(a), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: "engaging in or continuing any activity involving any transaction in or advice concerning contracts of sale of a commodity for future delivery, concerning matters subject to Commission regulation under section 6c or 23 of this title, or concerning securities".

Par. (2)(D)(ii). Pub. L. 102–546, §207(b)(4), inserted "floor trader," after "floor broker,".

Par. (2)(D)(iv). Pub. L. 102–546, §208(b), inserted references to sections 1001, 1503, 1623, 1961 to 1963, and 2314 of title 18 and sections 7201 and 7206 of title 26.

Par. (2)(E). Pub. L. 102–546, §208(c), substituted "in a proceeding brought" for "by any court of competent jurisdiction," and in cl. (i) inserted reference to chapter 96 of title 18.

Par. (2)(G). Pub. L. 102–546, §208(d), substituted "this paragraph and paragraph (3)" for "subparagraphs (A) through (F) of this paragraph", "materially false" for "material false", and "application or any update thereto" for "application".

Par. (3). Pub. L. 102–546, §209(b)(6)(B), made technical amendment to reference to sections 9 and 15 of this title in concluding provisions to reflect change in reference to corresponding section of original act.

Par. (3)(D). Pub. L. 102–546, §208(e), inserted "pleaded guilty to or" after "person", substituted "section," for "section within ten years preceding the filing of the application or at any time thereafter," and "felony of the type specified in paragraph (2)(D) of this section more" for "felony, including a felony of the type specified in paragraph (2)(D) of this section, more".

Par. (3)(E). Pub. L. 102–546, §208(f)(1), (2), inserted "pleaded guilty to or" after "person" and struck out "within ten years preceding the filing of the application for registration or at any time thereafter" before "of any misdemeanor".

Par. (3)(E)(ii). Pub. L. 102–546, §207(b)(4), inserted "floor trader," after "floor broker,".

Par. (3)(E)(iv). Pub. L. 102–546, §208(f)(3), inserted reference to sections 7203 to 7205 and 7207 of title 26.

Par. (3)(G). Pub. L. 102–546, §208(g)(5), which directed the insertion of "or in any registration disqualification proceeding" after "Commission", was executed by making the insertion after "Commission" the second time it appeared to reflect the probable intent of Congress.

Pub. L. 102–546, §208(g)(1)–(4), substituted "materially false" for "material false", "application or any update thereto," for "application," and struck out "or" after "thereunder,".

Par. (3)(H). Pub. L. 102–546, §208(h), inserted ", in a United States military court," after "State court".

Par. (3)(J). Pub. L. 102–546, §208(i), struck out "or" before "any other self-regulatory", inserted "or any foreign regulatory body that the Commission recognizes as having a comparable regulatory program", and substituted "association, self-regulatory organization, or foreign regulatory body" for "association, or self-regulatory organization".

Par. (4). Pub. L. 102–546, §209(b)(6)(C), made technical amendment to references to sections 9 and 15 of this title in concluding provisions to reflect change in references to corresponding section of original act.

Par. (5). Pub. L. 102–546, §402(10)(A), struck out "and" at end.

Par. (7). Pub. L. 102–546, §402(10)(B), substituted "matters as—" for "matters as:" in introductory provisions.

Par. (11). Pub. L. 102–546, §227, added par. (11).

1983—Par. (1). Pub. L. 97–444, §223, substituted authorization for registration of "associated persons of futures commission merchants" for "and persons associated therewith as described in section 6k of this title"; authorized registration of introducing brokers, associated persons of introducing brokers, associated persons of commodity trading advisors and associated persons of commodity pool operators, substituted "such persons" for "any persons" before "associated with the applicant", and authorized establishment of registration and renewal fees and charges and granting of temporary licenses for terms not exceeding six months from date of issuance.

Par. (2). Pub. L. 97–444, §224(1), added par. (2) and struck out prior par. (2) which authorized Commission "to refuse to register any person—

"(A) if the prior registration of such person has been suspended (and the period of such suspension shall not have expired) or has been revoked;

"(B) if it is found, after opportunity for hearing, that the applicant is unfit to engage in the business for which the application for registration is made, (i) because such applicant, or, if the applicant is a partnership, any general partner, or, if the applicant is a corporation, any officer or holder of more than 10 per centum of the stock, at any time engaged in any practice of the character prohibited by this chapter or was convicted of a felony in any State or Federal court, or was debarred by any agency of the United States from contracting with the United States, or the applicant willfully made any material false or misleading statement in his application or willfully omitted to state any material fact in connection with the application, or (ii) for other good cause shown; or

"(C) in the case of an applicant for registration as futures commission merchant, if it is found after opportunity for hearing that the applicant has not established that he meets the minimum financial requirements under section 6f of this title: *Provided*, That pending final determination under subparagraph (B) or (C), registration shall not be granted: *And provided further*, That the applicant may appeal from the refusal of registration under subparagraph (B) or (C) in the manner provided in sections 9 and 15 of this title; and".

Par. (3). Pub. L. 97–444, §224(3), added par. (3). Former par. (3) redesignated (4).

Par. (4). Pub. L. 97–444, §224(2), (4), struck out par. (4) provision for establishment of registration and renewal fees and charges, covered in par. (1), redesignated par. (3) as (4), and in redesignated par. (4), authorized placing of restrictions on registrations, suspension or revocation of registration of an introducing broker and appeals from registration decisions made pursuant to this paragraph as provided in sections 9 and 15 of this title, and substituted "if cause exists under paragraph (3) of this section" for "if cause exists under paragraph (2)(B) or (C) of this section".

Par. (6). Pub. L. 97–444, §104, authorized communication of full facts respecting transactions or market operations to registered futures associations and self-regulatory organizations, included concern for investors, provided for communications when necessary or appropriate to effectuate purposes of this chapter, and prohibited disclosure of furnished information except in self-regulatory actions or proceedings.

Pars. (6) to (8). Pub. L. 97–444, §224(5), struck out "and" at end of pars. (6), (7), and (8).

Par. (9). Pub. L. 97–444, §225, authorized Commission to direct the contract market to take certain action, including, but not limited to, setting of temporary emergency margin levels on any futures contract, and fixing of limits that may apply to a market position acquired in good faith prior to the effective date of Commission's action and inserted provisions respecting judicial review.

Par. (10). Pub. L. 97–444, §224(6), added par. (10).

1978—Par. (1). Pub. L. 95–405, §17(1), inserted ", which may require the applicant, and any persons associated with the applicant as the Commission may specify, to be fingerprinted and to submit, or cause to be submitted, such fingerprints to the Attorney General for identification and appropriate processing" after "by the Commission".

Par. (6). Pub. L. 95–405, §17(2), struck out "and to publish" after "any contract market".

1974—Pub. L. 93–463, §103(a), substituted "Commission" for "Secretary of Agriculture" in provisions preceding par. (1).

Par. (1). Pub. L. 93–463, §§103(a), 204(c), 205(c), substituted "Commission" for "Secretary of Agriculture", inserted "and persons associated therewith as described in section 6k of this title," after "futures commission merchants", and inserted "commodity trading advisors, commodity pool operators" before "and floor brokers".

Pars. (3), (5), (6). Pub. L. 93–463, §103(a), substituted "Commission" for "Secretary of Agriculture".

Par. (7). Pub. L. 93–463, §213, amended par. (7) generally, substituting provisions covering the altering or supplementing of the rules of a contract market for provisions covering the disapproval of bylaws, rules, regulations, and resolutions made, issued, or proposed by a contract market.

Par. (8). Pub. L. 93–463, §214, added par. (8).

Par. (9). Pub. L. 93–463, §215, added par. (9).

1968—Par. (2). Pub. L. 90–258, §20, designated existing provisions as subpar. (A), substituted "if the prior registration of such person" for "if such person has violated any of the provisions of this chapter or any of the rules or regulations promulgated by the Secretary of Agriculture hereunder for which the registration of such person" and added subpars. (B) and (C).

Par. (3). Pub. L. 90–258, §21, authorized Secretary of Agriculture, in accordance with procedure provided for in sections 9 and 15 of this title, to suspend or revoke the registration of any person registered under this chapter if cause exists under par. (2)(B) or (C) of this section which would warrant a refusal of registration of such person.

Par. (4). Pub. L. 90–258, §22, struck out authorization for establishment of fees for copies of registration certificates.

Par. (7). Pub. L. 90–258, §23, added par. (7).

1955—Par. (4). Act Aug. 5, 1955, authorized Secretary to fix and establish reasonable fees for registrations and renewals, and struck out provisions which set the fee for each registration and renewal at not more than $10.

Effective Date of 2010 Amendment

Amendment by Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as a note under section 1a of this title.

Effective Date of 1992 Amendment

Amendment by section 207(b)(3), (4) of Pub. L. 102–546 effective 180 days after Oct. 28, 1992, with Commodity Futures Trading Commission to issue any regulations necessary to implement such amendment no later than 180 days after Oct. 28, 1992, see section 207(c) of Pub. L. 102–546, set out as a note under section 6e of this title.

Effective Date of 1983 Amendment

Amendment by Pub. L. 97–444 effective Jan. 11, 1983, see section 239 of Pub. L. 97–444, set out as a note under section 2 of this title.

Effective Date of 1978 Amendment

Amendment by Pub. L. 95–405 effective Oct. 1, 1978, see section 28 of Pub. L. 95–405, set out as a note under section 2 of this title.

Effective Date of 1974 Amendment

For effective date of amendment by Pub. L. 93–463, see section 418 of Pub. L. 93–463, set out as a note under section 2 of this title.

Effective Date of 1968 Amendment

Amendment by Pub. L. 90–258 effective 120 days after Feb. 19, 1968, see section 28 of Pub. L. 90–258, set out as a note under section 2 of this title.

Effective Date

For effective date of section, see section 13 of act June 15, 1936, set out as an Effective Date of 1936 Amendment note under section 1 of this title.

[1] *See References in Text note below.*

[2] *So in original. Probably should be "Investor".*

[3] So in original. Probably should be "Investor".

§12b. Trading ban violations; prohibition

It shall be unlawful for any person, against whom there is outstanding any order of the Commission prohibiting him from trading on or subject to the rules of any registered entity, to make or cause to be made in contravention of such order, any contract for future delivery of any commodity, on or subject to the rules of any registered entity.

(Sept. 21, 1922, ch. 369, §8b, as added Pub. L. 90–258, §24, Feb. 19, 1968, 82 Stat. 33; amended Pub. L. 93–463, title I, §103(a), Oct. 23, 1974, 88 Stat. 1392; Pub. L. 106–554, §1(a)(5) [title I, §123(a)(20)], Dec. 21, 2000, 114 Stat. 2763, 2763A–410.)

Amendments

2000—Pub. L. 106–554 substituted "registered entity" for "contract market" in two places.
1974—Pub. L. 93–463 substituted "Commission" for "Secretary of Agriculture".

Effective Date of 1974 Amendment

For effective date of amendment by Pub. L. 93–463 see section 418 of Pub. L. 93–463, set out as a note under section 2 of this title.

Effective Date

Section effective 120 days after Feb. 19, 1968, see section 28 of Pub. L. 90–258, set out as an Effective Date of 1968 Amendment note under section 2 of this title.

§12c. Disciplinary actions

(a) Action taken; written notice of reasons for action

(1) Any exchange or the Commission if the exchange fails to act, may suspend, expel, or otherwise discipline any person who is a member of that exchange, or deny any person access to the exchange. Any such action shall be taken solely in accordance with the rules of that exchange.

(2) Any suspension, expulsion, disciplinary, or access denial procedure established by an exchange rule shall provide for written notice to the Commission and to the person who is suspended, expelled, or disciplined, or denied access, within thirty days, which includes the reasons for the exchange action in the form and manner the Commission prescribes. An exchange shall make public its findings and the reasons for the exchange action in any such proceeding, including the action taken or the penalty imposed, but shall not disclose the evidence therefor, except to the person who is suspended, expelled, or disciplined, or denied access, and to the Commission.

(b) Review by Commission

The Commission may, in its discretion and in accordance with such standards and procedures as it deems appropriate, review any decision by an exchange whereby a person is suspended, expelled, otherwise disciplined, or denied access to the exchange. In addition, the Commission may, in its discretion and upon application of any person who is adversely affected by any other exchange action, review such action.

(c) Affirmance, modification, set aside, or remand of action

The Commission may affirm, modify, set aside, or remand any exchange decision it reviews pursuant to subsection (b), after a determination on the record whether the action of the exchange was in accordance with the policies of this chapter. Subject to judicial review, any order of the Commission entered pursuant to subsection (b) shall govern the exchange in its further treatment of the matter.

(d) Stay of action

The Commission, in its discretion, may order a stay of any action taken pursuant to subsection (a) pending review thereof.

(e) Major disciplinary rule violations

(1) The Commission shall issue regulations requiring each registered entity to establish and make available to the public a schedule of major violations of any rule within the disciplinary jurisdiction of such registered entity.

(2) The regulations issued by the Commission pursuant to this subsection shall prohibit, for a period of time to be determined by the Commission, any individual who is found to have committed any major violation from service on the governing board of any registered entity or registered futures association, or on any disciplinary committee thereof.

(Sept. 21, 1922, ch. 369, §8c, as added Pub. L. 93–463, title II, §216, Oct. 23, 1974, 88 Stat. 1405; amended Pub. L. 95–405, §18, Sept. 30, 1978, 92 Stat. 874; Pub. L. 102–546, title II, §206(a)(2), Oct. 28, 1992, 106 Stat. 3602; Pub. L. 106–554, §1(a)(5) [title I, §123(a)(20)], Dec. 21, 2000, 114 Stat. 2763, 2763A–410.)

Amendments

2000—Subsec. (e). Pub. L. 106–554 substituted "registered entity" for "contract market" wherever appearing.

1992—Pub. L. 102–546 redesignated pars. (1) to (4) as subsecs. (a) to (d), respectively, in subsec. (a) redesignated subpars. (A) and (B) as pars. (1) and (2), respectively, in subsec. (c) substituted references to subsection (b) for references to paragraph (2), in subsec. (d) substituted reference to subsection (a) for reference to paragraph (1), and added subsec. (e).

1978—Par. (1)(B). Pub. L. 95–405 substituted "An exchange shall make public its findings and the reasons for the exchange action in any such proceeding, including the action taken or the penalty imposed, but shall not disclose the evidence therefor, except to the person who is suspended, expelled, or disciplined or denied access, and to the Commission" for "Otherwise the notice and reasons shall be kept confidential".

Effective Date of 1978 Amendment

Amendment by Pub. L. 95–405 effective Oct. 1, 1978, see section 28 of Pub. L. 95–405, set out as a note under section 2 of this title.

Effective Date

For effective date of section, see section 418 of Pub. L. 93–463, set out as an Effective Date of 1968 Amendment note under section 2 of this title.

§12d. Commission action for noncompliance with export sales reporting requirements

The Commission may, in accordance with the procedures provided for in this chapter, refuse to register, register conditionally, or suspend, place restrictions upon, or revoke the registration of, any person, and may bar for any period as it deems appropriate any person from using or participating in any manner in any market regulated by the Commission, if such person is subject to a final decision or order of any court of competent jurisdiction or agency of the United States finding such person to have knowingly violated any provision of the export sales reporting requirements of section 612c–3 [1] of this title, or of any regulation issued thereunder.

(Sept. 21, 1922, ch. 369, §8d, as added Pub. L. 97–444, title II, §226, Jan. 11, 1983, 96 Stat. 2316.)

References in Text

Section 612c–3 of this title, referred to in text, was repealed by Pub. L. 101–624, title XV, §1578, Nov. 28, 1990, 104 Stat. 3702.

Effective Date

Section effective Jan. 11, 1983, see section 239 of Pub. L. 97–444, set out as an Effective Date of 1983 Amendment note under section 2 of this title.

[1] *See References in Text note below.*

§12e. Repealed. Pub. L. 106–554, §1(a)(5) [title I, §123(a)(21)], Dec. 21, 2000, 114 Stat. 2763, 2763A–410

Section, act Sept. 21, 1922, ch. 369, §8e, as added Pub. L. 102–546, title II, §202(a), Oct. 28, 1992, 106 Stat. 3598, related to Commission oversight and deficiency orders.

§13. Violations generally; punishment; costs of prosecution

(a) Felonies generally

It shall be a felony punishable by a fine of not more than $1,000,000 or imprisonment for not more than 10 years, or both, together with the costs of prosecution, for:

(1) Any person registered or required to be registered under this chapter, or any employee or agent thereof, to embezzle, steal, purloin, or with criminal intent convert to such person's use or to the use of another, any money, securities, or property having a value in excess of $100, which was received by such person or any employee or agent thereof to margin, guarantee, or secure the trades or contracts of any customer or accruing to such customer as a result of such trades or contracts or which otherwise was received from any customer, client, or pool participant in connection with the business of such person. The word "value" as used in this paragraph means face, par, or market value, or cost price, either wholesale or retail, whichever is greater.

(2) Any person to manipulate or attempt to manipulate the price of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, or of any swap, or to corner or attempt to corner any such commodity or knowingly to deliver or cause to be delivered for transmission through the mails or interstate commerce by telegraph, telephone, wireless, or other means of communication false or misleading or knowingly inaccurate reports concerning crop or market information or conditions that affect or tend to affect the price of any commodity in interstate commerce, or knowingly to violate the provisions of section 6, section 6b, subsections (a) through (e) of subsection [1] 6c, section 6h, section 6o(1), or section 23 of this title.

(3) Any person knowingly to make, or cause to be made, any statement in any application, report, or document required to be filed under this chapter or any rule or regulation thereunder or any undertaking contained in a registration statement required under this chapter, or by any registered entity or registered futures association in connection with an application for membership or participation therein or to become associated with a member thereof, which statement was false or misleading with respect to any material fact, or knowingly to omit any material fact required to be stated therein or necessary to make the statements therein not misleading.

(4) Any person willfully to falsify, conceal, or cover up by any trick, scheme, or artifice a material fact, make any false, fictitious, or fraudulent statements or representations, or make or use any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry to a registered entity, board of trade, swap data repository, or futures association designated or registered under this chapter acting in furtherance of its official duties under this chapter.

(5) Any person willfully to violate any other provision of this chapter, or any rule or regulation thereunder, the violation of which is made unlawful or the observance of which is required under the terms of this chapter, but no person shall be subject to imprisonment under this paragraph for the violation of any rule or regulation if such person proves that he had no knowledge of such rule or regulation.

(6) Any person to abuse the end user clearing exemption under section 2(h)(4) of this title, as determined by the Commission.

(b) Suspension of convicted felons

Any person convicted of a felony under this section shall be suspended from registration under this chapter and shall be denied registration or reregistration for five years or such longer period as the Commission may determine, and barred from using, or participating in any manner in, any market regulated by the Commission for five years or such longer period as the Commission shall determine, on such terms and conditions as the Commission may prescribe, unless the Commission determines that the imposition of such suspension, denial of registration or reregistration, or market bar is not required to protect the public interest. The Commission may upon petition later review such disqualification and market bar and for good cause shown reduce the period thereof.

(c) Transactions by Commissioners and Commission employees prohibited

It shall be a felony punishable by a fine of not more than $500,000 or imprisonment for not more than five years, or both, together with the costs of prosecution, for any Commissioner of the Commission or any employee or agent thereof, to participate, directly or indirectly, in any transaction in commodity futures or any transaction of the character of or which is commonly known to the trade as an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty", or "decline guaranty", or any transaction for the delivery of any commodity under a standardized contract commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract, or under any contract, account, arrangement, scheme, or device that the Commission determines serves the same function or functions as such a standardized contract, or is marketed or managed in substantially the same manner as such a standardized contract, or for any such person to participate, directly or indirectly, in any investment transaction in an actual commodity if nonpublic information is used in the investment transaction, if the investment transaction is prohibited by rule or regulation of the Commission, or if the investment transaction is effected by means of any instrument regulated by the Commission. The foregoing prohibitions shall not apply to any transaction or class of transactions that the Commission, by rule or regulation, has determined would not be contrary to the public interest or otherwise inconsistent with the purposes of this subsection.

(d) Use of information by Commissioners and Commission employees prohibited

It shall be a felony punishable by a fine of not more than $500,000 or imprisonment for not more than five years, or both, together with the costs of prosecution—(1) for any Commissioner of the Commission or any employee or agent thereof who, by virtue of his employment or position, acquires information which may affect or tend to affect the price of any commodity futures or commodity and which information has not been made public to impart such information with intent to assist another person, directly or indirectly, to participate in any transaction in commodity futures, any transaction in an actual commodity, or in any transaction of the character of or which is commonly known to the trade as an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty", or "decline guaranty", or in any transaction for the delivery of any commodity under a

standardized contract commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract, or under any contract, account, arrangement, scheme, or device that the Commission determines serves the same function or functions as such a standardized contract, or is marketed or managed in substantially the same manner as such a standardized contract; and (2) for any person to acquire such information from any Commissioner of the Commission or any employee or agent thereof and to use such information in any transaction in commodity futures, any transaction in an actual commodity, or in any transaction of the character of or which is commonly known to the trade as an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty", or "decline guaranty", or in any transaction for the delivery of any commodity under a standardized contract commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract, or under any contract, account, arrangement, scheme, or device that the Commission determines serves the same function or functions as such a standardized contract, or is marketed or managed in substantially the same manner as such a standardized contract.

(e) Insider trading prohibited

It shall be a felony for any person—

(1) who is an employee, member of the governing board, or member of any committee of a board of trade, registered entity, swap data repository, or registered futures association, in violation of a regulation issued by the Commission, willfully and knowingly to trade for such person's own account, or for or on behalf of any other account, in contracts for future delivery or options thereon, or swaps, on the basis of, or willfully and knowingly to disclose for any purpose inconsistent with the performance of such person's official duties as an employee or member, any material nonpublic information obtained through special access related to the performance of such duties; or

(2) willfully and knowingly to trade for such person's own account, or for or on behalf of any other account, in contracts for future delivery or options thereon on the basis of any material nonpublic information that such person knows was obtained in violation of paragraph (1) from an employee, member of the governing board, or member of any committee of a board of trade, registered entity, or registered futures association.

Such felony shall be punishable by a fine of not more than $500,000, plus the amount of any profits realized from such trading or disclosure made in violation of this subsection, or imprisonment for not more than five years, or both, together with the costs of prosecution.

(Sept. 21, 1922, ch. 369, §9, 42 Stat. 1003; June 15, 1936, ch. 545, §§2, 11, 49 Stat. 1491, 1501; Pub. L. 90–258, §25, Feb. 19, 1968, 82 Stat. 33; Pub. L. 93–463, title II, §212(d), title IV, §§401, 409, Oct. 23, 1974, 88 Stat. 1404, 1412, 1414; Pub. L. 95–405, §19, Sept. 30, 1978, 92 Stat. 875; Pub. L. 97–444, title II, §227, Jan. 11, 1983, 96 Stat. 2316; Pub. L. 99–641, title I, §§105, 110(3), (4), Nov. 10, 1986, 100 Stat. 3558, 3561; Pub. L. 102–546, title II, §§212(a), 214(a), Oct. 28, 1992, 106 Stat. 3608, 3610; Pub. L. 106–554, §1(a)(5) [title I, §123(a)(22)], Dec. 21, 2000, 114 Stat. 2763, 2763A–410; Pub. L. 110–234, title XIII, §§13103(d), 13105(h), May 22, 2008, 122 Stat. 1434, 1435; Pub. L. 110–246, §4(a), title XIII, §§13103(d), 13105(h), June 18, 2008, 122 Stat. 1664, 2196, 2197; Pub. L. 111–203, title VII, §741(b)(6), (7), July 21, 2010, 124 Stat. 1731.)

Codification

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

Amendments

2010—Subsec. (a)(2). Pub. L. 111–203, §741(b)(6)(A)(i), inserted "or of any swap," before "or to corner".

Subsec. (a)(4). Pub. L. 111–203, §741(b)(6)(A)(ii), inserted "swap data repository," before "or futures association".

Subsec. (a)(6). Pub. L. 111–203, §741(b)(7), added par. (6).

Subsec. (e)(1). Pub. L. 111–203, §741(b)(6)(B), inserted "swap data repository," before "or registered futures association" and ", or swaps," before "on the basis".

2008—Subsec. (a). Pub. L. 110–246, §13103(d), in introductory provisions, struck out "(or $500,000 in the case of a person who is an individual)" after "$1,000,000" and substituted "10 years" for "five years".

Subsecs. (e), (f). Pub. L. 110–246, §13105(h), redesignated subsec. (f) as (e) and, in par. (1), substituted "; or" for period at end.

2000—Subsecs. (a)(2) to (4), (f)(1), (2). Pub. L. 106–554 substituted "registered entity" for "contract market".

1992—Subsec. (a). Pub. L. 102–546, §212(a)(1)(A), (C), added subsec. (a) and struck out former subsec. (a) which related to penalty for embezzlement and larcenous actions.

Subsec. (b). Pub. L. 102–546, §212(a)(1)(A), (C), added subsec. (b) and struck out former subsec. (b) which related to penalty for price manipulation, cornering, and fraudulent information.

Subsec. (c). Pub. L. 102–546, §212(a)(1)(A), (B), (2), redesignated subsec. (d) as (c), substituted "$500,000" for "$100,000", and struck out former subsec. (c) which related to penalty for misdemeanors.

Subsecs. (d) to (f). Pub. L. 102–546, §§212(a)(1)(B), (3), 214(a), redesignated subsec. (e) as (d), substituted "$500,000" for "$100,000", and added subsec. (f).

1986—Subsec. (c). Pub. L. 99–641, §110(3), substituted "6k," for "6k."

Subsec. (d). Pub. L. 99–641, §110(4), substituted "advance guaranty" for "advance guarantee".

Pub. L. 99–641, §105, inserted "if nonpublic information is used in the investment transaction, if the investment transaction is prohibited by rule or regulation of the Commission, or if the investment transaction is effected by means of any instrument regulated by the Commission" after "actual commodity", and substituted provisions which related to foregoing prohibitions not being applicable to transactions determined by Commission not contrary to public interest or inconsistent with this subsection for provisions which read as follows: "Such prohibition against any investment transaction in an actual commodity shall not apply to (1) a transaction in which such person buys an agricultural commodity or livestock for use in such person's own farming or ranching operations or sells an agricultural commodity which such person has produced in connection with such person's own farming or ranching operations nor to any transaction in which such person sells livestock owned by such person for at least three months, (2) a transaction entered into by the trustee of a trust established by such person over which such person exercises no control if such transaction is entered into solely to hedge against adverse price changes in connection with such farming or ranching operations or is a transaction for the lease of oil or gas or other mineral rights or interests owned by such person, or (3) a transaction in which such person buys or sells, directly or indirectly (except by means of an instrument regulated by the Commission), a United States Government security, a certificate of deposit, or a similar financial instrument if no nonpublic information is used by such person in such transaction. With respect to such excepted transactions, the Commission shall require any Commissioner of the Commission or any employee or agent thereof who participates in any such transaction to notify the Commission thereof in accordance with such regulations as the Commission shall prescribe and the Commission shall make such information available to the public."

1983—Subsec. (a). Pub. L. 97–444, §227(1), expanded applicability to any person registered or required to be registered under this chapter and inserted provision suspending persons convicted under this subsec. from registration and denying reregistration for five years or longer as determined by the Commission, unless such suspension or denial is not required to protect the public interest.

Subsec. (b). Pub. L. 97–444, §227(2), inserted "A person convicted of a felony under this subsection shall be suspended from any registration under this chapter, denied registration

or reregistration for five years or such longer period as the Commission shall determine, and barred from using or participating in any manner in any market regulated by the Commission for five years or such longer period as the Commission shall determine on such terms and conditions as the Commission may prescribe, unless the Commission determines that the imposition of such suspension, denial of registration or reregistration, or market bar is not required to protect the public interest. The Commission may upon petition later review such disqualification and market bar and for good cause shown reduce the period thereof."

Subsec. (c). Pub. L. 97–444, §227(3), inserted "A person convicted under this subsection of knowingly violating the provisions of section 6a of this title shall be suspended from any registration under this chapter, denied registration or reregistration for a period of two years or such longer period as the Commission shall determine, and barred from using or participating in any manner in any market regulated by the Commission for two years or such longer period as the Commission shall determine on such terms and conditions as the Commission may prescribe, unless the Commission determines that the imposition of such suspension, denial of registration or reregistration, or market bar is not required to protect the public interest. The Commission may upon petition later review such disqualification and market bar and for good cause shown reduce the period thereof."

Subsec. (d). Pub. L. 97–444, §227(4), in amending subsec. (d) generally, added to range of felonious conduct, participation in any transaction for the delivery of any commodity under a standardized contract commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract, or under any contract, account, arrangement, scheme, or device that the Commission determines serves the same function or functions as such a standardized contract, or is marketed or managed in substantially the same manner as such a standardized contract, and added to nonapplicability of prohibition against any investment transaction in an actual commodity, a transaction entered into by the trustee of a trust established by such person over which such person exercises no control if such transaction is entered into solely to hedge against adverse price changes in connection with such farming or ranching operations or is a transaction for the lease of oil or gas or other mineral rights or interests owned by such person, or a transaction in which such person buys or sells, directly or indirectly (except by means of an instrument regulated by the Commission), a United States Government security, a certificate of deposit, or a similar financial instrument if no nonpublic information is used by such person in such transaction.

Subsec. (e). Pub. L. 97–444, §227(5), inserted after words " 'decline guaranty' " each place they appear the following: ", or in any transaction for the delivery of any commodity under a standardized contract commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract, or under any contract, account, arrangement, scheme, or device that the Commission determines serves the same function or functions as such a standardized contract, or is marketed or managed in substantially the same manner as such a standardized contract".

1978—Subsec. (a). Pub. L. 95–405, §19(1), substituted "$500,000" for "$100,000" and inserted provision relating to a fine of not more than $100,000 plus costs of prosecution for a violation by a person who is an individual.

Subsec. (b). Pub. L. 95–405, §19(2), substituted "$500,000" for "$100,000" and inserted provisions making felonies the violation of sections 6, 6b, 6c(b) to (e), 6h, 6o(1) and 23 of this title, knowingly making any false or misleading statement of material fact, or omitting such fact in any application or report, and setting the fine for such felonies at not more than $100,000 for a person who is an individual.

Subsec. (c). Pub. L. 95–405, §19(3), inserted references to subsecs. (d) and (e) of this section and substituted "sections 6a, 6c(a), 6d, 6e, 6i, 6k, 6m, 6o(2), or 12b of this title" for "sections 6 to 6e, 6h, 6i, 6k, 6m, 6o or 12b of this title".

Subsecs. (d), (e). Pub. L. 95–405, §19(4), (5), substituted "$100,000" for "$10,000".

1974—Subsecs. (a), (b). Pub. L. 93–463, §212(d)(1), (2), substituted "$100,000" for "$10,000".

Subsec. (c). Pub. L. 93–463, §§212(d)(3), 409, substituted "$100,000" for "$10,000" and inserted reference to sections 6k, 6m, and 6o of this title.

Subsecs. (d), (e). Pub. L. 93–463, §401, added subsecs. (d) and (e).

1968—Subsec. (a). Pub. L. 90–258 added subsec. (a).

Subsec. (b). Pub. L. 90–258 incorporated existing offenses in provisions designated as subsec. (b), changed classification thereof from misdemeanors to felonies, and increased term of imprisonment from not more than one year to not more than five years.

Subsec. (c). Pub. L. 90–258 incorporated existing offenses in provisions designated as subsec. (c), and included penalty for violation of section 12b of this title.

1936—Act June 15, 1936, amended section generally and provided that price manipulations of commodities in interstate commerce was a violation.

Effective Date of 2010 Amendment

Amendment by Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as a note under section 1a of this title.

Effective Date of 2008 Amendment

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of this title.

Effective Date of 1983 Amendment

Amendment by Pub. L. 97–444 effective Jan. 11, 1983, see section 239 of Pub. L. 97–444, set out as a note under section 2 of this title.

Effective Date of 1978 Amendment

Amendment by Pub. L. 95–405 effective Oct. 1, 1978, see section 28 of Pub. L. 95–405, set out as a note under section 2 of this title.

Effective Date of 1974 Amendment

For effective date of amendment by Pub. L. 93–463, see section 418 of Pub. L. 93–463, set out as a note under section 2 of this title.

Effective Date of 1968 Amendment

Amendment by Pub. L. 90–258 effective 120 days after Feb. 19, 1968, see section 28 of Pub. L. 90–258, set out as a note under section 2 of this title.

Effective Date of 1936 Amendment

Amendment by act June 15, 1936, effective 90 days after June 15, 1936, see section 13 of that act, set out as a note under section 1 of this title.

Regulations

Pub. L. 102–546, title II, §214(b), Oct. 28, 1992, 106 Stat. 3611, provided that: "The Commodity Futures Trading Commission shall issue regulations to implement the amendment made by subsection (a) [amending this section] not later than three hundred and sixty days after the date of enactment of this Act [Oct. 28, 1992]."

Penalties Study and Guidelines

Pub. L. 102–546, title II, §225, Oct. 28, 1992, 106 Stat. 3618, provided that:

"(a) Study.—The Commodity Futures Trading Commission shall study the penalties the Commission imposes against persons found to have violated the Commodity Exchange Act (7 U.S.C. 1 et seq.) and the penalties imposed by contract markets and registered futures associations against persons found to have violated their respective rules established under such Act.

"(b) Report.—Not later than two years after the date of enactment of this Act [Oct. 28, 1992], the Commission shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that describes the results of the study conducted under subsection (a). The report shall—

"(1) include an analysis of whether systematic differences exist among penalties imposed by various contract markets and registered futures associations for similar

offenses, and, if so, the causes of such differences;

"(2) propose industry-wide guidelines or rules to make penalty levels among contract markets and registered futures associations consistent, including, if appropriate, minimum penalties or penalty ranges for various offenses; and

"(3) propose guidelines or rules to make Commission penalty levels consistent, including, if appropriate, minimum penalties or penalty ranges for various offenses."

[1] *So in original. Probably should be "section".*

§13–1. Violations, prohibition against dealings in motion picture box office receipts or onion futures; punishment

(a) No contract for the sale of motion picture box office receipts (or any index, measure, value, or data related to such receipts) or onions for future delivery shall be made on or subject to the rules of any board of trade in the United States. The terms used in this section shall have the same meaning as when used in this chapter.

(b) Any person who shall violate the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof be fined not more than $5,000.

(Pub. L. 85–839, §1, Aug. 28, 1958, 72 Stat. 1013; Pub. L. 111–203, title VII, §721(e)(10), July 21, 2010, 124 Stat. 1672.)

Codification

Section was not enacted as part of the Commodity Exchange Act which comprises this chapter.

Amendments

2010—Subsec. (a). Pub. L. 111–203 inserted "motion picture box office receipts (or any index, measure, value, or data related to such receipts) or" after "sale of".

Effective Date of 2010 Amendment

Amendment by Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as a note under section 1a of this title.

Effective Date

Pub. L. 85–839, §2, Aug. 28, 1958, 72 Stat. 1013, provided that: "This Act [enacting this section] shall take effect thirty days after its enactment [Aug. 28, 1958]."

§13a. Nonenforcement of rules of government or other violations; cease and desist orders; fines and penalties; imprisonment; misdemeanor; separate offenses

If any registered entity is not enforcing or has not enforced its rules of government made a condition of its designation or registration as set forth in sections 7 through 7a–2 of this title, or if any registered entity, or any director, officer, agent, or employee of any registered entity otherwise is violating or has violated any of the provisions of this chapter or any of the rules, regulations, or orders of the Commission thereunder, the Commission may, upon notice and hearing on the record and subject to appeal as in other cases provided for in section 8(b) of this title, make and enter an order directing that such registered entity, director, officer, agent, or employee shall cease and desist from such violation, and assess a civil penalty of not more than $500,000 for each such violation, or, in any case of manipulation or attempted manipulation in violation of section 9, 15, 13b, or

13(a)(2) of this title, a civil penalty of not more than $1,000,000 for each such violation. If such registered entity, director, officer, agent, or employee, after the entry of such a cease and desist order and the lapse of the period allowed for appeal of such order or after the affirmance of such order, shall fail or refuse to obey or comply with such order, such registered entity, director, officer, agent, or employee shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $500,000 or imprisoned for not less than six months nor more than one year, or both, except that if the failure or refusal to obey or comply with the order involved any offense under section 13(a)(2) of this title, the registered entity, director, officer, agent, or employee shall be guilty of a felony and, on conviction, shall be subject to penalties under section 13(a)(2) of this title. Each day during which such failure or refusal to obey such cease and desist order continues shall be deemed a separate offense. If the offending registered entity or other person upon whom such penalty is imposed, after the lapse of the period allowed for appeal or after the affirmance of such penalty, shall fail to pay such penalty, the Commission shall refer the matter to the Attorney General who shall recover such penalty by action in the appropriate United States district court. In determining the amount of the money penalty assessed under this section, the Commission shall consider the gravity of the offense, and in the case of a registered entity shall further consider whether the amount of the penalty will materially impair the ability of the registered entity to carry on its operations and duties.

(Sept. 21, 1922, ch. 369, §6b, as added June 15, 1936, ch. 545, §9, 49 Stat. 1500; amended Pub. L. 90–258, §18, Feb. 19, 1968, 82 Stat. 31; Pub. L. 93–463, title II, §212(b), Oct. 23, 1974, 88 Stat. 1403; Pub. L. 95–405, §14, Sept. 30, 1978, 92 Stat. 872; Pub. L. 102–546, title II, §§209(b)(5), 212(c), Oct. 28, 1992, 106 Stat. 3607, 3609; Pub. L. 106–554, §1(a)(5) [title I, §123(a)(14)], Dec. 21, 2000, 114 Stat. 2763, 2763A–409; Pub. L. 110–234, title XIII, §13103(b), May 22, 2008, 122 Stat. 1433; Pub. L. 110–246, §4(a), title XIII, §13103(b), June 18, 2008, 122 Stat. 1664, 2195.)

Codification

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

Amendments

2008—Pub. L. 110–246, §13103(b), in first sentence, inserted before period at end ", or, in any case of manipulation or attempted manipulation in violation of section 9, 15, 13b, or 13(a)(2) of this title, a civil penalty of not more than $1,000,000 for each such violation" and, in second sentence, inserted before period at end ", except that if the failure or refusal to obey or comply with the order involved any offense under section 13(a)(2) of this title, the registered entity, director, officer, agent, or employee shall be guilty of a felony and, on conviction, shall be subject to penalties under section 13(a)(2) of this title".

2000—Pub. L. 106–554 substituted "registered entity" for "contract market" wherever appearing, "designation or registration as set forth in sections 7 through 7a–2 of this title" for "designation as set forth in section 7 of this title" in first sentence, and "the ability of the registered entity" for "the contract market's ability" in last sentence.

1992—Pub. L. 102–546 substituted "section 8(b) of this title" for "paragraph (a) of section 8 of this title", substituted "$500,000" for "$100,000" in two places, and in last sentence struck out "the appropriateness of such penalty to the net worth of the offending person and" after "Commission shall consider".

1978—Pub. L. 95–405 inserted "on the record" after "notice and hearing".

1974—Pub. L. 93–463 inserted provision for assessment of a civil penalty of not more than $100,000 for each violation, substituted "not more than $100,000" for "not less than $500 nor more than $10,000" as permissible range of fines imposed, inserted provisions for enforcement of a penalty, and substituted "orders of the Commission" for "orders of the Secretary of Agriculture or the commission".

1968—Pub. L. 90–258 amended section to clarify application only to boards of trade designated as contract markets, to include as grounds for cease and desist orders failure to

enforce the market's rules of government made a condition of its designation and violation of rules or regulations of the commission or orders of the Secretary, and to authorize such orders in conjunction with a suspension or revocation of designation as a contract market rather than in lieu of suspension or revocation.

Effective Date of 2008 Amendment

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of this title.

Effective Date of 1978 Amendment

Amendment by Pub. L. 95–405 effective Oct. 1, 1978, see section 28 of Pub. L. 95–405, set out as a note under section 2 of this title.

Effective Date of 1974 Amendment

For effective date of amendment by Pub. L. 93–463, see section 418 of Pub. L. 93–463, set out as a note under section 2 of this title.

Effective Date of 1968 Amendment

Amendment by Pub. L. 90–258 effective 120 days after Feb. 19, 1968, see section 28 of Pub. L. 90–258, set out as a note under section 2 of this title.

Effective Date

For effective date of section, see section 13 of act June 15, 1936, set out as an Effective Date of 1936 Amendment note under section 1 of this title.

§13a–1. Enjoining or restraining violations

(a) Action to enjoin or restrain violations

Whenever it shall appear to the Commission that any registered entity or other person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule, regulation, or order thereunder, or is restraining trading in any commodity for future delivery or any swap, the Commission may bring an action in the proper district court of the United States or the proper United States court of any territory or other place subject to the jurisdiction of the United States, to enjoin such act or practice, or to enforce compliance with this chapter, or any rule, regulation or order thereunder, and said courts shall have jurisdiction to entertain such actions: *Provided*, That no restraining order (other than a restraining order which prohibits any person from destroying, altering or disposing of, or refusing to permit authorized representatives of the Commission to inspect, when and as requested, any books and records or other documents or which prohibits any person from withdrawing, transferring, removing, dissipating, or disposing of any funds, assets, or other property, and other than an order appointing a temporary receiver to administer such restraining order and to perform such other duties as the court may consider appropriate) or injunction for violation of the provisions of this chapter shall be issued ex parte by said court.

(b) Injunction or restraining order

Upon a proper showing, a permanent or temporary injunction or restraining order shall be granted without bond.

(c) Writs or other orders

Upon application of the Commission, the district courts of the United States and the United States courts of any territory or other place subject to the jurisdiction of the United States shall also have jurisdiction to issue writs of mandamus, or orders affording like relief, commanding any person to comply with the provisions of this chapter or any rule, regulation, or order of the Commission thereunder, including the

requirement that such person take such action as is necessary to remove the danger of violation of this chapter or any such rule, regulation, or order: *Provided*, That no such writ of mandamus, or order affording like relief, shall be issued ex parte.

(d) Civil penalties

(1) IN GENERAL.—In any action brought under this section, the Commission may seek and the court shall have jurisdiction to impose, on a proper showing, on any person found in the action to have committed any violation—

(A) a civil penalty in the amount of not more than the greater of $100,000 or triple the monetary gain to the person for each violation; or

(B) in any case of manipulation or attempted manipulation in violation of section 9, 15, 13b, or 13(a)(2) of this title, a civil penalty in the amount of not more than the greater of $1,000,000 or triple the monetary gain to the person for each violation.

(2) If a person on whom such a penalty is imposed fails to pay the penalty within the time prescribed in the court's order, the Commission may refer the matter to the Attorney General who shall recover the penalty by action in the appropriate United States district court.

(3) EQUITABLE REMEDIES.—In any action brought under this section, the Commission may seek, and the court may impose, on a proper showing, on any person found in the action to have committed any violation, equitable remedies including—

(A) restitution to persons who have sustained losses proximately caused by such violation (in the amount of such losses); and

(B) disgorgement of gains received in connection with such violation.

(e) Venue and process

Any action under this section may be brought in the district wherein the defendant is found or is an inhabitant or transacts business or in the district where the act or practice occurred, is occurring, or is about to occur, and process in such cases may be served in any district in which the defendant is an inhabitant or wherever the defendant may be found.

(f) Action by Attorney General

In lieu of bringing actions itself pursuant to this section, the Commission may request the Attorney General to bring the action.

(g) Notice to Attorney General of action brought by Commission

Where the Commission elects to bring the action, it shall inform the Attorney General of such suit and advise him of subsequent developments.

(h) Notice of investigations and enforcement actions

The Commission shall provide the Securities and Exchange Commission with notice of the commencement of any proceeding and a copy of any order entered by the Commission against any futures commission merchant or introducing broker registered pursuant to section 6f(a)(2) of this title, any floor broker or floor trader exempt from registration pursuant to section 6f(a)(3) of this title, any associated person exempt from registration pursuant to section 6k(6) of this title, or any board of trade designated as a contract market pursuant to section 7b–1 of this title.

(Sept. 21, 1922, ch. 369, §6c, as added Pub. L. 93–463, title II, §211, Oct. 23, 1974, 88 Stat. 1402; amended Pub. L. 97–444, title II, §220, Jan. 11, 1983, 96 Stat. 2308; Pub. L. 99–641, title I, §104, Nov. 10, 1986, 100 Stat. 3557; Pub. L. 102–546, title II, §221, Oct. 28, 1992, 106 Stat. 3614; Pub. L. 106–554, §1(a)(5) [title I, §123(a)(15), title II, §253(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–409, 2763A–449; Pub. L. 110–234, title XIII, §13103(c), May 22, 2008, 122 Stat. 1434; Pub. L. 110–246, §4(a), title XIII, §13103(c), June 18, 2008, 122 Stat. 1664, 2196; Pub. L. 111–203, title VII, §§741(b)(5), 744, July 21, 2010, 124 Stat. 1731, 1735.)

Codification

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

Amendments

2010—Subsec. (a). Pub. L. 111–203, §741(b)(5), inserted "or any swap" after "commodity for future delivery".

Subsec. (d)(3). Pub. L. 111–203, §744, added par. (3).

2008—Subsec. (d). Pub. L. 110–246, §13103(c), inserted subsec. heading, added par. (1), and struck out former par. (1) which read as follows: "In any action brought under this section, the Commission may seek and the court shall have jurisdiction to impose, on a proper showing, on any person found in the action to have committed any violation a civil penalty in the amount of not more than the higher of $100,000 or triple the monetary gain to the person for each violation."

2000—Subsec. (a). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(15)], substituted "registered entity" for "contract market".

Subsec. (h). Pub. L. 106–554, §1(a)(5) [title II, §253(c)], added subsec. (h).

1992—Pub. L. 102–546 designated first, second, and third sentences as subsecs. (a) to (c), respectively, added subsec. (d), and designated fourth, fifth, and sixth sentences as subsecs. (e) to (g), respectively.

1986—Pub. L. 99–641 inserted ", and other than an order appointing a temporary receiver to administer such restraining order and to perform such other duties as the court may consider appropriate".

1983—Pub. L. 97–444 inserted "(other than a restraining order which prohibits any person from destroying, altering or disposing of, or refusing to permit authorized representatives of the Commission to inspect, when and as requested, any books and records or other documents or which prohibits any person from withdrawing, transferring, removing, dissipating, or disposing of any funds, assets, or other property)" after "*Provided*, That no restraining order".

Effective Date of 2010 Amendment

Amendment by Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as a note under section 1a of this title.

Effective Date of 2008 Amendment

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of this title.

Effective Date of 1983 Amendment

Amendment by Pub. L. 97–444 effective Jan. 11, 1983, see section 239 of Pub. L. 97–444, set out as a note under section 2 of this title.

Effective Date

For effective date of section, see section 418 of Pub. L. 93–463, set out as an Effective Date of 1974 Amendment note under section 2 of this title.

§13a–2. Jurisdiction of States

(1) Whenever it shall appear to the attorney general of any State, the administrator of the securities laws of any State, or such other official as a State may designate, that the interests of the residents of that State have been, are being, or may be threatened or adversely affected because any person (other than a contract market, derivatives transaction execution facility, clearinghouse, floor broker, or floor trader) has engaged in, is engaging or is about to engage in, any act or practice constituting a violation of any provision of this chapter or any rule, regulation, or order of the

Commission thereunder, the State may bring a suit in equity or an action at law on behalf of its residents to enjoin such act or practice, to enforce compliance with this chapter, or any rule, regulation, or order of the Commission thereunder, to obtain damages on behalf of their residents, or to obtain such further and other relief as the court may deem appropriate.

(2) The district courts of the United States, the United States courts of any territory, and the District Court of the United States for the District of Columbia, shall have jurisdiction of all suits in equity and actions at law brought under this section to enforce any liability or duty created by this chapter or any rule, regulation, or order of the Commission thereunder, or to obtain damages or other relief with respect thereto. Upon proper application, such courts shall also have jurisdiction to issue writs of mandamus, or orders affording like relief, commanding the defendant to comply with the provisions of this chapter or any rule, regulation, or order of the Commission thereunder, including the requirement that the defendant take such action as is necessary to remove the danger of violation of this chapter or of any such rule, regulation, or order. Upon a proper showing, a permanent or temporary injunction or restraining order shall be granted without bond.

(3) Immediately upon instituting any such suit or action, the State shall serve written notice thereof upon the Commission and provide the Commission with a copy of its complaint, and the Commission shall have the right to (A) intervene in the suit or action and, upon doing so, shall be heard on all matters arising therein, and (B) file petitions for appeal.

(4) Any suit or action brought under this section in a district court of the United States may be brought in the district wherein the defendant is found or is an inhabitant or transacts business or wherein the act or practice occurred, is occurring, or is about to occur, and process in such cases may be served in any district in which the defendant is an inhabitant or wherever the defendant may be found.

(5) For purposes of bringing any suit or action under this section, nothing in this chapter shall prevent the attorney general, the administrator of the State securities laws, or other duly authorized State officials from exercising the powers conferred on them by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

(6) For purposes of this section, "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

(7) Nothing contained in this section shall prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any general civil or criminal antifraud statute of such State.

(8)(A) Nothing in this chapter shall prohibit an authorized State official from proceeding in a State court against any person registered under this chapter (other than a floor broker, floor trader, or registered futures association) for an alleged violation of any antifraud provision of this chapter or any antifraud rule, regulation, or order issued pursuant to the chapter.

(B) The State shall give the Commission prior written notice of its intent to proceed before instituting a proceeding in State court as described in this subsection and shall furnish the Commission with a copy of its complaint immediately upon instituting any such proceeding. The Commission shall have the right to (i) intervene in the proceeding and, upon doing so, shall be heard on all matters arising therein, and (ii) file a petition for appeal. The Commission or the defendant may remove such proceeding to the district court of the United States for the proper district by following the procedure for removal otherwise provided by law, except that the petition for removal shall be filed within sixty days after service of the summons and complaint upon the defendant. The Commission shall have the right to appear as amicus curiae in any such proceeding.

(Sept. 21, 1922, ch. 369, §6d, as added Pub. L. 95–405, §15, Sept. 30, 1978, 92 Stat. 872; amended Pub. L. 97–444, title II, §221, Jan. 11, 1983, 96 Stat. 2308; Pub. L. 102–546, title II, §207(b)(1), (2), Oct. 28, 1992, 106 Stat. 3604; Pub. L. 106–554, §1(a)(5) [title I, §123(a)(16)], Dec. 21, 2000, 114 Stat. 2763, 2763A–409.)

Amendments

2000—Par. (1). Pub. L. 106–554 inserted "derivatives transaction execution facility," after "contract market,".

1992—Pars. (1), (8)(A). Pub. L. 102–546 inserted reference to floor trader.

1983—Par. (8). Pub. L. 97–444 added par. (8).

Effective Date of 1992 Amendment

Amendment by Pub. L. 102–546 effective 180 days after Oct. 28, 1992, with Commodity Futures Trading Commission to issue any regulations necessary to implement such amendment no later than 180 days after Oct. 28, 1992, see section 207(c) of Pub. L. 102–546, set out as a note under section 6e of this title.

Effective Date of 1983 Amendment

Amendment by Pub. L. 97–444 effective Jan. 11, 1983, see section 239 of Pub. L. 97–444, set out as a note under section 2 of this title.

Effective Date

Section effective Oct. 1, 1978, see section 28 of Pub. L. 95–405, set out as an Effective Date of 1978 Amendment note under section 2 of this title.

§13b. Manipulations or other violations; cease and desist orders against persons other than registered entities; punishment

If any person (other than a registered entity), is violating or has violated section 9 of this title or any other provisions of this chapter or of the rules, regulations, or orders of the Commission thereunder, the Commission may, upon notice and hearing, and subject to appeal as in other cases provided for in section 9 of this title, make and enter an order directing that such person shall cease and desist therefrom and, if such person thereafter and after the lapse of the period allowed for appeal of such order or after the affirmance of such order, shall knowingly fail or refuse to obey or comply with such order, such person, upon conviction thereof, shall be fined not more than the higher of $140,000 or triple the monetary gain to such person, or imprisoned for not more than 1 year, or both, except that if such knowing failure or refusal to obey or comply with such order involves any offense within subsection (a) or (b) of section 13 of this title, such person, upon conviction thereof, shall be subject to the penalties of said subsection (a) or (b): *Provided*, That any such cease and desist order under this section against any respondent in any case of manipulation shall be issued only in conjunction with an order issued against such respondent under section 9 of this title.

(Sept. 21, 1922, ch. 369, §6(d), formerly §6(c), as added Pub. L. 90–258, §17, Feb. 19, 1968, 82 Stat. 31; amended Pub. L. 93–463, title I, §103(a), (b), title II, §212(c), Oct. 23, 1974, 88 Stat. 1392, 1404; renumbered §6(d) and amended Pub. L. 102–546, title II, §§209(a)(1), (4), 212(b), Oct. 28, 1992, 106 Stat. 3606, 3609; Pub. L. 106–554, §1(a)(5) [title I, §123(a)(12)(D)], Dec. 21, 2000, 114 Stat. 2763, 2763A–409; Pub. L. 111–203, title VII, §§741(b)(4), 753(b), July 21, 2010, 124 Stat. 1731, 1753.)

Codification

Section is comprised of subsec. (d) of section 6 of act Sept. 21, 1922. Subsecs. (a) and (b) of section 6 are classified to section 8 of this title. Subsec. (c) of section 6 is classified to section 9 of this title. Subsecs. (e), (f), and (g) of section 6 are classified to sections 9a, 9b, and 9c of this title, respectively.

Amendments

2010—Pub. L. 111–203, §753(b), amended section generally. Prior to amendment, text read as follows: "If any person (other than a registered entity) is manipulating or attempting to manipulate or has manipulated or attempted to manipulate the market price of any commodity, in interstate commerce, or for future delivery on or subject to the rules of any registered entity, or of any swap, or otherwise is violating or has violated any of the provisions of this chapter or of the rules, regulations, or orders of the Commission or the commission thereunder, the Commission may, upon notice and hearing, and subject to appeal as in other cases provided for in sections 9 and 15 of this title, make and enter an order directing that such person shall cease and desist therefrom and, if such person thereafter and after the lapse of the period allowed for appeal of such order or after the affirmance of such order, shall fail or refuse to obey or comply with such order, such person shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than the higher of $100,000 or triple the monetary gain to such person, or imprisoned for not less than six months nor more than one year, or both, except that if such failure or refusal to obey or comply with such order involves any offense within paragraph (a) or (b) of section 13 of this title, such person shall be guilty of a felony and, upon conviction thereof, shall be subject to the penalties of said paragraph (a) or (b): *Provided*, That any such cease and desist order against any respondent in any case of manipulation of, or attempt to manipulate, the price of any commodity shall be issued only in conjunction with an order issued against such respondent under sections 9 and 15 of this title. Each day during which such failure or refusal to obey or comply with such order continues shall be deemed a separate offense."

Pub. L. 111–203, §741(b)(4), inserted "or of any swap," before "or otherwise is violating".

2000—Pub. L. 106–554 substituted "registered entity" for "contract market" in two places.

1992—Pub. L. 102–546 made technical amendment to references to sections 9 and 15 of this title to reflect change in reference to corresponding section of original act and substituted "the higher of $100,000 or triple the monetary gain to such person" for "$100,000".

1974—Pub. L. 93–463, §§103(a), 212(c), substituted "Commission" for "Secretary" before "may" and substituted "not more than $100,000" for "not less than $500 nor more than $10,000".

Pub. L. 93–463, §103(a), provided for substitution of "Commission" for "Secretary of Agriculture" except where such words would be stricken by section 103(b), which directed striking the words "the Secretary of Agriculture or" where they appeared in the phrase "the Secretary of Agriculture or the Commission". Because the word "commission" was not capitalized in the text of this section, section 103(b) did not apply to this section and therefore section 103(a) was executed, resulting in the substitution of "the Commission or the commission" for "the Secretary of Agriculture or the commission".

Effective Date of 2010 Amendment

Amendment by section 741(b)(4) of Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as a note under section 1a of this title.

Amendment by section 753(b) of Pub. L. 111–203 effective on the date on which the final rule promulgated by the Commodity Futures Trading Commission pursuant to Pub. L. 111–203 takes effect [see 76 F.R. 41398, effective Aug. 15, 2011], see section 753(d) of Pub. L. 111–203, set out as a note under section 9 of this title.

Effective Date of 1974 Amendment

For effective date of amendment by Pub. L. 93–463, see section 418 of Pub. L. 93–463, set out as a note under section 2 of this title.

Effective Date

Section effective 120 days after Feb. 19, 1968, see section 28 of Pub. L. 90–258, set out as an Effective Date of 1968 Amendment note under section 2 of this title.

§13c. Responsibility as principal; minor violations

(a) Any person who commits, or who willfully aids, abets, counsels, commands, induces, or procures the commission of, a violation of any of the provisions of this chapter, or any of the rules, regulations, or orders issued pursuant to this chapter, or who acts in combination or concert with any other person in any such violation, or who willfully causes an act to be done or omitted which if directly performed or omitted by him or another would be a violation of the provisions of this chapter or any of such rules, regulations, or orders may be held responsible for such violation as a principal.

(b) Any person who, directly or indirectly, controls any person who has violated any provision of this chapter or any of the rules, regulations, or orders issued pursuant to this chapter may be held liable for such violation in any action brought by the Commission to the same extent as such controlled person. In such action, the Commission has the burden of proving that the controlling person did not act in good faith or knowingly induced, directly or indirectly, the act or acts constituting the violation.

(c) Nothing in this chapter shall be construed as requiring the Commission or the Commission [1] to report minor violations of this chapter for prosecution, whenever it appears that the public interest does not require such action.

(Sept. 21, 1922, ch. 369, §13, as added Pub. L. 90–258, §26, Feb. 19, 1968, 82 Stat. 34; amended Pub. L. 93–463, title I, §103(a), (b), Oct. 23, 1974, 88 Stat. 1392; Pub. L. 97–444, title II, §230, Jan. 11, 1983, 96 Stat. 2319; Pub. L. 102–546, title IV, §402(1)(D), (9)(C), Oct. 28, 1992, 106 Stat. 3624, 3625.)

Amendments

1992—Subsec. (c). Pub. L. 102–546, §402(9)(C), which directed that "the Secretary of Agriculture or" be struck out, could not be executed because of amendment by Pub. L. 93–463, §103(a). See 1974 Amendment note below.

Pub. L. 102–546, §402(1)(D), substituted "Commission" for "commission" before "to report".

1983—Subsec. (a). Pub. L. 97–444, §230(1), struck out "in administrative proceedings under this chapter" after "may be held responsible".

Subsecs. (b), (c). Pub. L. 97–444, §230(2), (3), added subsec. (b) and redesignated former subsec. (b) as (c).

1974—Subsec. (b). Pub. L. 93–463, §103(a), provided for substitution of "Commission" for "Secretary of Agriculture" except where such words would be stricken by section 103(b), which directed striking the words "the Secretary of Agriculture or" where they appeared in the phrase "the Secretary of Agriculture or the Commission". Because the word "commission" was not capitalized in the text of this section, section 103(b) did not apply to this section and therefore section 103(a) was executed, resulting in the substitution of "the Commission or the commission" for "the Secretary of Agriculture or the commission".

Effective Date of 1983 Amendment

Amendment by Pub. L. 97–444 effective Jan. 11, 1983, see section 239 of Pub. L. 97–444, set out as a note under section 2 of this title.

Effective Date of 1974 Amendment

For effective date of amendment by Pub. L. 93–463, see section 418 of Pub. L. 93–463, set out as a note under section 2 of this title.

Effective Date

Section effective 120 days after Feb. 19, 1968, see section 28 of Pub. L. 90–258, set out as an Effective Date of 1968 Amendment note under section 2 of this title.

[1] *So in original. The words "or the Commission" probably should not appear.*

§14. Repealed. Pub. L. 99–641, title I, §110(5), Nov. 10, 1986, 100 Stat. 3561

Section, act Sept. 21, 1922, ch. 369, §11, 42 Stat. 1003, provided that violations of this chapter occurring before Nov. 1, 1922, should not be punishable.

§15. Omitted

Codification

Section, act Sept. 21, 1922, ch. 369, §6(c) (part), formerly §6(b), 42 Stat. 1002, as amended and renumbered, which related to enforcement powers of Commission, was omitted in the general amendment of section 6(c) of act Sept. 21, 1922, by Pub. L. 111–203, title VII, §753(a), July 21, 2010, 124 Stat. 1750. Section 6(c) is now classified to section 9 of this title.

§15a. Repealed. Pub. L. 95–405, §24, Sept. 30, 1978, 92 Stat. 877

Section, Pub. L. 93–463, title II, §217, Oct. 23, 1974, 88 Stat. 1405, related to leverage contracts for gold and silver. See section 23(b) of this title.

Effective Date of Repeal

Repeal effective Oct. 1, 1978, see section 28 of Pub. L. 95–405, set out as an Effective Date of 1978 Amendment note under section 2 of this title.

§15b. Cotton futures contracts

(a) Short title

This section may be cited as the "United States Cotton Futures Act".

(b) Repeal of tax on cotton futures

Subchapter D of chapter 39 of title 26 (relating to tax on cotton futures) is repealed.

(c) Definitions

For purposes of this section—

(1) Cotton futures contract

The term "cotton futures contract" means any contract of sale of cotton for future delivery made at, on, or in any exchange, board of trade, or similar institution or place of business which has been designated a "contract market" by the Commodity Futures Trading Commission pursuant to the Commodity Exchange Act [7 U.S.C. 1 et seq.] and the term "contract of sale" as so used shall be held to include sales, agreements of sale, and agreements to sell, except that—

(A) any cotton futures contract that, by its terms, is settled in cash is excluded from the coverage of this paragraph and section; and

(B) any cotton futures contract that permits tender of cotton grown outside of the United States is excluded from the coverage of this paragraph and section to the extent that the cotton grown outside of the United States is tendered for delivery under the cotton futures contract.

(2) Future delivery

The term "future delivery" shall not include any cash sale of cotton for deferred shipment or delivery.

(3) Person

The term "person" includes an individual, trust, estate, partnership, association, company, or corporation.

(4) Secretary

The term "Secretary" means the Secretary of Agriculture of the United States.

(5) Standards

The term "standards" means the official cotton standards of the United States established by the Secretary pursuant to the United States Cotton Standards Act, as amended [7 U.S.C. 51 et seq.].

(d) Bona fide spot markets and commercial differences

(1) Definition

For purposes of this section, the only markets which shall be considered bona fide spot markets shall be those which the Secretary shall, from time to time, after investigation, determine and designate to be such, and of which he shall give public notice.

(2) Determination

In determining, pursuant to the provisions of this section, what markets are bona fide spot markets, the Secretary is directed to consider only markets in which spot cotton is sold in such volume and under such conditions as customarily to reflect accurately the value of middling cotton and the differences between the prices or values of middling cotton and of other grades of cotton for which standards shall have been established by the Secretary; except that if there are not sufficient places, in the markets of which are made bona fide sales of spot cotton of grades for which standards are established by the Secretary, to enable him to designate at least five spot markets in accordance with subsection (f)(3), he shall, from data as to spot sales collected by him, make rules and regulations for determining the actual commercial differences in the value of spot cotton of the grades established by him as reflected by bona fide sales of spot cotton, of the same or different grades, in the market selected and designated by him, from time to time, for that purpose, and in that event differences in value of cotton of various grades involved in contracts made pursuant to subsection (f)(1) and (2) shall be determined in compliance with such rules and regulations. It shall be the duty of any person engaged in the business of dealing in cotton, when requested by the Secretary or any agent acting under his instructions, to answer correctly to the best of his knowledge, under oath or otherwise, all questions touching his knowledge of the number of bales, the classification, the price or bona fide price offered, and other terms of purchase or sale, of any cotton involved in any transaction participated in by him, or to produce all books, letters, papers, or documents in his possession or under his control relating to such matter. A person complying with the preceding sentence shall not be liable for any loss or damage arising or resulting from such compliance.

(3) Withholding information

Any person engaged in the business of dealing in cotton who shall, within a reasonable time prescribed by the Secretary or any agent acting under his instructions, willfully fail or refuse to answer questions or to produce books, letters, papers, or documents, as required under paragraph (2) of this subsection, or who shall willfully give any answer that is false or misleading, shall, upon conviction thereof, be fined not more than $500.

(e) Form and validity of cotton futures contracts

Each cotton futures contract shall be a basis grade contract, or a tendered grade contract, or a specific grade contract as specified in subsections (f), (g), or (h) and shall be in writing plainly stating, or evidenced by written memorandum showing, the terms of such contract, including the quantity of the cotton involved and the names and addresses of the seller and buyer in such contract, and shall be signed by the party to be charged, or by his agent in his behalf. No cotton futures contract

which does not conform to such requirements shall be enforceable by, or on behalf of, any party to such contract or his privies.

(f) Basis grade contracts

(1) Conditions

Each basis grade cotton futures contract shall comply with each of the following conditions:

(A) Conformity with regulations

Conform to the regulations made pursuant to this section.

(B) Specification of grade, price, and dates of sale and settlement

Specify the basis grade for the cotton involved in the contract, which shall be one of the grades for which standards are established by the Secretary, except grades prohibited from being delivered on a contract made under this subsection by subparagraph (E), the price per pound at which the cotton of such basis grade is contracted to be bought or sold, the date when the purchase or sale was made, and the month or months in which the contract is to be fulfilled or settled; except that middling shall be deemed the basis grade incorporated into the contract if no other basis grade be specified either in the contract or in the memorandum evidencing the same.

(C) Provision for delivery of standard grades only

Provide that the cotton dealt with therein or delivered thereunder shall be of or within the grades for which standards are established by the Secretary except grades prohibited from being delivered on a contract made under this subsection by subparagraph (E) and no other grade or grades.

(D) Provision for settlement on basis of actual commercial differences

Provide that in case cotton of grade other than the basis grade be tendered or delivered in settlement of such contract, the differences above or below the contract price which the receiver shall pay for such grades other than the basis grade shall be the actual commercial differences, determined as hereinafter provided.

(E) Prohibition of delivery of inferior cotton

Provide that cotton that, because of the presence of extraneous matter of any character, or irregularities or defects, is reduced in value below that of low middling, or cotton that is below the grade of low middling, or, if tinged, cotton that is below the grade of strict middling, or, if yellow stained, cotton that is below the grade of good middling, the grades mentioned being of the official cotton standards of the United States, or cotton that is less than seven-eighths of an inch in length of staple, or cotton of perished staple, or of immature staple, or cotton that is "gin cut" or reginned, or cotton that is "repacked" or "false packed" or "mixed packed" or "water packed", shall not be delivered on, under, or in settlement of such contract.

(F) Provisions for tender in full, notice of delivery date, and certificate of grade

Provide that all tenders of cotton under such contract shall be the full number of bales involved therein, except that such variations of the number of bales may be permitted as is necessary to bring the total weight of the cotton tendered within the provisions of the contract as to weight; that, on the fifth business day prior to delivery, the person making the tender shall give to the person receiving the same written notice of the date of delivery, and that, on or prior to the date so fixed for delivery, and in advance of final settlement of the contract, the person making the tender shall furnish to the person receiving the same a written notice or certificate stating the grade of each individual bale to be

delivered and, by means of marks or numbers, identifying each bale with its grade.

(G) Provision for tender and settlement in accordance with Government classification

Provide that all tenders of cotton and settlements therefor under such contract shall be in accordance with the classification thereof made under the regulations of the Secretary by such officer or officers of the Government as shall be designated for the purpose, and the costs of such classification shall be fixed, assessed, collected, and paid as provided in such regulations and shall be credited to the account referred to in section 55 of this title. The Secretary may provide by regulation conditions under which cotton samples submitted or used in the performance of services authorized by this act shall become the property of the United States and may be sold and the proceeds credited to the foregoing account: *Provided*, That such cotton samples shall not be subject to the provisions of chapters 1 to 11 of title 40 and division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41. The Secretary is authorized to prescribe regulations for carrying out the purposes of this subparagraph and the certificates of the officers of the Government as to the classification of any cotton for the purposes of this subparagraph shall be accepted in the courts of the United States in all suits between the parties to such contract, or their privies, as prima facie evidence of the true classification of the cotton involved.

(2) Incorporation of conditions in contracts

The provisions of paragraphs (1)(C), (D), (E), (F), and (G) shall be deemed fully incorporated into any such contract if there be written or printed thereon, or on the memorandums evidencing the same, at or prior to the time the same is signed, the phrase "Subject to United States Cotton Futures Act, subsection (f)."

(3) Delivery allowances

For the purpose of this subsection, the differences above or below the contract price which the receiver shall pay for cotton of grades above or below the basic [1] grade in the settlement of a contract of sale for the future delivery of cotton shall be determined by the actual commercial differences in value thereof upon the sixth business day prior to the day fixed, in accordance with paragraph (1)(F), for the delivery of cotton on the contract, established by the sale of spot cotton in the spot markets of not less than five places designated for the purpose from time to time by the Secretary, as such values were established by the sales of spot cotton, in such designated five or more markets. For purposes of this paragraph, such values in the such spot markets shall be based upon the standards for grades of cotton established by the Secretary. Whenever the value of one grade is to be determined from the sale or sales of spot cotton of another grade or grades, such value shall be fixed in accordance with rules and regulations which shall be prescribed for the purpose by the Secretary.

(g) Tendered grade contracts

(1) Conditions

Each tendered grade cotton future contract shall comply with each of the following conditions:

(A) Compliance with subsection (f)

Comply with all the terms and conditions of subsection (f) not inconsistent with this subsection; and

(B) Provision for contingent specific performance

Provide that, in case cotton of grade or grades other than the basis grade specified in the contract shall be tendered in performance of the contract, the

parties to such contract may agree, at the time of the tender, as to the price of the grade or grades so tendered, and that if they shall not then agree as to such price, then, and in that event, the buyer of said contract shall have the right to demand the specific fulfillment of such contract by the actual delivery of cotton of the basis grade named therein and at the price specified for such basis grade in said contract.

(2) Incorporation of conditions in contract

Contracts made in compliance with this subsection shall be known as "subsection (g) Contracts". The provisions of this subsection shall be deemed fully incorporated into any such contract if there be written or printed thereon, or on the memorandum evidencing the same, at or prior to the time the same is signed, the phrase "Subject to United States Cotton Futures Act, subsection (g)".

(3) Application of subsection

Nothing in this subsection shall be so construed as to authorize any contract in which, or in the settlement of or in respect to which, any device or arrangement whatever is resorted to, or any agreement is made, for the determination or adjustment of the price of the grade or grades tendered other than the basis grade specified in the contract by any "fixed difference" system, or by arbitration, or by any other method not provided for by this section.

(h) Specific grade contracts

(1) Conditions

Each specific grade cotton futures contract shall comply with each of the following conditions:

(A) Conformity with rules and regulations

Conform to the rules and regulations made pursuant to this section.

(B) Specification of grade, price, dates of sale and delivery

Specify the grade, type, sample, or description of the cotton involved in the contract, the price per pound at which such cotton is contracted to be bought or sold, the date of the purchase or sale, and the time when shipment or delivery of such cotton is to be made.

(C) Prohibition of delivery of other than specified grade

Provide that cotton of or within the grade or of the type, or according to the sample or description, specified in the contract shall be delivered thereunder, and that no cotton which does not conform to the type, sample, or description, or which is not of or within the grade specified in the contract shall be tendered or delivered thereunder.

(D) Provision for specific performance

Provide that the delivery of cotton under the contract shall not be effected by means of "setoff" or "ring" settlement, but only by the actual transfer of the specified cotton mentioned in the contract.

(2) Incorporation of conditions in contract

The provisions of paragraphs (1)(A), (C), and (D) shall be deemed fully incorporated into any such contract if there be written or printed thereon, or on the document or memorandum evidencing the same, at or prior to the time the same is entered into, the words "Subject to United States Cotton Futures Act, subsection (h)".

(3) Application of subsection

This subsection shall not be construed to apply to any contract of sale made in compliance with subsection (f) or (g).

(i) Liability of principal for acts of agent

When construing and enforcing the provisions of this section, the act, omission, or failure of any official, agent, or other person acting for or employed by any association, partnership, or corporation within the scope of his employment or office shall, in every case, also be deemed the act, omission, or failure of such association, partnership, or corporation, as well as that of the person.

(j) Regulations

The Secretary is authorized to make such regulations with the force and effect of law as he determines may be necessary to carry out the provisions of this section and the powers vested in him by this section.

(k) Violations

Any person who knowingly violates any regulation made in pursuance of this section, shall, upon conviction thereof, be fined not less than $100 nor more than $500, for each violation thereof, in the discretion of the court, and, in case of natural persons, may, in addition be punished by imprisonment for not less than 30 days nor more than 90 days, for each violation, in the discretion of the court except that this subsection shall not apply to violations subject to subsection (d)(3).

(l) Applicability to contracts prior to effective date

The provisions of this section shall not apply to any cotton futures contract entered into prior to the effective date of this section or to any act or failure to act by any person prior to such effective date and all such prior contracts, acts or failure to act shall continue to be governed by the applicable provisions of the Internal Revenue Code of 1954 [2] as in effect prior to the enactment of this section. All designations of bona fide spot markets and all rules and regulations issued by the Secretary pursuant to the applicable provisions of the Internal Revenue Code of 1954 [2] which were in effect on the effective date of this section, shall remain fully effective as designations and regulations under this section until superseded, amended, or terminated by the Secretary.

(m) Authorization

There are authorized to be appropriated such sums as may be necessary to carry out this section.

(Pub. L. 94–455, title XIX, §1952(a)–(m), Oct. 4, 1976, 90 Stat. 1841–1846; Pub. L. 97–35, title I, §156(c), Aug. 13, 1981, 95 Stat. 374; Pub. L. 102–237, title I, §123, Dec. 13, 1991, 105 Stat. 1844; Pub. L. 106–472, title III, §311, Nov. 9, 2000, 114 Stat. 2076; Pub. L. 114–36, §1(a), July 20, 2015, 129 Stat. 435.)

References in Text

The Commodity Exchange Act, referred to in subsec. (c)(1), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, which is classified generally to chapter 1 (§1 et seq.) of this title. For complete classification of this Act to the Code, see section 1 of this title and Tables.

The United States Cotton Standards Act, referred to in subsec. (c)(5), is act Mar. 4, 1923, ch. 288, 42 Stat. 1517, which is classified generally to chapter 2 (§51 et seq.) of this title. For complete classification of this Act to the Code, see section 51 of this title and Tables.

The Internal Revenue Code of 1954, referred to in subsec. (l), was redesignated the Internal Revenue Code of 1986 by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, and is classified to Title 26, Internal Revenue Code.

Codification

Section was enacted as part of the Tax Reform Act of 1976, and not as part of the Commodity Exchange Act which comprises this chapter.

This section, referred to in subsec. (c)(1), was in the original a reference to this "Act", meaning the United States Cotton Futures Act, which comprises this section.

In subsec. (f)(1)(G), "chapters 1 to 11 of title 40 and division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41" substituted for "the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.)" on

authority of Pub. L. 107–217, §5(c), Aug. 21, 2002, 116 Stat. 1303, which Act enacted Title 40, Public Buildings, Property, and Works, and Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

Amendments

2015—Subsec. (c)(1). Pub. L. 114–36 inserted a dash after "except that", designated "any cotton futures contract that, by its terms, is settled in cash is excluded from the coverage of this paragraph and section." as subpar. (A), and added subpar. (B).

2000—Subsec. (d)(2). Pub. L. 106–472 inserted at end "A person complying with the preceding sentence shall not be liable for any loss or damage arising or resulting from such compliance."

1991—Subsec. (c)(1). Pub. L. 102–237 inserted before period at end ", except that any cotton futures contract that, by its terms, is settled in cash is excluded from the coverage of this paragraph and section".

1981—Subsec. (f)(1)(G). Pub. L. 97–35 inserted provisions relating to crediting to account referred to in section 55 of this title and provisions respecting cotton samples submitted or used becoming the property of the United States.

Effective Date of 2015 Amendment

Pub. L. 114–36, §1(b), July 20, 2015, 129 Stat. 435, provided that: "The amendments made by subsection (a) [amending this section] shall apply with respect to cotton futures contracts entered into on or after the date of the enactment of this Act [July 20, 2015]."

Effective Date of 1981 Amendment

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 156(e) of Pub. L. 97–35, set out as an Effective Date note under section 61a of this title.

Effective Date

Pub. L. 94–455, title XIX, §1952(o), Oct. 4, 1976, 90 Stat. 1846, provided that: "The provisions of this section [enacting this section, amending section 6808 of Title 26, Internal Revenue Code, and repealing sections 7233 and 7263, subchapter D of chapter 39, and subchapter E of chapter 76 of Title 26] shall take effect on the 90th day after the date of the enactment of this Act [Oct. 4, 1976]."

[1] *So in original. Probably should be "basis".*

[2] *See References in Text note below.*

§16. Commission operations

(a) Cooperation with other agencies

The Commission may cooperate with any Department or agency of the Government, any State, territory, district, or possession, or department, agency, or political subdivision thereof, any foreign futures authority, any department or agency of a foreign government or political subdivision thereof, or any person.

(b) Employment of investigators, experts, Administrative Law Judges, consultants, clerks, and other personnel; contracts

(1) The Commission shall have the authority to employ such investigators, special experts, Administrative Law Judges, clerks, and other employees as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress.

(2) The Commission may employ experts and consultants in accordance with section 3109 of title 5, and compensate such persons at rates not in excess of the maximum daily rate prescribed for GS–18 under section 5332 of title 5.

(3) The Commission shall also have authority to make and enter into contracts with respect to all matters which in the judgment of the Commission are necessary and appropriate to effectuate the purposes and provisions of this chapter, including,

but not limited to, the rental of necessary space at the seat of Government and elsewhere.

(4) The Commission may request (in accordance with the procedures set forth in subchapter II of chapter 31 of title 5) and the Office of Personnel Management shall authorize pursuant to the request, eight positions in the Senior Executive Service in addition to the number of such positions authorized for the Commission on October 28, 1992.

(c) Expenses

All of the expenses of the Commissioners, including all necessary expenses for transportation incurred by them while on official business of the Commission, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Commission.

(d) Authorization of appropriations

There are authorized to be appropriated such sums as are necessary to carry out this chapter for each of the fiscal years 2008 through 2013.

(e) Relation to other law, departments, or agencies

(1) Nothing in this chapter shall supersede or preempt—

(A) criminal prosecution under any Federal criminal statute;

(B) the application of any Federal or State statute (except as provided in paragraph (2)), including any rule or regulation thereunder, to any transaction in or involving any commodity, product, right, service, or interest—

(i) that is not conducted on or subject to the rules of a registered entity or exempt board of trade;

(ii) (except as otherwise specified by the Commission by rule or regulation) that is not conducted on or subject to the rules of any board of trade, exchange, or market located outside the United States, its territories or possessions; or

(iii) that is not subject to regulation by the Commission under section 6c or 23 of this title; or

(C) the application of any Federal or State statute, including any rule or regulation thereunder, to any person required to be registered or designated under this chapter who shall fail or refuse to obtain such registration or designation.

(2) This chapter shall supersede and preempt the application of any State or local law that prohibits or regulates gaming or the operation of bucket shops (other than antifraud provisions of general applicability) in the case of—

(A) an electronic trading facility excluded under section 2(e) [1] of this title; and

(B) an agreement, contract, or transaction that is excluded from this chapter under section 2(c) or 2(f) of this title or sections 27 to 27f of this title, or exempted under section 6(c) of this title (regardless of whether any such agreement, contract, or transaction is otherwise subject to this chapter).

(f) Investigative assistance to foreign futures authorities

(1) On request from a foreign futures authority, the Commission may, in its discretion, provide assistance in accordance with this section if the requesting authority states that the requesting authority is conducting an investigation which it deems necessary to determine whether any person has violated, is violating, or is about to violate any laws, rules or regulations relating to futures or options matters that the requesting authority administers or enforces. The Commission may conduct such investigation as the Commission deems necessary to collect information and evidence pertinent to the request for assistance. Such assistance may be provided without regard to whether the facts stated in the request would also constitute a violation of the laws of the United States.

(2) In deciding whether to provide assistance under this subsection, the Commission shall consider whether—

(A) the requesting authority has agreed to provide reciprocal assistance to the Commission in futures and options matters; and

(B) compliance with the request would prejudice the public interest of the United States.

(3) Notwithstanding any other provision of law, the Commission may accept payment and reimbursement, in cash or in kind, from a foreign futures authority, or made on behalf of such authority, for necessary expenses incurred by the Commission, its members, and employees in carrying out any investigation, or in providing any other assistance to a foreign futures authority, pursuant to this section. Any payment or reimbursement accepted shall be considered a reimbursement to the appropriated funds of the Commission.

(g) Computerized futures trading

Consistent with its responsibilities under section 22 of this title, the Commission is directed to facilitate the development and operation of computerized trading as an adjunct to the open outcry auction system. The Commission is further directed to cooperate with the Office of the United States Trade Representative, the Department of the Treasury, the Department of Commerce, and the Department of State in order to remove any trade barriers that may be imposed by a foreign nation on the international use of electronic trading systems.

(h) Regulation of swaps as insurance under State law

A swap—

(1) shall not be considered to be insurance; and

(2) may not be regulated as an insurance contract under the law of any State.

(Sept. 21, 1922, ch. 369, §12, 42 Stat. 1003; Pub. L. 93–463, title I, §101(b), Oct. 23, 1974, 88 Stat. 1391; Pub. L. 95–405, §20, Sept. 30, 1978, 92 Stat. 875; Pub. L. 97–444, title II, §§228, 229, Jan. 11, 1983, 96 Stat. 2318; Pub. L. 99–641, title I, §106, Nov. 10, 1986, 100 Stat. 3558; Pub. L. 102–546, title II, §§216, 220(a), title III, §§302, 303, title IV, §401, title V, §502(c), Oct. 28, 1992, 106 Stat. 3611, 3614, 3622, 3624, 3631; Pub. L. 104–9, §2, Apr. 21, 1995, 109 Stat. 154; Pub. L. 106–554, §1(a)(5) [title I, §§116, 117], Dec. 21, 2000, 114 Stat. 2763, 2763A–402; Pub. L. 110–234, title XIII, §13104, May 22, 2008, 122 Stat. 1434; Pub. L. 110–246, §4(a), title XIII, §13104, June 18, 2008, 122 Stat. 1664, 2196; Pub. L. 111–203, title VII, §§722(b), 749(f), July 21, 2010, 124 Stat. 1673, 1747.)

References in Text

Section 2(e) of this title relating to the exclusion of electronic trading facilities, referred to in subsec. (e)(2)(A), was struck out by Pub. L. 111–203, title VII, §723(a)(1)(A), July 21, 2010, 124 Stat. 1675.

Codification

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

Amendments

2010—Subsec. (e)(2)(B). Pub. L. 111–203, §749(f), substituted "section 2(c) or 2(f) of this title" for "section 2(c), 2(d), 2(f), or 2(g) of this title" and struck out "2(h) or" before "6(c)".

Subsec. (h). Pub. L. 111–203, §722(b), added subsec. (h).

2008—Subsec. (d). Pub. L. 110–246, §13104, amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: "There are authorized to be appropriated such sums as are necessary to carry out this chapter for each of fiscal years 1995 through 2005."

2000—Subsec. (d). Pub. L. 106–554, §1(a)(5) [title I, §116], substituted "2005" for "2000".

Subsec. (e). Pub. L. 106–554, §1(a)(5) [title I, §117], added subsec. (e) and struck out former subsec. (e) which provided that this chapter did not supersede or preempt criminal

prosecutions under Federal criminal statutes or the application of any Federal or State statute to certain specified transactions and persons.

1995—Subsec. (d). Pub. L. 104–9 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: "There are authorized to be appropriated to carry out this chapter—

"(1) $53,000,000 for fiscal year 1993; and

"(2) $60,000,000 for fiscal year 1994."

1992—Subsec. (a). Pub. L. 102–546, §302, inserted "any foreign futures authority, any department or agency of a foreign government or political subdivision thereof," after "thereof,".

Subsec. (b). Pub. L. 102–546, §216, designated first through third sentences as pars. (1) to (3), respectively, and added par. (4).

Subsec. (d). Pub. L. 102–546, §401, amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: "There are authorized to be appropriated to carry out this chapter such sums as may be necessary for each of the fiscal years during the period beginning October 1, 1986, and ending September 30, 1989."

Subsec. (e)(2)(A). Pub. L. 102–546, §502(c), inserted "or, in the case of any State or local law that prohibits or regulates gaming or the operation of 'bucket shops' (other than antifraud provisions of general applicability), that is not a transaction or class of transactions that has received or is covered by the terms of any exemption previously granted by the Commission under subsection (c) of section 6 of this title," after "market,".

Subsec. (f). Pub. L. 102–546, §303, added subsec. (f).

Subsec. (g). Pub. L. 102–546, §220(a), added subsec. (g).

1986—Subsec. (d). Pub. L. 99–641 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: "There are authorized to be appropriated to carry out the provisions of this chapter such sums as may be required for each of the fiscal years during the period beginning October 1, 1982, and ending September 30, 1986."

1983—Subsec. (d). Pub. L. 97–444, §228, substituted appropriation authorization for fiscal years during period beginning Oct. 1, 1982, and ending Sept. 30, 1986, for prior authorization for fiscal years during period beginning Oct. 1, 1978, and ending Sept. 30, 1982.

Subsec. (e). Pub. L. 97–444, §229, added subsec. (e).

1978—Subsec. (d). Pub. L. 95–405 substituted "for each of the fiscal years during the period beginning October 1, 1978, and ending September 30, 1982" for "for the fiscal year ending June 30, 1975, for the fiscal year ending June 30, 1976, for the fiscal year ending June 30, 1977, and for the fiscal year ending June 30, 1978".

1974—Pub. L. 93–463 designated existing unlettered provisions as subsecs. (a) to (d), substituted "Commission" for "Secretary of Agriculture", inserted provisions authorizing the expenditure of funds for expenses upon the presentation of itemized vouchers therefor approved by the Commission, substituted provisions authorizing appropriations specifically for fiscal years ending June 30, 1975, 1976, 1977, and 1978, for provisions making a general authorization of appropriations without a fiscal year limitation, and inserted authorization to enter into contracts and compensate experts and consultants in accordance with section 3109 of title 5 at rates not in excess of the maximum daily rate prescribed for GS–18 under section 5332 of title 5.

Effective Date of 2010 Amendment

Amendment by Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as a note under section 1a of this title.

Effective Date of 2008 Amendment

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of this title.

Effective Date of 1983 Amendment

Amendment by Pub. L. 97–444 effective Jan. 11, 1983, see section 239 of Pub. L. 97–444, set out as a note under section 2 of this title.

Effective Date of 1978 Amendment

Amendment by Pub. L. 95–405 effective Oct. 1, 1978, see section 28 of Pub. L. 95–405, set out as a note under section 2 of this title.

Effective Date of 1974 Amendment

For effective date of amendment by Pub. L. 93–463, see section 418 of Pub. L. 93–463, set out as a note under section 2 of this title.

References in Other Laws to GS–16, 17, or 18 Pay Rates

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

[1] *See References in Text note below.*

§16a. Service fees and National Futures Association study

(a) Development and implementation of plan for user fees; report to and approval by Congressional committees

Notwithstanding any other provision of law, the Commodity Futures Trading Commission may develop and implement a plan to charge and collect reasonable fees to cover the estimated cost of regulating transactions under the jurisdiction of the Commission. However, prior to implementing such a plan, the Commission shall report its intention to do so to the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry. The Commission shall include in its report the feasibility and desirability of collecting such fees. Any plan developed under this section shall not be implemented until approved by the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry. Fees collected under any plan approved under this section shall be deposited in the Treasury of the United States as miscellaneous receipts.

(b) National Futures Association regulatory experience; report; contents

The Commodity Futures Trading Commission shall submit to Congress a report containing the results of a study of the regulatory experience of the National Futures Association for the period beginning January 1, 1983 and ending September 30, 1985. The report shall be submitted not later than January 1, 1986. The report shall include (but not to be limited to) the following—

(1) the extent to which the National Futures Association has fully implemented the program provided in the rules approved by the Commission under section 17(p) and (q) of the Commodity Exchange Act [7 U.S.C. 21(p), (q)] and the effectiveness of the operation of such program;

(2) the actual and projected cost savings to the Federal Government, if any, resulting from operations of the National Futures Association;

(3) the actual and projected costs which the Commission and the public would have incurred if the Association had not undertaken self-regulatory responsibility for certain areas under the Commission's jurisdiction;

(4) problem areas, if any, encountered by the Association;

(5) the nature of the working relationship between the Association and the Commission;

(6) an assessment of the actual and projected efficiencies the Commission has achieved or expects to be achieved as a result of the continuing regulatory activities of the Association; and

(7) the immediate and projected capabilities of the Commission at the time of submission of the study to turn its attention to more immediate problems of regulation, as a result of the activities of the Association.

(c) Schedule of fees for services, activities and functions; notice and hearing; actual cost standard

Nothing in this section shall limit the authority of the Commission to promulgate, after notice and opportunity for hearing, a schedule of appropriate fees to be charged for services rendered and activities and functions performed by the Commission in conjunction with its administration and enforcement of the Commodity Exchange Act [7 U.S.C. 1 et seq.]: *Provided*, That the fees for any specified service or activity or function shall not exceed the actual cost thereof to the Commission.

(Pub. L. 95–405, §26, Sept. 30, 1978, 92 Stat. 877; Pub. L. 97–444, title II, §237, Jan. 11, 1983, 96 Stat. 2325.)

References in Text

The Commodity Exchange Act, referred to in subsec. (c), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, as amended, which is classified generally to chapter 1 (§1 et seq.) of this title. For complete classification of this Act to the Code, see section 1 of this title and Tables.

Codification

Section was enacted as part of the Futures Trading Act of 1978, and not as part of the Commodity Exchange Act which comprises this chapter.

Amendments

1983—Pub. L. 97–444 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

Effective Date of 1983 Amendment

Amendment by Pub. L. 97–444 effective Jan. 11, 1983, see section 239 of Pub. L. 97–444, set out as a note under section 2 of this title.

Effective Date

Section effective Oct. 1, 1978, see section 28 of Pub. L. 95–405, set out as an Effective Date of 1978 Amendment note under section 2 of this title.

Study of Assessments on Transactions

Pub. L. 102–546, title II, §218, Oct. 28, 1992, 106 Stat. 3612, provided that:

"(a) Study.—The Comptroller General of the United States shall conduct a study to determine whether—

"(1) it is feasible to fund some or all of the enforcement and market surveillance activities of the Commodity Futures Trading Commission, as required by the amendments to the Commodity Exchange Act made by the Futures Trading Practices Act of 1992 [see Short Title of 1992 Amendment note set out under section 1 of this title], through the imposition of an assessment on commodity futures and options transactions executed pursuant to the Commodity Exchange Act [7 U.S.C. 1 et seq.]; and

"(2) a program of assessment-based funding for some or all of such enforcement and market surveillance activities would better provide resources to the Commodity Futures Trading Commission to enable the Commission to—

"(A) protect the interests of market users (including hedgers and speculators), producers of commodities traded on the futures markets, and the general public; and

"(B) maintain and enhance the credibility of such futures and options markets.

"(b) Report.—Not later than one year after the date of enactment of this Act [Oct. 28, 1992], the Comptroller General shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report containing the Comptroller General's determinations pursuant to subsection (a), together with any appropriate recommendations for the implementation of such a program

of assessment-based funding for some or all of the Commodity Futures Trading Commission's enforcement and market surveillance activities."

§17. Separability

If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the chapter and of the application of such provision to other persons and circumstances shall not be affected thereby.

(Sept. 21, 1922, ch. 369, §10, 42 Stat. 1003.)

§17a. Separability of 1936 amendment

If any provision of the act of June 15, 1936, ch. 545, 49 Stat. 1491, which amends this chapter, or the application thereof to any person or circumstances is held invalid, the provisions of the section of this chapter which is amended by such provision of said act shall apply to such person or circumstances. No proceeding shall be abated by reason of any amendment to this chapter made by said act but shall be disposed of pursuant to said act.

(June 15, 1936, ch. 545, §12, 49 Stat. 1501.)

Codification

Section was not enacted as part of the Commodity Exchange Act which comprises this chapter.

Effective Date

For effective date of section, see section 13 of act June 15, 1936, set out as an Effective Date of 1936 Amendment note under section 1 of this title.

§17b. Separability of 1968 amendment

If any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby, and the provisions of the section of this chapter which is amended by such provision of this Act shall apply to such person or circumstances. Pending proceedings shall not be abated by reason of any provision of this Act but shall be disposed of pursuant to the provisions of this chapter, in effect prior to the effective date of this Act.

(Pub. L. 90–258, §27, Feb. 19, 1968, 82 Stat. 34.)

References in Text

This Act, referred to in text, is Pub. L. 90–258, Feb. 19, 1968, 82 Stat. 26. For complete classification of this Act to the Code, see Tables.

Effective date of this Act, referred to in text, as one hundred and twenty days after Feb. 19, 1968, see section 28 of Pub. L. 90–258, set out as an Effective Date of 1968 Amendment note under section 2 of this title.

Codification

Section was not enacted as part of the Commodity Exchange Act which comprises this chapter.

§18. Complaints against registered persons

(a) Petition for actual damages

(1) Any person complaining of any violation of any provision of this chapter, or any rule, regulation, or order issued pursuant to this chapter, by any person who is registered under this chapter may, at any time within two years after the cause of action accrues, apply to the Commission for an order awarding—

(A) actual damages proximately caused by such violation. If an award of actual damages is made against a floor broker in connection with the execution of a customer order, and the futures commission merchant which selected the floor broker for the execution of the customer order is held to be responsible under section 2(a)(1) of this title for the floor broker's violation, such futures commission merchant may be required to satisfy such award; and

(B) in the case of any action arising from a willful and intentional violation in the execution of an order on the floor of a registered entity, punitive or exemplary damages equal to no more than two times the amount of such actual damages. If an award of punitive or exemplary damages is made against a floor broker in connection with the execution of a customer order, and the futures commission merchant which selected the floor broker for the execution of the customer order is held to be responsible under section 2(a)(1) of this title for the floor broker's violation, such futures commission merchant may be required to satisfy such award if the floor broker fails to do so, except that such requirement shall apply to the futures commission merchant only if it willfully and intentionally selected the floor broker with the intent to assist or facilitate the floor broker's violation.

(2)(A) An action may be brought under this subsection by any one or more persons described in this subsection for and in behalf of such person or persons and other persons similarly situated, if the Commission permits such actions pursuant to a final rule issued by the Commission.

(B) Not later than two hundred and seventy days after October 28, 1992, the Commission shall propose and publish for public comment such rules as are necessary to carry out subparagraph (A). In developing such rules, the Commission shall consider the potential impact of such actions on resources available to the reparations system established under this chapter and the relative merits of bringing such actions in Federal court.

(b) Rules and regulations; control over right of appeal

The Commission may promulgate such rules, regulations, and orders as it deems necessary or appropriate for the efficient and expeditious administration of this section. Notwithstanding any other provision of law, such rules, regulations, and orders may prescribe, or otherwise condition, without limitation, the form, filing, and service of pleadings or orders, the nature and scope of discovery, counterclaims, motion practice (including the grounds for dismissal of any claim or counterclaim), hearings (including the waiver thereof, which may relate to the amount in controversy), rights of appeal, if any, and all other matters governing proceedings before the Commission under this section.

(c) Bond requirement when complainant is nonresident; waiver

In case a complaint is made by a nonresident of the United States, the complainant shall be required, before any formal action is taken on his complaint, to furnish a bond in double the amount of the claim conditioned upon the payment of costs, including a reasonable attorney's fee for the respondent if the respondent shall prevail, and any reparation award that may be issued by the Commission against the complainant on any counterclaim by respondent: *Provided*, That the Commission shall have authority to waive the furnishing of a bond by a complainant who is a resident of a country which permits the filing of a complaint by a resident of the United States without the furnishing of a bond.

(d) Enforcement of reparation award

(1) If any person against whom an award has been made does not pay the reparation award within the time specified in the Commission's order, the complainant, or any person for whose benefit such order was made, within three years of the date of the order, may file a certified copy of the order of the Commission, in the district court of the United States for the district in which he resides or in which is located the principal place of business of the respondent, for enforcement of such reparation award by appropriate orders. The orders, writs, and processes of such district court may in such case run, be served, and be returnable anywhere in the United States. The petitioner shall not be liable for costs in the district court, nor for costs at any subsequent state of the proceedings, unless they accrue upon his appeal. If the petitioner finally prevails, he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. Subject to the right of appeal under subsection (e) of this section, an order of the Commission awarding reparations shall be final and conclusive.

(2) A reparation award shall be directly enforceable in district court as if it were a judgment pursuant to section 1963 of title 28. This paragraph shall operate retroactively from the effective date of its enactment, and shall apply to all reparation awards for which a proceeding described in paragraph (1) is commenced within 3 years of the date of the Commission's order.

(e) Review

Any order of the Commission entered hereunder shall be reviewable on petition of any party aggrieved thereby, by the United States Court of Appeals for any circuit in which a hearing was held, or if no hearing was held, any circuit in which the appellee is located, under the procedure provided in section 9 of this title. Such appeal shall not be effective unless within 30 days from and after the date of the reparation order the appellant also files with the clerk of the court a bond in double the amount of the reparation awarded against the appellant conditioned upon the payment of the judgment entered by the court, plus interest and costs, including a reasonable attorney's fee for the appellee, if the appellee shall prevail. Such bond shall be in the form of cash, negotiable securities having a market value at least equivalent to the amount of bond prescribed, or the undertaking of a surety company on the approved list of sureties issued by the Treasury Department of the United States. The appellee shall not be liable for costs in said court. If the appellee prevails, he shall be allowed a reasonable attorney's fee to be taxed and collected as a part of his costs.

(f) Automatic bar from trading and suspension for noncompliance; effect of appeal

Unless the party against whom a reparation order has been issued shows to the satisfaction of the Commission within fifteen days from the expiration of the period allowed for compliance with such order that either an appeal as herein authorized has been taken or payment of the full amount of the order (or any agreed settlement thereof) has been made, such party shall be prohibited automatically from trading on all registered entities and, if the party is registered with the Commission, such registration shall be suspended automatically at the expiration of such fifteen-day period until such party shows to the satisfaction of the Commission that payment of such amount with interest thereon to date of payment has been made: *Provided*, That if on appeal the appellee prevails or if the appeal is dismissed, the automatic prohibition against trading and suspension of registration shall become effective at the expiration of thirty days from the date of judgment on the appeal, but if the judgment is stayed by a court of competent jurisdiction, the suspension shall become effective ten days after the expiration of such stay, unless prior thereto the judgment of the court has been satisfied.

(g) Predispute resolution agreements for institutional customers

Nothing in this section prohibits a registered futures commission merchant from requiring a customer that is an eligible contract participant, as a condition to the commission merchant's conducting a transaction for the customer, to enter into an agreement waiving the right to file a claim under this section.

(Sept. 21, 1922, ch. 369, §14, as added Pub. L. 93–463, title I, §106, Oct. 23, 1974, 88 Stat. 1393; amended Pub. L. 94–16, §3, Apr. 16, 1975, 89 Stat. 77; Pub. L. 95–405, §21, Sept. 30, 1978, 92 Stat. 875; Pub. L. 97–444, title II, §231, Jan. 11, 1983, 96 Stat. 2319; Pub. L. 102–546, title II, §§209(b)(7), 222(b), 224, title IV, §402(11), Oct. 28, 1992, 106 Stat. 3607, 3615, 3617, 3625; Pub. L. 106–554, §1(a)(5) [title I, §§118, 123(a)(23)], Dec. 21, 2000, 114 Stat. 2763, 2763A–403, 2763A–410; Pub. L. 110–234, title XIII, §13105(k), May 22, 2008, 122 Stat. 1435; Pub. L. 110–246, §4(a), title XIII, §13105(k), June 18, 2008, 122 Stat. 1664, 2197.)

Codification

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

Amendments

2008—Subsec. (d). Pub. L. 110–246, §13105(k), designated existing provisions as par. (1) and added par. (2).

2000—Subsec. (a)(1)(B). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(23)(A)], substituted "registered entity" for " contract market".

Subsec. (f). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(23)(B)], substituted "registered entities" for " contract markets".

Subsec. (g). Pub. L. 106–554, §1(a)(5) [title I, §118], added subsec. (g) and struck out former subsec. (g) which read as follows: "The provisions of this section shall not become effective until fifteen months after October 23, 1974: *Provided*, That claims which arise within one year immediately prior to the effective date of this section may be heard by the Commission after such 15-month period."

1992—Subsec. (a). Pub. L. 102–546, §224, designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, and added par. (2).

Pub. L. 102–546, §222(b), substituted "awarding—" and pars. (1) and (2) for "awarding actual damages proximately caused by such violation."

Subsec. (e). Pub. L. 102–546, §209(b)(7), made technical amendment to reference to sections 9 and 15 of this title to reflect change in reference to corresponding section of original act.

Subsec. (g). Pub. L. 102–546, §402(11), substituted "15-month" for second reference to "fifteen months".

1983—Subsec. (a). Pub. L. 97–444, §231(1), substituted provisions relating to complaints against violations by persons "registered under this chapter" for provisions relating to complaints against persons "registered or required to be registered under section 6d, 6e, 6j, or 6m of this title", and substituted provisions for application to Commission for an award of actual damages caused by such violation, for provisions authorizing application to Commission by petition, and forwarding of complaint, if warranted, to respondent for satisfaction or answer.

Subsec. (b). Pub. L. 97–444, §231(2), substituted provisions relating to promulgation by Commission of rules, regulations, and orders necessary or appropriate for administration of this section, including rules of practice and procedure governing proceedings before the Commission, for provisions relating to investigation and service of complaint by Commission, and hearing thereon before an Administrative Law Judge, except that where amount claimed as damages did not exceed $5,000, hearing need not be held, and proofs could be supplied by deposition or verified statements of fact.

Subsec. (c). Pub. L. 97–444, §231(3), (4), redesignated subsec. (d) as (c). Former subsec. (c), which provided that after opportunity for hearing on complaints where the damages claimed exceeded the sum of $5,000 had been provided or waived and on complaints where damages claimed did not exceed the sum of $5,000 not requiring hearing as provided

herein, Commission would determine whether or not the respondent had violated any provision of this chapter or any rule, regulation, or order thereunder, was struck out.

Subsec. (d). Pub. L. 97–444, §231(4), (5), redesignated subsec. (f) as (d) and substituted "subsection (e)" for "subsection (g)". Former subsec. (d) was redesignated (c).

Subsec. (e). Pub. L. 97–444, §231(3), (4), redesignated subsec. (g) as (e). Former subsec. (e), which provided that if, after a hearing on a complaint made by any person under subsection (a) of this section, or without hearing as provided in subsections (b) and (c) of this section, or upon failure of the party complained against to answer a complaint duly served within the time prescribed, or to appear at a hearing after being duly notified, the Commission determined that the respondent had violated any provision of this chapter, or any rule, regulation, or order thereunder, the Commission would unless the offender had already made reparation to the person complaining, determine the amount of damage, if any, to which such person was entitled as a result of such violation and would make an order directing the offender to pay to such person complaining such amount on or before the date fixed in the order, and that if, after the respondent had filed his answer to the complaint, it appeared therein that the respondent had admitted liability for a portion of the amount claimed in the complaint as damages, the Commission under such rules and regulations as it would prescribe, unless the respondent had already made reparation to the person complaining, could issue an order directing the respondent to pay to the complainant the undisputed amount on or before the date fixed in the order, leaving the respondent's liability for the disputed amount for subsequent determination, with the remaining disputed amount to be determined in the same manner and under the same procedure as it would have been determined if no order had been issued by the Commission with respect to the undisputed sum, was struck out.

Subsec. (f). Pub. L. 97–444, §231(4), (6), redesignated subsec. (h) as (f), made certain grammatical changes, and inserted provision allowing party against whom a reparation order has been issued to show compliance by payment of the full amount of the order or any agreed settlement thereof.

Subsecs. (g) to (i). Pub. L. 97–444, §231(4), redesignated subsecs. (g), (h), and (i), as (e), (f), and (g), respectively.

1978—Subsec. (a). Pub. L. 95–405, §21(1), substituted "who is registered or required to be registered" for "registered".

Subsecs. (b), (c). Pub. L. 95–405, §21(2), (3), substituted "$5,000" for "$2,500" wherever appearing.

1975—Subsec. (i). Pub. L. 94–16 substituted "fifteen months" for "one year" in two places, and "one year" for "nine months".

Effective Date of 2008 Amendment

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of this title.

Effective Date of 1983 Amendment

Amendment by Pub. L. 97–444 effective 120 days after Jan. 11, 1983, or such earlier date as the Commission shall prescribe by regulation, see section 239 of Pub. L. 97–444, set out as a note under section 2 of this title.

Effective Date of 1978 Amendment

Amendment by Pub. L. 95–405 effective Oct. 1, 1978, see section 28 of Pub. L. 95–405, set out as a note under section 2 of this title.

§19. Consideration of costs and benefits and antitrust laws

(a) Costs and benefits

(1) In general

Before promulgating a regulation under this chapter or issuing an order (except as provided in paragraph (3)), the Commission shall consider the costs and

benefits of the action of the Commission.

(2) Considerations

The costs and benefits of the proposed Commission action shall be evaluated in light of—

(A) considerations of protection of market participants and the public;

(B) considerations of the efficiency, competitiveness, and financial integrity of futures markets;

(C) considerations of price discovery;

(D) considerations of sound risk management practices; and

(E) other public interest considerations.

(3) Applicability

This subsection does not apply to the following actions of the Commission:

(A) An order that initiates, is part of, or is the result of an adjudicatory or investigative process of the Commission.

(B) An emergency action.

(C) A finding of fact regarding compliance with a requirement of the Commission.

(b) Antitrust laws

The Commission shall take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the objectives of this chapter, as well as the policies and purposes of this chapter, in issuing any order or adopting any Commission rule or regulation (including any exemption under section 6(c) or 6c(b) of this title), or in requiring or approving any bylaw, rule, or regulation of a contract market or registered futures association established pursuant to section 21 of this title.

(Sept. 21, 1922, ch. 369, §15, as added Pub. L. 93–463, title I, §107, Oct. 23, 1974, 88 Stat. 1395; amended Pub. L. 102–546, title V, §502(b), Oct. 28, 1992, 106 Stat. 3631; Pub. L. 106–554, §1(a)(5) [title I, §119], Dec. 21, 2000, 114 Stat. 2763, 2763A–403.)

Amendments

2000—Pub. L. 106–554 inserted section catchline, added subsec. (a), designated existing provisions as subsec. (b), and inserted subsec. (b) heading.

1992—Pub. L. 102–546 substituted "regulation (including any exemption under section 6(c) or 6c(b) of this title)" for "regulation".

Effective Date

For effective date of section, see section 418 of Pub. L. 93–463, set out as an Effective Date of 1974 Amendment note under section 2 of this title.

§20. Market reports

(a) Information

The Commission may conduct regular investigations of the markets for goods, articles, services, rights, and interests which are the subject of futures contracts, and furnish reports of the findings of these investigations to the public on a regular basis. These market reports shall, where appropriate, include information on the supply, demand, prices, and other conditions in the United States and other countries with respect to such goods, articles, services, rights, interests, and information respecting the futures markets.

(b) Avoidance of duplication

The Commission shall cooperate with the Department of Agriculture and any other Department or Federal agency which makes market investigations to avoid unnecessary duplication of information-gathering activities.

(c) Furnishing of information; confidentiality

The Department of Agriculture and any other Department or Federal agency which has market information sought by the Commission shall furnish it to the Commission upon the request of any authorized employee of the Commission. The Commission shall abide by any rules of confidentiality applying to such information.

(d) Disclosure of business transactions, market positions, trade secrets, or names of customers

The Commission shall not disclose in such reports data and information which would separately disclose the business transactions or market positions of any person and trade secrets or names of customers except as provided in section 12 of this title.

(e) Application

This section shall not apply to investigations involving any security underlying a security futures product.

(Sept. 21, 1922, ch. 369, §16, as added Pub. L. 93–463, title IV, §414, Oct. 23, 1974, 88 Stat. 1414; amended Pub. L. 97–444, title II, §232, Jan. 11, 1983, 96 Stat. 2320; Pub. L. 106–554, §1(a)(5) [title II, §251(e)], Dec. 21, 2000, 114 Stat. 2763, 2763A–443.)

Amendments

2000—Subsec. (e). Pub. L. 106–554 added subsec. (e).

1983—Subsec. (d). Pub. L. 97–444 prohibited disclosure of market positions.

Effective Date of 1983 Amendment

Amendment by Pub. L. 97–444 effective Jan. 11, 1983, see section 239 of Pub. L. 97–444, set out as a note under section 2 of this title.

Effective Date

For effective date of section, see section 418 of Pub. L. 93–463, set out as an Effective Date of 1974 Amendment note under section 2 of this title.

Study of Trading in Cattle Futures Contracts

Pub. L. 99–641, title I, §111, Nov. 10, 1986, 100 Stat. 3561, provided that:

"(a) Study.—The Comptroller General of the United States shall conduct and complete a comprehensive study of the effect of trading in contracts for the future delivery of live cattle on the cash market price of live cattle, with particular emphasis on—

"(1) whether the reaction of the live cattle futures market to the results of the milk production termination program in March 1986, conducted under section 201(d)(3) of the Agricultural Act of 1949 (7 U.S.C. 1446(d)(3)), was based on and accurately reflected the then prevailing conditions of supply and demand;

"(2) the effect of the trading in contracts for the future delivery of live cattle on—

"(i) the price relationship between feeder cattle and fed cattle;

"(ii) the price discovery process with respect to live cattle; and

"(iii) price competition within the cattle industry;

"(3) the effect of the use of packer contracts, as a means of obtaining slaughter cattle, on the increase in short hedging in contracts for the future delivery of live cattle and the effect of this increase in short hedging on prices in the futures and cash markets;

"(4) the effect on the ability of the cash markets to accurately reflect prevailing conditions of supply and demand if packer contracts become the prevalent method of marketing fed cattle;

"(5) whether the present delivery system for contracts for the future delivery of live cattle creates any bias (either upward or downward) in the cash price for cattle;

"(6) whether the present delivery system for contracts for the future delivery of live cattle creates price volatility during the delivery month; and

"(7) whether there are advantages or disadvantages to a cash settlement system in lieu of the present delivery system in the case of contracts for the future delivery of live cattle.

"(b) Reports.—

"(1) PRELIMINARY REPORT.—Not later than January 15, 1987, the Comptroller General shall submit a preliminary report on the results of the study required under subsection (a) to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

"(2) FINAL REPORT.—Not later than 1 year after the date of enactment of this Act [Nov. 10, 1986], the Comptroller General shall submit to such committees a detailed final report of the results of the study required under subsection (a)."

POTATO FUTURES STUDY; SUBMISSION OF REPORT TO CONGRESS

Pub. L. 95–405, §27, Sept. 30, 1978, 92 Stat. 877, required, within one year of Oct. 1, 1978, Secretary of Agriculture to (1) conduct a comprehensive study of marketing of Irish potatoes and of making and trading of contracts of sale for future delivery of Irish potatoes, including rules and regulations pertaining to such trading issued by Commodity Futures Trading Commission or any contract market designated by Commission; and (2) submit to each House of Congress a detailed report on results of such study, and that report should also include any proposals Secretary may have concerning any legislation needed to implement such recommendations and concerning any modifications and rules and regulations needed to improve regulation of such contracts by Commission or any contract market designated by Commission.

§21. Registered futures associations

(a) Registration statement

Any association of persons may be registered with the Commission as a registered futures association pursuant to subsection (b) of this section, under the terms and conditions hereinafter provided in this section, by filing with the Commission for review and approval a registration statement in such form as the Commission may prescribe, setting forth the information, and accompanied by the documents, below specified:

(1) Data as to its organization, membership, and rules of procedure, and such other information as the Commission may by rules and regulations require as necessary or appropriate in the public interest; and

(2) Copies of its constitution, charter, or articles of incorporation or association, with all amendments thereto, and of its bylaws, and of any rules or instruments corresponding to the foregoing, whatever the name, hereinafter in this section collectively referred to as the "rules of the association".

(b) Standards for registration; Commission findings

An applicant association shall not be registered as a futures association unless the Commission finds, under standards established by the Commission, that—

(1) such association is in the public interest and that it will be able to comply with the provisions of this section and the rules and regulations thereunder and to carry out the purposes of this section;

(2) the rules of the association provide that any person registered under this chapter, registered entity, or any other person designated pursuant to the rules of the Commission as eligible for membership may become a member of such association, except such as are excluded pursuant to paragraph (3) or (4) of this subsection, or a rule of the association permitted under this subparagraph. The rules of the association may restrict membership in such association on such specified basis relating to the type of business done by its members, or on such other specified and appropriate basis, as appears to the Commission to be necessary or appropriate in the public interest and to carryout the purpose of this section. Rules adopted by the association may provide that the association may, unless the Commission directs otherwise in cases in which the Commission finds it appropriate in the public interest so to direct, deny admission to, or refuse to continue in such association any person if (i) such person, whether prior or

subsequent to becoming registered as such, or (ii) any person associated within the meaning of "associated person" as set forth in section 6k of this title, whether prior or subsequent to becoming so associated, has been and is suspended or expelled from a registered entity or has been and is barred or suspended from being associated with all members of such registered entity, for violation of any rule of such registered entity;

(3) the rules of the association provide that, except with the approval or at the direction of the Commission in cases in which the Commission finds it appropriate in the public interest so to approve or direct, no person shall be admitted to or continued in membership in such association, if such person—

(A) has been and is suspended or expelled from a registered futures association or from a registered entity or has been and is barred or suspended from being associated with all members of such association or from being associated with all members of such registered entity, for violation of any rule of such association or registered entity which prohibits any act or transaction constituting conduct inconsistent with just and equitable principles of trade, or requires any act the omission of which constitutes conduct inconsistent with just and equitable principles of trade;

(B) is subject to an order of the Commission denying, suspending, or revoking his registration pursuant to section 9 of this title, or expelling or suspending him from membership in a registered futures association or a registered entity, or barring or suspending him from being associated with a futures commission merchant;

(C) whether prior or subsequent to becoming a member, by his conduct while associated with a member, was a cause of any suspension, expulsion, or order of the character described in clause (A) or (B) which is in effect with respect to such member, and in entering such a suspension, expulsion, or order, the Commission or any such registered entity or association shall have jurisdiction to determine whether or not any person was a cause thereof; or

(D) has associated with him any person who is known, or in the exercise of reasonable care should be known, to him to be a person who would be ineligible for admission to or continuance in membership under clause (A), (B), or (C) of this paragraph;

(4) the rules of the association provide that, except with the approval or at the direction of the Commission in cases in which the Commission finds it appropriate in the public interest so to approve or direct, no person shall become a member and no natural person shall become a person associated with a member, unless such person is qualified to become a member or a person associated with a member in conformity with specified and appropriate standards with respect to the training, experience, and such other qualifications of such person as the association finds necessary or desirable, and in the case of a member, the financial responsibility of such a member. For the purpose of defining such standards and the application thereof, such rules may—

(A) appropriately classify prospective members (taking into account relevant matters, including type or nature of business done) and persons proposed to be associated with members;

(B) specify that all or any portion of such standard shall be applicable to any such class;

(C) require persons in any such class to pass examinations prescribed in accordance with such rules;

(D) provide that persons in any such class other than prospective members and partners, officers and supervisory employees (which latter term may be defined by such rules and as so defined shall include branch managers of members) of members, may be qualified solely on the basis of compliance with

specified standards of training and such other qualifications as the association finds appropriate;

(E) provide that applications to become a member or a person associated with a member shall set forth such facts as the association may prescribe as to the training, experience, and other qualifications (including, in the case of an applicant for membership, financial responsibility) of the applicant and that the association shall adopt procedures for verification of qualifications of the applicant, which may require the applicant to be fingerprinted and to submit, or cause to be submitted, such fingerprints to the Attorney General for identification and appropriate processing. Notwithstanding any other provision of law, such an association may receive from the Attorney General all the results of such identification and processing; and

(F) require any class of persons associated with a member to be registered with the association in accordance with procedures specified by such rules (and any application or document supplemental thereto required by such rules of a person seeking to be registered with such association shall, for the purposes of section 9 of this title, be deemed an application required to be filed under this section);

(5) the rules of the association assure a fair representation of its members in the adoption of any rule of the association or amendment thereto, the selection of its officers and directors, and in all other phases of the administration of its affairs;

(6) the rules of the association provide for the equitable allocation of dues among its members, to defray reasonable expenses of administration;

(7) the rules of the association are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, in general, to protect the public interest, and to remove impediments to and perfect the mechanism of free and open futures trading;

(8) the rules of the association provide that its members and persons associated with its members shall be appropriately disciplined, by expulsion, suspension, fine, censure, or being suspended or barred from being associated with all members, or any other fitting penalty, for any violation of its rules;

(9) the rules of the association provide a fair and orderly procedure with respect to the disciplining of members and persons associated with members and the denial of membership to any person seeking membership therein or the barring of any person from being associated with a member. In any proceeding to determine whether any member or other person shall be disciplined, such rules shall require that specific charges be brought; that such member or person shall be notified of, and be given an opportunity to defend against, such charges; that a record shall be kept; and that the determination shall include—

(A) a statement setting forth any act or practice in which such member or other person may be found to have engaged, or which such member or other person may be found to have omitted;

(B) a statement setting forth the specific rule or rules of the association of which any such act or practice, or omission to act, is deemed to be in violation;

(C) a statement whether the acts or practices prohibited by such rule or rules, or the omission of any act required thereby, are deemed to constitute conduct inconsistent with just and equitable principles of trade; and

(D) a statement setting forth the penalty imposed; [1]

In any proceeding to determine whether a person shall be denied membership or whether any person shall be barred from being associated with a member, such rules shall provide that the person shall be notified of, and be given an opportunity to be heard upon, the specific grounds for denial or bar which are

under consideration; that a record shall be kept; and that the determination shall set forth the specific grounds upon which the denial or bar is based;

(10) the rules of the association provide a fair, equitable, and expeditious procedure through arbitration or otherwise for the settlement of customers' claims and grievances against any member or employee thereof: *Provided*, That (A) the use of such procedure by a customer shall be voluntary, (B) the term "customer" as used in this paragraph shall not include another member of the association, and (C) in the case of a claim arising from a violation in the execution of an order on the floor of a registered entity, such procedure shall provide, to the extent appropriate—

(i) for payment of actual damages proximately caused by such violation. If an award of actual damages is made against a floor broker in connection with the execution of a customer order, and the futures commission merchant which selected the floor broker for the execution of the customer order is held to be responsible under section 2(a)(1) of this title for the floor broker's violation, such futures commission merchant may be required to satisfy such award; and

(ii) where the violation is willful and intentional, for payment to the customer of punitive or exemplary damages, in addition to losses proximately caused by the violation, in an amount equal to no more than two times the amount of such losses. If punitive or exemplary damages are awarded against a floor broker in connection with the execution of a customer order, and the futures commission merchant which selected the floor broker for the execution of such order is held to be responsible under section 2(a)(1) of this title for the floor broker's violation, such futures commission merchant may be required to satisfy the award of punitive or exemplary damages if the floor broker fails to do so, except that such requirement shall apply to the futures commission merchant only if it willfully and intentionally selected the floor broker with the intent to assist or facilitate the floor broker's violation; and [2]

(11) such association provides for meaningful representation on the governing board of such association of a diversity of membership interests and provides that no less than 20 percent of the regular voting members of such board be comprised of qualified nonmembers of or persons who are not regulated by such association.[3]

(12)(A) [4] such association provides on all major disciplinary committees for a diversity of membership sufficient to ensure fairness and to prevent special treatment or preference for any person in the conduct of disciplinary proceedings and the assessment of penalties.[5]

(13) A [6] major disciplinary committee hearing a disciplinary matter shall include —

(A) qualified persons representing segments of the association membership other than that of the subject of the proceeding; and

(B) where appropriate to carry out the purposes of this paragraph, qualified persons who are not members of the association.

(c) Suspension of registration

The Commission may, after notice and opportunity for hearing, suspend the registration of any futures association if it finds that the rules thereof do not conform to the requirements of the Commission, and any such suspension shall remain in effect until the Commission issues an order determining that such rules have been modified to conform with such requirements.

(d) Fees and charges

In addition to the fees and charges authorized by section 12a(1) of this title, each person registered under this chapter, who is not a member of a futures association

registered pursuant to this section, shall pay to the Commission such reasonable fees and charges as may be necessary to defray the costs of additional regulatory duties required to be performed by the Commission because such person is not a member of a registered futures association. The Commission shall establish such additional fees and charges by rules and regulations.

(e) Registered persons not members of registered associations

Any person registered under this chapter, who is not a member of a futures association registered pursuant to this section, in addition to the other requirements and obligations of this chapter and the regulations thereunder shall be subject to such other rules and regulations as the Commission may find necessary to protect the public interest and promote just and equitable principles of trade.

(f) Denial of registration

Upon filing of an application for registration pursuant to subsection (a), the Commission may by order grant such registration if the requirements of this section are satisfied. If, after appropriate notice and opportunity for hearing, it appears to the Commission that any requirement of this section is not satisfied, the Commission shall by order deny such registration.

(g) Withdrawal from registration; notice of withdrawal

A registered futures association may, upon such reasonable notice as the Commission may deem necessary in the public interest, withdraw from registration by filing with the Commission a written notice of withdrawal in such form as the Commission may by rules and regulations prescribe.

(h) Commission review of disciplinary actions taken by registered futures associations

(1) If any registered futures association takes any final disciplinary action against a member of the association or a person associated with a member, denies admission to any person seeking membership therein, or bars any person from being associated with a member, the association promptly shall give notice thereof to such member or person and file notice thereof with the Commission. The notice shall be in such form and contain such information as the Commission, by rule or regulation, may prescribe as necessary or appropriate to carry out the purposes of this chapter.

(2) Any action with respect to which a registered futures association is required by paragraph (1) to file notice shall be subject to review by the Commission on its motion, or on application by any person aggrieved by the action. Such application shall be filed within 30 days after the date such notice is filed with the Commission and received by the aggrieved person, or within such longer period as the Commission may determine.

(3)(A) Application to the Commission for review, or the institution of review by the Commission on its own motion, shall not operate as a stay of such action unless the Commission otherwise orders, summarily or after notice and opportunity for hearing on the question of a stay (which hearing may consist solely of the submission of affidavits or presentation of oral arguments).

(B) The Commission shall establish procedures for expedited consideration and determination of the question of a stay.

(i) Notice; hearing; findings; cancellation, reduction, or remission of penalties; review by court of appeals

(1) In a proceeding to review a final disciplinary action taken by a registered futures association against a member thereof or a person associated with a member, after appropriate notice and opportunity for a hearing (which hearing may consist solely of consideration of the record before the association and opportunity for the presentation of supporting reasons to affirm, modify, or set aside the sanction imposed by the association)—

(A) if the Commission finds that—

(i) the member or person associated with a member has engaged in the acts or practices, or has omitted the acts, that the association has found the member or person to have engaged in or omitted;

(ii) the acts or practices, or omissions to act, are in violation of the rules of the association specified in the determination of the association; and

(iii) such rules are, and were applied in a manner, consistent with the purposes of this chapter,

the Commission, by order, shall so declare and, as appropriate, affirm the sanction imposed by the association, modify the sanction in accordance with paragraph (2), or remand the case to the association for further proceedings; or

(B) if the Commission does not make any such finding, the Commission, by order, shall set aside the sanction imposed by the association and, if appropriate, remand the case to the association for further proceedings.

(2) If, after a proceeding under paragraph (1), the Commission finds that any penalty imposed on a member or person associated with a member is excessive or oppressive, having due regard for the public interest, the Commission, by order, shall cancel, reduce, or require the remission of the penalty.

(3) In a proceeding to review the denial of membership in a registered futures association or the barring of any person from being associated with a member, after appropriate notice and opportunity for a hearing (which hearing may consist solely of consideration of the record before the association and opportunity for the presentation of supporting reasons to affirm, modify, or set aside the action of the association)—

(A) if the Commission finds that—

(i) the specific grounds on which the denial or bar is based exist in fact;

(ii) the denial or bar is in accordance with the rules of the association; and

(iii) such rules are, and were applied in a manner, consistent with the purposes of this chapter,

the Commission, by order, shall so declare and, as appropriate, affirm or modify the action of the association, or remand the case to the association for further proceedings; or

(B) if the Commission does not make any such finding, the Commission, by order, shall set aside the action of the association and require the association to admit the applicant to membership or permit the person to be associated with a member, or, as appropriate, remand the case to the association for further proceedings.

(4) Any person aggrieved by a final order of the Commission entered under this subsection may file a petition for review with a United States court of appeals in the same manner as provided in section 9 of this title.

(j) Changes or additions to association rules

Every registered futures association shall file with the Commission in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest, copies of any changes in or additions to the rules of the association, and such other information and documents as the Commission may require to keep current or to supplement the registration statement and documents filed pursuant to subsection (a) of this section. A registered futures association shall submit to the Commission any change in or addition to its rules and may make such rules effective ten days after receipt of such submission by the Commission unless, within the ten-day period, the registered futures association

requests review and approval thereof by the Commission or the Commission notifies such registered futures association in writing of its determination to review such rules for approval. The Commission shall approve such rules if such rules are determined by the Commission to be consistent with the requirements of this section and not otherwise in violation of this chapter or the regulations issued pursuant to this chapter, and the Commission shall disapprove, after appropriate notice and opportunity for hearing, any such rule which the Commission determines at any time to be inconsistent with the requirements of this section or in violation of this chapter or the regulations issued pursuant to this chapter. If the Commission does not approve or institute disapproval proceedings with respect to any rule within one hundred and eighty days after receipt or within such longer period of time as the registered futures association may agree to, or if the Commission does not conclude a disapproval proceeding with respect to any rule within one year after receipt or within such longer period as the registered futures association may agree to, such rule may be made effective by the registered futures association until such time as the Commission disapproves such rule in accordance with this subsection.

(k) Abrogation of association rules; requests to associations by Commission to alter or supplement rules

(1) The Commission is authorized by order to abrogate any rule of a registered futures association, if after appropriate notice and opportunity for hearing, it appears to the Commission that such abrogation is necessary or appropriate to assure fair dealing by the members of such association, to assure a fair representation of its members in the administration of its affairs or effectuate the purposes of this section.

(2) The Commission may in writing request any registered futures association to adopt any specified alteration or supplement to its rules with respect to any of the matters hereinafter enumerated. If such association fails to adopt such alteration or supplement within a reasonable time, the Commission is authorized by order to alter or supplement the rules of such association in the manner theretofore requested, or with such modifications of such alteration or supplement as it deems necessary if, after appropriate notice and opportunity for hearing, it appears to the Commission that such alteration or supplement is necessary or appropriate in the public interest or to effectuate the purposes of this section, with respect to—

(A) the basis for, and procedure in connection with, the denial of membership or the barring from being associated with a member or the disciplining of members or persons associated with members, or the qualifications required for members or natural persons associated with members or any class thereof;

(B) the method for adoption of any change in or addition to the rules of the association;

(C) the method of choosing officers and directors.

(l) Suspension and revocation of registration; expulsion of members; removal of association officers or directors

The Commission is authorized, if such action appears to it to be necessary or appropriate in the public interest or to carry out the purposes of this section—

(1) after appropriate notice and opportunity for hearing, by order to suspend for a period not exceeding twelve months or to revoke the registration of a registered futures association, if the Commission finds that such association has violated any provisions of this chapter or any rule or regulation thereunder, or has failed to enforce compliance with its own rules, or has engaged in any other activity tending to defeat the purposes of this chapter;

(2) after appropriate notice and opportunity for hearing, by order to suspend for a period not exceeding twelve months or to expel from a registered futures association any member thereof, or to suspend for a period not exceeding twelve

months or to bar any person from being associated with a member thereof, if the Commission finds that such member or person—

(A) has violated any provision of this chapter or any rule or regulation thereunder, or has effected any transaction for any other person who, he had reason to believe, was violating with respect to such transaction any provision of this chapter or any rule or regulation thereunder; or

(B) has willfully violated any provision of this chapter, or of any rule, regulation, or order thereunder, or has effected any transaction for any other person who, he had reason to believe, was willfully violating with respect to such transaction any provision of this chapter or rule, regulation, or order; and

(3) after appropriate notice and opportunity for hearing, by order to remove from office any officer or director of a registered futures association who, the Commission finds, has willfully failed to enforce the rules of the association, or has willfully abused his authority.

(m) Rules requiring membership in associations

Notwithstanding any other provision of law, the Commission may approve rules of futures associations that, directly or indirectly, require persons eligible for membership in such associations to become members of at least one such association, upon a determination by the Commission that such rules are necessary or appropriate to achieve the purposes and objectives of this chapter.

(n) Reports to Congress

The Commission shall include in its annual reports to Congress information concerning any futures associations registered pursuant to this section and the effectiveness of such associations in regulating the practices of the members.

(o) Delegation to futures associations of registrative functions; discretionary review by Commission; judicial appeal

(1) The Commission may require any futures association registered pursuant to this section to perform any portion of the registration functions under this chapter with respect to each member of the association other than a registered entity and with respect to each associated person of such member, in accordance with rules, notwithstanding any other provision of law, adopted by such futures association and submitted to the Commission pursuant to subsection (j), and subject to the provisions of this chapter applicable to registrations granted by the Commission.

(2) In performing any Commission registration function authorized by the Commission under section 12a(10) of this title, this section, or any other applicable provisions of this chapter, a futures association may issue orders (A) to refuse to register any person, (B) to register conditionally any person, (C) to suspend the registration of any person, (D) to place restrictions on the registration of any person, or (E) to revoke the registration of any person. If such an order is the final decision of the futures association, any person against whom the order has been issued may petition the Commission to review the decision. The Commission may on its own initiative or upon petition decline review or grant review and affirm, set aside, or modify such an order of the futures association; and the findings of the futures association as to the facts, if supported by the weight of the evidence, shall be conclusive. Unless the Commission grants review under this section of an order concerning registration issued by a futures association, the order of the futures association shall be considered to be an order issued by the Commission.

(3) Nothing in this section shall affect the Commission's authority to review the granting of a registration application by a registered futures association that is performing any Commission registration function authorized by the Commission under section 12a(10) of this title, this section, or any other applicable provision of this chapter.

(4) If a person against whom a futures association has issued a registration order under this subsection petitions the Commission to review that order and the Commission declines to take review, such person may file a petition for review with a United States court of appeals, in accordance with section 9 of this title.

(p) Establishment of rules for futures associations; approval by Commission

Notwithstanding any other provision of this section, each futures association registered under this section on January 11, 1983, shall adopt and submit for Commission approval not later than ninety days after such date, and each futures association that applies for registration after such date shall adopt and include with its application for registration, rules of the association that require the association to —

(1) establish training standards and proficiency testing for persons involved in the solicitation of transactions subject to the provisions of this chapter, supervisors of such persons, and all persons for which it has registration responsibilities, and a program to audit and enforce compliance with such standards;

(2) establish minimum capital, segregation, and other financial requirements applicable to its members for which such requirements are imposed by the Commission and implement a program to audit and enforce compliance with such requirements, except that such requirements may not be less stringent than those imposed on such firms by this chapter or by Commission regulation;

(3) establish minimum standards governing the sales practices of its members and persons associated therewith for transactions subject to the provisions of this chapter; and

(4) establish special supervisory guidelines to protect the public interest relating to the solicitation by telephone of new futures or options accounts and make such guidelines applicable to those members determined to require such guidelines in accordance with standards established by the Commission consistent with this chapter. Such guidelines may include a requirement that, with respect to a customer with no previous futures or commodity options trading experience, the member may not enter an order for the account of such customer for a period of three days following opening of the account and receipt of a signed acknowledgment by the customer of receipt of a risk disclosure statement.

(q) [7] Major disciplinary rule violations

(1) The Commission shall issue regulations requiring each registered futures association to establish and make available to the public a schedule of major violations of any rule within the disciplinary jurisdiction of such registered futures association.

(2) The regulations issued by the Commission pursuant to this subsection shall prohibit, for a period of time to be determined by the Commission, any member of a registered futures association who is found to have committed any major violation from service on the governing board of any registered futures association or registered entity, or on any disciplinary committee thereof.

(q) [7] Program for implementation of rules

Each futures association registered under this section shall develop a comprehensive program that fully implements the rules approved by the Commission under this section as soon as practicable but not later than September 30, 1985, in the case of any futures association registered on January 11, 1983, and not later than two and one-half years after the date of registration in the case of any other futures association registered under this section.

(r) Rules to avoid duplicative regulation of dual registrants

Consistent with this chapter, each futures association registered under this section shall issue such rules as are necessary to avoid duplicative or conflicting rules applicable to any futures commission merchant registered with the Commission

pursuant to section 6f(a) of this title (except paragraph (2) thereof), that is also registered with the Securities and Exchange Commission pursuant to section 78o(b) of title 15 (except paragraph (11) thereof), with respect to the application of—

(1) rules of such futures association of the type specified in section 6d(e) of this title involving security futures products; and

(2) similar rules of national securities associations registered pursuant to section 78o–3(a) of title 15 involving security futures products.

(Sept. 21, 1922, ch. 369, §17, as added Pub. L. 93–463, title III, §301, Oct. 23, 1974, 88 Stat. 1406; amended Pub. L. 95–405, §22, Sept. 30, 1978, 92 Stat. 876; Pub. L. 97–444, title II, §§217(b), 233, Jan. 11, 1983, 96 Stat. 2307, 2320; Pub. L. 99–641, title I, §§107, 108, 110(6), (7), Nov. 10, 1986, 100 Stat. 3558, 3559, 3561; Pub. L. 102–546, title II, §§204(a), 206(b), 209(b)(8), 222(c), 228, title IV, §402(12), Oct. 28, 1992, 106 Stat. 3600, 3602, 3607, 3616, 3619, 3625; Pub. L. 106–554, §1(a)(5) [title I, §123(a)(24), title II, §251(g)], Dec. 21, 2000, 114 Stat. 2763, 2763A–410, 2763A–444; Pub. L. 110–234, title XIII, §13105(f), May 22, 2008, 122 Stat. 1434; Pub. L. 110–246, §4(a), title XIII, §13105(f), June 18, 2008, 122 Stat. 1664, 2196; Pub. L. 111–203, title VII, §749(g), July 21, 2010, 124 Stat. 1748.)

Codification

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

Amendments

2010—Subsec. (r)(1). Pub. L. 111–203 substituted "section 6d(e) of this title" for "section 6d(c) of this title".

2008—Subsec. (r)(1). Pub. L. 110–246, §13105(f), substituted "6d(c)" for "6d(3)".

2000—Subsecs. (b)(2), (3), (10), (o)(1), (q)(2). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(24)], substituted "registered entity" for "contract market" wherever appearing.

Subsec. (r). Pub. L. 106–554, §1(a)(5) [title II, §251(g)], added subsec. (r).

1992—Subsec. (a)(1), (2). Pub. L. 102–546, §402(12)(A), realigned margins.

Subsec. (b)(3). Pub. L. 102–546, §§206(b)(1)(A), (B), 209(b)(8)(A)(i), struck out "or" at end of subpar. (A), in subpar. (B) made technical amendment to reference to sections 9 and 15 of this title to reflect change in reference to corresponding section of original act and struck out "or" at end, and in subpar. (D) substituted a semicolon for period at end.

Subsec. (b)(4). Pub. L. 102–546, §§206(b)(1)(B), (C), 209(b)(8)(A)(ii), substituted a semicolon for period at end of subpars. (A) to (D), in subpar. (E) substituted "; and" for period at end, and in subpar. (F) made technical amendment to reference to sections 9 and 15 of this title to reflect change in reference to corresponding section of original act and substituted a semicolon for period at end.

Subsec. (b)(5) to (9). Pub. L. 102–546, §206(b)(1)(B), (C), substituted a semicolon for period at end of pars. (5) to (9) and subpars. (A), (B), and (D) of par. (9) and in par. (9)(C) substituted "; and" for period at end.

Subsec. (b)(10). Pub. L. 102–546, §§206(b)(1)(C), 222(c), substituted "(A)" for "(i)" and "voluntary, (B)" for "voluntary and (ii)", inserted ", and" and subpar. (C) after "association", and substituted "; and" for period at end.

Subsec. (b)(11) to (13). Pub. L. 102–546, §206(b)(1)(D), added pars. (11) to (13).

Subsec. (i)(4). Pub. L. 102–546, §228, which directed that "(other than a registered futures association)." be struck out, was executed by striking "(other than a registered futures association)" after "Any person" to reflect the probable intent of Congress.

Pub. L. 102–546, §209(b)(8)(B), made technical amendment to reference to sections 9 and 15 of this title to reflect change in reference to corresponding section of original act.

Subsec. (l)(2)(B). Pub. L. 102–546, §402(12)(B), made technical amendment to reference to this chapter appearing after "violated any provision of" to reflect change in reference to corresponding provision of original act and substituted "; and" for period at end.

Subsec. (o)(4). Pub. L. 102–546, §209(b)(8)(C), made technical amendment to reference to sections 9 and 15 of this title to reflect change in reference to corresponding section of original act.

Subsec. (p)(4). Pub. L. 102–546, §204(a), added par. (4).

Subsec. (q). Pub. L. 102–546, §206(b)(2), added subsec. (q) relating to major disciplinary rules violations.

1986—Subsec. (b)(2). Pub. L. 99–641, §110(6), substituted "within" for "with in" before "the meaning".

Subsec. (h). Pub. L. 99–641, §107, amended subsec. (h) generally. Prior to amendment, subsec. (h) read as follows: "If any registered futures association takes any disciplinary action against any member thereof or any person associated with such a member or denies admission to any person seeking membership therein, or bars any person from being associated with a member, such action shall be subject to review by the Commission, on its own motion, or upon application by any person aggrieved thereby filed within thirty days after such action has been taken or within such longer period as the Commission may determine. Application to the Commission for review, or the institution of review by the Commission on its own motion, shall operate as a stay of such action until an order is issued upon such review pursuant to subsection (i) of this section unless the Commission otherwise orders, after notice and opportunity for hearing on the question of a stay (which hearing may consist solely of affidavits and oral arguments)."

Subsec. (i). Pub. L. 99–641, §107, amended subsec. (i) generally. Prior to amendment, subsec. (i) read as follows:

"(1) In a proceeding to review disciplinary action taken by a registered futures association against a member thereof or a person associated with a member, if the Commission, after appropriate notice and opportunity for hearing, upon consideration of the record before the association and such other evidence as it may deem relevant—

"(A) finds that such member or person has engaged in such acts or practices, or has omitted such act, as the association has found him to have engaged in or omitted, and

"(B) determines that such acts or practices, or omission to act, are in violation of such rules of the association as have been designated in the determination of the association, the Commission shall by order dismiss the proceeding, unless it appears to the Commission that such action should be modified in accordance with paragraph (2) of this subsection. The Commission shall likewise determine whether the acts or practices prohibited, or the omission of any act required, by any such rule constitute conduct inconsistent with just and equitable principles of trade, and shall so declare. If it appears to the Commission that the evidence does not warrant the finding required in clause (A), or if the Commission determines that such acts or practices as are found to have been engaged in are not prohibited by the designated rule or rules of the association, or that such act as is found to have been omitted is not required by such designated rule or rules, the Commission shall by order set aside the action of the association.

"(2) If, after appropriate notice and opportunity for hearing, the Commission finds that any penalty imposed upon a member or person associated with a member is excessive or oppressive, having due regard to the public interest, the Commission shall by order cancel, reduce, or require the remission of such penalty.

"(3) In any proceeding to review the denial of membership in a registered futures association or the barring of any person from being associated with a member, if the Commission, after appropriate notice and hearing, and upon consideration of the record before the association and such other evidence as it may deem relevant, determines that the specific grounds on which such denial or bar is based exist in fact and are valid under this section, the Commission shall by order dismiss the proceeding; otherwise, the Commission shall by order set aside the action of the association and require it to admit the applicant to membership therein, or to permit such person to be associated with a member."

Subsec. (j). Pub. L. 99–641, §108, struck out sentence which read as follows: "The Commission shall approve such rules within thirty days of their receipt if Commission approval is requested under this subsection or within thirty days after the Commission determines to review for approval any other rules unless the Commission notifies the registered futures association of its inability to complete such approval or review within such period of time."

Subsec. (k)(1). Pub. L. 99–641, §110(7), substituted "section" for "title".

1983—Subsec. (b)(4)(E). Pub. L. 97–444, §233(1), inserted ", which may require the applicant to be fingerprinted and to submit, or cause to be submitted, such fingerprints to

the Attorney General for identification and appropriate processing. Notwithstanding any other provision of law, such an association may receive from the Attorney General all the results of such identification and processing" after "adopt procedures for verification of qualifications of the applicant".

Subsec. (b)(10). Pub. L. 97–444, §217(b), required association rules to provide for "expeditious" procedure, redesignated cl. (iv) as (ii) and substituted " 'customer' as used in this paragraph shall not include another member of the association" for " 'customer' as used in this subsection shall not include a futures commission merchant or a floor broker", and struck out clauses "(ii) the procedure shall not be applicable to any claim in excess of $15,000, (iii) the procedure shall not result in any compulsory payment except as agreed upon between the parties,".

Subsec. (d). Pub. L. 97–444, §233(2), substituted "section 12a(1) of this title" for "section 12a(4) of this title".

Subsec. (h). Pub. L. 97–444, §233(3), substituted "subsection (i) of this section" for "subsection (k) of this section".

Subsec. (j). Pub. L. 97–444, §233(4), substituted "A registered futures association shall submit to the Commission any change in or addition to its rules and may make such rules effective ten days after receipt of such submission by the Commission unless, within the ten-day period, the registered futures association requests review and approval thereof by the Commission or the Commission notifies such registered futures association in writing of its determination to review such rules for approval. The Commission shall approve such rules within thirty days of their receipt if Commission approval is requested under this subsection or within thirty days after the Commission determines to review for approval any other rules unless the Commission notifies the registered futures association of its inability to complete such approval or review within such period of time. The Commission shall approve such rules if such rules are determined by the Commission to be consistent with the requirements of this section and not otherwise in violation of this chapter or the regulations issued pursuant to this chapter, and the Commission shall disapprove, after appropriate notice and opportunity for hearing, any such rule which the Commission determines at any time to be inconsistent with the requirements of this section or in violation of this chapter or the regulations issued pursuant to this chapter. If the Commission does not approve or institute disapproval proceedings with respect to any rule within one hundred and eighty days after receipt or within such longer period of time as the registered futures association may agree to, or if the Commission does not conclude a disapproval proceeding with respect to any rule within one year after receipt or within such longer period as the registered futures association may agree to, such rule may be made effective by the registered futures association until such time as the Commission disapproves such rule in accordance with this subsection" for "Any change in or addition to the rules of a registered futures association shall be submitted to the Commission for approval and shall take effect upon the thirtieth day after such approval by the Commission, or upon such earlier date as the Commission may determine, unless the Commission shall enter an order disapproving such change or addition; and the Commission shall enter such an order unless such change or addition appears to the Commission to be consistent with the requirements of this section and the provisions of this chapter".

Subsecs. (o) to (q). Pub. L. 97–444, §233(5), added subsecs. (o), (p), and (q).

1978—Subsec. (b)(3)(B). Pub. L. 95–405, §22(1), struck out "(7 U.S.C. 9)" after "sections 9 and 15 of this title".

Subsec. (b)(10). Pub. L. 95–405, §22(2), substituted "$15,000" for "$5,000".

Subsec. (l)(1), (2)(A). Pub. L. 95–405, §22(3), substituted "chapter" for "section" wherever appearing.

Subsecs. (m), (n). Pub. L. 95–405, §22(4), added subsec. (m) and redesignated former subsec. (m) as (n).

Effective Date of 2010 Amendment

Amendment by Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation

implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as a note under section 1a of this title.

Effective Date of 2008 Amendment

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of this title.

Effective Date of 1983 Amendment

Amendment by Pub. L. 97–444 effective Jan. 11, 1983, see section 239 of Pub. L. 97–444, set out as a note under section 2 of this title.

Effective Date of 1978 Amendment

Amendment by Pub. L. 95–405 effective Oct. 1, 1978, see section 28 of Pub. L. 95–405, set out as a note under section 2 of this title.

Effective Date

For effective date of section, see section 418 of Pub. L. 93–463, set out as an Effective Date of 1974 Amendment note under section 2 of this title.

Implementation

Pub. L. 102–546, title II, §204(b), Oct. 28, 1992, 106 Stat. 3600, provided that: "The guidelines required under section 17(p)(4) of the Commodity Exchange Act [7 U.S.C. 21(p)(4)] (as added by subsection (a) of this section) shall be submitted by a futures association registered with the Commodity Futures Trading Commission on the date of enactment of this Act [Oct. 28, 1992] to the Commission for the approval of the Commission not later than one hundred and eighty days after the date of enactment of this Act."

Study on Computerized Futures Trading

Pub. L. 102–546, title II, §220(b), (c), Oct. 28, 1992, 106 Stat. 3614, provided that:

"(b) Study.—The Commodity Futures Trading Commission shall conduct a study to assess —

"(1) the progress made under initiatives to conduct trading in futures and options subject to the jurisdiction of the Commission under the Commodity Exchange Act [7 U.S.C. 1 et seq.] through systems of computers or by other electronic means; and

"(2) whether the experience with such systems of trading indicates that they may be useful or effective to enhance access to the futures and options markets by potential market participants, improve the ability of the Commission to audit the activities of the futures and options markets, reduce the opportunity for trading abuses, and otherwise be in the public interest or raise other related issues.

"(c) Report.—Not later than two years after the date of enactment of this Act [Oct. 28, 1992], the Commission shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report containing the results of the study conducted under subsection (a), together with any appropriate recommendations."

[1] *So in original. The semicolon probably should be a period.*

[2] *So in original. The word "and" probably should not appear.*

[3] *So in original. The period probably should be a semicolon.*

[4] *So in original. No subpar. (B) has been enacted.*

[5] *So in original. The period probably should be "; and".*

[6] *So in original. Probably should not be capitalized.*

[7] *Two subsecs. (q) have been enacted.*

§22. Research and information programs; reports to Congress

(a) The Commission shall establish and maintain, as part of its ongoing operations, research and information programs to (1) determine the feasibility of trading by computer, and the expanded use of modern information system technology, electronic data processing, and modern communication systems by commodity exchanges, boards of trade, and by the Commission itself for purposes of improving, strengthening, facilitating, or regulating futures trading operations; (2) assist in the development of educational and other informational materials regarding futures trading for dissemination and use among producers, market users, and the general public; and (3) carry out the general purposes of this chapter.

(b) The Commission shall include in its annual reports to Congress plans and findings with respect to implementing this section.

(Sept. 21, 1922, ch. 369, §18, as added Pub. L. 93–463, title IV, §416, Oct. 23, 1974, 88 Stat. 1415.)

Effective Date

For effective date of section, see section 418 of Pub. L. 93–463, set out as an Effective Date of 1974 Amendment note under section 2 of this title.

§23. Standardized contracts for certain commodities

(a) Margin accounts or contracts and leverage accounts or contracts prohibited except as authorized

Except as authorized under subsection (b), no person shall offer to enter into, enter into, or confirm the execution of, any transaction for the delivery of any commodity under a standardized contract commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract, or under any contract, account, arrangement, scheme, or device that the Commission determines serves the same function or functions as such a standardized contract, or is marketed or managed in substantially the same manner as such a standardized contract.

(b) Permission to enter into contracts for delivery of silver or gold bullion, bulk silver or gold coins, or platinum; rules and regulations

(1) Subject to paragraph (2), no person shall offer to enter into, enter into, or confirm the execution of, any transaction for the delivery of silver bullion, gold bullion, bulk silver coins, bulk gold coins, or platinum under a standardized contract described in subsection (a), contrary to the terms of any rule, regulation, or order that the Commission shall prescribe, which may include terms designed to ensure the financial solvency of the transaction or prevent manipulation or fraud. Such rule, regulation, or order may be made only after notice and opportunity for hearing. The Commission may set different terms and conditions for transactions involving different commodities.

(2) No person may engage in any activity described in paragraph (1) who is not permitted to engage in such activity, by the rules, regulations, and orders of the Commission in effect on November 10, 1986, until the Commission permits such person to engage in such activity in accordance with regulations issued in accordance with subsection (c)(2).

(c) Survey of persons interested in engaging in transactions of silver and gold, etc.; assistance of futures association; regulations

(1)(A) Not later than 2 years after November 10, 1986, the Commission shall—

(i) with the assistance of a futures association registered under this chapter, conduct a survey concerning the persons interested in engaging in the business of

offering to enter into, entering into, or confirming the execution of, the transactions described in subsection (b)(1); and

(ii) transmit a report of the results of the survey to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

(B) Notwithstanding any other provision of law, for purposes of completing such report the Commission may direct, by rule, regulation, or order, a futures association registered under this chapter to render such assistance as the Commission shall specify.

(C) Such report shall include the findings and any recommendations of the Commission concerning—

(i) whether such transactions serve an economic purpose;

(ii) the most efficient manner, consistent with the public interest, to permit additional persons to engage in the business of offering to enter into, entering into, and confirming the execution of such transactions; and

(iii) the appropriate regulatory scheme to govern such transactions to ensure the financial solvency of such transactions and to prevent manipulation or fraud.

(2) The report shall also include Commission regulations governing such transactions. The regulations shall provide for permitting additional persons to engage in such transactions. The regulations shall become effective on the expiration of 90 calendar days on which either House of Congress is in session after the date of the transmittal of the report to Congress. The regulations—

(A) may authorize or require, notwithstanding any other provision of law, a futures association registered under this chapter to perform such responsibilities in connection with such transactions as the Commission may specify; and

(B) may require that permission for additional persons to engage in such business be given on a gradual basis, so as not to place an undue burden on the resources of the Commission.

(d) Savings provision

This section shall not affect any rights or obligations arising out of any transaction subject to this section, as in effect before November 10, 1986, that was entered into, or the execution of which was confirmed, before November 10, 1986.

(Sept. 21, 1922, ch. 369, §19, as added Pub. L. 95–405, §23, Sept. 30, 1978, 92 Stat. 876; amended Pub. L. 97–444, title II, §234, Jan. 11, 1983, 96 Stat. 2322; Pub. L. 99–641, title I, §109, Nov. 10, 1986, 100 Stat. 3560.)

Prior Provisions

Provisions similar to those appearing in subsec. (b) were formerly contained in section 15a of this title.

Amendments

1986—Subsec. (a). Pub. L. 99–641 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "No person shall offer to enter into, enter into, or confirm the execution of, any transaction for the delivery of any commodity specifically set forth in section 2 of this title prior to October 23, 1974, under a standardized contract commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract, or under any contract, account, arrangement, scheme, or device that the Commission determines serves the same function or functions as such a standardized contract, or is marketed or managed in substantially the same manner as such a standardized contract."

Subsec. (b). Pub. L. 99–641 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "No person shall offer to enter into, enter into, or confirm the execution of any transaction for the delivery of silver bullion, gold bullion, or bulk silver coins or bulk gold coins, under a standardized contract described in subsection (a) of this section,

contrary to any rule, regulation, or order of the Commission designed to ensure the financial solvency of the transaction or prevent manipulation or fraud: *Provided*, That such rule, regulation, or order may be made only after notice and opportunity for hearing."

Subsec. (c). Pub. L. 99–641 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "The Commission shall regulate any transactions under a standardized contract described in subsection (a) of this section involving commodities described in subsection (b) of this section or any other commodities (except those commodities described in subsection (a) of this section) under such terms and conditions as the Commission shall prescribe by rule, regulation, or order made only after notice and opportunity for a hearing. The Commission may set different terms and conditions for such transactions involving different commodities. Notwithstanding any other provision of this section, the Commission may prohibit any transaction for the delivery of any commodity under a standardized contract described in subsection (a) of this section that is not permitted by the rules, regulations and orders of the Commission in effect on December 9, 1982, if the Commission determines that any such transactions would be contrary to the public interest."

Subsec. (d). Pub. L. 99–641, in amending section generally, added subsec. (d).

1983—Subsec. (c). Pub. L. 97–444, §234(1), substituted "shall regulate" for "may prohibit or regulate" and authorized Commission prohibition of transactions for delivery of commodities under a standardized contract that was not permitted by the rules, regulations and orders of the Commission in effect on Dec. 9, 1982, where transactions are determined to be contrary to the public interest.

Subsec. (d). Pub. L. 97–444, §234(2), struck out subsec. (d) which provided for regulation of transactions in accordance with applicable provisions of this chapter where Commission determined the transactions under subsecs. (b) and (c) of this section were contracts for future delivery within the meaning of this chapter.

Effective Date of 1983 Amendment

Amendment by Pub. L. 97–444 effective Jan. 11, 1983, see section 239 of Pub. L. 97–444, set out as a note under section 2 of this title.

Effective Date

Section effective Oct. 1, 1978, see section 28 of Pub. L. 95–405, set out as an Effective Date of 1978 Amendment note under section 2 of this title.

§24. Customer property with respect to commodity broker debtors; definitions

(a) Regulations respecting commodity broker debtors

Notwithstanding title 11, the Commission may provide, with respect to a commodity broker that is a debtor under chapter 7 of title 11, by rule or regulation —

(1) that certain cash, securities, other property, or commodity contracts are to be included in or excluded from customer property or member property;

(2) that certain cash, securities, other property, or commodity contracts are to be specifically identifiable to a particular customer in a specific capacity;

(3) the method by which the business of such commodity broker is to be conducted or liquidated after the date of the filing of the petition under such chapter, including the payment and allocation of margin with respect to commodity contracts not specifically identifiable to a particular customer pending their orderly liquidation;

(4) any persons to which customer property and commodity contracts may be transferred under section 766 of title 11; and

(5) how the net equity of a customer is to be determined.

(b) Definitions

As used in this section, the terms "commodity broker", "commodity contract", "customer", "customer property", "member property", "net equity", and "security" have the meanings assigned such terms for the purposes of subchapter IV of chapter 7 of title 11.

(c) Portfolio margining accounts

The Commission shall exercise its authority to ensure that securities held in a portfolio margining account carried as a futures account are customer property and the owners of those accounts are customers for the purposes of subchapter IV of chapter 7 of title 11.

(Sept. 21, 1922, ch. 369, §20, formerly §19, as added Pub. L. 95–598, title III, §302, Nov. 6, 1978, 92 Stat. 2673; renumbered and amended Pub. L. 97–222, §20, July 27, 1982, 96 Stat. 241; Pub. L. 111–203, title VII, §713(c), July 21, 2010, 124 Stat. 1647.)

Amendments

2010—Subsec. (c). Pub. L. 111–203 added subsec. (c).

1982—Subsec. (a)(3). Pub. L. 97–222, §20(b), inserted ", including the payment and allocation of margin with respect to commodity contracts not specifically identifiable to a particular customer pending their orderly liquidation".

Effective Date of 2010 Amendment

Amendment by Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as a note under section 1a of this title.

Effective Date

Section effective Nov. 6, 1978, see section 402(d) of Pub. L. 95–598, set out as a note preceding section 101 of Title 11, Bankruptcy.

§24a. Swap data repositories

(a) Registration requirement

(1) Requirement; authority of derivatives clearing organization

(A) In general

It shall be unlawful for any person, unless registered with the Commission, directly or indirectly to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a swap data repository.

(B) Registration of derivatives clearing organizations

A derivatives clearing organization may register as a swap data repository.

(2) Inspection and examination

Each registered swap data repository shall be subject to inspection and examination by any representative of the Commission.

(3) Compliance with core principles

(A) In general

To be registered, and maintain registration, as a swap data repository, the swap data repository shall comply with—

(i) the requirements and core principles described in this section; and

(ii) any requirement that the Commission may impose by rule or regulation pursuant to section 12a(5) of this title.

(B) Reasonable discretion of swap data repository

Unless otherwise determined by the Commission by rule or regulation, a swap data repository described in subparagraph (A) shall have reasonable discretion

in establishing the manner in which the swap data repository complies with the core principles described in this section.

(b) Standard setting

(1) Data identification

(A) In general

In accordance with subparagraph (B), the Commission shall prescribe standards that specify the data elements for each swap that shall be collected and maintained by each registered swap data repository.

(B) Requirement

In carrying out subparagraph (A), the Commission shall prescribe consistent data element standards applicable to registered entities and reporting counterparties.

(2) Data collection and maintenance

The Commission shall prescribe data collection and data maintenance standards for swap data repositories.

(3) Comparability

The standards prescribed by the Commission under this subsection shall be comparable to the data standards imposed by the Commission on derivatives clearing organizations in connection with their clearing of swaps.

(c) Duties

A swap data repository shall—

(1) accept data prescribed by the Commission for each swap under subsection (b);

(2) confirm with both counterparties to the swap the accuracy of the data that was submitted;

(3) maintain the data described in paragraph (1) in such form, in such manner, and for such period as may be required by the Commission;

(4)(A) provide direct electronic access to the Commission (or any designee of the Commission, including another registered entity); and

(B) provide the information described in paragraph (1) in such form and at such frequency as the Commission may require to comply with the public reporting requirements contained in section 2(a)(13) of this title;

(5) at the direction of the Commission, establish automated systems for monitoring, screening, and analyzing swap data, including compliance and frequency of end user clearing exemption claims by individual and affiliated entities;

(6) maintain the privacy of any and all swap transaction information that the swap data repository receives from a swap dealer, counterparty, or any other registered entity; and

(7) on a confidential basis pursuant to section 12 of this title, upon request, and after notifying the Commission of the request, make available swap data obtained by the swap data repository, including individual counterparty trade and position data, to—

(A) each appropriate prudential regulator;

(B) the Financial Stability Oversight Council;

(C) the Securities and Exchange Commission;

(D) the Department of Justice; and

(E) any other person that the Commission determines to be appropriate, including—

(i) foreign financial supervisors (including foreign futures authorities);

(ii) foreign central banks;

(iii) foreign ministries; and

(iv) other foreign authorities; and

(8) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allows for the timely recovery and resumption of operations and the fulfillment of the responsibilities and obligations of the organization.

(d) Confidentiality agreement

Before the swap data repository may share information with any entity described in subsection (c)(7), the swap data repository shall receive a written agreement from each entity stating that the entity shall abide by the confidentiality requirements described in section 12 of this title relating to the information on swap transactions that is provided.

(e) Designation of chief compliance officer

(1) In general

Each swap data repository shall designate an individual to serve as a chief compliance officer.

(2) Duties

The chief compliance officer shall—

(A) report directly to the board or to the senior officer of the swap data repository;

(B) review the compliance of the swap data repository with respect to the requirements and core principles described in this section;

(C) in consultation with the board of the swap data repository, a body performing a function similar to the board of the swap data repository, or the senior officer of the swap data repository, resolve any conflicts of interest that may arise;

(D) be responsible for administering each policy and procedure that is required to be established pursuant to this section;

(E) ensure compliance with this chapter (including regulations) relating to agreements, contracts, or transactions, including each rule prescribed by the Commission under this section;

(F) establish procedures for the remediation of noncompliance issues identified by the chief compliance officer through any—

(i) compliance office review;

(ii) look-back;

(iii) internal or external audit finding;

(iv) self-reported error; or

(v) validated complaint; and

(G) establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.

(3) Annual reports

(A) In general

In accordance with rules prescribed by the Commission, the chief compliance officer shall annually prepare and sign a report that contains a description of—

(i) the compliance of the swap data repository of the chief compliance officer with respect to this chapter (including regulations); and

(ii) each policy and procedure of the swap data repository of the chief compliance officer (including the code of ethics and conflict of interest policies of the swap data repository).

(B) Requirements

A compliance report under subparagraph (A) shall—

(i) accompany each appropriate financial report of the swap data repository that is required to be furnished to the Commission pursuant to this section; and

(ii) include a certification that, under penalty of law, the compliance report is accurate and complete.

(f) Core principles applicable to swap data repositories

(1) Antitrust considerations

Unless necessary or appropriate to achieve the purposes of this chapter, a swap data repository shall not—

(A) adopt any rule or take any action that results in any unreasonable restraint of trade; or

(B) impose any material anticompetitive burden on the trading, clearing, or reporting of transactions.

(2) Governance arrangements

Each swap data repository shall establish governance arrangements that are transparent—

(A) to fulfill public interest requirements; and

(B) to support the objectives of the Federal Government, owners, and participants.

(3) Conflicts of interest

Each swap data repository shall—

(A) establish and enforce rules to minimize conflicts of interest in the decision-making process of the swap data repository; and

(B) establish a process for resolving conflicts of interest described in subparagraph (A).

(4) Additional duties developed by Commission

(A) In general

The Commission may develop 1 or more additional duties applicable to swap data repositories.

(B) Consideration of evolving standards

In developing additional duties under subparagraph (A), the Commission may take into consideration any evolving standard of the United States or the international community.

(C) Additional duties for Commission designees

The Commission shall establish additional duties for any registrant described in section 1a(48) of this title in order to minimize conflicts of interest, protect data, ensure compliance, and guarantee the safety and security of the swap data repository.

(g) Required registration for swap data repositories

Any person that is required to be registered as a swap data repository under this section shall register with the Commission regardless of whether that person is also licensed as a bank or registered with the Securities and Exchange Commission as a swap data repository.

(h) Rules

The Commission shall adopt rules governing persons that are registered under this section.

(Sept. 21, 1922, ch. 369, §21, as added Pub. L. 111–203, title VII, §728, July 21, 2010, 124 Stat. 1697; amended Pub. L. 114–94, div. G, title LXXXVI, §86001(b), Dec. 4, 2015, 129 Stat. 1797.)

Prior Provisions

A prior section 21 of act Sept. 21, 1922, ch. 369, as added by Pub. L. 96–276, §7, June 17, 1980, 94 Stat. 542, related to silver markets activity and was set out as a note under section 4a of this title prior to repeal by Pub. L. 102–546, title IV, §402(13), Oct. 28, 1992, 106 Stat. 3625.

Amendments

2015—Subsec. (c)(7). Pub. L. 114–94, §86001(b)(1)(A), substituted "swap" for "all" in introductory provisions.

Subsec. (c)(7)(E)(iv). Pub. L. 114–94, §86001(b)(1)(B), added cl. (iv).

Subsec. (d). Pub. L. 114–94, §86001(b)(2), added subsec. (d) and struck out former subsec. (d) which related to confidentiality and indemnification agreement.

Effective Date of 2015 Amendment

Amendment by Pub. L. 114–94 effective as if enacted as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, see section 86001(d) of Pub. L. 114–94, set out as a note under section 7a–1 of this title.

Effective Date

Section effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 1a of this title.

§25. Private rights of action

(a) Actual damages; actionable transactions; exclusive remedy

(1) Any person (other than a registered entity or registered futures association) who violates this chapter or who willfully aids, abets, counsels, induces, or procures the commission of a violation of this chapter shall be liable for actual damages resulting from one or more of the transactions referred to in subparagraphs (A) through (D) of this paragraph and caused by such violation to any other person—

(A) who received trading advice from such person for a fee;

(B) who made through such person any contract of sale of any commodity for future delivery (or option on such contract or any commodity) or any swap; or who deposited with or paid to such person money, securities, or property (or incurred debt in lieu thereof) in connection with any order to make such contract or any swap;

(C) who purchased from or sold to such person or placed through such person an order for the purchase or sale of—

(i) an option subject to section 6c of this title (other than an option purchased or sold on a registered entity or other board of trade);

(ii) a contract subject to section 23 of this title; or [1]

(iii) an interest or participation in a commodity pool; or

(iv) a swap; or

(D) who purchased or sold a contract referred to in subparagraph (B) hereof or swap if the violation constitutes—

(i) the use or employment of, or an attempt to use or employ, in connection with a swap, or a contract of sale of a commodity, in interstate commerce, or for future delivery on or subject to the rules of any registered entity, any manipulative device or contrivance in contravention of such rules and regulations as the Commission shall promulgate by not later than 1 year after July 21, 2010; or

(ii) a manipulation of the price of any such contract or swap or the price of the commodity underlying such contract or swap.

(2) Except as provided in subsection (b), the rights of action authorized by this subsection and by sections 7(d)(13), 7a–1(c)(2)(H), and 21(b)(10) of this title shall be the exclusive remedies under this chapter available to any person who sustains loss as a result of any alleged violation of this chapter. Nothing in this subsection shall limit or abridge the rights of the parties to agree in advance of a dispute upon any forum for resolving claims under this section, including arbitration.

(3) In any action arising from a violation in the execution of an order on the floor of a registered entity, the person referred to in paragraph (1) shall be liable for—

(A) actual damages proximately caused by such violation. If an award of actual damages is made against a floor broker in connection with the execution of a customer order, and the futures commission merchant which selected the floor broker for the execution of the customer order is held to be responsible under section 2(a)(1) of this title for the floor broker's violation, such futures commission merchant may be required to satisfy such award; and

(B) where the violation is willful and intentional, punitive or exemplary damages equal to no more than two times the amount of such actual damages. If an award of punitive or exemplary damages is made against a floor broker in connection with the execution of a customer order, and the futures commission merchant which selected the floor broker for the execution of the customer order is held to be responsible under section 2(a)(1) of this title for the floor broker's violation, such futures commission merchant may be required to satisfy such award if the floor broker fails to do so, except that such requirement shall apply to the futures commission merchant only if it willfully and intentionally selected the floor broker with the intent to assist or facilitate the floor broker's violation.

(4) Contract enforcement between eligible counterparties.—

(A) In general.—No hybrid instrument sold to any investor shall be void, voidable, or unenforceable, and no party to a hybrid instrument shall be entitled to rescind, or recover any payment made with respect to, the hybrid instrument under this section or any other provision of Federal or State law, based solely on the failure of the hybrid instrument to comply with the terms or conditions of section 2(f) of this title or regulations of the Commission.

(B) Swaps.—No agreement, contract, or transaction between eligible contract participants or persons reasonably believed to be eligible contract participants shall be void, voidable, or unenforceable, and no party to such agreement, contract, or transaction shall be entitled to rescind, or recover any payment made with respect to, the agreement, contract, or transaction under this section or any other provision of Federal or State law, based solely on the failure of the agreement, contract, or transaction—

(i) to meet the definition of a swap under section 1a of this title; or

(ii) to be cleared in accordance with section 2(h)(1) of this title.

(5) Legal certainty for long-term swaps entered into before July 21, 2010.—

(A) Effect on swaps.—Unless specifically reserved in the applicable swap, neither the enactment of the Wall Street Transparency and Accountability Act of 2010, nor any requirement under that Act or an amendment made by that Act, shall constitute a termination event, force majeure, illegality, increased costs, regulatory change, or similar event under a swap (including any related credit support arrangement) that would permit a party to terminate, renegotiate, modify, amend, or supplement 1 or more transactions under the swap.

(B) Position limits.—Any position limit established under the Wall Street Transparency and Accountability Act of 2010 shall not apply to a position acquired

in good faith prior to the effective date of any rule, regulation, or order under the Act that establishes the position limit; provided, however, that such positions shall be attributed to the trader if the trader's position is increased after the effective date of such position limit rule, regulation, or order.

(6) CONTRACT ENFORCEMENT FOR FOREIGN FUTURES CONTRACTS.—A contract of sale of a commodity for future delivery traded or executed on or through the facilities of a board of trade, exchange, or market located outside the United States for purposes of section 6(a) of this title shall not be void, voidable, or unenforceable, and a party to such a contract shall not be entitled to rescind or recover any payment made with respect to the contract, based on the failure of the foreign board of trade to comply with any provision of this chapter.

(b) Liabilities of organizations and individuals; bad faith requirement; exclusive remedy

(1)(A) A registered entity that fails to enforce any bylaw, rule, regulation, or resolution that it is required to enforce by section 7, 7a–1, 7a–2, 7b–3, or 24a of this title, (B) a licensed board of trade that fails to enforce any bylaw, rule, regulation, or resolution that it is required to enforce by the Commission, or (C) any registered entity that in enforcing any such bylaw, rule, regulation, or resolution violates this chapter or any Commission rule, regulation, or order, shall be liable for actual damages sustained by a person who engaged in any transaction on or subject to the rules of such registered entity to the extent of such person's actual losses that resulted from such transaction and were caused by such failure to enforce or enforcement of such bylaws, rules, regulations, or resolutions.

(2) A registered futures association that fails to enforce any bylaw or rule that is required under section 21 of this title or in enforcing any such bylaw or rule violates this chapter or any Commission rule, regulation, or order shall be liable for actual damages sustained by a person that engaged in any transaction specified in subsection (a) of this section to the extent of such person's actual losses that resulted from such transaction and were caused by such failure to enforce or enforcement of such bylaw or rule.

(3) Any individual who, in the capacity as an officer, director, governor, committee member, or employee of registered [2] entity or a registered futures association willfully aids, abets, counsels, induces, or procures any failure by any such entity to enforce (or any violation of the chapter in enforcing) any bylaw, rule, regulation, or resolution referred to in paragraph (1) or (2) of this subsection, shall be liable for actual damages sustained by a person who engaged in any transaction specified in subsection (a) of this section on, or subject to the rules of, such registered entity or, in the case of an officer, director, governor, committee member, or employee of a registered futures association, any transaction specified in subsection (a) of this section, in either case to the extent of such person's actual losses that resulted from such transaction and were caused by such failure or violation.

(4) A person seeking to enforce liability under this section must establish that the registered entity [3] registered futures association, officer, director, governor, committee member, or employee acted in bad faith in failing to take action or in taking such action as was taken, and that such failure or action caused the loss.

(5) The rights of action authorized by this subsection shall be the exclusive remedy under this chapter available to any person who sustains a loss as a result of (A) the alleged failure by a registered entity or registered futures association or by any officer, director, governor, committee member, or employee to enforce any bylaw, rule, regulation, or resolution referred to in paragraph (1) or (2) of this subsection, or (B) the taking of action in enforcing any bylaw, rule, regulation, or resolution referred to in this subsection that is alleged to have violated this chapter, or any Commission rule, regulation, or order.

(c) Jurisdiction; statute of limitations; venue; process

The United States district courts shall have exclusive jurisdiction of actions brought under this section. Any such action shall be brought not later than two years after the date the cause of action arises. Any action brought under subsection (a) of this section may be brought in any judicial district wherein the defendant is found, resides, or transacts business, or in the judicial district wherein any act or transaction constituting the violation occurs. Process in such action may be served in any judicial district of which the defendant is an inhabitant or wherever the defendant may be found.

(d) Dates of application to actions

The provisions of this section shall become effective with respect to causes of action accruing on or after the date of enactment of the Futures Trading Act of 1982 [January 11, 1983]: *Provided*, That the enactment of the Futures Trading Act of 1982 shall not affect any right of any parties which may exist with respect to causes of action accruing prior to such date.

(Sept. 21, 1922, ch. 369, §22, as added Pub. L. 97–444, title II, §235, Jan. 11, 1983, 96 Stat. 2322; amended Pub. L. 102–546, title II, §§211, 222(d), title IV, §402(14), Oct. 28, 1992, 106 Stat. 3607, 3616, 3625; Pub. L. 106–554, §1(a)(5) [title I, §§120, 123(a)(25)], Dec. 21, 2000, 114 Stat. 2763, 2763A–404, 2763A–410; Pub. L. 110–234, title XIII, §§13105(i), 13203(n), May 22, 2008, 122 Stat. 1435, 1441; Pub. L. 110–246, §4(a), title XIII, §§13105(i), 13203(n), June 18, 2008, 122 Stat. 1664, 2197, 2203; Pub. L. 111–203, title VII, §§738(c), 739, 749(h), 753(c), July 21, 2010, 124 Stat. 1728, 1729, 1748, 1754.)

References in Text

The Wall Street Transparency and Accountability Act of 2010, referred to in subsec. (a)(5), is title VII of Pub. L. 111–203, July 21, 2010, 124 Stat. 1641, which enacted chapter 109 (§8301 et seq.) of Title 15, Commerce and Trade, and enacted and amended numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title note set out under section 8301 of Title 15 and Tables.

The Futures Trading Act of 1982, referred to in subsec. (d), is Pub. L. 97–444, Jan. 11, 1983, 96 Stat. 2294, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title of 1983 Amendment note set out under section 1 of this title and Tables.

Codification

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

Amendments

2010—Subsec. (a)(1)(B). Pub. L. 111–203, §749(h)(1)(B), which directed insertion of "or any swap" after "such contract", was executed by making the insertion after "such contract" the second time appearing, to reflect the probable intent of Congress.

Pub. L. 111–203, §749(h)(1)(A), inserted "or any swap" after "commodity)".

Subsec. (a)(1)(C)(iv). Pub. L. 111–203, §749(h)(2), added cl. (iv).

Subsec. (a)(1)(D). Pub. L. 111–203, §753(c), added subpar. (D) and struck out former subpar. (D) which read as follows: "who purchased or sold a contract referred to in subparagraph (B) hereof if the violation constitutes a manipulation of the price of any such contract or the price of the commodity underlying such contract."

Subsec. (a)(4), (5). Pub. L. 111–203, §739, added pars. (4) and (5) and struck out former par. (4). Prior to amendment, text of par. (4) read as follows: "No agreement, contract, or transaction between eligible contract participants or persons reasonably believed to be eligible contract participants, and no hybrid instrument sold to any investor, shall be void, voidable, or unenforceable, and no such party shall be entitled to rescind, or recover any payment made with respect to, such an agreement, contract, transaction, or instrument under this section or any other provision of Federal or State law, based solely on the failure of the agreement, contract, transaction, or instrument to comply with the terms or

conditions of an exemption or exclusion from any provision of this chapter or regulations of the Commission."

Subsec. (a)(6). Pub. L. 111–203, §738(c), added par. (6).

Subsec. (b)(1)(A). Pub. L. 111–203, §749(h)(3), substituted "section 7, 7a–1, 7a–2, 7b–3, or 24a of this title" for "section 2(h)(7) of this title or sections 7 through 7a–2 of this title".

2008—Subsec. (a)(2). Pub. L. 110–246, §13105(i), substituted "7a–1(c)(2)(H)" for "7a–1(b)(1)(E)".

Subsec. (b)(1)(A). Pub. L. 110–246, §13203(n), inserted "section 2(h)(7) of this title or" before "sections 7 through 7a–2".

2000—Subsec. (a)(1). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(25)(A)(i)(I)], substituted "registered entity" for "contract market, clearing organization of a contract market, licensed board of trade," in introductory provisions.

Subsec. (a)(1)(C)(i). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(25)(A)(i)(II)], substituted "registered entity" for "contract market".

Subsec. (a)(2). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(25)(A)(ii)], substituted "sections 7(d)(13), 7a–1(b)(1)(E)," for "sections 7a(11),".

Subsec. (a)(3). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(25)(A)(iii)], substituted "registered entity" for "contract market" in introductory provisions.

Subsec. (a)(4). Pub. L. 106–554, §1(a)(5) [title I, §120], added par. (4).

Subsec. (b)(1). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(25)(B)(i)], substituted "registered entity that fails" for "contract market or clearing organization of a contract market that fails", "sections 7 through 7a–2 of this title" for "section 7a(8) and section 7a(9) of this title", "registered entity that in" for "contract market, clearing organization of a contract market, or licensed board of trade that in", and "registered entity to the" for "contract market or licensed board of trade to the".

Subsec. (b)(3). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(25)(B)(ii)], substituted "employee of registered entity" for "employee of a contract market, clearing organization, licensed board of trade," and "such registered entity" for "such contract market, licensed board of trade".

Subsec. (b)(4). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(25)(B)(iii)], substituted "registered entity" for "contract market, licensed board of trade, clearing organization,".

Subsec. (b)(5). Pub. L. 106–554, §1(a)(5) [title I, §123(a)(25)(B)(iv)], substituted "registered entity" for "contract market, licensed board of trade, clearing organization,".

1992—Subsec. (a)(1). Pub. L. 102–546, §402(14)(A), substituted "subparagraphs" for "clauses" in introductory provisions and "subparagraph" for "clause" in subpar. (D).

Subsec. (a)(2). Pub. L. 102–546, §402(14)(B), made technical amendment to reference to section 21(b)(10) of this title to correct reference to corresponding section of original act.

Subsec. (a)(3). Pub. L. 102–546, §222(d), added par. (3).

Subsec. (c). Pub. L. 102–546, §211, amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "The United States district courts shall have exclusive jurisdiction of actions brought under this section. Any such action must be brought within two years after the date the cause of action accrued."

Effective Date of 2010 Amendment

Amendment by sections 738(c), 739, and 749(h) of Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as a note under section 1a of this title.

Amendment by section 753(c) of Pub. L. 111–203 effective on the date on which the final rule promulgated by the Commodity Futures Trading Commission pursuant to Pub. L. 111–203 takes effect [see 76 F.R. 41398, effective Aug. 15, 2011], see section 753(d) of Pub. L. 111–203, set out as a note under section 9 of this title.

Effective Date of 2008 Amendment

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of this title.

Amendment by section 13203(n) of Pub. L. 110–246 effective June 18, 2008, see section 13204(a) of Pub. L. 110–246, set out as a note under section 2 of this title.

Effective Date

Section effective Jan. 11, 1983, see section 239 of Pub. L. 97–444, set out as an Effective Date of 1983 Amendment note under section 2 of this title.

[1] *So in original. The word "or" probably should not appear.*

[2] *So in original. Probably should be preceded by "a".*

[3] *So in original. Probably should be followed by a comma.*

§26. Commodity whistleblower incentives and protection

(a) Definitions

In this section:

(1) Covered judicial or administrative action

The term "covered judicial or administrative action" means any judicial or administrative action brought by the Commission under this chapter that results in monetary sanctions exceeding $1,000,000.

(2) Fund

The term "Fund" means the Commodity Futures Trading Commission Customer Protection Fund established under subsection (g).

(3) Monetary sanctions

The term "monetary sanctions", when used with respect to any judicial or administrative action means—

(A) any monies, including penalties, disgorgement, restitution, and interest ordered to be paid; and

(B) any monies deposited into a disgorgement fund or other fund pursuant to section 7246(b) of title 15, as a result of such action or any settlement of such action.

(4) Original information

The term "original information" means information that—

(A) is derived from the independent knowledge or analysis of a whistleblower;

(B) is not known to the Commission from any other source, unless the whistleblower is the original source of the information; and

(C) is not exclusively derived from an allegation made in a judicial or administrative hearing, in a governmental report, hearing, audit, or investigation, or from the news media, unless the whistleblower is a source of the information.

(5) Related action

The term "related action", when used with respect to any judicial or administrative action brought by the Commission under this chapter, means any judicial or administrative action brought by an entity described in subclauses (I) through (VI) of subsection (h)(2)(C) that is based upon the original information provided by a whistleblower pursuant to subsection (a) that led to the successful enforcement of the Commission action.

(6) Successful resolution

The term "successful resolution", when used with respect to any judicial or administrative action brought by the Commission under this chapter, includes any settlement of such action.

(7) Whistleblower

The term "whistleblower" means any individual, or 2 or more individuals acting jointly, who provides information relating to a violation of this chapter to the Commission, in a manner established by rule or regulation by the Commission.

(b) Awards

(1) In general

In any covered judicial or administrative action, or related action, the Commission, under regulations prescribed by the Commission and subject to subsection (c), shall pay an award or awards to 1 or more whistleblowers who voluntarily provided original information to the Commission that led to the successful enforcement of the covered judicial or administrative action, or related action, in an aggregate amount equal to—

(A) not less than 10 percent, in total, of what has been collected of the monetary sanctions imposed in the action or related actions; and

(B) not more than 30 percent, in total, of what has been collected of the monetary sanctions imposed in the action or related actions.

(2) Payment of awards

Any amount paid under paragraph (1) shall be paid from the Fund.

(c) Determination of amount of award; denial of award

(1) Determination of amount of award

(A) Discretion

The determination of the amount of an award made under subsection (b) shall be in the discretion of the Commission.

(B) Criteria

In determining the amount of an award made under subsection (b), the Commission—

(i) shall take into consideration—

(I) the significance of the information provided by the whistleblower to the success of the covered judicial or administrative action;

(II) the degree of assistance provided by the whistleblower and any legal representative of the whistleblower in a covered judicial or administrative action;

(III) the programmatic interest of the Commission in deterring violations of the [1] chapter (including regulations under the [1] chapter) by making awards to whistleblowers who provide information that leads to the successful enforcement of such laws; and

(IV) such additional relevant factors as the Commission may establish by rule or regulation; and

(ii) shall not take into consideration the balance of the Fund.

(2) Denial of award

No award under subsection (b) shall be made—

(A) to any whistleblower who is, or was at the time the whistleblower acquired the original information submitted to the Commission, a member, officer, or employee of—

(i) a appropriate regulatory agency;

(ii) the Department of Justice;

(iii) a registered entity;

(iv) a registered futures association;

(v) a self-regulatory organization as defined in section 78c(a) of title 15; or

(vi) a law enforcement organization;

(B) to any whistleblower who is convicted of a criminal violation related to the judicial or administrative action for which the whistleblower otherwise could receive an award under this section;

(C) to any whistleblower who submits information to the Commission that is based on the facts underlying the covered action submitted previously by another whistleblower;

(D) to any whistleblower who fails to submit information to the Commission in such form as the Commission may, by rule or regulation, require.

(d) Representation

(1) Permitted representation

Any whistleblower who makes a claim for an award under subsection (b) may be represented by counsel.

(2) Required representation

(A) In general

Any whistleblower who anonymously makes a claim for an award under subsection (b) shall be represented by counsel if the whistleblower submits the information upon which the claim is based.

(B) Disclosure of identity

Prior to the payment of an award, a whistleblower shall disclose the identity of the whistleblower and provide such other information as the Commission may require, directly or through counsel for the whistleblower.

(e) No contract necessary

No contract with the Commission is necessary for any whistleblower to receive an award under subsection (b), unless otherwise required by the Commission, by rule or regulation.

(f) Appeals

(1) In general

Any determination made under this section, including whether, to whom, or in what amount to make awards, shall be in the discretion of the Commission.

(2) Appeals

Any determination described in paragraph (1) may be appealed to the appropriate court of appeals of the United States not more than 30 days after the determination is issued by the Commission.

(3) Review

The court shall review the determination made by the Commission in accordance with section 7064 [2] of title 5.

(g) Commodity Futures Trading Commission Customer Protection Fund

(1) Establishment

There is established in the Treasury of the United States a revolving fund to be known as the "Commodity Futures Trading Commission Customer Protection Fund".

(2) Use of Fund

The Fund shall be available to the Commission, without further appropriation or fiscal year limitation, for—

(A) the payment of awards to whistleblowers as provided in subsection (a); and

(B) the funding of customer education initiatives designed to help customers protect themselves against fraud or other violations of this chapter, or the rules

and regulations thereunder.

(3) Deposits and credits

There shall be deposited into or credited to the Fund:

(A) Monetary sanctions

Any monetary sanctions collected by the Commission in any covered judicial or administrative action that is not otherwise distributed to victims of a violation of this chapter or the rules and regulations thereunder underlying such action, unless the balance of the Fund at the time the monetary judgment is collected exceeds $100,000,000.

(B) Additional amounts

If the amounts deposited into or credited to the Fund under subparagraph (A) are not sufficient to satisfy an award made under subsection (b), there shall be deposited into or credited to the Fund an amount equal to the unsatisfied portion of the award from any monetary sanction collected by the Commission in any judicial or administrative action brought by the Commission under this chapter that is based on information provided by a whistleblower.

(C) Investment income

All income from investments made under paragraph (4).

(4) Investments

(A) Amounts in Fund may be invested

The Commission may request the Secretary of the Treasury to invest the portion of the Fund that is not, in the Commission's judgment, required to meet the current needs of the Fund.

(B) Eligible investments

Investments shall be made by the Secretary of the Treasury in obligations of the United States or obligations that are guaranteed as to principal and interest by the United States, with maturities suitable to the needs of the Fund as determined by the Commission.

(C) Interest and proceeds credited

The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to, and form a part of, the Fund.

(5) Reports to Congress

Not later than October 30 of each year, the Commission shall transmit to the Committee on Agriculture, Nutrition, and Forestry of the Senate, and the Committee on Agriculture of the House of Representatives a report on—

(A) the Commission's whistleblower award program under this section, including a description of the number of awards granted and the types of cases in which awards were granted during the preceding fiscal year;

(B) customer education initiatives described in paragraph (2)(B) that were funded by the Fund during the preceding fiscal year;

(C) the balance of the Fund at the beginning of the preceding fiscal year;

(D) the amounts deposited into or credited to the Fund during the preceding fiscal year;

(E) the amount of earnings on investments of amounts in the Fund during the preceding fiscal year;

(F) the amount paid from the Fund during the preceding fiscal year to whistleblowers pursuant to subsection (b);

(G) the amount paid from the Fund during the preceding fiscal year for customer education initiatives described in paragraph (2)(B);

(H) the balance of the Fund at the end of the preceding fiscal year; and

(I) a complete set of audited financial statements, including a balance sheet, income statement, and cash flow analysis.

(h) Protection of whistleblowers

(1) Prohibition against retaliation

(A) In general

No employer may discharge, demote, suspend, threaten, harass, directly or indirectly, or in any other manner discriminate against, a whistleblower in the terms and conditions of employment because of any lawful act done by the whistleblower—

(i) in providing information to the Commission in accordance with subsection (b); or

(ii) in assisting in any investigation or judicial or administrative action of the Commission based upon or related to such information.

(B) Enforcement

(i) Cause of action

An individual who alleges discharge or other discrimination in violation of subparagraph (A) may bring an action under this subsection in the appropriate district court of the United States for the relief provided in subparagraph (C), unless the individual who is alleging discharge or other discrimination in violation of subparagraph (A) is an employee of the Federal Government, in which case the individual shall only bring an action under section 1221 of title 5.

(ii) Subpoenas

A subpoena requiring the attendance of a witness at a trial or hearing conducted under this subsection may be served at any place in the United States.

(iii) Statute of limitations

An action under this subsection may not be brought more than 2 years after the date on which the violation reported in subparagraph (A) is committed.

(C) Relief

Relief for an individual prevailing in an action brought under subparagraph (B) shall include—

(i) reinstatement with the same seniority status that the individual would have had, but for the discrimination;

(ii) the amount of back pay otherwise owed to the individual, with interest; and

(iii) compensation for any special damages sustained as a result of the discharge or discrimination, including litigation costs, expert witness fees, and reasonable attorney's fees.

(2) Confidentiality

(A) In general

Except as provided in subparagraphs (B) and (C), the Commission, and any officer or employee of the Commission, shall not disclose any information, including information provided by a whistleblower to the Commission, which could reasonably be expected to reveal the identity of a whistleblower, except in accordance with the provisions of section 552a of title 5, unless and until required to be disclosed to a defendant or respondent in connection with a public proceeding instituted by the Commission or any entity described in subparagraph (C). For purposes of section 552 of title 5, this paragraph shall be considered a statute described in subsection (b)(3)(B) of such section 552.

(B) Effect

Nothing in this paragraph is intended to limit the ability of the Attorney General to present such evidence to a grand jury or to share such evidence with potential witnesses or defendants in the course of an ongoing criminal investigation.

(C) Availability to government agencies

(i) In general

Without the loss of its status as confidential in the hands of the Commission, all information referred to in subparagraph (A) may, in the discretion of the Commission, when determined by the Commission to be necessary or appropriate to accomplish the purposes of this chapter and protect customers and in accordance with clause (ii), be made available to—

(I) the Department of Justice;

(II) an appropriate department or agency of the Federal Government, acting within the scope of its jurisdiction;

(III) a registered entity, registered futures association, or self-regulatory organization as defined in section 78c(a) of title 15;

(IV) a State attorney general in connection with any criminal investigation;

(V) an appropriate department or agency of any State, acting within the scope of its jurisdiction; and

(VI) a foreign futures authority.

(ii) Maintenance of information

Each of the entities, agencies, or persons described in clause (i) shall maintain information described in that clause as confidential, in accordance with the requirements in subparagraph (A).

(iii) Study on impact of FOIA exemption on Commodity Futures Trading Commission

(I) Study

The Inspector General of the Commission shall conduct a study—

(aa) on whether the exemption under section 552(b)(3) of title 5 (known as the Freedom of Information Act) established in paragraph (2)(A) aids whistleblowers in disclosing information to the Commission;

(bb) on what impact the exemption has had on the public's ability to access information about the Commission's regulation of commodity futures and option markets; and

(cc) to make any recommendations on whether the Commission should continue to use the exemption.

(II) Report

Not later than 30 months after July 21, 2010, the Inspector General shall—

(aa) submit a report on the findings of the study required under this clause to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives; and

(bb) make the report available to the public through publication of a report on the website of the Commission.

(3) Rights retained

Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any whistleblower under any Federal or State law, or under any collective bargaining agreement.

(i) Rulemaking authority

The Commission shall have the authority to issue such rules and regulations as may be necessary or appropriate to implement the provisions of this section consistent with the purposes of this section.

(j) Implementing rules

The Commission shall issue final rules or regulations implementing the provisions of this section not later than 270 days after July 21, 2010.

(k) Original information

Information submitted to the Commission by a whistleblower in accordance with rules or regulations implementing this section shall not lose its status as original information solely because the whistleblower submitted such information prior to the effective date of such rules or regulations, provided such information was submitted after July 21, 2010.

(l) Awards

A whistleblower may receive an award pursuant to this section regardless of whether any violation of a provision of this chapter, or a rule or regulation thereunder, underlying the judicial or administrative action upon which the award is based occurred prior to July 21, 2010.

(m) Provision of false information

A whistleblower who knowingly and willfully makes any false, fictitious, or fraudulent statement or representation, or who makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall not be entitled to an award under this section and shall be subject to prosecution under section 1001 of title 18.

(n) Nonenforceability of certain provisions waiving rights and remedies or requiring arbitration of disputes

(1) Waiver of rights and remedies

The rights and remedies provided for in this section may not be waived by any agreement, policy form, or condition of employment including by a predispute arbitration agreement.

(2) Predispute arbitration agreements

No predispute arbitration agreement shall be valid or enforceable, if the agreement requires arbitration of a dispute arising under this section.

(Sept. 21, 1922, ch. 369, §23, as added Pub. L. 111–203, title VII, §748, July 21, 2010, 124 Stat. 1739.)

Prior Provisions

A prior section 26, act Sept. 21, 1922, ch. 369, §23, as added Jan. 11, 1983, Pub. L. 97–444, title II, §236, 96 Stat. 2324, provided for special studies to be conducted by Commission, Board of Governors of Federal Reserve System, and Securities and Exchange Commission, prior to repeal by Pub. L. 102–546, title IV, §402(15), Oct. 28, 1992, 106 Stat. 3625.

Effective Date

Section effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 1a of this title.

[1] *So in original. Probably should be "this".*

[2] *So in original. Probably should be "section 706".*

§27. Definitions

(a) Bank

In sections 27 to 27f of this title, the term "bank" means—

(1) any depository institution (as defined in section 1813(c) of title 12);

(2) any foreign bank or branch or agency of a foreign bank (each as defined in section 3101 of title 12);

(3) any Federal or State credit union (as defined in section 1752 of title 12);

(4) any corporation organized under section 25A of the Federal Reserve Act [12 U.S.C. 611 et seq.];

(5) any corporation operating under section 25 of the Federal Reserve Act [12 U.S.C. 601 et seq.];

(6) any trust company; or

(7) any subsidiary of any entity described in paragraph [1] (1) through (6) of this subsection, if the subsidiary is regulated as if the subsidiary were part of the entity and is not a broker or dealer (as such terms are defined in section 78c of title 15) or a futures commission merchant (as defined in section 1a of this title).

(b) Identified banking product

In sections 27 to 27f of this title, the term "identified banking product" shall have the same meaning as in paragraphs (1) through (5) of section 206(a) of the Gramm-Leach-Bliley Act, except that in applying such section for purposes of sections 27 to 27f of this title—

(1) the term "bank" shall have the meaning given in subsection (a) of this section; and

(2) the term "qualified investor" means eligible contract participant (as defined in section 1a of this title, as in effect on December 21, 2000).

(c) Hybrid instrument

In sections 27 to 27f of this title, the term "hybrid instrument" means an identified banking product not excluded by section 27a of this title, offered by a bank, having one or more payments indexed to the value, level, or rate of, or providing for the delivery of, one or more commodities (as defined in section 1a of this title).

(Pub. L. 106–554, §1(a)(5) [title IV, §402], Dec. 21, 2000, 114 Stat. 2763, 2763A–457; Pub. L. 111–203, title VII, §§721(e)(9), 725(g)(1)(B), July 21, 2010, 124 Stat. 1672, 1694.)

References in Text

Section 25A of the Federal Reserve Act, referred to in subsec. (a)(4), is classified to subchapter II (§611 et seq.) of chapter 6 of Title 12, Banks and Banking. Section 25 of the Federal Reserve Act, referred to in subsec. (a)(5), is classified to subchapter I (§601 et seq.) of chapter 6 of Title 12.

Section 206 of the Gramm-Leach-Bliley Act, referred to in subsec. (b), is section 206 of Pub. L. 106–102 which is set out as a note under section 78c of Title 15, Commerce and Trade.

Codification

Section was enacted as part of the Legal Certainty for Bank Products Act of 2000, and also as part of the Commodity Futures Modernization Act of 2000, and not as part of the Commodity Exchange Act which comprises this chapter.

Amendments

2010—Subsec. (a)(7). Pub. L. 111–203, §721(e)(9)(A), substituted "section 1a" for "section 1a(20)".

Subsec. (b)(2). Pub. L. 111–203, §721(e)(9)(B), substituted "section 1a" for "section 1a(12)".

Subsec. (c). Pub. L. 111–203, §721(e)(9)(C), substituted "section 1a" for "section 1a(4)".

Subsec. (d). Pub. L. 111–203, §725(g)(1)(B), struck out subsec. (d) which defined covered swap agreement.

Effective Date of 2010 Amendment

Amendment by Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as a note under section 1a of this title.

Short Title

For short title of sections 27 to 27f of this title as the "Legal Certainty for Bank Products Act of 2000", see section 1(a)(5) [title IV, §401] of Pub. L. 106–554, set out as a Short Title of 2000 Amendment note under section 1 of this title.

[1] *So in original. Probably should be "paragraphs".*

§27a. Exclusion of identified banking product

(a) Exclusion

Except as provided in subsection (b) or (c)—

(1) the Commodity Exchange Act (7 U.S.C. 1 et seq.) shall not apply to, and the Commodity Futures Trading Commission shall not exercise regulatory authority under the Commodity Exchange Act (7 U.S.C. 1 et seq.) with respect to, an identified banking product; and

(2) the definitions of "security-based swap" in section 3(a)(68) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(68)] and "security-based swap agreement" in section 1a(47)(A)(v) of the Commodity Exchange Act [7 U.S.C. 1a(47)(A)(v)] and section 3(a)(78) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(78)] do not include any identified bank product.

(b) Exception

An appropriate Federal banking agency may except an identified banking product of a bank under its regulatory jurisdiction from the exclusion in subsection (a) if the agency determines, in consultation with the Commodity Futures Trading Commission and the Securities and Exchange Commission, that the product—

(1) would meet the definition of a "swap" under section 1a(47) of the Commodity Exchange Act (7 U.S.C. 1a[47]) or a "security-based swap" under that [1] section 3(a)(68) of the Securities Exchange Act of 1934; and

(2) has become known to the trade as a swap or security-based swap, or otherwise has been structured as an identified banking product for the purpose of evading the provisions of the Commodity Exchange Act (7 U.S.C. 1 et seq.), the Securities Act of 1933 (15 U.S.C. 77a et seq.), or the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

(c) Exception

The exclusions in subsection (a) shall not apply to an identified bank product that —

(1) is a product of a bank that is not under the regulatory jurisdiction of an appropriate Federal banking agency;

(2) meets the definition of swap in section 1a(47) of the Commodity Exchange Act or security-based swap in section 3(a)(68) of the Securities Exchange Act of 1934; and

(3) has become known to the trade as a swap or security-based swap, or otherwise has been structured as an identified banking product for the purpose of evading the provisions of the Commodity Exchange Act (7 U.S.C. 1 et seq.), the

Securities Act of 1933 (15 U.S.C. 77a et seq.), or the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

(Pub. L. 106–554, §1(a)(5) [title IV, §403], Dec. 21, 2000, 114 Stat. 2763, 2763A–458; Pub. L. 111–203, title VII, §725(g)(2), July 21, 2010, 124 Stat. 1694.)

References in Text

The Commodity Exchange Act, referred to in subsecs. (a)(1), (b)(2), and (c)(3), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, as amended, which is classified generally to this chapter. For complete classification of this Act to the Code, see section 1 of this title and Tables.

The Securities Act of 1933, referred to in subsecs. (b)(2) and (c)(3), is title I of act May 27, 1933, ch. 38, 48 Stat. 74, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 77a of Title 15 and Tables.

The Securities Exchange Act of 1934, referred to in subsecs. (b)(2) and (c)(3), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§78a et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

Codification

Section was enacted as part of the Legal Certainty for Bank Products Act of 2000, and also as part of the Commodity Futures Modernization Act of 2000, and not as part of the Commodity Exchange Act which comprises this chapter.

Amendments

2010—Pub. L. 111–203 amended section generally. Prior to amendment, text read as follows: "No provision of the Commodity Exchange Act shall apply to, and the Commodity Futures Trading Commission shall not exercise regulatory authority with respect to, an identified banking product if—

"(1) an appropriate banking agency certifies that the product has been commonly offered, entered into, or provided in the United States by any bank on or before December 5, 2000, under applicable banking law; and

"(2) the product was not prohibited by the Commodity Exchange Act and not regulated by the Commodity Futures Trading Commission as a contract of sale of a commodity for future delivery (or an option on such a contract) or an option on a commodity, on or before December 5, 2000."

Effective Date of 2010 Amendment

Amendment by Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as a note under section 1a of this title.

[1] So in original.

§27b. Repealed. Pub. L. 111–203, title VII, §725(g)(1)(A), July 21, 2010, 124 Stat. 1694

Section, Pub. L. 106–554, §1(a)(5) [title IV, §404], Dec. 21, 2000, 114 Stat. 2763, 2763A–459, related to exclusion of certain identified banking products offered by banks after Dec. 5, 2000.

Effective Date of Repeal

Repeal effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 1a of this title.

§27c. Exclusion of certain other identified banking products

(a) In general

No provision of the Commodity Exchange Act [7 U.S.C. 1 et seq.] shall apply to, and the Commodity Futures Trading Commission shall not exercise regulatory authority with respect to, a banking product if the product is a hybrid instrument that is predominantly a banking product under the predominance test set forth in subsection (b).

(b) Predominance test

A hybrid instrument shall be considered to be predominantly a banking product for purposes of this section if—

(1) the issuer of the hybrid instrument receives payment in full of the purchase price of the hybrid instrument substantially contemporaneously with delivery of the hybrid instrument;

(2) the purchaser or holder of the hybrid instrument is not required to make under the terms of the instrument, or any arrangement referred to in the instrument, any payment to the issuer in addition to the purchase price referred to in paragraph (1), whether as margin, settlement payment, or otherwise during the life of the hybrid instrument or at maturity;

(3) the issuer of the hybrid instrument is not subject by the terms of the instrument to mark-to-market margining requirements; and

(4) the hybrid instrument is not marketed as a contract of sale of a commodity for future delivery (or option on such a contract) subject to the Commodity Exchange Act [7 U.S.C. 1 et seq.].

(c) Mark-to-market margining requirement

For purposes of subsection (b)(3) of this title, mark-to-market margining requirements shall not include the obligation of an issuer of a secured debt instrument to increase the amount of collateral held in pledge for the benefit of the purchaser of the secured debt instrument to secure the repayment obligations of the issuer under the secured debt instrument.

(Pub. L. 106–554, §1(a)(5) [title IV, §405], Dec. 21, 2000, 114 Stat. 2763, 2763A–459.)

References in Text

The Commodity Exchange Act, referred to in subsecs. (a) and (b)(4), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, as amended, which is classified generally to this chapter. For complete classification of this Act to the Code, see section 1 of this title and Tables.

Codification

Section was enacted as part of the Legal Certainty for Bank Products Act of 2000, and also as part of the Commodity Futures Modernization Act of 2000, and not as part of the Commodity Exchange Act which comprises this chapter.

§27d. Administration of the predominance test

(a) In general

No provision of the Commodity Exchange Act [7 U.S.C. 1 et seq.] shall apply to, and the Commodity Futures Trading Commission shall not regulate, a hybrid instrument, unless the Commission determines, by or under a rule issued in accordance with this section, that—

(1) the action is necessary and appropriate in the public interest;

(2) the action is consistent with the Commodity Exchange Act [7 U.S.C. 1 et seq.] and the purposes of the Commodity Exchange Act; and

(3) the hybrid instrument is not predominantly a banking product under the predominance test set forth in section 27c(b) of this title.

(b) Consultation

Before commencing a rulemaking or making a determination pursuant to a rule issued under sections 27 to 27f of this title, the Commodity Futures Trading Commission shall consult with and seek the concurrence of the Board of Governors of the Federal Reserve System concerning—

(1) the nature of the hybrid instrument; and

(2) the history, purpose, extent, and appropriateness of the regulation of the hybrid instrument under the Commodity Exchange Act [7 U.S.C. 1 et seq.] and under appropriate banking laws.

(c) Objection to Commission regulation

(1) Filing of petition for review

The Board of Governors of the Federal Reserve System may obtain review of any rule or determination referred to in subsection (a) in the United States Court of Appeals for the District of Columbia Circuit by filing in the court, not later than 60 days after the date of publication of the rule or determination, a written petition requesting that the rule or determination be set aside. Any proceeding to challenge any such rule or determination shall be expedited by the court.

(2) Transmittal of petition and record

A copy of a petition described in paragraph (1) shall be transmitted as soon as possible by the Clerk of the court to an officer or employee of the Commodity Futures Trading Commission designated for that purpose. Upon receipt of the petition, the Commission shall file with the court the rule or determination under review and any documents referred to therein, and any other relevant materials prescribed by the court.

(3) Exclusive jurisdiction

On the date of the filing of a petition under paragraph (1), the court shall have jurisdiction, which shall become exclusive on the filing of the materials set forth in paragraph (2), to affirm and enforce or to set aside the rule or determination at issue.

(4) Standard of review

The court shall determine to affirm and enforce or set aside a rule or determination of the Commodity Futures Trading Commission under this section, based on the determination of the court as to whether—

(A) the subject product is predominantly a banking product; and

(B) making the provision or provisions of the Commodity Exchange Act [7 U.S.C. 1 et seq.] at issue applicable to the subject instrument is appropriate in light of the history, purpose, and extent of regulation under such Act, sections 27 to 27f of this title, and under the appropriate banking laws, giving deference neither to the views of the Commodity Futures Trading Commission nor the Board of Governors of the Federal Reserve System.

(5) Judicial stay

The filing of a petition by the Board pursuant to paragraph (1) shall operate as a judicial stay, until the date on which the determination of the court is final (including any appeal of the determination).

(6) Other authority to challenge

Any aggrieved party may seek judicial review pursuant to section 6(c) of the Commodity Exchange Act [7 U.S.C. 9] of a determination or rulemaking by the Commodity Futures Trading Commission under this section.

(Pub. L. 106–554, §1(a)(5) [title IV, §406], Dec. 21, 2000, 114 Stat. 2763, 2763A–459.)

References in Text

The Commodity Exchange Act, referred to in subsecs. (a), (b)(2), and (c)(4)(B), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, as amended, which is classified generally to this chapter. For complete classification of this Act to the Code, see section 1 of this title and Tables.

Codification

Section was enacted as part of the Legal Certainty for Bank Products Act of 2000, and also as part of the Commodity Futures Modernization Act of 2000, and not as part of the Commodity Exchange Act which comprises this chapter.

§27e. Repealed. Pub. L. 111–203, title VII, §725(g)(1)(A), July 21, 2010, 124 Stat. 1694

Section, Pub. L. 106–554, §1(a)(5) [title IV, §407], Dec. 21, 2000, 114 Stat. 2763, 2763A–461, related to exclusion of covered swap agreements.

Effective Date of Repeal

Repeal effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 1a of this title.

§27f. Contract enforcement

(a) Hybrid instruments

No hybrid instrument shall be void, voidable, or unenforceable, and no party to a hybrid instrument shall be entitled to rescind, or recover any payment made with respect to, a hybrid instrument under any provision of Federal or State law, based solely on the failure of the hybrid instrument to satisfy the predominance test set forth in section 27c(b) of this title or to comply with the terms or conditions of an exemption or exclusion from any provision of the Commodity Exchange Act [7 U.S.C. 1 et seq.] or any regulation of the Commodity Futures Trading Commission.

(b) Preemption

Sections 27 to 27f of this title shall supersede and preempt the application of any State or local law that prohibits or regulates gaming or the operation of bucket shops (other than antifraud provisions of general applicability) in the case of a hybrid instrument that is predominantly a banking product.

(Pub. L. 106–554, §1(a)(5) [title IV, §408], Dec. 21, 2000, 114 Stat. 2763, 2763A–461; Pub. L. 111–203, title VII, §725(g)(1)(C), July 21, 2010, 124 Stat. 1694.)

References in Text

The Commodity Exchange Act, referred to in subsec. (a), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, as amended, which is classified generally to this chapter. For complete classification of this Act to the Code, see section 1 of this title and Tables.

Codification

Section was enacted as part of the Legal Certainty for Bank Products Act of 2000, and also as part of the Commodity Futures Modernization Act of 2000, and not as part of the Commodity Exchange Act which comprises this chapter.

Amendments

2010—Subsec. (b). Pub. L. 111–203, §725(g)(1)(C)(ii), (iii), redesignated subsec. (c) as (b) and struck out former subsec. (b). Text of subsec. (b) read as follows: "No covered swap agreement shall be void, voidable, or unenforceable, and no party to a covered swap agreement shall be entitled to rescind, or recover any payment made with respect to, a

covered swap agreement under any provision of Federal or State law, based solely on the failure of the covered swap agreement to comply with the terms or conditions of an exemption or exclusion from any provision of the Commodity Exchange Act or any regulation of the Commodity Futures Trading Commission."

Subsec. (c). Pub. L. 111–203, §725(g)(1)(C)(iii), redesignated subsec. (c) as (b).

Pub. L. 111–203, §725(g)(1)(C)(i), substituted "in the case of" for "in the case of—", struck out par. (1) designation before "a hybrid", substituted "product." for "product; or", and struck out par. (2) which read as follows: "a covered swap agreement."

Effective Date of 2010 Amendment

Amendment by Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as a note under section 1a of this title.

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

One Hundred Eleventh Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Tuesday, the fifth day of January, two thousand and ten

An Act

To promote the financial stability of the United States by improving accountability and transparency in the financial system, to end "too big to fail", to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Dodd-Frank Wall Street Reform and Consumer Protection Act".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

SEC. 2. DEFINITIONS.

As used in this Act, the following definitions shall apply, except as the context otherwise requires or as otherwise specifically provided in this Act:

(1) AFFILIATE.—The term "affiliate" has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(2) APPROPRIATE FEDERAL BANKING AGENCY.—On and after the transfer date, the term "appropriate Federal banking agency" has the same meaning as in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), as amended by title III.

(3) BOARD OF GOVERNORS.—The term "Board of Governors" means the Board of Governors of the Federal Reserve System.

(4) BUREAU.—The term "Bureau" means the Bureau of Consumer Financial Protection established under title X.

(5) COMMISSION.—The term "Commission" means the Securities and Exchange Commission, except in the context of the Commodity Futures Trading Commission.

(6) COMMODITY FUTURES TERMS.—The terms "futures commission merchant", "swap", "swap dealer", "swap execution facility", "derivatives clearing organization", "board of trade", "commodity trading advisor", "commodity pool", and "commodity pool operator" have the same meanings as given the terms in section 1a of the Commodity Exchange Act (7 U.S.C. 1 et seq.).

(7) CORPORATION.—The term "Corporation" means the Federal Deposit Insurance Corporation.

(8) COUNCIL.—The term "Council" means the Financial Stability Oversight Council established under title I.

(9) CREDIT UNION.—The term "credit union" means a Federal credit union, State credit union, or State-chartered credit union, as those terms are defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752).

(10) FEDERAL BANKING AGENCY.—The term—

(A) "Federal banking agency" means, individually, the Board of Governors, the Office of the Comptroller of the Currency, and the Corporation; and

(B) "Federal banking agencies" means all of the agencies referred to in subparagraph (A), collectively.

(11) FUNCTIONALLY REGULATED SUBSIDIARY.—The term "functionally regulated subsidiary" has the same meaning as in section 5(c)(5) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(c)(5)).

(12) PRIMARY FINANCIAL REGULATORY AGENCY.—The term "primary financial regulatory agency" means—

(A) the appropriate Federal banking agency, with respect to institutions described in section 3(q) of the Federal Deposit Insurance Act, except to the extent that an institution is or the activities of an institution are otherwise described in subparagraph (B), (C), (D), or (E);

(B) the Securities and Exchange Commission, with respect to—

(i) any broker or dealer that is registered with the Commission under the Securities Exchange Act of 1934, with respect to the activities of the broker or dealer that require the broker or dealer to be registered under that Act;

(ii) any investment company that is registered with the Commission under the Investment Company Act of 1940, with respect to the activities of the investment company that require the investment company to be registered under that Act;

(iii) any investment adviser that is registered with the Commission under the Investment Advisers Act of 1940, with respect to the investment advisory activities of such company and activities that are incidental to such advisory activities;

(iv) any clearing agency registered with the Commission under the Securities Exchange Act of 1934, with respect to the activities of the clearing agency that require the agency to be registered under such Act;

(v) any nationally recognized statistical rating organization registered with the Commission under the Securities Exchange Act of 1934;

(vi) any transfer agent registered with the Commission under the Securities Exchange Act of 1934;

(vii) any exchange registered as a national securities exchange with the Commission under the Securities Exchange Act of 1934;

(viii) any national securities association registered with the Commission under the Securities Exchange Act of 1934;

(ix) any securities information processor registered with the Commission under the Securities Exchange Act of 1934;

(x) the Municipal Securities Rulemaking Board established under the Securities Exchange Act of 1934;

(xi) the Public Company Accounting Oversight Board established under the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7211 et seq.);

(xii) the Securities Investor Protection Corporation established under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.); and

(xiii) any security-based swap execution facility, security-based swap data repository, security-based swap dealer or major security-based swap participant registered with the Commission under the Securities Exchange Act of 1934, with respect to the security-based swap activities of the person that require such person to be registered under such Act;

(C) the Commodity Futures Trading Commission, with respect to—

(i) any futures commission merchant registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.), with respect to the activities of the futures commission merchant that require the futures commission merchant to be registered under that Act;

(ii) any commodity pool operator registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.), with respect to the activities of the commodity pool operator that require the commodity pool operator to be registered under that Act, or a commodity pool, as defined in that Act;

(iii) any commodity trading advisor or introducing broker registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.), with respect to the activities of the commodity trading advisor or introducing broker that require the commodity trading adviser or introducing broker to be registered under that Act;

(iv) any derivatives clearing organization registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.), with respect to the activities of the derivatives clearing organization that require the derivatives clearing organization to be registered under that Act;

(v) any board of trade designated as a contract market by the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.);

(vi) any futures association registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.);

(vii) any retail foreign exchange dealer registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.), with respect to the activities of the retail foreign exchange dealer that require the retail foreign exchange dealer to be registered under that Act;

(viii) any swap execution facility, swap data repository, swap dealer, or major swap participant registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.) with respect to the swap activities of the person that require such person to be registered under that Act; and

(ix) any registered entity under the Commodity Exchange Act (7 U.S.C. 1 et seq.), with respect to the activities of the registered entity that require the registered entity to be registered under that Act;

(D) the State insurance authority of the State in which an insurance company is domiciled, with respect to the insurance activities and activities that are incidental to such insurance activities of an insurance company that is subject to supervision by the State insurance authority under State insurance law; and

(E) the Federal Housing Finance Agency, with respect to Federal Home Loan Banks or the Federal Home Loan Bank System, and with respect to the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

(13) PRUDENTIAL STANDARDS.—The term "prudential standards" means enhanced supervision and regulatory standards developed by the Board of Governors under section 165.

(14) SECRETARY.—The term "Secretary" means the Secretary of the Treasury.

(15) SECURITIES TERMS.—The—

(A) terms "broker", "dealer", "issuer", "nationally recognized statistical rating organization", "security", and "securities laws" have the same meanings as in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c);

(B) term "investment adviser" has the same meaning as in section 202 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2); and

(C) term "investment company" has the same meaning as in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3).

(16) STATE.—The term "State" means any State, commonwealth, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the United States Virgin Islands.

(17) TRANSFER DATE.—The term "transfer date" means the date established under section 311.

(18) OTHER INCORPORATED DEFINITIONS.—

(A) FEDERAL DEPOSIT INSURANCE ACT.—The terms "bank", "bank holding company", "control", "deposit", "depository institution", "Federal depository institution", "Federal savings association", "foreign bank", "including", "insured branch", "insured depository institution", "national member bank", "national nonmember bank", "savings association", "State bank", "State depository institution", "State member bank", "State nonmember bank", "State savings association", and "subsidiary" have the same meanings as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(B) HOLDING COMPANIES.—The term—

(i) "bank holding company" has the same meaning as in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841);

(ii) "financial holding company" has the same meaning as in section 2(p) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(p)); and

(iii) "savings and loan holding company" has the same meaning as in section 10 of the Home Owners' Loan Act (12 U.S.C. 1467a(a)).

SEC. 3. SEVERABILITY.

If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

SEC. 4. EFFECTIVE DATE.

Except as otherwise specifically provided in this Act or the amendments made by this Act, this Act and such amendments shall take effect 1 day after the date of enactment of this Act.

SEC. 5. BUDGETARY EFFECTS.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go-Act of 2010, shall be determined by reference to the latest statement titled "Budgetary Effects of PAYGO Legislation" for this Act, jointly submitted for printing in the Congressional Record by the Chairmen of the House and Senate Budget Committees, provided that such statement has been submitted prior to the vote on passage in the House acting first on this conference report or amendment between the Houses.

SEC. 6. ANTITRUST SAVINGS CLAUSE.

Nothing in this Act, or any amendment made by this Act, shall be construed to modify, impair, or supersede the operation of any of the antitrust laws, unless otherwise specified. For purposes of this section, the term "antitrust laws" has the same meaning

as in subsection (a) of the first section of the Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act, to the extent that such section 5 applies to unfair methods of competition.

TITLE I—FINANCIAL STABILITY

SEC. 101. SHORT TITLE.

This title may be cited as the "Financial Stability Act of 2010".

SEC. 102. DEFINITIONS.

(a) IN GENERAL.—For purposes of this title, unless the context otherwise requires, the following definitions shall apply:

(1) BANK HOLDING COMPANY.—The term "bank holding company" has the same meaning as in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841). A foreign bank or company that is treated as a bank holding company for purposes of the Bank Holding Company Act of 1956, pursuant to section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a)), shall be treated as a bank holding company for purposes of this title.

(2) CHAIRPERSON.—The term "Chairperson" means the Chairperson of the Council.

(3) MEMBER AGENCY.—The term "member agency" means an agency represented by a voting member of the Council.

(4) NONBANK FINANCIAL COMPANY DEFINITIONS.—

(A) FOREIGN NONBANK FINANCIAL COMPANY.—The term "foreign nonbank financial company" means a company (other than a company that is, or is treated in the United States as, a bank holding company) that is—

(i) incorporated or organized in a country other than the United States; and

(ii) predominantly engaged in, including through a branch in the United States, financial activities, as defined in paragraph (6).

(B) U.S. NONBANK FINANCIAL COMPANY.—The term "U.S. nonbank financial company" means a company (other than a bank holding company, a Farm Credit System institution chartered and subject to the provisions of the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.), or a national securities exchange (or parent thereof), clearing agency (or parent thereof, unless the parent is a bank holding company), security-based swap execution facility, or security-based swap data repository registered with the Commission, or a board of trade designated as a contract market (or parent thereof), or a derivatives clearing organization (or parent thereof, unless the parent is a bank holding company), swap execution facility or a swap data repository registered with the Commodity Futures Trading Commission), that is—

(i) incorporated or organized under the laws of the United States or any State; and

(ii) predominantly engaged in financial activities, as defined in paragraph (6).

(C) NONBANK FINANCIAL COMPANY.—The term "nonbank financial company" means a U.S. nonbank financial company and a foreign nonbank financial company.

(D) NONBANK FINANCIAL COMPANY SUPERVISED BY THE BOARD OF GOVERNORS.—The term "nonbank financial company supervised by the Board of Governors" means a nonbank financial company that the Council has determined under section 113 shall be supervised by the Board of Governors.

(5) OFFICE OF FINANCIAL RESEARCH.—The term "Office of Financial Research" means the office established under section 152.

(6) PREDOMINANTLY ENGAGED.—A company is "predominantly engaged in financial activities" if—

(A) the annual gross revenues derived by the company and all of its subsidiaries from activities that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956) and, if applicable, from the ownership or control of one or more insured depository institutions, represents 85 percent or more of the consolidated annual gross revenues of the company; or

(B) the consolidated assets of the company and all of its subsidiaries related to activities that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956) and, if applicable, related to the ownership or control of one or more insured depository institutions, represents 85 percent or more of the consolidated assets of the company.

(7) SIGNIFICANT INSTITUTIONS.—The terms "significant nonbank financial company" and "significant bank holding company" have the meanings given those terms by rule of the Board of Governors, but in no instance shall the term "significant nonbank financial company" include those entities that are excluded under paragraph (4)(B).

(b) DEFINITIONAL CRITERIA.—The Board of Governors shall establish, by regulation, the requirements for determining if a company is predominantly engaged in financial activities, as defined in subsection (a)(6).

(c) FOREIGN NONBANK FINANCIAL COMPANIES.—For purposes of the application of subtitles A and C (other than section 113(b)) with respect to a foreign nonbank financial company, references in this title to "company" or "subsidiary" include only the United States activities and subsidiaries of such foreign company, except as otherwise provided.

Subtitle A—Financial Stability Oversight Council

SEC. 111. FINANCIAL STABILITY OVERSIGHT COUNCIL ESTABLISHED.

(a) ESTABLISHMENT.—Effective on the date of enactment of this Act, there is established the Financial Stability Oversight Council.

(b) MEMBERSHIP.—The Council shall consist of the following members:

(1) VOTING MEMBERS.—The voting members, who shall each have 1 vote on the Council shall be—

(A) the Secretary of the Treasury, who shall serve as Chairperson of the Council;

(B) the Chairman of the Board of Governors;

(C) the Comptroller of the Currency;

(D) the Director of the Bureau;

(E) the Chairman of the Commission;

(F) the Chairperson of the Corporation;

(G) the Chairperson of the Commodity Futures Trading Commission;

(H) the Director of the Federal Housing Finance Agency;

(I) the Chairman of the National Credit Union Administration Board; and

(J) an independent member appointed by the President, by and with the advice and consent of the Senate, having insurance expertise.

(2) NONVOTING MEMBERS.—The nonvoting members, who shall serve in an advisory capacity as a nonvoting member of the Council, shall be—

(A) the Director of the Office of Financial Research;

(B) the Director of the Federal Insurance Office;

(C) a State insurance commissioner, to be designated by a selection process determined by the State insurance commissioners;

(D) a State banking supervisor, to be designated by a selection process determined by the State banking supervisors; and

(E) a State securities commissioner (or an officer performing like functions), to be designated by a selection process determined by such State securities commissioners.

(3) NONVOTING MEMBER PARTICIPATION.—The nonvoting members of the Council shall not be excluded from any of the proceedings, meetings, discussions, or deliberations of the Council, except that the Chairperson may, upon an affirmative vote of the member agencies, exclude the nonvoting members from any of the proceedings, meetings, discussions, or deliberations of the Council when necessary to safeguard and promote the free exchange of confidential supervisory information.

(c) TERMS; VACANCY.—

(1) TERMS.—The independent member of the Council shall serve for a term of 6 years, and each nonvoting member described in subparagraphs (C), (D), and (E) of subsection (b)(2) shall serve for a term of 2 years.

(2) VACANCY.—Any vacancy on the Council shall be filled in the manner in which the original appointment was made.

(3) ACTING OFFICIALS MAY SERVE.—In the event of a vacancy in the office of the head of a member agency or department, and pending the appointment of a successor, or during the absence or disability of the head of a member agency or department, the acting head of the member agency or department shall serve as a member of the Council in the place of that agency or department head.

(d) TECHNICAL AND PROFESSIONAL ADVISORY COMMITTEES.—The Council may appoint such special advisory, technical, or professional committees as may be useful in carrying out the functions of the Council, including an advisory committee consisting of State

regulators, and the members of such committees may be members of the Council, or other persons, or both.

(e) MEETINGS.—

(1) TIMING.—The Council shall meet at the call of the Chairperson or a majority of the members then serving, but not less frequently than quarterly.

(2) RULES FOR CONDUCTING BUSINESS.—The Council shall adopt such rules as may be necessary for the conduct of the business of the Council. Such rules shall be rules of agency organization, procedure, or practice for purposes of section 553 of title 5, United States Code.

(f) VOTING.—Unless otherwise specified, the Council shall make all decisions that it is authorized or required to make by a majority vote of the voting members then serving.

(g) NONAPPLICABILITY OF FACA.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Council, or to any special advisory, technical, or professional committee appointed by the Council, except that, if an advisory, technical, or professional committee has one or more members who are not employees of or affiliated with the United States Government, the Council shall publish a list of the names of the members of such committee.

(h) ASSISTANCE FROM FEDERAL AGENCIES.—Any department or agency of the United States may provide to the Council and any special advisory, technical, or professional committee appointed by the Council, such services, funds, facilities, staff, and other support services as the Council may determine advisable.

(i) COMPENSATION OF MEMBERS.—

(1) FEDERAL EMPLOYEE MEMBERS.—All members of the Council who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

(2) COMPENSATION FOR NON-FEDERAL MEMBER.—Section 5314 of title 5, United States Code, is amended by adding at the end the following:

"Independent Member of the Financial Stability Oversight Council (1).".

(j) DETAIL OF GOVERNMENT EMPLOYEES.—Any employee of the Federal Government may be detailed to the Council without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege. An employee of the Federal Government detailed to the Council shall report to and be subject to oversight by the Council during the assignment to the Council, and shall be compensated by the department or agency from which the employee was detailed.

SEC. 112. COUNCIL AUTHORITY.

(a) PURPOSES AND DUTIES OF THE COUNCIL.—

(1) IN GENERAL.—The purposes of the Council are—

(A) to identify risks to the financial stability of the United States that could arise from the material financial distress or failure, or ongoing activities, of large, interconnected bank holding companies or nonbank financial companies, or that could arise outside the financial services marketplace;

(B) to promote market discipline, by eliminating expectations on the part of shareholders, creditors, and

counterparties of such companies that the Government will shield them from losses in the event of failure; and

(C) to respond to emerging threats to the stability of the United States financial system.

(2) DUTIES.—The Council shall, in accordance with this title—

(A) collect information from member agencies, other Federal and State financial regulatory agencies, the Federal Insurance Office and, if necessary to assess risks to the United States financial system, direct the Office of Financial Research to collect information from bank holding companies and nonbank financial companies;

(B) provide direction to, and request data and analyses from, the Office of Financial Research to support the work of the Council;

(C) monitor the financial services marketplace in order to identify potential threats to the financial stability of the United States;

(D) to monitor domestic and international financial regulatory proposals and developments, including insurance and accounting issues, and to advise Congress and make recommendations in such areas that will enhance the integrity, efficiency, competitiveness, and stability of the U.S. financial markets;

(E) facilitate information sharing and coordination among the member agencies and other Federal and State agencies regarding domestic financial services policy development, rulemaking, examinations, reporting requirements, and enforcement actions;

(F) recommend to the member agencies general supervisory priorities and principles reflecting the outcome of discussions among the member agencies;

(G) identify gaps in regulation that could pose risks to the financial stability of the United States;

(H) require supervision by the Board of Governors for nonbank financial companies that may pose risks to the financial stability of the United States in the event of their material financial distress or failure, or because of their activities pursuant to section 113;

(I) make recommendations to the Board of Governors concerning the establishment of heightened prudential standards for risk-based capital, leverage, liquidity, contingent capital, resolution plans and credit exposure reports, concentration limits, enhanced public disclosures, and overall risk management for nonbank financial companies and large, interconnected bank holding companies supervised by the Board of Governors;

(J) identify systemically important financial market utilities and payment, clearing, and settlement activities (as that term is defined in title VIII);

(K) make recommendations to primary financial regulatory agencies to apply new or heightened standards and safeguards for financial activities or practices that could create or increase risks of significant liquidity, credit, or other problems spreading among bank holding companies, nonbank financial companies, and United States financial markets;

(L) review and, as appropriate, may submit comments to the Commission and any standard-setting body with respect to an existing or proposed accounting principle, standard, or procedure;

(M) provide a forum for—

(i) discussion and analysis of emerging market developments and financial regulatory issues; and

(ii) resolution of jurisdictional disputes among the members of the Council; and

(N) annually report to and testify before Congress on—

(i) the activities of the Council;

(ii) significant financial market and regulatory developments, including insurance and accounting regulations and standards, along with an assessment of those developments on the stability of the financial system;

(iii) potential emerging threats to the financial stability of the United States;

(iv) all determinations made under section 113 or title VIII, and the basis for such determinations;

(v) all recommendations made under section 119 and the result of such recommendations; and

(vi) recommendations—

(I) to enhance the integrity, efficiency, competitiveness, and stability of United States financial markets;

(II) to promote market discipline; and

(III) to maintain investor confidence.

(b) STATEMENTS BY VOTING MEMBERS OF THE COUNCIL.—At the time at which each report is submitted under subsection (a), each voting member of the Council shall—

(1) if such member believes that the Council, the Government, and the private sector are taking all reasonable steps to ensure financial stability and to mitigate systemic risk that would negatively affect the economy, submit a signed statement to Congress stating such belief; or

(2) if such member does not believe that all reasonable steps described under paragraph (1) are being taken, submit a signed statement to Congress stating what actions such member believes need to be taken in order to ensure that all reasonable steps described under paragraph (1) are taken.

(c) TESTIMONY BY THE CHAIRPERSON.—The Chairperson shall appear before the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate at an annual hearing, after the report is submitted under subsection (a)—

(1) to discuss the efforts, activities, objectives, and plans of the Council; and

(2) to discuss and answer questions concerning such report.

(d) AUTHORITY TO OBTAIN INFORMATION.—

(1) IN GENERAL.—The Council may receive, and may request the submission of, any data or information from the Office of Financial Research, member agencies, and the Federal Insurance Office, as necessary—

(A) to monitor the financial services marketplace to identify potential risks to the financial stability of the United States; or

(B) to otherwise carry out any of the provisions of this title.

(2) SUBMISSIONS BY THE OFFICE AND MEMBER AGENCIES.—Notwithstanding any other provision of law, the Office of Financial Research, any member agency, and the Federal Insurance Office, are authorized to submit information to the Council.

(3) FINANCIAL DATA COLLECTION.—

(A) IN GENERAL.—The Council, acting through the Office of Financial Research, may require the submission of periodic and other reports from any nonbank financial company or bank holding company for the purpose of assessing the extent to which a financial activity or financial market in which the nonbank financial company or bank holding company participates, or the nonbank financial company or bank holding company itself, poses a threat to the financial stability of the United States.

(B) MITIGATION OF REPORT BURDEN.—Before requiring the submission of reports from any nonbank financial company or bank holding company that is regulated by a member agency or any primary financial regulatory agency, the Council, acting through the Office of Financial Research, shall coordinate with such agencies and shall, whenever possible, rely on information available from the Office of Financial Research or such agencies.

(C) MITIGATION IN CASE OF FOREIGN FINANCIAL COMPANIES.—Before requiring the submission of reports from a company that is a foreign nonbank financial company or foreign-based bank holding company, the Council shall, acting through the Office of Financial Research, to the extent appropriate, consult with the appropriate foreign regulator of such company and, whenever possible, rely on information already being collected by such foreign regulator, with English translation.

(4) BACK-UP EXAMINATION BY THE BOARD OF GOVERNORS.—If the Council is unable to determine whether the financial activities of a U.S. nonbank financial company pose a threat to the financial stability of the United States, based on information or reports obtained under paragraphs (1) and (3), discussions with management, and publicly available information, the Council may request the Board of Governors, and the Board of Governors is authorized, to conduct an examination of the U.S. nonbank financial company for the sole purpose of determining whether the nonbank financial company should be supervised by the Board of Governors for purposes of this title.

(5) CONFIDENTIALITY.—

(A) IN GENERAL.—The Council, the Office of Financial Research, and the other member agencies shall maintain the confidentiality of any data, information, and reports submitted under this title.

(B) RETENTION OF PRIVILEGE.—The submission of any nonpublicly available data or information under this subsection and subtitle B shall not constitute a waiver of, or otherwise affect, any privilege arising under Federal or State law (including the rules of any Federal or State court) to which the data or information is otherwise subject.

(C) FREEDOM OF INFORMATION ACT.—Section 552 of title 5, United States Code, including the exceptions thereunder, shall apply to any data or information submitted under this subsection and subtitle B.

SEC. 113. AUTHORITY TO REQUIRE SUPERVISION AND REGULATION OF CERTAIN NONBANK FINANCIAL COMPANIES.

(a) U.S. NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS.—

(1) DETERMINATION.—The Council, on a nondelegable basis and by a vote of not fewer than ⅔ of the voting members then serving, including an affirmative vote by the Chairperson, may determine that a U.S. nonbank financial company shall be supervised by the Board of Governors and shall be subject to prudential standards, in accordance with this title, if the Council determines that material financial distress at the U.S. nonbank financial company, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the U.S. nonbank financial company, could pose a threat to the financial stability of the United States.

(2) CONSIDERATIONS.—In making a determination under paragraph (1), the Council shall consider—

(A) the extent of the leverage of the company;

(B) the extent and nature of the off-balance-sheet exposures of the company;

(C) the extent and nature of the transactions and relationships of the company with other significant nonbank financial companies and significant bank holding companies;

(D) the importance of the company as a source of credit for households, businesses, and State and local governments and as a source of liquidity for the United States financial system;

(E) the importance of the company as a source of credit for low-income, minority, or underserved communities, and the impact that the failure of such company would have on the availability of credit in such communities;

(F) the extent to which assets are managed rather than owned by the company, and the extent to which ownership of assets under management is diffuse;

(G) the nature, scope, size, scale, concentration, interconnectedness, and mix of the activities of the company;

(H) the degree to which the company is already regulated by 1 or more primary financial regulatory agencies;

(I) the amount and nature of the financial assets of the company;

(J) the amount and types of the liabilities of the company, including the degree of reliance on short-term funding; and

(K) any other risk-related factors that the Council deems appropriate.

(b) FOREIGN NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS.—

(1) DETERMINATION.—The Council, on a nondelegable basis and by a vote of not fewer than ⅔ of the voting members then serving, including an affirmative vote by the Chairperson,

may determine that a foreign nonbank financial company shall be supervised by the Board of Governors and shall be subject to prudential standards, in accordance with this title, if the Council determines that material financial distress at the foreign nonbank financial company, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the foreign nonbank financial company, could pose a threat to the financial stability of the United States.

(2) CONSIDERATIONS.—In making a determination under paragraph (1), the Council shall consider—

(A) the extent of the leverage of the company;

(B) the extent and nature of the United States related off-balance-sheet exposures of the company;

(C) the extent and nature of the transactions and relationships of the company with other significant nonbank financial companies and significant bank holding companies;

(D) the importance of the company as a source of credit for United States households, businesses, and State and local governments and as a source of liquidity for the United States financial system;

(E) the importance of the company as a source of credit for low-income, minority, or underserved communities in the United States, and the impact that the failure of such company would have on the availability of credit in such communities;

(F) the extent to which assets are managed rather than owned by the company and the extent to which ownership of assets under management is diffuse;

(G) the nature, scope, size, scale, concentration, interconnectedness, and mix of the activities of the company;

(H) the extent to which the company is subject to prudential standards on a consolidated basis in its home country that are administered and enforced by a comparable foreign supervisory authority;

(I) the amount and nature of the United States financial assets of the company;

(J) the amount and nature of the liabilities of the company used to fund activities and operations in the United States, including the degree of reliance on short-term funding; and

(K) any other risk-related factors that the Council deems appropriate.

(c) ANTIEVASION.—

(1) DETERMINATIONS.—In order to avoid evasion of this title, the Council, on its own initiative or at the request of the Board of Governors, may determine, on a nondelegable basis and by a vote of not fewer than ⅔ of the voting members then serving, including an affirmative vote by the Chairperson, that—

(A) material financial distress related to, or the nature, scope, size, scale, concentration, interconnectedness, or mix of, the financial activities conducted directly or indirectly by a company incorporated or organized under the laws of the United States or any State or the financial activities in the United States of a company incorporated or organized in a country other than the United States would

pose a threat to the financial stability of the United States, based on consideration of the factors in subsection (a)(2) or (b)(2), as applicable;

(B) the company is organized or operates in such a manner as to evade the application of this title; and

(C) such financial activities of the company shall be supervised by the Board of Governors and subject to prudential standards in accordance with this title, consistent with paragraph (3).

(2) REPORT.—Upon making a determination under paragraph (1), the Council shall submit a report to the appropriate committees of Congress detailing the reasons for making such determination.

(3) CONSOLIDATED SUPERVISION OF ONLY FINANCIAL ACTIVITIES; ESTABLISHMENT OF AN INTERMEDIATE HOLDING COMPANY.—

(A) ESTABLISHMENT OF AN INTERMEDIATE HOLDING COMPANY.—Upon a determination under paragraph (1), the company that is the subject of the determination may establish an intermediate holding company in which the financial activities of such company and its subsidiaries shall be conducted (other than the activities described in section 167(b)(2)) in compliance with any regulations or guidance provided by the Board of Governors. Such intermediate holding company shall be subject to the supervision of the Board of Governors and to prudential standards under this title as if the intermediate holding company were a nonbank financial company supervised by the Board of Governors.

(B) ACTION OF THE BOARD OF GOVERNORS.—To facilitate the supervision of the financial activities subject to the determination in paragraph (1), the Board of Governors may require a company to establish an intermediate holding company, as provided for in section 167, which would be subject to the supervision of the Board of Governors and to prudential standards under this title, as if the intermediate holding company were a nonbank financial company supervised by the Board of Governors.

(4) NOTICE AND OPPORTUNITY FOR HEARING AND FINAL DETERMINATION; JUDICIAL REVIEW.—Subsections (d) through (h) shall apply to determinations made by the Council pursuant to paragraph (1) in the same manner as such subsections apply to nonbank financial companies.

(5) COVERED FINANCIAL ACTIVITIES.—For purposes of this subsection, the term "financial activities"—

(A) means activities that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956);

(B) includes the ownership or control of one or more insured depository institutions; and

(C) does not include internal financial activities conducted for the company or any affiliate thereof, including internal treasury, investment, and employee benefit functions.

(6) ONLY FINANCIAL ACTIVITIES SUBJECT TO PRUDENTIAL SUPERVISION.—Nonfinancial activities of the company shall not

be subject to supervision by the Board of Governors and prudential standards of the Board. For purposes of this Act, the financial activities that are the subject of the determination in paragraph (1) shall be subject to the same requirements as a nonbank financial company supervised by the Board of Governors. Nothing in this paragraph shall prohibit or limit the authority of the Board of Governors to apply prudential standards under this title to the financial activities that are subject to the determination in paragraph (1).

(d) REEVALUATION AND RESCISSION.—The Council shall—

(1) not less frequently than annually, reevaluate each determination made under subsections (a) and (b) with respect to such nonbank financial company supervised by the Board of Governors; and

(2) rescind any such determination, if the Council, by a vote of not fewer than ⅔ of the voting members then serving, including an affirmative vote by the Chairperson, determines that the nonbank financial company no longer meets the standards under subsection (a) or (b), as applicable.

(e) NOTICE AND OPPORTUNITY FOR HEARING AND FINAL DETERMINATION.—

(1) IN GENERAL.—The Council shall provide to a nonbank financial company written notice of a proposed determination of the Council, including an explanation of the basis of the proposed determination of the Council, that a nonbank financial company shall be supervised by the Board of Governors and shall be subject to prudential standards in accordance with this title.

(2) HEARING.—Not later than 30 days after the date of receipt of any notice of a proposed determination under paragraph (1), the nonbank financial company may request, in writing, an opportunity for a written or oral hearing before the Council to contest the proposed determination. Upon receipt of a timely request, the Council shall fix a time (not later than 30 days after the date of receipt of the request) and place at which such company may appear, personally or through counsel, to submit written materials (or, at the sole discretion of the Council, oral testimony and oral argument).

(3) FINAL DETERMINATION.—Not later than 60 days after the date of a hearing under paragraph (2), the Council shall notify the nonbank financial company of the final determination of the Council, which shall contain a statement of the basis for the decision of the Council.

(4) NO HEARING REQUESTED.—If a nonbank financial company does not make a timely request for a hearing, the Council shall notify the nonbank financial company, in writing, of the final determination of the Council under subsection (a) or (b), as applicable, not later than 10 days after the date by which the company may request a hearing under paragraph (2).

(f) EMERGENCY EXCEPTION.—

(1) IN GENERAL.—The Council may waive or modify the requirements of subsection (e) with respect to a nonbank financial company, if the Council determines, by a vote of not fewer than ⅔ of the voting members then serving, including an affirmative vote by the Chairperson, that such waiver or modification is necessary or appropriate to prevent or mitigate

threats posed by the nonbank financial company to the financial stability of the United States.

(2) NOTICE.—The Council shall provide notice of a waiver or modification under this subsection to the nonbank financial company concerned as soon as practicable, but not later than 24 hours after the waiver or modification is granted.

(3) INTERNATIONAL COORDINATION.—In making a determination under paragraph (1), the Council shall consult with the appropriate home country supervisor, if any, of the foreign nonbank financial company that is being considered for such a determination.

(4) OPPORTUNITY FOR HEARING.—The Council shall allow a nonbank financial company to request, in writing, an opportunity for a written or oral hearing before the Council to contest a waiver or modification under this subsection, not later than 10 days after the date of receipt of notice of the waiver or modification by the company. Upon receipt of a timely request, the Council shall fix a time (not later than 15 days after the date of receipt of the request) and place at which the nonbank financial company may appear, personally or through counsel, to submit written materials (or, at the sole discretion of the Council, oral testimony and oral argument).

(5) NOTICE OF FINAL DETERMINATION.—Not later than 30 days after the date of any hearing under paragraph (4), the Council shall notify the subject nonbank financial company of the final determination of the Council under this subsection, which shall contain a statement of the basis for the decision of the Council.

(g) CONSULTATION.—The Council shall consult with the primary financial regulatory agency, if any, for each nonbank financial company or subsidiary of a nonbank financial company that is being considered for supervision by the Board of Governors under this section before the Council makes any final determination with respect to such nonbank financial company under subsection (a), (b), or (c).

(h) JUDICIAL REVIEW.—If the Council makes a final determination under this section with respect to a nonbank financial company, such nonbank financial company may, not later than 30 days after the date of receipt of the notice of final determination under subsection (d)(2), (e)(3), or (f)(5), bring an action in the United States district court for the judicial district in which the home office of such nonbank financial company is located, or in the United States District Court for the District of Columbia, for an order requiring that the final determination be rescinded, and the court shall, upon review, dismiss such action or direct the final determination to be rescinded. Review of such an action shall be limited to whether the final determination made under this section was arbitrary and capricious.

(i) INTERNATIONAL COORDINATION.—In exercising its duties under this title with respect to foreign nonbank financial companies, foreign-based bank holding companies, and cross-border activities and markets, the Council shall consult with appropriate foreign regulatory authorities, to the extent appropriate.

SEC. 114. REGISTRATION OF NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS.

Not later than 180 days after the date of a final Council determination under section 113 that a nonbank financial company is to be supervised by the Board of Governors, such company shall register with the Board of Governors, on forms prescribed by the Board of Governors, which shall include such information as the Board of Governors, in consultation with the Council, may deem necessary or appropriate to carry out this title.

SEC. 115. ENHANCED SUPERVISION AND PRUDENTIAL STANDARDS FOR NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS AND CERTAIN BANK HOLDING COMPANIES.

(a) IN GENERAL.—

(1) PURPOSE.—In order to prevent or mitigate risks to the financial stability of the United States that could arise from the material financial distress, failure, or ongoing activities of large, interconnected financial institutions, the Council may make recommendations to the Board of Governors concerning the establishment and refinement of prudential standards and reporting and disclosure requirements applicable to nonbank financial companies supervised by the Board of Governors and large, interconnected bank holding companies, that—

(A) are more stringent than those applicable to other nonbank financial companies and bank holding companies that do not present similar risks to the financial stability of the United States; and

(B) increase in stringency, based on the considerations identified in subsection (b)(3).

(2) RECOMMENDED APPLICATION OF REQUIRED STANDARDS.—In making recommendations under this section, the Council may—

(A) differentiate among companies that are subject to heightened standards on an individual basis or by category, taking into consideration their capital structure, riskiness, complexity, financial activities (including the financial activities of their subsidiaries), size, and any other risk-related factors that the Council deems appropriate; or

(B) recommend an asset threshold that is higher than $50,000,000,000 for the application of any standard described in subsections (c) through (g).

(b) DEVELOPMENT OF PRUDENTIAL STANDARDS.—

(1) IN GENERAL.—The recommendations of the Council under subsection (a) may include—

(A) risk-based capital requirements;

(B) leverage limits;

(C) liquidity requirements;

(D) resolution plan and credit exposure report requirements;

(E) concentration limits;

(F) a contingent capital requirement;

(G) enhanced public disclosures;

(H) short-term debt limits; and

(I) overall risk management requirements.

(2) PRUDENTIAL STANDARDS FOR FOREIGN FINANCIAL COMPANIES.—In making recommendations concerning the standards set forth in paragraph (1) that would apply to foreign nonbank financial companies supervised by the Board of Governors or foreign-based bank holding companies, the Council shall—

(A) give due regard to the principle of national treatment and equality of competitive opportunity; and

(B) take into account the extent to which the foreign nonbank financial company or foreign-based bank holding company is subject on a consolidated basis to home country standards that are comparable to those applied to financial companies in the United States.

(3) CONSIDERATIONS.—In making recommendations concerning prudential standards under paragraph (1), the Council shall—

(A) take into account differences among nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), based on—

(i) the factors described in subsections (a) and (b) of section 113;

(ii) whether the company owns an insured depository institution;

(iii) nonfinancial activities and affiliations of the company; and

(iv) any other factors that the Council determines appropriate;

(B) to the extent possible, ensure that small changes in the factors listed in subsections (a) and (b) of section 113 would not result in sharp, discontinuous changes in the prudential standards established under section 165; and

(C) adapt its recommendations as appropriate in light of any predominant line of business of such company, including assets under management or other activities for which particular standards may not be appropriate.

(c) CONTINGENT CAPITAL.—

(1) STUDY REQUIRED.—The Council shall conduct a study of the feasibility, benefits, costs, and structure of a contingent capital requirement for nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), which study shall include—

(A) an evaluation of the degree to which such requirement would enhance the safety and soundness of companies subject to the requirement, promote the financial stability of the United States, and reduce risks to United States taxpayers;

(B) an evaluation of the characteristics and amounts of contingent capital that should be required;

(C) an analysis of potential prudential standards that should be used to determine whether the contingent capital of a company would be converted to equity in times of financial stress;

(D) an evaluation of the costs to companies, the effects on the structure and operation of credit and other financial markets, and other economic effects of requiring contingent capital;

(E) an evaluation of the effects of such requirement on the international competitiveness of companies subject to the requirement and the prospects for international coordination in establishing such requirement; and

(F) recommendations for implementing regulations.

(2) REPORT.—The Council shall submit a report to Congress regarding the study required by paragraph (1) not later than 2 years after the date of enactment of this Act.

(3) RECOMMENDATIONS.—

(A) IN GENERAL.—Subsequent to submitting a report to Congress under paragraph (2), the Council may make recommendations to the Board of Governors to require any nonbank financial company supervised by the Board of Governors and any bank holding company described in subsection (a) to maintain a minimum amount of contingent capital that is convertible to equity in times of financial stress.

(B) FACTORS TO CONSIDER.—In making recommendations under this subsection, the Council shall consider—

(i) an appropriate transition period for implementation of a conversion under this subsection;

(ii) the factors described in subsection (b)(3);

(iii) capital requirements applicable to a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), and subsidiaries thereof;

(iv) results of the study required by paragraph (1); and

(v) any other factor that the Council deems appropriate.

(d) RESOLUTION PLAN AND CREDIT EXPOSURE REPORTS.—

(1) RESOLUTION PLAN.—The Council may make recommendations to the Board of Governors concerning the requirement that each nonbank financial company supervised by the Board of Governors and each bank holding company described in subsection (a) report periodically to the Council, the Board of Governors, and the Corporation, the plan of such company for rapid and orderly resolution in the event of material financial distress or failure.

(2) CREDIT EXPOSURE REPORT.—The Council may make recommendations to the Board of Governors concerning the advisability of requiring each nonbank financial company supervised by the Board of Governors and bank holding company described in subsection (a) to report periodically to the Council, the Board of Governors, and the Corporation on—

(A) the nature and extent to which the company has credit exposure to other significant nonbank financial companies and significant bank holding companies; and

(B) the nature and extent to which other such significant nonbank financial companies and significant bank holding companies have credit exposure to that company.

(e) CONCENTRATION LIMITS.—In order to limit the risks that the failure of any individual company could pose to nonbank financial companies supervised by the Board of Governors or bank holding companies described in subsection (a), the Council may make recommendations to the Board of Governors to prescribe standards to limit such risks, as set forth in section 165.

(f) ENHANCED PUBLIC DISCLOSURES.—The Council may make recommendations to the Board of Governors to require periodic public disclosures by bank holding companies described in subsection (a) and by nonbank financial companies supervised by the Board of Governors, in order to support market evaluation of the risk profile, capital adequacy, and risk management capabilities thereof.

(g) SHORT-TERM DEBT LIMITS.—The Council may make recommendations to the Board of Governors to require short-term debt limits to mitigate the risks that an over-accumulation of such debt could pose to bank holding companies described in subsection (a), nonbank financial companies supervised by the Board of Governors, or the financial system.

SEC. 116. REPORTS.

(a) IN GENERAL.—Subject to subsection (b), the Council, acting through the Office of Financial Research, may require a bank holding company with total consolidated assets of $50,000,000,000 or greater or a nonbank financial company supervised by the Board of Governors, and any subsidiary thereof, to submit certified reports to keep the Council informed as to—

(1) the financial condition of the company;

(2) systems for monitoring and controlling financial, operating, and other risks;

(3) transactions with any subsidiary that is a depository institution; and

(4) the extent to which the activities and operations of the company and any subsidiary thereof, could, under adverse circumstances, have the potential to disrupt financial markets or affect the overall financial stability of the United States.

(b) USE OF EXISTING REPORTS.—

(1) IN GENERAL.—For purposes of compliance with subsection (a), the Council, acting through the Office of Financial Research, shall, to the fullest extent possible, use—

(A) reports that a bank holding company, nonbank financial company supervised by the Board of Governors, or any functionally regulated subsidiary of such company has been required to provide to other Federal or State regulatory agencies or to a relevant foreign supervisory authority;

(B) information that is otherwise required to be reported publicly; and

(C) externally audited financial statements.

(2) AVAILABILITY.—Each bank holding company described in subsection (a) and nonbank financial company supervised by the Board of Governors, and any subsidiary thereof, shall provide to the Council, at the request of the Council, copies of all reports referred to in paragraph (1).

(3) CONFIDENTIALITY.—The Council shall maintain the confidentiality of the reports obtained under subsection (a) and paragraph (1)(A) of this subsection.

SEC. 117. TREATMENT OF CERTAIN COMPANIES THAT CEASE TO BE BANK HOLDING COMPANIES.

(a) APPLICABILITY.—This section shall apply to—

(1) any entity that—

(A) was a bank holding company having total consolidated assets equal to or greater than $50,000,000,000 as of January 1, 2010; and

(B) received financial assistance under or participated in the Capital Purchase Program established under the Troubled Asset Relief Program authorized by the Emergency Economic Stabilization Act of 2008; and

(2) any successor entity (as defined by the Board of Governors, in consultation with the Council) to an entity described in paragraph (1).

(b) TREATMENT.—If an entity described in subsection (a) ceases to be a bank holding company at any time after January 1, 2010, then such entity shall be treated as a nonbank financial company supervised by the Board of Governors, as if the Council had made a determination under section 113 with respect to that entity.

(c) APPEAL.—

(1) REQUEST FOR HEARING.—An entity may request, in writing, an opportunity for a written or oral hearing before the Council to appeal its treatment as a nonbank financial company supervised by the Board of Governors in accordance with this section. Upon receipt of the request, the Council shall fix a time (not later than 30 days after the date of receipt of the request) and place at which such entity may appear, personally or through counsel, to submit written materials (or, at the sole discretion of the Council, oral testimony and oral argument).

(2) DECISION.—

(A) PROPOSED DECISION.—A Council decision to grant an appeal under this subsection shall be made by a vote of not fewer than ⅔ of the voting members then serving, including an affirmative vote by the Chairperson. Not later than 60 days after the date of a hearing under paragraph (1), the Council shall submit a report to, and may testify before, the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the proposed decision of the Council regarding an appeal under paragraph (1), which report shall include a statement of the basis for the proposed decision of the Council.

(B) NOTICE OF FINAL DECISION.—The Council shall notify the subject entity of the final decision of the Council regarding an appeal under paragraph (1), which notice shall contain a statement of the basis for the final decision of the Council, not later than 60 days after the later of—

(i) the date of the submission of the report under subparagraph (A); or

(ii) if, not later than 1 year after the date of submission of the report under subparagraph (A), the Committee on Banking, Housing, and Urban Affairs of the Senate or the Committee on Financial Services of the House of Representatives holds one or more hearings regarding such report, the date of the last such hearing.

(C) CONSIDERATIONS.—In making a decision regarding an appeal under paragraph (1), the Council shall consider whether the company meets the standards under section 113(a) or 113(b), as applicable, and the definition of the

term "nonbank financial company" under section 102. The decision of the Council shall be final, subject to the review under paragraph (3).

(3) REVIEW.—If the Council denies an appeal under this subsection, the Council shall, not less frequently than annually, review and reevaluate the decision.

SEC. 118. COUNCIL FUNDING.

Any expenses of the Council shall be treated as expenses of, and paid by, the Office of Financial Research.

SEC. 119. RESOLUTION OF SUPERVISORY JURISDICTIONAL DISPUTES AMONG MEMBER AGENCIES.

(a) REQUEST FOR COUNCIL RECOMMENDATION.—The Council shall seek to resolve a dispute among 2 or more member agencies, if—

(1) a member agency has a dispute with another member agency about the respective jurisdiction over a particular bank holding company, nonbank financial company, or financial activity or product (excluding matters for which another dispute mechanism specifically has been provided under title X);

(2) the Council determines that the disputing agencies cannot, after a demonstrated good faith effort, resolve the dispute without the intervention of the Council; and

(3) any of the member agencies involved in the dispute—

(A) provides all other disputants prior notice of the intent to request dispute resolution by the Council; and

(B) requests in writing, not earlier than 14 days after providing the notice described in subparagraph (A), that the Council seek to resolve the dispute.

(b) COUNCIL RECOMMENDATION.—The Council shall seek to resolve each dispute described in subsection (a)—

(1) within a reasonable time after receiving the dispute resolution request;

(2) after consideration of relevant information provided by each agency party to the dispute; and

(3) by agreeing with 1 of the disputants regarding the entirety of the matter, or by determining a compromise position.

(c) FORM OF RECOMMENDATION.—Any Council recommendation under this section shall—

(1) be in writing;

(2) include an explanation of the reasons therefor; and

(3) be approved by the affirmative vote of ⅔ of the voting members of the Council then serving.

(d) NONBINDING EFFECT.—Any recommendation made by the Council under subsection (c) shall not be binding on the Federal agencies that are parties to the dispute.

SEC. 120. ADDITIONAL STANDARDS APPLICABLE TO ACTIVITIES OR PRACTICES FOR FINANCIAL STABILITY PURPOSES.

(a) IN GENERAL.—The Council may provide for more stringent regulation of a financial activity by issuing recommendations to the primary financial regulatory agencies to apply new or heightened standards and safeguards, including standards enumerated in section 115, for a financial activity or practice conducted by bank holding companies or nonbank financial companies under their respective jurisdictions, if the Council determines that the

conduct, scope, nature, size, scale, concentration, or interconnectedness of such activity or practice could create or increase the risk of significant liquidity, credit, or other problems spreading among bank holding companies and nonbank financial companies, financial markets of the United States, or low-income, minority, or underserved communities.

(b) PROCEDURE FOR RECOMMENDATIONS TO REGULATORS.—

(1) NOTICE AND OPPORTUNITY FOR COMMENT.—The Council shall consult with the primary financial regulatory agencies and provide notice to the public and opportunity for comment for any proposed recommendation that the primary financial regulatory agencies apply new or heightened standards and safeguards for a financial activity or practice.

(2) CRITERIA.—The new or heightened standards and safeguards for a financial activity or practice recommended under paragraph (1)—

(A) shall take costs to long-term economic growth into account; and

(B) may include prescribing the conduct of the activity or practice in specific ways (such as by limiting its scope, or applying particular capital or risk management requirements to the conduct of the activity) or prohibiting the activity or practice.

(c) IMPLEMENTATION OF RECOMMENDED STANDARDS.—

(1) ROLE OF PRIMARY FINANCIAL REGULATORY AGENCY.—

(A) IN GENERAL.—Each primary financial regulatory agency may impose, require reports regarding, examine for compliance with, and enforce standards in accordance with this section with respect to those entities for which it is the primary financial regulatory agency.

(B) RULE OF CONSTRUCTION.—The authority under this paragraph is in addition to, and does not limit, any other authority of a primary financial regulatory agency. Compliance by an entity with actions taken by a primary financial regulatory agency under this section shall be enforceable in accordance with the statutes governing the respective jurisdiction of the primary financial regulatory agency over the entity, as if the agency action were taken under those statutes.

(2) IMPOSITION OF STANDARDS.—The primary financial regulatory agency shall impose the standards recommended by the Council in accordance with subsection (a), or similar standards that the Council deems acceptable, or shall explain in writing to the Council, not later than 90 days after the date on which the Council issues the recommendation, why the agency has determined not to follow the recommendation of the Council.

(d) REPORT TO CONGRESS.—The Council shall report to Congress on—

(1) any recommendations issued by the Council under this section;

(2) the implementation of, or failure to implement, such recommendation on the part of a primary financial regulatory agency; and

(3) in any case in which no primary financial regulatory agency exists for the nonbank financial company conducting financial activities or practices referred to in subsection (a),

recommendations for legislation that would prevent such activities or practices from threatening the stability of the financial system of the United States.

(e) EFFECT OF RESCISSION OF IDENTIFICATION.—

(1) NOTICE.—The Council may recommend to the relevant primary financial regulatory agency that a financial activity or practice no longer requires any standards or safeguards implemented under this section.

(2) DETERMINATION OF PRIMARY FINANCIAL REGULATORY AGENCY TO CONTINUE.—

(A) IN GENERAL.—Upon receipt of a recommendation under paragraph (1), a primary financial regulatory agency that has imposed standards under this section shall determine whether such standards should remain in effect.

(B) APPEAL PROCESS.—Each primary financial regulatory agency that has imposed standards under this section shall promulgate regulations to establish a procedure under which entities under its jurisdiction may appeal a determination by such agency under this paragraph that standards imposed under this section should remain in effect.

SEC. 121. MITIGATION OF RISKS TO FINANCIAL STABILITY.

(a) MITIGATORY ACTIONS.—If the Board of Governors determines that a bank holding company with total consolidated assets of $50,000,000,000 or more, or a nonbank financial company supervised by the Board of Governors, poses a grave threat to the financial stability of the United States, the Board of Governors, upon an affirmative vote of not fewer than ⅔ of the voting members of the Council then serving, shall—

(1) limit the ability of the company to merge with, acquire, consolidate with, or otherwise become affiliated with another company;

(2) restrict the ability of the company to offer a financial product or products;

(3) require the company to terminate one or more activities;

(4) impose conditions on the manner in which the company conducts 1 or more activities; or

(5) if the Board of Governors determines that the actions described in paragraphs (1) through (4) are inadequate to mitigate a threat to the financial stability of the United States in its recommendation, require the company to sell or otherwise transfer assets or off-balance-sheet items to unaffiliated entities.

(b) NOTICE AND HEARING.—

(1) IN GENERAL.—The Board of Governors, in consultation with the Council, shall provide to a company described in subsection (a) written notice that such company is being considered for mitigatory action pursuant to this section, including an explanation of the basis for, and description of, the proposed mitigatory action.

(2) HEARING.—Not later than 30 days after the date of receipt of notice under paragraph (1), the company may request, in writing, an opportunity for a written or oral hearing before the Board of Governors to contest the proposed mitigatory action. Upon receipt of a timely request, the Board of Governors shall fix a time (not later than 30 days after the date of

receipt of the request) and place at which such company may appear, personally or through counsel, to submit written materials (or, at the discretion of the Board of Governors, in consultation with the Council, oral testimony and oral argument).

(3) DECISION.—Not later than 60 days after the date of a hearing under paragraph (2), or not later than 60 days after the provision of a notice under paragraph (1) if no hearing was held, the Board of Governors shall notify the company of the final decision of the Board of Governors, including the results of the vote of the Council, as described in subsection (a).

(c) FACTORS FOR CONSIDERATION.—The Board of Governors and the Council shall take into consideration the factors set forth in subsection (a) or (b) of section 113, as applicable, in making any determination under subsection (a).

(d) APPLICATION TO FOREIGN FINANCIAL COMPANIES.—The Board of Governors may prescribe regulations regarding the application of this section to foreign nonbank financial companies supervised by the Board of Governors and foreign-based bank holding companies—

(1) giving due regard to the principle of national treatment and equality of competitive opportunity; and

(2) taking into account the extent to which the foreign nonbank financial company or foreign-based bank holding company is subject on a consolidated basis to home country standards that are comparable to those applied to financial companies in the United States.

SEC. 122. GAO AUDIT OF COUNCIL.

(a) AUTHORITY TO AUDIT.—The Comptroller General of the United States may audit the activities of—

(1) the Council; and

(2) any person or entity acting on behalf of or under the authority of the Council, to the extent that such activities relate to work for the Council by such person or entity.

(b) ACCESS TO INFORMATION.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the Comptroller General shall, upon request and at such reasonable time and in such reasonable form as the Comptroller General may request, have access to—

(A) any records or other information under the control of or used by the Council;

(B) any records or other information under the control of a person or entity acting on behalf of or under the authority of the Council, to the extent that such records or other information is relevant to an audit under subsection (a); and

(C) the officers, directors, employees, financial advisors, staff, working groups, and agents and representatives of the Council (as related to the activities on behalf of the Council of such agent or representative), at such reasonable times as the Comptroller General may request.

(2) COPIES.—The Comptroller General may make and retain copies of such books, accounts, and other records, access to which is granted under this section, as the Comptroller General considers appropriate.

SEC. 123. STUDY OF THE EFFECTS OF SIZE AND COMPLEXITY OF FINANCIAL INSTITUTIONS ON CAPITAL MARKET EFFICIENCY AND ECONOMIC GROWTH.

(a) STUDY REQUIRED.—

(1) IN GENERAL.—The Chairperson of the Council shall carry out a study of the economic impact of possible financial services regulatory limitations intended to reduce systemic risk. Such study shall estimate the benefits and costs on the efficiency of capital markets, on the financial sector, and on national economic growth, of—

(A) explicit or implicit limits on the maximum size of banks, bank holding companies, and other large financial institutions;

(B) limits on the organizational complexity and diversification of large financial institutions;

(C) requirements for operational separation between business units of large financial institutions in order to expedite resolution in case of failure;

(D) limits on risk transfer between business units of large financial institutions;

(E) requirements to carry contingent capital or similar mechanisms;

(F) limits on commingling of commercial and financial activities by large financial institutions;

(G) segregation requirements between traditional financial activities and trading or other high-risk operations in large financial institutions; and

(H) other limitations on the activities or structure of large financial institutions that may be useful to limit systemic risk.

(2) RECOMMENDATIONS.—The study required by this section shall include recommendations for the optimal structure of any limits considered in subparagraphs (A) through (E), in order to maximize their effectiveness and minimize their economic impact.

(b) REPORT.—Not later than the end of the 180-day period beginning on the date of enactment of this title, and not later than every 5 years thereafter, the Chairperson shall issue a report to the Congress containing any findings and determinations made in carrying out the study required under subsection (a).

Subtitle B—Office of Financial Research

SEC. 151. DEFINITIONS.

For purposes of this subtitle—

(1) the terms "Office" and "Director" mean the Office of Financial Research established under this subtitle and the Director thereof, respectively;

(2) the term "financial company" has the same meaning as in title II, and includes an insured depository institution and an insurance company;

(3) the term "Data Center" means the data center established under section 154;

(4) the term "Research and Analysis Center" means the research and analysis center established under section 154;

(5) the term "financial transaction data" means the structure and legal description of a financial contract, with sufficient detail to describe the rights and obligations between counterparties and make possible an independent valuation;

(6) the term "position data"—

(A) means data on financial assets or liabilities held on the balance sheet of a financial company, where positions are created or changed by the execution of a financial transaction; and

(B) includes information that identifies counterparties, the valuation by the financial company of the position, and information that makes possible an independent valuation of the position;

(7) the term "financial contract" means a legally binding agreement between 2 or more counterparties, describing rights and obligations relating to the future delivery of items of intrinsic or extrinsic value among the counterparties; and

(8) the term "financial instrument" means a financial contract in which the terms and conditions are publicly available, and the roles of one or more of the counterparties are assignable without the consent of any of the other counterparties (including common stock of a publicly traded company, government bonds, or exchange traded futures and options contracts).

SEC. 152. OFFICE OF FINANCIAL RESEARCH ESTABLISHED.

(a) ESTABLISHMENT.—There is established within the Department of the Treasury the Office of Financial Research.

(b) DIRECTOR.—

(1) IN GENERAL.—The Office shall be headed by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) TERM OF SERVICE.—The Director shall serve for a term of 6 years, except that, in the event that a successor is not nominated and confirmed by the end of the term of service of a Director, the Director may continue to serve until such time as the next Director is appointed and confirmed.

(3) EXECUTIVE LEVEL.—The Director shall be compensated at Level III of the Executive Schedule.

(4) PROHIBITION ON DUAL SERVICE.—The individual serving in the position of Director may not, during such service, also serve as the head of any financial regulatory agency.

(5) RESPONSIBILITIES, DUTIES, AND AUTHORITY.—The Director shall have sole discretion in the manner in which the Director fulfills the responsibilities and duties and exercises the authorities described in this subtitle.

(c) BUDGET.—The Director, in consultation with the Chairperson, shall establish the annual budget of the Office.

(d) OFFICE PERSONNEL.—

(1) IN GENERAL.—The Director, in consultation with the Chairperson, may fix the number of, and appoint and direct, all employees of the Office.

(2) COMPENSATION.—The Director, in consultation with the Chairperson, shall fix, adjust, and administer the pay for all employees of the Office, without regard to chapter 51 or subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates.

(3) COMPARABILITY.—Section 1206(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1833b(a)) is amended—

(A) by striking "Finance Board," and inserting "Finance Board, the Office of Financial Research, and the Bureau of Consumer Financial Protection"; and

(B) by striking "and the Office of Thrift Supervision,".

(4) SENIOR EXECUTIVES.—Section 3132(a)(1)(D) of title 5, United States Code, is amended by striking "and the National Credit Union Administration;" and inserting "the National Credit Union Administration, the Bureau of Consumer Financial Protection, and the Office of Financial Research;".

(e) ASSISTANCE FROM FEDERAL AGENCIES.—Any department or agency of the United States may provide to the Office and any special advisory, technical, or professional committees appointed by the Office, such services, funds, facilities, staff, and other support services as the Office may determine advisable. Any Federal Government employee may be detailed to the Office without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(f) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Director may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for Level V of the Executive Schedule under section 5316 of such title.

(g) POST-EMPLOYMENT PROHIBITIONS.—The Secretary, with the concurrence of the Director of the Office of Government Ethics, shall issue regulations prohibiting the Director and any employee of the Office who has had access to the transaction or position data maintained by the Data Center or other business confidential information about financial entities required to report to the Office from being employed by or providing advice or consulting services to a financial company, for a period of 1 year after last having had access in the course of official duties to such transaction or position data or business confidential information, regardless of whether that entity is required to report to the Office. For employees whose access to business confidential information was limited, the regulations may provide, on a case-by-case basis, for a shorter period of post-employment prohibition, provided that the shorter period does not compromise business confidential information.

(h) TECHNICAL AND PROFESSIONAL ADVISORY COMMITTEES.—The Office, in consultation with the Chairperson, may appoint such special advisory, technical, or professional committees as may be useful in carrying out the functions of the Office, and the members of such committees may be staff of the Office, or other persons, or both.

(i) FELLOWSHIP PROGRAM.—The Office, in consultation with the Chairperson, may establish and maintain an academic and professional fellowship program, under which qualified academics and professionals shall be invited to spend not longer than 2 years at the Office, to perform research and to provide advanced training for Office personnel.

(j) EXECUTIVE SCHEDULE COMPENSATION.—Section 5314 of title 5, United States Code, is amended by adding at the end the following new item:

"Director of the Office of Financial Research.".

SEC. 153. PURPOSE AND DUTIES OF THE OFFICE.

(a) PURPOSE AND DUTIES.—The purpose of the Office is to support the Council in fulfilling the purposes and duties of the Council, as set forth in subtitle A, and to support member agencies, by—

(1) collecting data on behalf of the Council, and providing such data to the Council and member agencies;

(2) standardizing the types and formats of data reported and collected;

(3) performing applied research and essential long-term research;

(4) developing tools for risk measurement and monitoring;

(5) performing other related services;

(6) making the results of the activities of the Office available to financial regulatory agencies; and

(7) assisting such member agencies in determining the types and formats of data authorized by this Act to be collected by such member agencies.

(b) ADMINISTRATIVE AUTHORITY.—The Office may—

(1) share data and information, including software developed by the Office, with the Council, member agencies, and the Bureau of Economic Analysis, which shared data, information, and software—

(A) shall be maintained with at least the same level of security as is used by the Office; and

(B) may not be shared with any individual or entity without the permission of the Council;

(2) sponsor and conduct research projects; and

(3) assist, on a reimbursable basis, with financial analyses undertaken at the request of other Federal agencies that are not member agencies.

(c) RULEMAKING AUTHORITY.—

(1) SCOPE.—The Office, in consultation with the Chairperson, shall issue rules, regulations, and orders only to the extent necessary to carry out the purposes and duties described in paragraphs (1), (2), and (7) of subsection (a).

(2) STANDARDIZATION.—Member agencies, in consultation with the Office, shall implement regulations promulgated by the Office under paragraph (1) to standardize the types and formats of data reported and collected on behalf of the Council, as described in subsection (a)(2). If a member agency fails to implement such regulations prior to the expiration of the 3-year period following the date of publication of final regulations, the Office, in consultation with the Chairperson, may implement such regulations with respect to the financial entities under the jurisdiction of the member agency. This paragraph shall not supersede or interfere with the independent authority of a member agency under other law to collect data, in such format and manner as the member agency requires.

(d) TESTIMONY.—

(1) IN GENERAL.—The Director of the Office shall report to and testify before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives annually on the activities of the Office, including the work of the Data Center and the Research and Analysis Center, and the assessment of the

Office of significant financial market developments and potential emerging threats to the financial stability of the United States.

(2) NO PRIOR REVIEW.—No officer or agency of the United States shall have any authority to require the Director to submit the testimony required under paragraph (1) or other congressional testimony to any officer or agency of the United States for approval, comment, or review prior to the submission of such testimony. Any such testimony to Congress shall include a statement that the views expressed therein are those of the Director and do not necessarily represent the views of the President.

(e) ADDITIONAL REPORTS.—The Director may provide additional reports to Congress concerning the financial stability of the United States. The Director shall notify the Council of any such additional reports provided to Congress.

(f) SUBPOENA.—

(1) IN GENERAL.—The Director may require from a financial company, by subpoena, the production of the data requested under subsection (a)(1) and section 154(b)(1), but only upon a written finding by the Director that—

(A) such data is required to carry out the functions described under this subtitle; and

(B) the Office has coordinated with the relevant primary financial regulatory agency, as required under section 154(b)(1)(B)(ii).

(2) FORMAT.—Subpoenas under paragraph (1) shall bear the signature of the Director, and shall be served by any person or class of persons designated by the Director for that purpose.

(3) ENFORCEMENT.—In the case of contumacy or failure to obey a subpoena, the subpoena shall be enforceable by order of any appropriate district court of the United States. Any failure to obey the order of the court may be punished by the court as a contempt of court.

SEC. 154. ORGANIZATIONAL STRUCTURE; RESPONSIBILITIES OF PRIMARY PROGRAMMATIC UNITS.

(a) IN GENERAL.—There are established within the Office, to carry out the programmatic responsibilities of the Office—

(1) the Data Center; and

(2) the Research and Analysis Center.

(b) DATA CENTER.—

(1) GENERAL DUTIES.—

(A) DATA COLLECTION.—The Data Center, on behalf of the Council, shall collect, validate, and maintain all data necessary to carry out the duties of the Data Center, as described in this subtitle. The data assembled shall be obtained from member agencies, commercial data providers, publicly available data sources, and financial entities under subparagraph (B).

(B) AUTHORITY.—

(i) IN GENERAL.—The Office may, as determined by the Council or by the Director in consultation with the Council, require the submission of periodic and other reports from any financial company for the purpose of assessing the extent to which a financial

activity or financial market in which the financial company participates, or the financial company itself, poses a threat to the financial stability of the United States.

(ii) MITIGATION OF REPORT BURDEN.—Before requiring the submission of a report from any financial company that is regulated by a member agency, any primary financial regulatory agency, a foreign supervisory authority, or the Office shall coordinate with such agencies or authority, and shall, whenever possible, rely on information available from such agencies or authority.

(iii) COLLECTION OF FINANCIAL TRANSACTION AND POSITION DATA.—The Office shall collect, on a schedule determined by the Director, in consultation with the Council, financial transaction data and position data from financial companies.

(C) RULEMAKING.—The Office shall promulgate regulations pursuant to subsections (a)(1), (a)(2), (a)(7), and (c)(1) of section 153 regarding the type and scope of the data to be collected by the Data Center under this paragraph.

(2) RESPONSIBILITIES.—

(A) PUBLICATION.—The Data Center shall prepare and publish, in a manner that is easily accessible to the public—

(i) a financial company reference database;

(ii) a financial instrument reference database; and

(iii) formats and standards for Office data, including standards for reporting financial transaction and position data to the Office.

(B) CONFIDENTIALITY.—The Data Center shall not publish any confidential data under subparagraph (A).

(3) INFORMATION SECURITY.—The Director shall ensure that data collected and maintained by the Data Center are kept secure and protected against unauthorized disclosure.

(4) CATALOG OF FINANCIAL ENTITIES AND INSTRUMENTS.—The Data Center shall maintain a catalog of the financial entities and instruments reported to the Office.

(5) AVAILABILITY TO THE COUNCIL AND MEMBER AGENCIES.—The Data Center shall make data collected and maintained by the Data Center available to the Council and member agencies, as necessary to support their regulatory responsibilities.

(6) OTHER AUTHORITY.—The Office shall, after consultation with the member agencies, provide certain data to financial industry participants and to the general public to increase market transparency and facilitate research on the financial system, to the extent that intellectual property rights are not violated, business confidential information is properly protected, and the sharing of such information poses no significant threats to the financial system of the United States.

(c) RESEARCH AND ANALYSIS CENTER.—

(1) GENERAL DUTIES.—The Research and Analysis Center, on behalf of the Council, shall develop and maintain independent analytical capabilities and computing resources—

(A) to develop and maintain metrics and reporting systems for risks to the financial stability of the United States;

(B) to monitor, investigate, and report on changes in systemwide risk levels and patterns to the Council and Congress;

(C) to conduct, coordinate, and sponsor research to support and improve regulation of financial entities and markets;

(D) to evaluate and report on stress tests or other stability-related evaluations of financial entities overseen by the member agencies;

(E) to maintain expertise in such areas as may be necessary to support specific requests for advice and assistance from financial regulators;

(F) to investigate disruptions and failures in the financial markets, report findings, and make recommendations to the Council based on those findings;

(G) to conduct studies and provide advice on the impact of policies related to systemic risk; and

(H) to promote best practices for financial risk management.

(d) REPORTING RESPONSIBILITIES.—

(1) REQUIRED REPORTS.—Not later than 2 years after the date of enactment of this Act, and not later than 120 days after the end of each fiscal year thereafter, the Office shall prepare and submit a report to Congress.

(2) CONTENT.—Each report required by this subsection shall assess the state of the United States financial system, including—

(A) an analysis of any threats to the financial stability of the United States;

(B) the status of the efforts of the Office in meeting the mission of the Office; and

(C) key findings from the research and analysis of the financial system by the Office.

SEC. 155. FUNDING.

(a) FINANCIAL RESEARCH FUND.—

(1) FUND ESTABLISHED.—There is established in the Treasury of the United States a separate fund to be known as the "Financial Research Fund".

(2) FUND RECEIPTS.—All amounts provided to the Office under subsection (c), and all assessments that the Office receives under subsection (d) shall be deposited into the Financial Research Fund.

(3) INVESTMENTS AUTHORIZED.—

(A) AMOUNTS IN FUND MAY BE INVESTED.—The Director may request the Secretary to invest the portion of the Financial Research Fund that is not, in the judgment of the Director, required to meet the needs of the Office.

(B) ELIGIBLE INVESTMENTS.—Investments shall be made by the Secretary in obligations of the United States or obligations that are guaranteed as to principal and interest by the United States, with maturities suitable to the needs of the Financial Research Fund, as determined by the Director.

(4) INTEREST AND PROCEEDS CREDITED.—The interest on, and the proceeds from the sale or redemption of, any obligations

held in the Financial Research Fund shall be credited to and form a part of the Financial Research Fund.

(b) USE OF FUNDS.—

(1) IN GENERAL.—Funds obtained by, transferred to, or credited to the Financial Research Fund shall be immediately available to the Office, and shall remain available until expended, to pay the expenses of the Office in carrying out the duties and responsibilities of the Office.

(2) FEES, ASSESSMENTS, AND OTHER FUNDS NOT GOVERNMENT FUNDS.—Funds obtained by, transferred to, or credited to the Financial Research Fund shall not be construed to be Government funds or appropriated moneys.

(3) AMOUNTS NOT SUBJECT TO APPORTIONMENT.—Notwithstanding any other provision of law, amounts in the Financial Research Fund shall not be subject to apportionment for purposes of chapter 15 of title 31, United States Code, or under any other authority, or for any other purpose.

(c) INTERIM FUNDING.—During the 2-year period following the date of enactment of this Act, the Board of Governors shall provide to the Office an amount sufficient to cover the expenses of the Office.

(d) PERMANENT SELF-FUNDING.—Beginning 2 years after the date of enactment of this Act, the Secretary shall establish, by regulation, and with the approval of the Council, an assessment schedule, including the assessment base and rates, applicable to bank holding companies with total consolidated assets of $50,000,000,000 or greater and nonbank financial companies supervised by the Board of Governors, that takes into account differences among such companies, based on the considerations for establishing the prudential standards under section 115, to collect assessments equal to the total expenses of the Office.

SEC. 156. TRANSITION OVERSIGHT.

(a) PURPOSE.—The purpose of this section is to ensure that the Office—

(1) has an orderly and organized startup;

(2) attracts and retains a qualified workforce; and

(3) establishes comprehensive employee training and benefits programs.

(b) REPORTING REQUIREMENT.—

(1) IN GENERAL.—The Office shall submit an annual report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives that includes the plans described in paragraph (2).

(2) PLANS.—The plans described in this paragraph are as follows:

(A) TRAINING AND WORKFORCE DEVELOPMENT PLAN.—The Office shall submit a training and workforce development plan that includes, to the extent practicable—

(i) identification of skill and technical expertise needs and actions taken to meet those requirements;

(ii) steps taken to foster innovation and creativity;

(iii) leadership development and succession planning; and

(iv) effective use of technology by employees.

(B) WORKPLACE FLEXIBILITY PLAN.—The Office shall submit a workforce flexibility plan that includes, to the extent practicable—

(i) telework;
(ii) flexible work schedules;
(iii) phased retirement;
(iv) reemployed annuitants;
(v) part-time work;
(vi) job sharing;
(vii) parental leave benefits and childcare assistance;
(viii) domestic partner benefits;
(ix) other workplace flexibilities; or
(x) any combination of the items described in clauses (i) through (ix).

(C) RECRUITMENT AND RETENTION PLAN.—The Office shall submit a recruitment and retention plan that includes, to the extent practicable, provisions relating to—

(i) the steps necessary to target highly qualified applicant pools with diverse backgrounds;
(ii) streamlined employment application processes;
(iii) the provision of timely notification of the status of employment applications to applicants; and
(iv) the collection of information to measure indicators of hiring effectiveness.

(c) EXPIRATION.—The reporting requirement under subsection (b) shall terminate 5 years after the date of enactment of this Act.

(d) RULE OF CONSTRUCTION.—Nothing in this section may be construed to affect—

(1) a collective bargaining agreement, as that term is defined in section 7103(a)(8) of title 5, United States Code, that is in effect on the date of enactment of this Act; or
(2) the rights of employees under chapter 71 of title 5, United States Code.

Subtitle C—Additional Board of Governors Authority for Certain Nonbank Financial Companies and Bank Holding Companies

SEC. 161. REPORTS BY AND EXAMINATIONS OF NONBANK FINANCIAL COMPANIES BY THE BOARD OF GOVERNORS.

(a) REPORTS.—

(1) IN GENERAL.—The Board of Governors may require each nonbank financial company supervised by the Board of Governors, and any subsidiary thereof, to submit reports under oath, to keep the Board of Governors informed as to—

(A) the financial condition of the company or subsidiary, systems of the company or subsidiary for monitoring and controlling financial, operating, and other risks, and the extent to which the activities and operations of the company or subsidiary pose a threat to the financial stability of the United States; and
(B) compliance by the company or subsidiary with the requirements of this title.

(2) USE OF EXISTING REPORTS AND INFORMATION.—In carrying out subsection (a), the Board of Governors shall, to the fullest extent possible, use—

(A) reports and supervisory information that a nonbank financial company or subsidiary thereof has been required to provide to other Federal or State regulatory agencies;

(B) information otherwise obtainable from Federal or State regulatory agencies;

(C) information that is otherwise required to be reported publicly; and

(D) externally audited financial statements of such company or subsidiary.

(3) AVAILABILITY.—Upon the request of the Board of Governors, a nonbank financial company supervised by the Board of Governors, or a subsidiary thereof, shall promptly provide to the Board of Governors any information described in paragraph (2).

(b) EXAMINATIONS.—

(1) IN GENERAL.—Subject to paragraph (2), the Board of Governors may examine any nonbank financial company supervised by the Board of Governors and any subsidiary of such company, to inform the Board of Governors of—

(A) the nature of the operations and financial condition of the company and such subsidiary;

(B) the financial, operational, and other risks of the company or such subsidiary that may pose a threat to the safety and soundness of such company or subsidiary or to the financial stability of the United States;

(C) the systems for monitoring and controlling such risks; and

(D) compliance by the company or such subsidiary with the requirements of this title.

(2) USE OF EXAMINATION REPORTS AND INFORMATION.—For purposes of this subsection, the Board of Governors shall, to the fullest extent possible, rely on reports of examination of any subsidiary depository institution or functionally regulated subsidiary made by the primary financial regulatory agency for that subsidiary, and on information described in subsection (a)(2).

(c) COORDINATION WITH PRIMARY FINANCIAL REGULATORY AGENCY.—The Board of Governors shall—

(1) provide reasonable notice to, and consult with, the primary financial regulatory agency for any subsidiary before requiring a report or commencing an examination of such subsidiary under this section; and

(2) avoid duplication of examination activities, reporting requirements, and requests for information, to the fullest extent possible.

SEC. 162. ENFORCEMENT.

(a) IN GENERAL.—Except as provided in subsection (b), a nonbank financial company supervised by the Board of Governors and any subsidiaries of such company (other than any depository institution subsidiary) shall be subject to the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), in the same manner and to the same extent as if the company were a bank holding company, as provided

in section 8(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)(3)).

(b) ENFORCEMENT AUTHORITY FOR FUNCTIONALLY REGULATED SUBSIDIARIES.—

(1) REFERRAL.—If the Board of Governors determines that a condition, practice, or activity of a depository institution subsidiary or functionally regulated subsidiary of a nonbank financial company supervised by the Board of Governors does not comply with the regulations or orders prescribed by the Board of Governors under this Act, or otherwise poses a threat to the financial stability of the United States, the Board of Governors may recommend, in writing, to the primary financial regulatory agency for the subsidiary that such agency initiate a supervisory action or enforcement proceeding. The recommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

(2) BACK-UP AUTHORITY OF THE BOARD OF GOVERNORS.—If, during the 60-day period beginning on the date on which the primary financial regulatory agency receives a recommendation under paragraph (1), the primary financial regulatory agency does not take supervisory or enforcement action against a subsidiary that is acceptable to the Board of Governors, the Board of Governors (upon a vote of its members) may take the recommended supervisory or enforcement action, as if the subsidiary were a bank holding company subject to supervision by the Board of Governors.

SEC. 163. ACQUISITIONS.

(a) ACQUISITIONS OF BANKS; TREATMENT AS A BANK HOLDING COMPANY.—For purposes of section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842), a nonbank financial company supervised by the Board of Governors shall be deemed to be, and shall be treated as, a bank holding company.

(b) ACQUISITION OF NONBANK COMPANIES.—

(1) PRIOR NOTICE FOR LARGE ACQUISITIONS.—Notwithstanding section 4(k)(6)(B) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)(6)(B)), a bank holding company with total consolidated assets equal to or greater than $50,000,000,000 or a nonbank financial company supervised by the Board of Governors shall not acquire direct or indirect ownership or control of any voting shares of any company (other than an insured depository institution) that is engaged in activities described in section 4(k) of the Bank Holding Company Act of 1956 having total consolidated assets of $10,000,000,000 or more, without providing written notice to the Board of Governors in advance of the transaction.

(2) EXEMPTIONS.—The prior notice requirement in paragraph (1) shall not apply with regard to the acquisition of shares that would qualify for the exemptions in section 4(c) or section 4(k)(4)(E) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c) and (k)(4)(E)).

(3) NOTICE PROCEDURES.—The notice procedures set forth in section 4(j)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(j)(1)), without regard to section 4(j)(3) of that Act, shall apply to an acquisition of any company (other than an insured depository institution) by a bank holding company with total consolidated assets equal to or greater than

$50,000,000,000 or a nonbank financial company supervised by the Board of Governors, as described in paragraph (1), including any such company engaged in activities described in section 4(k) of that Act.

(4) STANDARDS FOR REVIEW.—In addition to the standards provided in section 4(j)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(j)(2)), the Board of Governors shall consider the extent to which the proposed acquisition would result in greater or more concentrated risks to global or United States financial stability or the United States economy.

(5) HART-SCOTT-RODINO FILING REQUIREMENT.—Solely for purposes of section 7A(c)(8) of the Clayton Act (15 U.S.C. 18a(c)(8)), the transactions subject to the requirements of paragraph (1) shall be treated as if Board of Governors approval is not required.

SEC. 164. PROHIBITION AGAINST MANAGEMENT INTERLOCKS BETWEEN CERTAIN FINANCIAL COMPANIES.

A nonbank financial company supervised by the Board of Governors shall be treated as a bank holding company for purposes of the Depository Institutions Management Interlocks Act (12 U.S.C. 3201 et seq.), except that the Board of Governors shall not exercise the authority provided in section 7 of that Act (12 U.S.C. 3207) to permit service by a management official of a nonbank financial company supervised by the Board of Governors as a management official of any bank holding company with total consolidated assets equal to or greater than $50,000,000,000, or other nonaffiliated nonbank financial company supervised by the Board of Governors (other than to provide a temporary exemption for interlocks resulting from a merger, acquisition, or consolidation).

SEC. 165. ENHANCED SUPERVISION AND PRUDENTIAL STANDARDS FOR NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS AND CERTAIN BANK HOLDING COMPANIES.

(a) IN GENERAL.—

(1) PURPOSE.—In order to prevent or mitigate risks to the financial stability of the United States that could arise from the material financial distress or failure, or ongoing activities, of large, interconnected financial institutions, the Board of Governors shall, on its own or pursuant to recommendations by the Council under section 115, establish prudential standards for nonbank financial companies supervised by the Board of Governors and bank holding companies with total consolidated assets equal to or greater than $50,000,000,000 that—

(A) are more stringent than the standards and requirements applicable to nonbank financial companies and bank holding companies that do not present similar risks to the financial stability of the United States; and

(B) increase in stringency, based on the considerations identified in subsection (b)(3).

(2) TAILORED APPLICATION.—

(A) IN GENERAL.—In prescribing more stringent prudential standards under this section, the Board of Governors may, on its own or pursuant to a recommendation by the Council in accordance with section 115, differentiate among companies on an individual basis or by category, taking into consideration their capital structure, riskiness,

complexity, financial activities (including the financial activities of their subsidiaries), size, and any other risk-related factors that the Board of Governors deems appropriate.

(B) ADJUSTMENT OF THRESHOLD FOR APPLICATION OF CERTAIN STANDARDS.—The Board of Governors may, pursuant to a recommendation by the Council in accordance with section 115, establish an asset threshold above $50,000,000,000 for the application of any standard established under subsections (c) through (g).

(b) DEVELOPMENT OF PRUDENTIAL STANDARDS.—

(1) IN GENERAL.—

(A) REQUIRED STANDARDS.—The Board of Governors shall establish prudential standards for nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), that shall include—

(i) risk-based capital requirements and leverage limits, unless the Board of Governors, in consultation with the Council, determines that such requirements are not appropriate for a company subject to more stringent prudential standards because of the activities of such company (such as investment company activities or assets under management) or structure, in which case, the Board of Governors shall apply other standards that result in similarly stringent risk controls;

(ii) liquidity requirements;

(iii) overall risk management requirements;

(iv) resolution plan and credit exposure report requirements; and

(v) concentration limits.

(B) ADDITIONAL STANDARDS AUTHORIZED.—The Board of Governors may establish additional prudential standards for nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), that include—

(i) a contingent capital requirement;

(ii) enhanced public disclosures;

(iii) short-term debt limits; and

(iv) such other prudential standards as the Board or Governors, on its own or pursuant to a recommendation made by the Council in accordance with section 115, determines are appropriate.

(2) STANDARDS FOR FOREIGN FINANCIAL COMPANIES.—In applying the standards set forth in paragraph (1) to any foreign nonbank financial company supervised by the Board of Governors or foreign-based bank holding company, the Board of Governors shall—

(A) give due regard to the principle of national treatment and equality of competitive opportunity; and

(B) take into account the extent to which the foreign financial company is subject on a consolidated basis to home country standards that are comparable to those applied to financial companies in the United States.

(3) CONSIDERATIONS.—In prescribing prudential standards under paragraph (1), the Board of Governors shall—

(A) take into account differences among nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), based on—

(i) the factors described in subsections (a) and (b) of section 113;

(ii) whether the company owns an insured depository institution;

(iii) nonfinancial activities and affiliations of the company; and

(iv) any other risk-related factors that the Board of Governors determines appropriate;

(B) to the extent possible, ensure that small changes in the factors listed in subsections (a) and (b) of section 113 would not result in sharp, discontinuous changes in the prudential standards established under paragraph (1) of this subsection;

(C) take into account any recommendations of the Council under section 115; and

(D) adapt the required standards as appropriate in light of any predominant line of business of such company, including assets under management or other activities for which particular standards may not be appropriate.

(4) CONSULTATION.—Before imposing prudential standards or any other requirements pursuant to this section, including notices of deficiencies in resolution plans and more stringent requirements or divestiture orders resulting from such notices, that are likely to have a significant impact on a functionally regulated subsidiary or depository institution subsidiary of a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), the Board of Governors shall consult with each Council member that primarily supervises any such subsidiary with respect to any such standard or requirement.

(5) REPORT.—The Board of Governors shall submit an annual report to Congress regarding the implementation of the prudential standards required pursuant to paragraph (1), including the use of such standards to mitigate risks to the financial stability of the United States.

(c) CONTINGENT CAPITAL.—

(1) IN GENERAL.—Subsequent to submission by the Council of a report to Congress under section 115(c), the Board of Governors may issue regulations that require each nonbank financial company supervised by the Board of Governors and bank holding companies described in subsection (a) to maintain a minimum amount of contingent capital that is convertible to equity in times of financial stress.

(2) FACTORS TO CONSIDER.—In issuing regulations under this subsection, the Board of Governors shall consider—

(A) the results of the study undertaken by the Council, and any recommendations of the Council, under section 115(c);

(B) an appropriate transition period for implementation of contingent capital under this subsection;

(C) the factors described in subsection (b)(3)(A);

(D) capital requirements applicable to the nonbank financial company supervised by the Board of Governors

or a bank holding company described in subsection (a), and subsidiaries thereof; and

(E) any other factor that the Board of Governors deems appropriate.

(d) RESOLUTION PLAN AND CREDIT EXPOSURE REPORTS.—

(1) RESOLUTION PLAN.—The Board of Governors shall require each nonbank financial company supervised by the Board of Governors and bank holding companies described in subsection (a) to report periodically to the Board of Governors, the Council, and the Corporation the plan of such company for rapid and orderly resolution in the event of material financial distress or failure, which shall include—

(A) information regarding the manner and extent to which any insured depository institution affiliated with the company is adequately protected from risks arising from the activities of any nonbank subsidiaries of the company;

(B) full descriptions of the ownership structure, assets, liabilities, and contractual obligations of the company;

(C) identification of the cross-guarantees tied to different securities, identification of major counterparties, and a process for determining to whom the collateral of the company is pledged; and

(D) any other information that the Board of Governors and the Corporation jointly require by rule or order.

(2) CREDIT EXPOSURE REPORT.—The Board of Governors shall require each nonbank financial company supervised by the Board of Governors and bank holding companies described in subsection (a) to report periodically to the Board of Governors, the Council, and the Corporation on—

(A) the nature and extent to which the company has credit exposure to other significant nonbank financial companies and significant bank holding companies; and

(B) the nature and extent to which other significant nonbank financial companies and significant bank holding companies have credit exposure to that company.

(3) REVIEW.—The Board of Governors and the Corporation shall review the information provided in accordance with this subsection by each nonbank financial company supervised by the Board of Governors and bank holding company described in subsection (a).

(4) NOTICE OF DEFICIENCIES.—If the Board of Governors and the Corporation jointly determine, based on their review under paragraph (3), that the resolution plan of a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a) is not credible or would not facilitate an orderly resolution of the company under title 11, United States Code—

(A) the Board of Governors and the Corporation shall notify the company of the deficiencies in the resolution plan; and

(B) the company shall resubmit the resolution plan within a timeframe determined by the Board of Governors and the Corporation, with revisions demonstrating that the plan is credible and would result in an orderly resolution under title 11, United States Code, including any

proposed changes in business operations and corporate structure to facilitate implementation of the plan.

(5) FAILURE TO RESUBMIT CREDIBLE PLAN.—

(A) IN GENERAL.—If a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a) fails to timely resubmit the resolution plan as required under paragraph (4), with such revisions as are required under subparagraph (B), the Board of Governors and the Corporation may jointly impose more stringent capital, leverage, or liquidity requirements, or restrictions on the growth, activities, or operations of the company, or any subsidiary thereof, until such time as the company resubmits a plan that remedies the deficiencies.

(B) DIVESTITURE.—The Board of Governors and the Corporation, in consultation with the Council, may jointly direct a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), by order, to divest certain assets or operations identified by the Board of Governors and the Corporation, to facilitate an orderly resolution of such company under title 11, United States Code, in the event of the failure of such company, in any case in which—

(i) the Board of Governors and the Corporation have jointly imposed more stringent requirements on the company pursuant to subparagraph (A); and

(ii) the company has failed, within the 2-year period beginning on the date of the imposition of such requirements under subparagraph (A), to resubmit the resolution plan with such revisions as were required under paragraph (4)(B).

(6) NO LIMITING EFFECT.—A resolution plan submitted in accordance with this subsection shall not be binding on a bankruptcy court, a receiver appointed under title II, or any other authority that is authorized or required to resolve the nonbank financial company supervised by the Board, any bank holding company, or any subsidiary or affiliate of the foregoing.

(7) NO PRIVATE RIGHT OF ACTION.—No private right of action may be based on any resolution plan submitted in accordance with this subsection.

(8) RULES.—Not later than 18 months after the date of enactment of this Act, the Board of Governors and the Corporation shall jointly issue final rules implementing this subsection.

(e) CONCENTRATION LIMITS.—

(1) STANDARDS.—In order to limit the risks that the failure of any individual company could pose to a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), the Board of Governors, by regulation, shall prescribe standards that limit such risks.

(2) LIMITATION ON CREDIT EXPOSURE.—The regulations prescribed by the Board of Governors under paragraph (1) shall prohibit each nonbank financial company supervised by the Board of Governors and bank holding company described in subsection (a) from having credit exposure to any unaffiliated company that exceeds 25 percent of the capital stock and surplus (or such lower amount as the Board of Governors may

determine by regulation to be necessary to mitigate risks to the financial stability of the United States) of the company.

(3) CREDIT EXPOSURE.—For purposes of paragraph (2), "credit exposure" to a company means—

(A) all extensions of credit to the company, including loans, deposits, and lines of credit;

(B) all repurchase agreements and reverse repurchase agreements with the company, and all securities borrowing and lending transactions with the company, to the extent that such transactions create credit exposure for the nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a);

(C) all guarantees, acceptances, or letters of credit (including endorsement or standby letters of credit) issued on behalf of the company;

(D) all purchases of or investment in securities issued by the company;

(E) counterparty credit exposure to the company in connection with a derivative transaction between the nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a) and the company; and

(F) any other similar transactions that the Board of Governors, by regulation, determines to be a credit exposure for purposes of this section.

(4) ATTRIBUTION RULE.—For purposes of this subsection, any transaction by a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a) with any person is a transaction with a company, to the extent that the proceeds of the transaction are used for the benefit of, or transferred to, that company.

(5) RULEMAKING.—The Board of Governors may issue such regulations and orders, including definitions consistent with this section, as may be necessary to administer and carry out this subsection.

(6) EXEMPTIONS.—This subsection shall not apply to any Federal home loan bank. The Board of Governors may, by regulation or order, exempt transactions, in whole or in part, from the definition of the term "credit exposure" for purposes of this subsection, if the Board of Governors finds that the exemption is in the public interest and is consistent with the purpose of this subsection.

(7) TRANSITION PERIOD.—

(A) IN GENERAL.—This subsection and any regulations and orders of the Board of Governors under this subsection shall not be effective until 3 years after the date of enactment of this Act.

(B) EXTENSION AUTHORIZED.—The Board of Governors may extend the period specified in subparagraph (A) for not longer than an additional 2 years.

(f) ENHANCED PUBLIC DISCLOSURES.—The Board of Governors may prescribe, by regulation, periodic public disclosures by nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a) in order to support market evaluation of the risk profile, capital adequacy, and risk management capabilities thereof.

(g) SHORT-TERM DEBT LIMITS.—

(1) IN GENERAL.—In order to mitigate the risks that an over-accumulation of short-term debt could pose to financial companies and to the stability of the United States financial system, the Board of Governors may, by regulation, prescribe a limit on the amount of short-term debt, including off-balance sheet exposures, that may be accumulated by any bank holding company described in subsection (a) and any nonbank financial company supervised by the Board of Governors.

(2) BASIS OF LIMIT.—Any limit prescribed under paragraph (1) shall be based on the short-term debt of the company described in paragraph (1) as a percentage of capital stock and surplus of the company or on such other measure as the Board of Governors considers appropriate.

(3) SHORT-TERM DEBT DEFINED.—For purposes of this subsection, the term "short-term debt" means such liabilities with short-dated maturity that the Board of Governors identifies, by regulation, except that such term does not include insured deposits.

(4) RULEMAKING AUTHORITY.—In addition to prescribing regulations under paragraphs (1) and (3), the Board of Governors may prescribe such regulations, including definitions consistent with this subsection, and issue such orders, as may be necessary to carry out this subsection.

(5) AUTHORITY TO ISSUE EXEMPTIONS AND ADJUSTMENTS.—Notwithstanding the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), the Board of Governors may, if it determines such action is necessary to ensure appropriate heightened prudential supervision, with respect to a company described in paragraph (1) that does not control an insured depository institution, issue to such company an exemption from or adjustment to the limit prescribed under paragraph (1).

(h) RISK COMMITTEE.—

(1) NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS.—The Board of Governors shall require each nonbank financial company supervised by the Board of Governors that is a publicly traded company to establish a risk committee, as set forth in paragraph (3), not later than 1 year after the date of receipt of a notice of final determination under section 113(e)(3) with respect to such nonbank financial company supervised by the Board of Governors.

(2) CERTAIN BANK HOLDING COMPANIES.—

(A) MANDATORY REGULATIONS.—The Board of Governors shall issue regulations requiring each bank holding company that is a publicly traded company and that has total consolidated assets of not less than $10,000,000,000 to establish a risk committee, as set forth in paragraph (3).

(B) PERMISSIVE REGULATIONS.—The Board of Governors may require each bank holding company that is a publicly traded company and that has total consolidated assets of less than $10,000,000,000 to establish a risk committee, as set forth in paragraph (3), as determined necessary or appropriate by the Board of Governors to promote sound risk management practices.

(3) RISK COMMITTEE.—A risk committee required by this subsection shall—

(A) be responsible for the oversight of the enterprise-wide risk management practices of the nonbank financial company supervised by the Board of Governors or bank holding company described in subsection (a), as applicable;

(B) include such number of independent directors as the Board of Governors may determine appropriate, based on the nature of operations, size of assets, and other appropriate criteria related to the nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), as applicable; and

(C) include at least 1 risk management expert having experience in identifying, assessing, and managing risk exposures of large, complex firms.

(4) RULEMAKING.—The Board of Governors shall issue final rules to carry out this subsection, not later than 1 year after the transfer date, to take effect not later than 15 months after the transfer date.

(i) STRESS TESTS.—

(1) BY THE BOARD OF GOVERNORS.—

(A) ANNUAL TESTS REQUIRED.—The Board of Governors, in coordination with the appropriate primary financial regulatory agencies and the Federal Insurance Office, shall conduct annual analyses in which nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a) are subject to evaluation of whether such companies have the capital, on a total consolidated basis, necessary to absorb losses as a result of adverse economic conditions.

(B) TEST PARAMETERS AND CONSEQUENCES.—The Board of Governors—

(i) shall provide for at least 3 different sets of conditions under which the evaluation required by this subsection shall be conducted, including baseline, adverse, and severely adverse;

(ii) may require the tests described in subparagraph (A) at bank holding companies and nonbank financial companies, in addition to those for which annual tests are required under subparagraph (A);

(iii) may develop and apply such other analytic techniques as are necessary to identify, measure, and monitor risks to the financial stability of the United States;

(iv) shall require the companies described in subparagraph (A) to update their resolution plans required under subsection (d)(1), as the Board of Governors determines appropriate, based on the results of the analyses; and

(v) shall publish a summary of the results of the tests required under subparagraph (A) or clause (ii) of this subparagraph.

(2) BY THE COMPANY.—

(A) REQUIREMENT.—A nonbank financial company supervised by the Board of Governors and a bank holding company described in subsection (a) shall conduct semi-annual stress tests. All other financial companies that have total consolidated assets of more than $10,000,000,000 and are regulated by a primary Federal financial regulatory

agency shall conduct annual stress tests. The tests required under this subparagraph shall be conducted in accordance with the regulations prescribed under subparagraph (C).

(B) REPORT.—A company required to conduct stress tests under subparagraph (A) shall submit a report to the Board of Governors and to its primary financial regulatory agency at such time, in such form, and containing such information as the primary financial regulatory agency shall require.

(C) REGULATIONS.—Each Federal primary financial regulatory agency, in coordination with the Board of Governors and the Federal Insurance Office, shall issue consistent and comparable regulations to implement this paragraph that shall—

(i) define the term "stress test" for purposes of this paragraph;

(ii) establish methodologies for the conduct of stress tests required by this paragraph that shall provide for at least 3 different sets of conditions, including baseline, adverse, and severely adverse;

(iii) establish the form and content of the report required by subparagraph (B); and

(iv) require companies subject to this paragraph to publish a summary of the results of the required stress tests.

(j) LEVERAGE LIMITATION.—

(1) REQUIREMENT.—The Board of Governors shall require a bank holding company with total consolidated assets equal to or greater than $50,000,000,000 or a nonbank financial company supervised by the Board of Governors to maintain a debt to equity ratio of no more than 15 to 1, upon a determination by the Council that such company poses a grave threat to the financial stability of the United States and that the imposition of such requirement is necessary to mitigate the risk that such company poses to the financial stability of the United States. Nothing in this paragraph shall apply to a Federal home loan bank.

(2) CONSIDERATIONS.—In making a determination under this subsection, the Council shall consider the factors described in subsections (a) and (b) of section 113 and any other risk-related factors that the Council deems appropriate.

(3) REGULATIONS.—The Board of Governors shall promulgate regulations to establish procedures and timelines for complying with the requirements of this subsection.

(k) INCLUSION OF OFF-BALANCE-SHEET ACTIVITIES IN COMPUTING CAPITAL REQUIREMENTS.—

(1) IN GENERAL.—In the case of any bank holding company described in subsection (a) or nonbank financial company supervised by the Board of Governors, the computation of capital for purposes of meeting capital requirements shall take into account any off-balance-sheet activities of the company.

(2) EXEMPTIONS.—If the Board of Governors determines that an exemption from the requirement under paragraph (1) is appropriate, the Board of Governors may exempt a company, or any transaction or transactions engaged in by such company, from the requirements of paragraph (1).

(3) OFF-BALANCE-SHEET ACTIVITIES DEFINED.—For purposes of this subsection, the term "off-balance-sheet activities" means an existing liability of a company that is not currently a balance sheet liability, but may become one upon the happening of some future event, including the following transactions, to the extent that they may create a liability:

(A) Direct credit substitutes in which a bank substitutes its own credit for a third party, including standby letters of credit.

(B) Irrevocable letters of credit that guarantee repayment of commercial paper or tax-exempt securities.

(C) Risk participations in bankers' acceptances.

(D) Sale and repurchase agreements.

(E) Asset sales with recourse against the seller.

(F) Interest rate swaps.

(G) Credit swaps.

(H) Commodities contracts.

(I) Forward contracts.

(J) Securities contracts.

(K) Such other activities or transactions as the Board of Governors may, by rule, define.

SEC. 166. EARLY REMEDIATION REQUIREMENTS.

(a) IN GENERAL.—The Board of Governors, in consultation with the Council and the Corporation, shall prescribe regulations establishing requirements to provide for the early remediation of financial distress of a nonbank financial company supervised by the Board of Governors or a bank holding company described in section 165(a), except that nothing in this subsection authorizes the provision of financial assistance from the Federal Government.

(b) PURPOSE OF THE EARLY REMEDIATION REQUIREMENTS.—The purpose of the early remediation requirements under subsection (a) shall be to establish a series of specific remedial actions to be taken by a nonbank financial company supervised by the Board of Governors or a bank holding company described in section 165(a) that is experiencing increasing financial distress, in order to minimize the probability that the company will become insolvent and the potential harm of such insolvency to the financial stability of the United States.

(c) REMEDIATION REQUIREMENTS.—The regulations prescribed by the Board of Governors under subsection (a) shall—

(1) define measures of the financial condition of the company, including regulatory capital, liquidity measures, and other forward-looking indicators; and

(2) establish requirements that increase in stringency as the financial condition of the company declines, including—

(A) requirements in the initial stages of financial decline, including limits on capital distributions, acquisitions, and asset growth; and

(B) requirements at later stages of financial decline, including a capital restoration plan and capital-raising requirements, limits on transactions with affiliates, management changes, and asset sales.

SEC. 167. AFFILIATIONS.

(a) AFFILIATIONS.—Nothing in this subtitle shall be construed to require a nonbank financial company supervised by the Board

of Governors, or a company that controls a nonbank financial company supervised by the Board of Governors, to conform the activities thereof to the requirements of section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843).

(b) REQUIREMENT.—

(1) IN GENERAL.—

(A) BOARD AUTHORITY.—If a nonbank financial company supervised by the Board of Governors conducts activities other than those that are determined to be financial in nature or incidental thereto under section 4(k) of the Bank Holding Company Act of 1956, the Board of Governors may require such company to establish and conduct all or a portion of such activities that are determined to be financial in nature or incidental thereto in or through an intermediate holding company established pursuant to regulation of the Board of Governors, not later than 90 days (or such longer period as the Board of Governors may deem appropriate) after the date on which the nonbank financial company supervised by the Board of Governors is notified of the determination of the Board of Governors under this section.

(B) NECESSARY ACTIONS.—Notwithstanding subparagraph (A), the Board of Governors shall require a nonbank financial company supervised by the Board of Governors to establish an intermediate holding company if the Board of Governors makes a determination that the establishment of such intermediate holding company is necessary to—

(i) appropriately supervise activities that are determined to be financial in nature or incidental thereto; or

(ii) to ensure that supervision by the Board of Governors does not extend to the commercial activities of such nonbank financial company.

(2) INTERNAL FINANCIAL ACTIVITIES.—For purposes of this subsection, activities that are determined to be financial in nature or incidental thereto under section 4(k) of the Bank Holding Company Act of 1956, as described in paragraph (1), shall not include internal financial activities, including internal treasury, investment, and employee benefit functions. With respect to any internal financial activity engaged in for the company or an affiliate and a non-affiliate of such company during the year prior to the date of enactment of this Act, such company (or an affiliate that is not an intermediate holding company or subsidiary of an intermediate holding company) may continue to engage in such activity, as long as not less than 2/3 of the assets or 2/3 of the revenues generated from the activity are from or attributable to such company or an affiliate, subject to review by the Board of Governors, to determine whether engaging in such activity presents undue risk to such company or to the financial stability of the United States.

(3) SOURCE OF STRENGTH.—A company that directly or indirectly controls an intermediate holding company established under this section shall serve as a source of strength to its subsidiary intermediate holding company.

(4) PARENT COMPANY REPORTS.—The Board of Governors may, from time to time, require reports under oath from a

company that controls an intermediate holding company, and from the appropriate officers or directors of such company, solely for purposes of ensuring compliance with the provisions of this section, including assessing the ability of the company to serve as a source of strength to its subsidiary intermediate holding company pursuant to paragraph (3) and enforcing such compliance.

(5) LIMITED PARENT COMPANY ENFORCEMENT.—

(A) IN GENERAL.—In addition to any other authority of the Board of Governors, the Board of Governors may enforce compliance with the provisions of this subsection that are applicable to any company described in paragraph (1) that controls an intermediate holding company under section 8 of the Federal Deposit Insurance Act, and such company shall be subject to such section (solely for such purposes) in the same manner and to the same extent as if such company were a bank holding company.

(B) APPLICATION OF OTHER ACT.—Any violation of this subsection by any company that controls an intermediate holding company may also be treated as a violation of the Federal Deposit Insurance Act for purposes of subparagraph (A).

(C) NO EFFECT ON OTHER AUTHORITY.—No provision of this paragraph shall be construed as limiting any authority of the Board of Governors or any other Federal agency under any other provision of law.

(c) REGULATIONS.—The Board of Governors—

(1) shall promulgate regulations to establish the criteria for determining whether to require a nonbank financial company supervised by the Board of Governors to establish an intermediate holding company under subsection (b); and

(2) may promulgate regulations to establish any restrictions or limitations on transactions between an intermediate holding company or a nonbank financial company supervised by the Board of Governors and its affiliates, as necessary to prevent unsafe and unsound practices in connection with transactions between such company, or any subsidiary thereof, and its parent company or affiliates that are not subsidiaries of such company, except that such regulations shall not restrict or limit any transaction in connection with the bona fide acquisition or lease by an unaffiliated person of assets, goods, or services.

SEC. 168. REGULATIONS.

The Board of Governors shall have authority to issue regulations to implement subtitles A and C and the amendments made thereunder. Except as otherwise specified in subtitle A or C, not later than 18 months after the effective date of this Act, the Board of Governors shall issue final regulations to implement subtitles A and C, and the amendments made thereunder.

SEC. 169. AVOIDING DUPLICATION.

The Board of Governors shall take any action that the Board of Governors deems appropriate to avoid imposing requirements under this subtitle that are duplicative of requirements applicable to bank holding companies and nonbank financial companies under other provisions of law.

SEC. 170. SAFE HARBOR.

(a) REGULATIONS.—The Board of Governors shall promulgate regulations on behalf of, and in consultation with, the Council setting forth the criteria for exempting certain types or classes of U.S. nonbank financial companies or foreign nonbank financial companies from supervision by the Board of Governors.

(b) CONSIDERATIONS.—In developing the criteria under subsection (a), the Board of Governors shall take into account the factors for consideration described in subsections (a) and (b) of section 113 in determining whether a U.S. nonbank financial company or foreign nonbank financial company shall be supervised by the Board of Governors.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to require supervision by the Board of Governors of a U.S. nonbank financial company or foreign nonbank financial company, if such company does not meet the criteria for exemption established under subsection (a).

(d) REVISIONS.—

(1) IN GENERAL.—The Board of Governors shall, in consultation with the Council, review the regulations promulgated under subsection (a), not less frequently than every 5 years, and based upon the review, the Board of Governors may revise such regulations on behalf of, and in consultation with, the Council to update as necessary the criteria set forth in such regulations.

(2) TRANSITION PERIOD.—No revisions under paragraph (1) shall take effect before the end of the 2-year period after the date of publication of such revisions in final form.

(e) REPORT.—The Chairman of the Board of Governors and the Chairperson of the Council shall submit a joint report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives not later than 30 days after the date of the issuance in final form of regulations under subsection (a), or any subsequent revision to such regulations under subsection (d), as applicable. Such report shall include, at a minimum, the rationale for exemption and empirical evidence to support the criteria for exemption.

SEC. 171. LEVERAGE AND RISK-BASED CAPITAL REQUIREMENTS.

(a) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

(1) GENERALLY APPLICABLE LEVERAGE CAPITAL REQUIREMENTS.—The term "generally applicable leverage capital requirements" means—

(A) the minimum ratios of tier 1 capital to average total assets, as established by the appropriate Federal banking agencies to apply to insured depository institutions under the prompt corrective action regulations implementing section 38 of the Federal Deposit Insurance Act, regardless of total consolidated asset size or foreign financial exposure; and

(B) includes the regulatory capital components in the numerator of that capital requirement, average total assets in the denominator of that capital requirement, and the required ratio of the numerator to the denominator.

(2) GENERALLY APPLICABLE RISK-BASED CAPITAL REQUIREMENTS.—The term "generally applicable risk-based capital requirements" means—

(A) the risk-based capital requirements, as established by the appropriate Federal banking agencies to apply to insured depository institutions under the prompt corrective action regulations implementing section 38 of the Federal Deposit Insurance Act, regardless of total consolidated asset size or foreign financial exposure; and

(B) includes the regulatory capital components in the numerator of those capital requirements, the risk-weighted assets in the denominator of those capital requirements, and the required ratio of the numerator to the denominator.

(3) DEFINITION OF DEPOSITORY INSTITUTION HOLDING COMPANY.—The term "depository institution holding company" means a bank holding company or a savings and loan holding company (as those terms are defined in section 3 of the Federal Deposit Insurance Act) that is organized in the United States, including any bank or savings and loan holding company that is owned or controlled by a foreign organization, but does not include the foreign organization.

(b) MINIMUM CAPITAL REQUIREMENTS.—

(1) MINIMUM LEVERAGE CAPITAL REQUIREMENTS.—The appropriate Federal banking agencies shall establish minimum leverage capital requirements on a consolidated basis for insured depository institutions, depository institution holding companies, and nonbank financial companies supervised by the Board of Governors. The minimum leverage capital requirements established under this paragraph shall not be less than the generally applicable leverage capital requirements, which shall serve as a floor for any capital requirements that the agency may require, nor quantitatively lower than the generally applicable leverage capital requirements that were in effect for insured depository institutions as of the date of enactment of this Act.

(2) MINIMUM RISK-BASED CAPITAL REQUIREMENTS.—The appropriate Federal banking agencies shall establish minimum risk-based capital requirements on a consolidated basis for insured depository institutions, depository institution holding companies, and nonbank financial companies supervised by the Board of Governors. The minimum risk-based capital requirements established under this paragraph shall not be less than the generally applicable risk-based capital requirements, which shall serve as a floor for any capital requirements that the agency may require, nor quantitatively lower than the generally applicable risk-based capital requirements that were in effect for insured depository institutions as of the date of enactment of this Act.

(3) INVESTMENTS IN FINANCIAL SUBSIDIARIES.—For purposes of this section, investments in financial subsidiaries that insured depository institutions are required to deduct from regulatory capital under section 5136A of the Revised Statutes of the United States or section 46(a)(2) of the Federal Deposit Insurance Act need not be deducted from regulatory capital by depository institution holding companies or nonbank financial companies supervised by the Board of Governors, unless such capital deduction is required by the Board of Governors

or the primary financial regulatory agency in the case of nonbank financial companies supervised by the Board of Governors.

(4) EFFECTIVE DATES AND PHASE-IN PERIODS.—

(A) DEBT OR EQUITY INSTRUMENTS ON OR AFTER MAY 19, 2010.—For debt or equity instruments issued on or after May 19, 2010, by depository institution holding companies or by nonbank financial companies supervised by the Board of Governors, this section shall be deemed to have become effective as of May 19, 2010.

(B) DEBT OR EQUITY INSTRUMENTS ISSUED BEFORE MAY 19, 2010.—For debt or equity instruments issued before May 19, 2010, by depository institution holding companies or by nonbank financial companies supervised by the Board of Governors, any regulatory capital deductions required under this section shall be phased in incrementally over a period of 3 years, with the phase-in period to begin on January 1, 2013, except as set forth in subparagraph (C).

(C) DEBT OR EQUITY INSTRUMENTS OF SMALLER INSTITUTIONS.—For debt or equity instruments issued before May 19, 2010, by depository institution holding companies with total consolidated assets of less than $15,000,000,000 as of December 31, 2009, and by organizations that were mutual holding companies on May 19, 2010, the capital deductions that would be required for other institutions under this section are not required as a result of this section.

(D) DEPOSITORY INSTITUTION HOLDING COMPANIES NOT PREVIOUSLY SUPERVISED BY THE BOARD OF GOVERNORS.—For any depository institution holding company that was not supervised by the Board of Governors as of May 19, 2010, the requirements of this section, except as set forth in subparagraphs (A) and (B), shall be effective 5 years after the date of enactment of this Act

(E) CERTAIN BANK HOLDING COMPANY SUBSIDIARIES OF FOREIGN BANKING ORGANIZATIONS.—For bank holding company subsidiaries of foreign banking organizations that have relied on Supervision and Regulation Letter SR-01-1 issued by the Board of Governors (as in effect on May 19, 2010), the requirements of this section, except as set forth in subparagraph (A), shall be effective 5 years after the date of enactment of this Act.

(5) EXCEPTIONS.—This section shall not apply to—

(A) debt or equity instruments issued to the United States or any agency or instrumentality thereof pursuant to the Emergency Economic Stabilization Act of 2008, and prior to October 4, 2010;

(B) any Federal home loan bank; or

(C) any small bank holding company that is subject to the Small Bank Holding Company Policy Statement of the Board of Governors, as in effect on May 19, 2010.

(6) STUDY AND REPORT ON SMALL INSTITUTION ACCESS TO CAPITAL.—

(A) STUDY REQUIRED.—The Comptroller General of the United States, after consultation with the Federal banking

agencies, shall conduct a study of access to capital by smaller insured depository institutions.

(B) SCOPE.—For purposes of this study required by subparagraph (A), the term "smaller insured depository institution" means an insured depository institution with total consolidated assets of $5,000,000,000 or less.

(C) REPORT TO CONGRESS.—Not later than 18 months after the date of enactment of this Act, the Comptroller General of the United States shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report summarizing the results of the study conducted under subparagraph (A), together with any recommendations for legislative or regulatory action that would enhance the access to capital of smaller insured depository institutions, in a manner that is consistent with safe and sound banking operations.

(7) CAPITAL REQUIREMENTS TO ADDRESS ACTIVITIES THAT POSE RISKS TO THE FINANCIAL SYSTEM.—

(A) IN GENERAL.—Subject to the recommendations of the Council, in accordance with section 120, the Federal banking agencies shall develop capital requirements applicable to insured depository institutions, depository institution holding companies, and nonbank financial companies supervised by the Board of Governors that address the risks that the activities of such institutions pose, not only to the institution engaging in the activity, but to other public and private stakeholders in the event of adverse performance, disruption, or failure of the institution or the activity.

(B) CONTENT.—Such rules shall address, at a minimum, the risks arising from—

(i) significant volumes of activity in derivatives, securitized products purchased and sold, financial guarantees purchased and sold, securities borrowing and lending, and repurchase agreements and reverse repurchase agreements;

(ii) concentrations in assets for which the values presented in financial reports are based on models rather than historical cost or prices deriving from deep and liquid 2-way markets; and

(iii) concentrations in market share for any activity that would substantially disrupt financial markets if the institution is forced to unexpectedly cease the activity.

SEC. 172. EXAMINATION AND ENFORCEMENT ACTIONS FOR INSURANCE AND ORDERLY LIQUIDATION PURPOSES.

(a) EXAMINATIONS FOR INSURANCE AND RESOLUTION PURPOSES.—Section 10(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1820(b)(3)) is amended—

(1) by striking "In addition" and inserting the following: "(A) IN GENERAL.—In addition"; and

(2) by striking "whenever the board of directors determines" and all that follows through the period and inserting the following: "or nonbank financial company supervised by the Board of Governors or a bank holding company described in section

165(a) of the Financial Stability Act of 2010, whenever the Board of Directors determines that a special examination of any such depository institution is necessary to determine the condition of such depository institution for insurance purposes, or of such nonbank financial company supervised by the Board of Governors or bank holding company described in section 165(a) of the Financial Stability Act of 2010, for the purpose of implementing its authority to provide for orderly liquidation of any such company under title II of that Act, provided that such authority may not be used with respect to any such company that is in a generally sound condition.

"(B) LIMITATION.—Before conducting a special examination of a nonbank financial company supervised by the Board of Governors or a bank holding company described in section 165(a) of the Financial Stability Act of 2010, the Corporation shall review any available and acceptable resolution plan that the company has submitted in accordance with section 165(d) of that Act, consistent with the nonbinding effect of such plan, and available reports of examination, and shall coordinate to the maximum extent practicable with the Board of Governors, in order to minimize duplicative or conflicting examinations.".

(b) ENFORCEMENT AUTHORITY.—Section 8(t) of the Federal Deposit Insurance Act (12 U.S.C. 1818(t)) is amended—

(1) in paragraph (1), by inserting ", any depository institution holding company," before "or any institution-affiliated party";

(2) in paragraph (2)—

(A) by striking "or" at the end of subparagraph (B);

(B) at the end of subparagraph (C), by striking the period and inserting "or"; and

(C) by inserting at the end the following new subparagraph:

"(D) the conduct or threatened conduct (including any acts or omissions) of the depository institution holding company poses a risk to the Deposit Insurance Fund, provided that such authority may not be used with respect to a depository institution holding company that is in generally sound condition and whose conduct does not pose a foreseeable and material risk of loss to the Deposit Insurance Fund;"; and

(3) by adding at the end the following:

"(6) POWERS AND DUTIES WITH RESPECT TO DEPOSITORY INSTITUTION HOLDING COMPANIES.—For purposes of exercising the backup authority provided in this subsection—

"(A) the Corporation shall have the same powers with respect to a depository institution holding company and its affiliates as the appropriate Federal banking agency has with respect to the holding company and its affiliates; and

"(B) the holding company and its affiliates shall have the same duties and obligations with respect to the Corporation as the holding company and its affiliates have with respect to the appropriate Federal banking agency.".

(c) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed to limit or curtail the Corporation's current authority to

examine or bring enforcement actions with respect to any insured depository institution or institution-affiliated party.

SEC. 173. ACCESS TO UNITED STATES FINANCIAL MARKET BY FOREIGN INSTITUTIONS.

(a) ESTABLISHMENT OF FOREIGN BANK OFFICES IN THE UNITED STATES.—Section 7(d)(3) of the International Banking Act of 1978 (12 U.S.C. 3105(d)(3)) is amended—

(1) in subparagraph (C), by striking "and" at the end;

(2) in subparagraph (D), by striking the period at the end of and inserting "; and"; and

(3) by adding at the end the following new subparagraph:

"(E) for a foreign bank that presents a risk to the stability of United States financial system, whether the home country of the foreign bank has adopted, or is making demonstrable progress toward adopting, an appropriate system of financial regulation for the financial system of such home country to mitigate such risk.".

(b) TERMINATION OF FOREIGN BANK OFFICES IN THE UNITED STATES.—Section 7(e)(1) of the International Banking Act of 1978 (12 U.S.C. 3105(e)(1)) is amended—

(1) in subparagraph (A), by striking "or" at the end;

(2) in subparagraph (B), by striking the period at the end of and inserting "; or"; and

(3) by inserting after subparagraph (B), the following new subparagraph:

"(C) for a foreign bank that presents a risk to the stability of the United States financial system, the home country of the foreign bank has not adopted, or made demonstrable progress toward adopting, an appropriate system of financial regulation to mitigate such risk.".

(c) REGISTRATION OR SUCCESSION TO A UNITED STATES BROKER OR DEALER AND TERMINATION OF SUCH REGISTRATION.—Section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o) is amended by adding at the end the following new subsections:

"(k) REGISTRATION OR SUCCESSION TO A UNITED STATES BROKER OR DEALER.—In determining whether to permit a foreign person or an affiliate of a foreign person to register as a United States broker or dealer, or succeed to the registration of a United States broker or dealer, the Commission may consider whether, for a foreign person, or an affiliate of a foreign person that presents a risk to the stability of the United States financial system, the home country of the foreign person has adopted, or made demonstrable progress toward adopting, an appropriate system of financial regulation to mitigate such risk.

"(l) TERMINATION OF A UNITED STATES BROKER OR DEALER.—For a foreign person or an affiliate of a foreign person that presents such a risk to the stability of the United States financial system, the Commission may determine to terminate the registration of such foreign person or an affiliate of such foreign person as a broker or dealer in the United States, if the Commission determines that the home country of the foreign person has not adopted, or made demonstrable progress toward adopting, an appropriate system of financial regulation to mitigate such risk.".

SEC. 174. STUDIES AND REPORTS ON HOLDING COMPANY CAPITAL REQUIREMENTS.

(a) STUDY OF HYBRID CAPITAL INSTRUMENTS.—The Comptroller General of the United States, in consultation with the Board of Governors, the Comptroller of the Currency, and the Corporation, shall conduct a study of the use of hybrid capital instruments as a component of Tier 1 capital for banking institutions and bank holding companies. The study shall consider—

(1) the current use of hybrid capital instruments, such as trust preferred shares, as a component of Tier 1 capital;

(2) the differences between the components of capital permitted for insured depository institutions and those permitted for companies that control insured depository institutions;

(3) the benefits and risks of allowing such instruments to be used to comply with Tier 1 capital requirements;

(4) the economic impact of prohibiting the use of such capital instruments for Tier 1;

(5) a review of the consequences of disqualifying trust preferred instruments, and whether it could lead to the failure or undercapitalization of existing banking organizations;

(6) the international competitive implications prohibiting hybrid capital instruments for Tier 1;

(7) the impact on the cost and availability of credit in the United States from such a prohibition;

(8) the availability of capital for financial institutions with less than $10,000,000,000 in total assets; and

(9) any other relevant factors relating to the safety and soundness of our financial system and potential economic impact of such a prohibition.

(b) STUDY OF FOREIGN BANK INTERMEDIATE HOLDING COMPANY CAPITAL REQUIREMENTS.—The Comptroller General of the United States, in consultation with the Secretary, the Board of Governors, the Comptroller of the Currency, and the Corporation, shall conduct a study of capital requirements applicable to United States intermediate holding companies of foreign banks that are bank holding companies or savings and loan holding companies. The study shall consider—

(1) current Board of Governors policy regarding the treatment of intermediate holding companies;

(2) the principle of national treatment and equality of competitive opportunity for foreign banks operating in the United States;

(3) the extent to which foreign banks are subject on a consolidated basis to home country capital standards comparable to United States capital standards;

(4) potential effects on United States banking organizations operating abroad of changes to United States policy regarding intermediate holding companies;

(5) the impact on the cost and availability of credit in the United States from a change in United States policy regarding intermediate holding companies; and

(6) any other relevant factors relating to the safety and soundness of our financial system and potential economic impact of such a prohibition.

(c) REPORT.—Not later than 18 months after the date of enactment of this Act, the Comptroller General of the United States shall submit reports to the Committee on Banking, Housing, and

Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives summarizing the results of the studies required under subsection (a). The reports shall include specific recommendations for legislative or regulatory action regarding the treatment of hybrid capital instruments, including trust preferred shares, and shall explain the basis for such recommendations.

SEC. 175. INTERNATIONAL POLICY COORDINATION.

(a) BY THE PRESIDENT.—The President, or a designee of the President, may coordinate through all available international policy channels, similar policies as those found in United States law relating to limiting the scope, nature, size, scale, concentration, and interconnectedness of financial companies, in order to protect financial stability and the global economy.

(b) BY THE COUNCIL.—The Chairperson of the Council, in consultation with the other members of the Council, shall regularly consult with the financial regulatory entities and other appropriate organizations of foreign governments or international organizations on matters relating to systemic risk to the international financial system.

(c) BY THE BOARD OF GOVERNORS AND THE SECRETARY.—The Board of Governors and the Secretary shall consult with their foreign counterparts and through appropriate multilateral organizations to encourage comprehensive and robust prudential supervision and regulation for all highly leveraged and interconnected financial companies.

SEC. 176. RULE OF CONSTRUCTION.

No regulation or standard imposed under this title may be construed in a manner that would lessen the stringency of the requirements of any applicable primary financial regulatory agency or any other Federal or State agency that are otherwise applicable. This title, and the rules and regulations or orders prescribed pursuant to this title, do not divest any such agency of any authority derived from any other applicable law.

TITLE II—ORDERLY LIQUIDATION AUTHORITY

SEC. 201. DEFINITIONS.

(a) IN GENERAL.—In this title, the following definitions shall apply:

(1) ADMINISTRATIVE EXPENSES OF THE RECEIVER.—The term "administrative expenses of the receiver" includes—

(A) the actual, necessary costs and expenses incurred by the Corporation as receiver for a covered financial company in liquidating a covered financial company; and

(B) any obligations that the Corporation as receiver for a covered financial company determines are necessary and appropriate to facilitate the smooth and orderly liquidation of the covered financial company.

(2) BANKRUPTCY CODE.—The term "Bankruptcy Code" means title 11, United States Code.

(3) BRIDGE FINANCIAL COMPANY.—The term "bridge financial company" means a new financial company organized by

the Corporation in accordance with section 210(h) for the purpose of resolving a covered financial company.

(4) CLAIM.—The term "claim" means any right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

(5) COMPANY.—The term "company" has the same meaning as in section 2(b) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(b)), except that such term includes any company described in paragraph (11), the majority of the securities of which are owned by the United States or any State.

(6) COURT.—The term "Court" means the United States District Court for the District of Columbia, unless the context otherwise requires.

(7) COVERED BROKER OR DEALER.—The term "covered broker or dealer" means a covered financial company that is a broker or dealer that—

(A) is registered with the Commission under section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)); and

(B) is a member of SIPC.

(8) COVERED FINANCIAL COMPANY.—The term "covered financial company"—

(A) means a financial company for which a determination has been made under section 203(b); and

(B) does not include an insured depository institution.

(9) COVERED SUBSIDIARY.—The term "covered subsidiary" means a subsidiary of a covered financial company, other than—

(A) an insured depository institution;

(B) an insurance company; or

(C) a covered broker or dealer.

(10) DEFINITIONS RELATING TO COVERED BROKERS AND DEALERS.—The terms "customer", "customer name securities", "customer property", and "net equity" in the context of a covered broker or dealer, have the same meanings as in section 16 of the Securities Investor Protection Act of 1970 (15 U.S.C. 78lll).

(11) FINANCIAL COMPANY.—The term "financial company" means any company that—

(A) is incorporated or organized under any provision of Federal law or the laws of any State;

(B) is—

(i) a bank holding company, as defined in section 2(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a));

(ii) a nonbank financial company supervised by the Board of Governors;

(iii) any company that is predominantly engaged in activities that the Board of Governors has determined are financial in nature or incidental thereto for purposes of section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)) other than a company described in clause (i) or (ii); or

(iv) any subsidiary of any company described in any of clauses (i) through (iii) that is predominantly engaged in activities that the Board of Governors has

determined are financial in nature or incidental thereto for purposes of section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)) (other than a subsidiary that is an insured depository institution or an insurance company); and

(C) is not a Farm Credit System institution chartered under and subject to the provisions of the Farm Credit Act of 1971, as amended (12 U.S.C. 2001 et seq.), a governmental entity, or a regulated entity, as defined under section 1303(20) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4502(20)).

(12) FUND.—The term "Fund" means the Orderly Liquidation Fund established under section 210(n).

(13) INSURANCE COMPANY.—The term "insurance company" means any entity that is—

(A) engaged in the business of insurance;

(B) subject to regulation by a State insurance regulator; and

(C) covered by a State law that is designed to specifically deal with the rehabilitation, liquidation, or insolvency of an insurance company.

(14) NONBANK FINANCIAL COMPANY.—The term "nonbank financial company" has the same meaning as in section 102(a)(4)(C).

(15) NONBANK FINANCIAL COMPANY SUPERVISED BY THE BOARD OF GOVERNORS.—The term "nonbank financial company supervised by the Board of Governors" has the same meaning as in section 102(a)(4)(D).

(16) SIPC.—The term "SIPC" means the Securities Investor Protection Corporation.

(b) DEFINITIONAL CRITERIA.—For purpose of the definition of the term "financial company" under subsection (a)(11), no company shall be deemed to be predominantly engaged in activities that the Board of Governors has determined are financial in nature or incidental thereto for purposes of section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)), if the consolidated revenues of such company from such activities constitute less than 85 percent of the total consolidated revenues of such company, as the Corporation, in consultation with the Secretary, shall establish by regulation. In determining whether a company is a financial company under this title, the consolidated revenues derived from the ownership or control of a depository institution shall be included.

SEC. 202. JUDICIAL REVIEW.

(a) COMMENCEMENT OF ORDERLY LIQUIDATION.—

(1) PETITION TO DISTRICT COURT.—

(A) DISTRICT COURT REVIEW.—

(i) PETITION TO DISTRICT COURT.—Subsequent to a determination by the Secretary under section 203 that a financial company satisfies the criteria in section 203(b), the Secretary shall notify the Corporation and the covered financial company. If the board of directors (or body performing similar functions) of the covered financial company acquiesces or consents to the appointment of the Corporation as receiver, the Secretary shall appoint the Corporation as receiver. If

the board of directors (or body performing similar functions) of the covered financial company does not acquiesce or consent to the appointment of the Corporation as receiver, the Secretary shall petition the United States District Court for the District of Columbia for an order authorizing the Secretary to appoint the Corporation as receiver.

(ii) FORM AND CONTENT OF ORDER.—The Secretary shall present all relevant findings and the recommendation made pursuant to section 203(a) to the Court. The petition shall be filed under seal.

(iii) DETERMINATION.—On a strictly confidential basis, and without any prior public disclosure, the Court, after notice to the covered financial company and a hearing in which the covered financial company may oppose the petition, shall determine whether the determination of the Secretary that the covered financial company is in default or in danger of default and satisfies the definition of a financial company under section 201(a)(11) is arbitrary and capricious.

(iv) ISSUANCE OF ORDER.—If the Court determines that the determination of the Secretary that the covered financial company is in default or in danger of default and satisfies the definition of a financial company under section 201(a)(11)—

(I) is not arbitrary and capricious, the Court shall issue an order immediately authorizing the Secretary to appoint the Corporation as receiver of the covered financial company; or

(II) is arbitrary and capricious, the Court shall immediately provide to the Secretary a written statement of each reason supporting its determination, and afford the Secretary an immediate opportunity to amend and refile the petition under clause (i).

(v) PETITION GRANTED BY OPERATION OF LAW.—If the Court does not make a determination within 24 hours of receipt of the petition—

(I) the petition shall be granted by operation of law;

(II) the Secretary shall appoint the Corporation as receiver; and

(III) liquidation under this title shall automatically and without further notice or action be commenced and the Corporation may immediately take all actions authorized under this title.

(B) EFFECT OF DETERMINATION.—The determination of the Court under subparagraph (A) shall be final, and shall be subject to appeal only in accordance with paragraph (2). The decision shall not be subject to any stay or injunction pending appeal. Upon conclusion of its proceedings under subparagraph (A), the Court shall provide immediately for the record a written statement of each reason supporting the decision of the Court, and shall provide copies thereof to the Secretary and the covered financial company.

(C) CRIMINAL PENALTIES.—A person who recklessly discloses a determination of the Secretary under section 203(b) or a petition of the Secretary under subparagraph (A), or the pendency of court proceedings as provided for under subparagraph (A), shall be fined not more than $250,000, or imprisoned for not more than 5 years, or both.

(2) APPEAL OF DECISIONS OF THE DISTRICT COURT.—

(A) APPEAL TO COURT OF APPEALS.—

(i) IN GENERAL.—Subject to clause (ii), the United States Court of Appeals for the District of Columbia Circuit shall have jurisdiction of an appeal of a final decision of the Court filed by the Secretary or a covered financial company, through its board of directors, notwithstanding section 210(a)(1)(A)(i), not later than 30 days after the date on which the decision of the Court is rendered or deemed rendered under this subsection.

(ii) CONDITION OF JURISDICTION.—The Court of Appeals shall have jurisdiction of an appeal by a covered financial company only if the covered financial company did not acquiesce or consent to the appointment of a receiver by the Secretary under paragraph (1)(A).

(iii) EXPEDITION.—The Court of Appeals shall consider any appeal under this subparagraph on an expedited basis.

(iv) SCOPE OF REVIEW.—For an appeal taken under this subparagraph, review shall be limited to whether the determination of the Secretary that a covered financial company is in default or in danger of default and satisfies the definition of a financial company under section 201(a)(11) is arbitrary and capricious.

(B) APPEAL TO THE SUPREME COURT.—

(i) IN GENERAL.—A petition for a writ of certiorari to review a decision of the Court of Appeals under subparagraph (A) may be filed by the Secretary or the covered financial company, through its board of directors, notwithstanding section 210(a)(1)(A)(i), with the Supreme Court of the United States, not later than 30 days after the date of the final decision of the Court of Appeals, and the Supreme Court shall have discretionary jurisdiction to review such decision.

(ii) WRITTEN STATEMENT.—In the event of a petition under clause (i), the Court of Appeals shall immediately provide for the record a written statement of each reason for its decision.

(iii) EXPEDITION.—The Supreme Court shall consider any petition under this subparagraph on an expedited basis.

(iv) SCOPE OF REVIEW.—Review by the Supreme Court under this subparagraph shall be limited to whether the determination of the Secretary that the covered financial company is in default or in danger of default and satisfies the definition of a financial company under section 201(a)(11) is arbitrary and capricious.

(b) ESTABLISHMENT AND TRANSMITTAL OF RULES AND PROCEDURES.—

(1) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Court shall establish such rules and procedures as may be necessary to ensure the orderly conduct of proceedings, including rules and procedures to ensure that the 24-hour deadline is met and that the Secretary shall have an ongoing opportunity to amend and refile petitions under subsection (a)(1).

(2) PUBLICATION OF RULES.—The rules and procedures established under paragraph (1), and any modifications of such rules and procedures, shall be recorded and shall be transmitted to—

(A) the Committee on the Judiciary of the Senate;

(B) the Committee on Banking, Housing, and Urban Affairs of the Senate;

(C) the Committee on the Judiciary of the House of Representatives; and

(D) the Committee on Financial Services of the House of Representatives.

(c) PROVISIONS APPLICABLE TO FINANCIAL COMPANIES.—

(1) BANKRUPTCY CODE.—Except as provided in this subsection, the provisions of the Bankruptcy Code and rules issued thereunder or otherwise applicable insolvency law, and not the provisions of this title, shall apply to financial companies that are not covered financial companies for which the Corporation has been appointed as receiver.

(2) THIS TITLE.—The provisions of this title shall exclusively apply to and govern all matters relating to covered financial companies for which the Corporation is appointed as receiver, and no provisions of the Bankruptcy Code or the rules issued thereunder shall apply in such cases, except as expressly provided in this title.

(d) TIME LIMIT ON RECEIVERSHIP AUTHORITY.—

(1) BASELINE PERIOD.—Any appointment of the Corporation as receiver under this section shall terminate at the end of the 3-year period beginning on the date on which such appointment is made.

(2) EXTENSION OF TIME LIMIT.—The time limit established in paragraph (1) may be extended by the Corporation for up to 1 additional year, if the Chairperson of the Corporation determines and certifies in writing to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives that continuation of the receivership is necessary—

(A) to—

(i) maximize the net present value return from the sale or other disposition of the assets of the covered financial company; or

(ii) minimize the amount of loss realized upon the sale or other disposition of the assets of the covered financial company; and

(B) to protect the stability of the financial system of the United States.

(3) SECOND EXTENSION OF TIME LIMIT.—

(A) IN GENERAL.—The time limit under this subsection, as extended under paragraph (2), may be extended for

up to 1 additional year, if the Chairperson of the Corporation, with the concurrence of the Secretary, submits the certifications described in paragraph (2).

(B) ADDITIONAL REPORT REQUIRED.—Not later than 30 days after the date of commencement of the extension under subparagraph (A), the Corporation shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives describing the need for the extension and the specific plan of the Corporation to conclude the receivership before the end of the second extension.

(4) ONGOING LITIGATION.—The time limit under this subsection, as extended under paragraph (3), may be further extended solely for the purpose of completing ongoing litigation in which the Corporation as receiver is a party, provided that the appointment of the Corporation as receiver shall terminate not later than 90 days after the date of completion of such litigation, if—

(A) the Council determines that the Corporation used its best efforts to conclude the receivership in accordance with its plan before the end of the time limit described in paragraph (3);

(B) the Council determines that the completion of longer-term responsibilities in the form of ongoing litigation justifies the need for an extension; and

(C) the Corporation submits a report approved by the Council not later than 30 days after the date of the determinations by the Council under subparagraphs (A) and (B) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, describing—

(i) the ongoing litigation justifying the need for an extension; and

(ii) the specific plan of the Corporation to complete the litigation and conclude the receivership.

(5) REGULATIONS.—The Corporation may issue regulations governing the termination of receiverships under this title.

(6) NO LIABILITY.—The Corporation and the Deposit Insurance Fund shall not be liable for unresolved claims arising from the receivership after the termination of the receivership.

(e) STUDY OF BANKRUPTCY AND ORDERLY LIQUIDATION PROCESS FOR FINANCIAL COMPANIES.—

(1) STUDY.—

(A) IN GENERAL.—The Administrative Office of the United States Courts and the Comptroller General of the United States shall each monitor the activities of the Court, and each such Office shall conduct separate studies regarding the bankruptcy and orderly liquidation process for financial companies under the Bankruptcy Code.

(B) ISSUES TO BE STUDIED.—In conducting the study under subparagraph (A), the Administrative Office of the United States Courts and the Comptroller General of the United States each shall evaluate—

(i) the effectiveness of chapter 7 or chapter 11 of the Bankruptcy Code in facilitating the orderly liquidation or reorganization of financial companies;

(ii) ways to maximize the efficiency and effectiveness of the Court; and

(iii) ways to make the orderly liquidation process under the Bankruptcy Code for financial companies more effective.

(2) REPORTS.—Not later than 1 year after the date of enactment of this Act, in each successive year until the third year, and every fifth year after that date of enactment, the Administrative Office of the United States Courts and the Comptroller General of the United States shall submit to the Committee on Banking, Housing, and Urban Affairs and the Committee on the Judiciary of the Senate and the Committee on Financial Services and the Committee on the Judiciary of the House of Representatives separate reports summarizing the results of the studies conducted under paragraph (1).

(f) STUDY OF INTERNATIONAL COORDINATION RELATING TO BANKRUPTCY PROCESS FOR FINANCIAL COMPANIES.—

(1) STUDY.—

(A) IN GENERAL.—The Comptroller General of the United States shall conduct a study regarding international coordination relating to the orderly liquidation of financial companies under the Bankruptcy Code.

(B) ISSUES TO BE STUDIED.—In conducting the study under subparagraph (A), the Comptroller General of the United States shall evaluate, with respect to the bankruptcy process for financial companies—

(i) the extent to which international coordination currently exists;

(ii) current mechanisms and structures for facilitating international cooperation;

(iii) barriers to effective international coordination; and

(iv) ways to increase and make more effective international coordination.

(2) REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States shall submit to the Committee on Banking, Housing, and Urban Affairs and the Committee on the Judiciary of the Senate and the Committee on Financial Services and the Committee on the Judiciary of the House of Representatives and the Secretary a report summarizing the results of the study conducted under paragraph (1).

(g) STUDY OF PROMPT CORRECTIVE ACTION IMPLEMENTATION BY THE APPROPRIATE FEDERAL AGENCIES.—

(1) STUDY.—The Comptroller General of the United States shall conduct a study regarding the implementation of prompt corrective action by the appropriate Federal banking agencies.

(2) ISSUES TO BE STUDIED.—In conducting the study under paragraph (1), the Comptroller General shall evaluate—

(A) the effectiveness of implementation of prompt corrective action by the appropriate Federal banking agencies and the resolution of insured depository institutions by the Corporation; and

(B) ways to make prompt corrective action a more effective tool to resolve the insured depository institutions at the least possible long-term cost to the Deposit Insurance Fund.

(3) REPORT TO COUNCIL.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall submit a report to the Council on the results of the study conducted under this subsection.

(4) COUNCIL REPORT OF ACTION.—Not later than 6 months after the date of receipt of the report from the Comptroller General under paragraph (3), the Council shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on actions taken in response to the report, including any recommendations made to the Federal primary financial regulatory agencies under section 120.

SEC. 203. SYSTEMIC RISK DETERMINATION.

(a) WRITTEN RECOMMENDATION AND DETERMINATION.—

(1) VOTE REQUIRED.—

(A) IN GENERAL.—On their own initiative, or at the request of the Secretary, the Corporation and the Board of Governors shall consider whether to make a written recommendation described in paragraph (2) with respect to whether the Secretary should appoint the Corporation as receiver for a financial company. Such recommendation shall be made upon a vote of not fewer than ⅔ of the members of the Board of Governors then serving and ⅔ of the members of the board of directors of the Corporation then serving.

(B) CASES INVOLVING BROKERS OR DEALERS.—In the case of a broker or dealer, or in which the largest United States subsidiary (as measured by total assets as of the end of the previous calendar quarter) of a financial company is a broker or dealer, the Commission and the Board of Governors, at the request of the Secretary, or on their own initiative, shall consider whether to make the written recommendation described in paragraph (2) with respect to the financial company. Subject to the requirements in paragraph (2), such recommendation shall be made upon a vote of not fewer than ⅔ of the members of the Board of Governors then serving and ⅔ of the members of the Commission then serving, and in consultation with the Corporation.

(C) CASES INVOLVING INSURANCE COMPANIES.—In the case of an insurance company, or in which the largest United States subsidiary (as measured by total assets as of the end of the previous calendar quarter) of a financial company is an insurance company, the Director of the Federal Insurance Office and the Board of Governors, at the request of the Secretary or on their own initiative, shall consider whether to make the written recommendation described in paragraph (2) with respect to the financial company. Subject to the requirements in paragraph (2), such recommendation shall be made upon a vote of not fewer than ⅔ of the Board of Governors then serving and the affirmative approval of the Director of the Federal Insurance Office, and in consultation with the Corporation.

(2) RECOMMENDATION REQUIRED.—Any written recommendation pursuant to paragraph (1) shall contain—

(A) an evaluation of whether the financial company is in default or in danger of default;

(B) a description of the effect that the default of the financial company would have on financial stability in the United States;

(C) a description of the effect that the default of the financial company would have on economic conditions or financial stability for low income, minority, or underserved communities;

(D) a recommendation regarding the nature and the extent of actions to be taken under this title regarding the financial company;

(E) an evaluation of the likelihood of a private sector alternative to prevent the default of the financial company;

(F) an evaluation of why a case under the Bankruptcy Code is not appropriate for the financial company;

(G) an evaluation of the effects on creditors, counterparties, and shareholders of the financial company and other market participants; and

(H) an evaluation of whether the company satisfies the definition of a financial company under section 201.

(b) DETERMINATION BY THE SECRETARY.—Notwithstanding any other provision of Federal or State law, the Secretary shall take action in accordance with section 202(a)(1)(A), if, upon the written recommendation under subsection (a), the Secretary (in consultation with the President) determines that—

(1) the financial company is in default or in danger of default;

(2) the failure of the financial company and its resolution under otherwise applicable Federal or State law would have serious adverse effects on financial stability in the United States;

(3) no viable private sector alternative is available to prevent the default of the financial company;

(4) any effect on the claims or interests of creditors, counterparties, and shareholders of the financial company and other market participants as a result of actions to be taken under this title is appropriate, given the impact that any action taken under this title would have on financial stability in the United States;

(5) any action under section 204 would avoid or mitigate such adverse effects, taking into consideration the effectiveness of the action in mitigating potential adverse effects on the financial system, the cost to the general fund of the Treasury, and the potential to increase excessive risk taking on the part of creditors, counterparties, and shareholders in the financial company;

(6) a Federal regulatory agency has ordered the financial company to convert all of its convertible debt instruments that are subject to the regulatory order; and

(7) the company satisfies the definition of a financial company under section 201.

(c) DOCUMENTATION AND REVIEW.—

(1) IN GENERAL.—The Secretary shall—

(A) document any determination under subsection (b);

(B) retain the documentation for review under paragraph (2); and

(C) notify the covered financial company and the Corporation of such determination.

(2) REPORT TO CONGRESS.—Not later than 24 hours after the date of appointment of the Corporation as receiver for a covered financial company, the Secretary shall provide written notice of the recommendations and determinations reached in accordance with subsections (a) and (b) to the Majority Leader and the Minority Leader of the Senate and the Speaker and the Minority Leader of the House of Representatives, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives, which shall consist of a summary of the basis for the determination, including, to the extent available at the time of the determination—

(A) the size and financial condition of the covered financial company;

(B) the sources of capital and credit support that were available to the covered financial company;

(C) the operations of the covered financial company that could have had a significant impact on financial stability, markets, or both;

(D) identification of the banks and financial companies which may be able to provide the services offered by the covered financial company;

(E) any potential international ramifications of resolution of the covered financial company under other applicable insolvency law;

(F) an estimate of the potential effect of the resolution of the covered financial company under other applicable insolvency law on the financial stability of the United States;

(G) the potential effect of the appointment of a receiver by the Secretary on consumers;

(H) the potential effect of the appointment of a receiver by the Secretary on the financial system, financial markets, and banks and other financial companies; and

(I) whether resolution of the covered financial company under other applicable insolvency law would cause banks or other financial companies to experience severe liquidity distress.

(3) REPORTS TO CONGRESS AND THE PUBLIC.—

(A) IN GENERAL.—Not later than 60 days after the date of appointment of the Corporation as receiver for a covered financial company, the Corporation shall file a report with the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives—

(i) setting forth information on the financial condition of the covered financial company as of the date of the appointment, including a description of its assets and liabilities;

(ii) describing the plan of, and actions taken by, the Corporation to wind down the covered financial company;

(iii) explaining each instance in which the Corporation waived any applicable requirements of part 366

of title 12, Code of Federal Regulations (or any successor thereto) with respect to conflicts of interest by any person in the private sector who was retained to provide services to the Corporation in connection with such receivership;

(iv) describing the reasons for the provision of any funding to the receivership out of the Fund;

(v) setting forth the expected costs of the orderly liquidation of the covered financial company;

(vi) setting forth the identity of any claimant that is treated in a manner different from other similarly situated claimants under subsection (b)(4), (d)(4), or (h)(5)(E), the amount of any additional payment to such claimant under subsection (d)(4), and the reason for any such action; and

(vii) which report the Corporation shall publish on an online website maintained by the Corporation, subject to maintaining appropriate confidentiality.

(B) AMENDMENTS.—The Corporation shall, on a timely basis, not less frequently than quarterly, amend or revise and resubmit the reports prepared under this paragraph, as necessary.

(C) CONGRESSIONAL TESTIMONY.—The Corporation and the primary financial regulatory agency, if any, of the financial company for which the Corporation was appointed receiver under this title shall appear before Congress, if requested, not later than 30 days after the date on which the Corporation first files the reports required under subparagraph (A).

(4) DEFAULT OR IN DANGER OF DEFAULT.—For purposes of this title, a financial company shall be considered to be in default or in danger of default if, as determined in accordance with subsection (b)—

(A) a case has been, or likely will promptly be, commenced with respect to the financial company under the Bankruptcy Code;

(B) the financial company has incurred, or is likely to incur, losses that will deplete all or substantially all of its capital, and there is no reasonable prospect for the company to avoid such depletion;

(C) the assets of the financial company are, or are likely to be, less than its obligations to creditors and others; or

(D) the financial company is, or is likely to be, unable to pay its obligations (other than those subject to a bona fide dispute) in the normal course of business.

(5) GAO REVIEW.—The Comptroller General of the United States shall review and report to Congress on any determination under subsection (b), that results in the appointment of the Corporation as receiver, including—

(A) the basis for the determination;

(B) the purpose for which any action was taken pursuant thereto;

(C) the likely effect of the determination and such action on the incentives and conduct of financial companies and their creditors, counterparties, and shareholders; and

(D) the likely disruptive effect of the determination and such action on the reasonable expectations of creditors, counterparties, and shareholders, taking into account the impact any action under this title would have on financial stability in the United States, including whether the rights of such parties will be disrupted.

(d) CORPORATION POLICIES AND PROCEDURES.—As soon as is practicable after the date of enactment of this Act, the Corporation shall establish policies and procedures that are acceptable to the Secretary governing the use of funds available to the Corporation to carry out this title, including the terms and conditions for the provision and use of funds under sections 204(d), 210(h)(2)(G)(iv), and 210(h)(9).

(e) TREATMENT OF INSURANCE COMPANIES AND INSURANCE COMPANY SUBSIDIARIES.—

(1) IN GENERAL.—Notwithstanding subsection (b), if an insurance company is a covered financial company or a subsidiary or affiliate of a covered financial company, the liquidation or rehabilitation of such insurance company, and any subsidiary or affiliate of such company that is not excepted under paragraph (2), shall be conducted as provided under applicable State law.

(2) EXCEPTION FOR SUBSIDIARIES AND AFFILIATES.—The requirement of paragraph (1) shall not apply with respect to any subsidiary or affiliate of an insurance company that is not itself an insurance company.

(3) BACKUP AUTHORITY.—Notwithstanding paragraph (1), with respect to a covered financial company described in paragraph (1), if, after the end of the 60-day period beginning on the date on which a determination is made under section 202(a) with respect to such company, the appropriate regulatory agency has not filed the appropriate judicial action in the appropriate State court to place such company into orderly liquidation under the laws and requirements of the State, the Corporation shall have the authority to stand in the place of the appropriate regulatory agency and file the appropriate judicial action in the appropriate State court to place such company into orderly liquidation under the laws and requirements of the State.

SEC. 204. ORDERLY LIQUIDATION OF COVERED FINANCIAL COMPANIES.

(a) PURPOSE OF ORDERLY LIQUIDATION AUTHORITY.—It is the purpose of this title to provide the necessary authority to liquidate failing financial companies that pose a significant risk to the financial stability of the United States in a manner that mitigates such risk and minimizes moral hazard. The authority provided in this title shall be exercised in the manner that best fulfills such purpose, so that—

(1) creditors and shareholders will bear the losses of the financial company;

(2) management responsible for the condition of the financial company will not be retained; and

(3) the Corporation and other appropriate agencies will take all steps necessary and appropriate to assure that all parties, including management, directors, and third parties, having responsibility for the condition of the financial company

bear losses consistent with their responsibility, including actions for damages, restitution, and recoupment of compensation and other gains not compatible with such responsibility.

(b) CORPORATION AS RECEIVER.—Upon the appointment of the Corporation under section 202, the Corporation shall act as the receiver for the covered financial company, with all of the rights and obligations set forth in this title.

(c) CONSULTATION.—The Corporation, as receiver—

(1) shall consult with the primary financial regulatory agency or agencies of the covered financial company and its covered subsidiaries for purposes of ensuring an orderly liquidation of the covered financial company;

(2) may consult with, or under subsection (a)(1)(B)(v) or (a)(1)(L) of section 210, acquire the services of, any outside experts, as appropriate to inform and aid the Corporation in the orderly liquidation process;

(3) shall consult with the primary financial regulatory agency or agencies of any subsidiaries of the covered financial company that are not covered subsidiaries, and coordinate with such regulators regarding the treatment of such solvent subsidiaries and the separate resolution of any such insolvent subsidiaries under other governmental authority, as appropriate; and

(4) shall consult with the Commission and the Securities Investor Protection Corporation in the case of any covered financial company for which the Corporation has been appointed as receiver that is a broker or dealer registered with the Commission under section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)) and is a member of the Securities Investor Protection Corporation, for the purpose of determining whether to transfer to a bridge financial company organized by the Corporation as receiver, without consent of any customer, customer accounts of the covered financial company.

(d) FUNDING FOR ORDERLY LIQUIDATION.—Upon its appointment as receiver for a covered financial company, and thereafter as the Corporation may, in its discretion, determine to be necessary or appropriate, the Corporation may make available to the receivership, subject to the conditions set forth in section 206 and subject to the plan described in section 210(n)(9), funds for the orderly liquidation of the covered financial company. All funds provided by the Corporation under this subsection shall have a priority of claims under subparagraph (A) or (B) of section 210(b)(1), as applicable, including funds used for—

(1) making loans to, or purchasing any debt obligation of, the covered financial company or any covered subsidiary;

(2) purchasing or guaranteeing against loss the assets of the covered financial company or any covered subsidiary, directly or through an entity established by the Corporation for such purpose;

(3) assuming or guaranteeing the obligations of the covered financial company or any covered subsidiary to 1 or more third parties;

(4) taking a lien on any or all assets of the covered financial company or any covered subsidiary, including a first priority lien on all unencumbered assets of the covered financial company or any covered subsidiary to secure repayment of any transactions conducted under this subsection;

(5) selling or transferring all, or any part, of such acquired assets, liabilities, or obligations of the covered financial company or any covered subsidiary; and

(6) making payments pursuant to subsections (b)(4), (d)(4), and (h)(5)(E) of section 210.

SEC. 205. ORDERLY LIQUIDATION OF COVERED BROKERS AND DEALERS.

(a) APPOINTMENT OF SIPC AS TRUSTEE.—

(1) APPOINTMENT.—Upon the appointment of the Corporation as receiver for any covered broker or dealer, the Corporation shall appoint, without any need for court approval, the Securities Investor Protection Corporation to act as trustee for the liquidation under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.) of the covered broker or dealer.

(2) ACTIONS BY SIPC.—

(A) FILING.—Upon appointment of SIPC under paragraph (1), SIPC shall promptly file with any Federal district court of competent jurisdiction specified in section 21 or 27 of the Securities Exchange Act of 1934 (15 U.S.C. 78u, 78aa), an application for a protective decree under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.) as to the covered broker or dealer. The Federal district court shall accept and approve the filing, including outside of normal business hours, and shall immediately issue the protective decree as to the covered broker or dealer.

(B) ADMINISTRATION BY SIPC.—Following entry of the protective decree, and except as otherwise provided in this section, the determination of claims and the liquidation of assets retained in the receivership of the covered broker or dealer and not transferred to the bridge financial company shall be administered under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.) by SIPC, as trustee for the covered broker or dealer.

(C) DEFINITION OF FILING DATE.—For purposes of the liquidation proceeding, the term "filing date" means the date on which the Corporation is appointed as receiver of the covered broker or dealer.

(D) DETERMINATION OF CLAIMS.—As trustee for the covered broker or dealer, SIPC shall determine and satisfy, consistent with this title and with the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.), all claims against the covered broker or dealer arising on or before the filing date.

(b) POWERS AND DUTIES OF SIPC.—

(1) IN GENERAL.—Except as provided in this section, upon its appointment as trustee for the liquidation of a covered broker or dealer, SIPC shall have all of the powers and duties provided by the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.), including, without limitation, all rights of action against third parties, and shall conduct such liquidation in accordance with the terms of the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.), except that SIPC shall have no powers or duties with respect to assets and liabilities transferred by the Corporation from the covered

broker or dealer to any bridge financial company established in accordance with this title.

(2) LIMITATION OF POWERS.—The exercise by SIPC of powers and functions as trustee under subsection (a) shall not impair or impede the exercise of the powers and duties of the Corporation with regard to—

(A) any action, except as otherwise provided in this title—

(i) to make funds available under section 204(d);

(ii) to organize, establish, operate, or terminate any bridge financial company;

(iii) to transfer assets and liabilities;

(iv) to enforce or repudiate contracts; or

(v) to take any other action relating to such bridge financial company under section 210; or

(B) determining claims under subsection (e).

(3) PROTECTIVE DECREE.—SIPC and the Corporation, in consultation with the Commission, shall jointly determine the terms of the protective decree to be filed by SIPC with any court of competent jurisdiction under section 21 or 27 of the Securities Exchange Act of 1934 (15 U.S.C. 78u, 78aa), as required by subsection (a).

(4) QUALIFIED FINANCIAL CONTRACTS.—Notwithstanding any provision of the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.) to the contrary (including section 5(b)(2)(C) of that Act (15 U.S.C. 78eee(b)(2)(C))), the rights and obligations of any party to a qualified financial contract (as that term is defined in section 210(c)(8)) to which a covered broker or dealer for which the Corporation has been appointed receiver is a party shall be governed exclusively by section 210, including the limitations and restrictions contained in section 210(c)(10)(B).

(c) LIMITATION ON COURT ACTION.—Except as otherwise provided in this title, no court may take any action, including any action pursuant to the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.) or the Bankruptcy Code, to restrain or affect the exercise of powers or functions of the Corporation as receiver for a covered broker or dealer and any claims against the Corporation as such receiver shall be determined in accordance with subsection (e) and such claims shall be limited to money damages.

(d) ACTIONS BY CORPORATION AS RECEIVER.—

(1) IN GENERAL.—Notwithstanding any other provision of this title, no action taken by the Corporation as receiver with respect to a covered broker or dealer shall—

(A) adversely affect the rights of a customer to customer property or customer name securities;

(B) diminish the amount or timely payment of net equity claims of customers; or

(C) otherwise impair the recoveries provided to a customer under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.).

(2) NET PROCEEDS.—The net proceeds from any transfer, sale, or disposition of assets of the covered broker or dealer, or proceeds thereof by the Corporation as receiver for the covered broker or dealer shall be for the benefit of the estate of the covered broker or dealer, as provided in this title.

(e) CLAIMS AGAINST THE CORPORATION AS RECEIVER.—Any claim against the Corporation as receiver for a covered broker or dealer for assets transferred to a bridge financial company established with respect to such covered broker or dealer—

(1) shall be determined in accordance with section 210(a)(2); and

(2) may be reviewed by the appropriate district or territorial court of the United States in accordance with section 210(a)(5).

(f) SATISFACTION OF CUSTOMER CLAIMS.—

(1) OBLIGATIONS TO CUSTOMERS.—Notwithstanding any other provision of this title, all obligations of a covered broker or dealer or of any bridge financial company established with respect to such covered broker or dealer to a customer relating to, or net equity claims based upon, customer property or customer name securities shall be promptly discharged by SIPC, the Corporation, or the bridge financial company, as applicable, by the delivery of securities or the making of payments to or for the account of such customer, in a manner and in an amount at least as beneficial to the customer as would have been the case had the actual proceeds realized from the liquidation of the covered broker or dealer under this title been distributed in a proceeding under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.) without the appointment of the Corporation as receiver and without any transfer of assets or liabilities to a bridge financial company, and with a filing date as of the date on which the Corporation is appointed as receiver.

(2) SATISFACTION OF CLAIMS BY SIPC.—SIPC, as trustee for a covered broker or dealer, shall satisfy customer claims in the manner and amount provided under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.), as if the appointment of the Corporation as receiver had not occurred, and with a filing date as of the date on which the Corporation is appointed as receiver. The Corporation shall satisfy customer claims, to the extent that a customer would have received more securities or cash with respect to the allocation of customer property had the covered financial company been subject to a proceeding under the Securities Investor Protection Act (15 U.S.C. 78aaa et seq.) without the appointment of the Corporation as receiver, and with a filing date as of the date on which the Corporation is appointed as receiver.

(g) PRIORITIES.—

(1) CUSTOMER PROPERTY.—As trustee for a covered broker or dealer, SIPC shall allocate customer property and deliver customer name securities in accordance with section 8(c) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78fff–2(c)).

(2) OTHER CLAIMS.—All claims other than those described in paragraph (1) (including any unpaid claim by a customer for the allowed net equity claim of such customer from customer property) shall be paid in accordance with the priorities in section 210(b).

(h) RULEMAKING.—The Commission and the Corporation, after consultation with SIPC, shall jointly issue rules to implement this section.

SEC. 206. MANDATORY TERMS AND CONDITIONS FOR ALL ORDERLY LIQUIDATION ACTIONS.

In taking action under this title, the Corporation shall—

(1) determine that such action is necessary for purposes of the financial stability of the United States, and not for the purpose of preserving the covered financial company;

(2) ensure that the shareholders of a covered financial company do not receive payment until after all other claims and the Fund are fully paid;

(3) ensure that unsecured creditors bear losses in accordance with the priority of claim provisions in section 210;

(4) ensure that management responsible for the failed condition of the covered financial company is removed (if such management has not already been removed at the time at which the Corporation is appointed receiver);

(5) ensure that the members of the board of directors (or body performing similar functions) responsible for the failed condition of the covered financial company are removed, if such members have not already been removed at the time the Corporation is appointed as receiver; and

(6) not take an equity interest in or become a shareholder of any covered financial company or any covered subsidiary.

SEC. 207. DIRECTORS NOT LIABLE FOR ACQUIESCING IN APPOINTMENT OF RECEIVER.

The members of the board of directors (or body performing similar functions) of a covered financial company shall not be liable to the shareholders or creditors thereof for acquiescing in or consenting in good faith to the appointment of the Corporation as receiver for the covered financial company under section 203.

SEC. 208. DISMISSAL AND EXCLUSION OF OTHER ACTIONS.

(a) IN GENERAL.—Effective as of the date of the appointment of the Corporation as receiver for the covered financial company under section 202 or the appointment of SIPC as trustee for a covered broker or dealer under section 205, as applicable, any case or proceeding commenced with respect to the covered financial company under the Bankruptcy Code or the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.) shall be dismissed, upon notice to the bankruptcy court (with respect to a case commenced under the Bankruptcy Code), and upon notice to SIPC (with respect to a covered broker or dealer) and no such case or proceeding may be commenced with respect to a covered financial company at any time while the orderly liquidation is pending.

(b) REVESTING OF ASSETS.—Effective as of the date of appointment of the Corporation as receiver, the assets of a covered financial company shall, to the extent they have vested in any entity other than the covered financial company as a result of any case or proceeding commenced with respect to the covered financial company under the Bankruptcy Code, the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.), or any similar provision of State liquidation or insolvency law applicable to the covered financial company, revest in the covered financial company.

(c) LIMITATION.—Notwithstanding subsections (a) and (b), any order entered or other relief granted by a bankruptcy court prior to the date of appointment of the Corporation as receiver shall

continue with the same validity as if an orderly liquidation had not been commenced.

SEC. 209. RULEMAKING; NON-CONFLICTING LAW.

The Corporation shall, in consultation with the Council, prescribe such rules or regulations as the Corporation considers necessary or appropriate to implement this title, including rules and regulations with respect to the rights, interests, and priorities of creditors, counterparties, security entitlement holders, or other persons with respect to any covered financial company or any assets or other property of or held by such covered financial company, and address the potential for conflicts of interest between or among individual receiverships established under this title or under the Federal Deposit Insurance Act. To the extent possible, the Corporation shall seek to harmonize applicable rules and regulations promulgated under this section with the insolvency laws that would otherwise apply to a covered financial company.

SEC. 210. POWERS AND DUTIES OF THE CORPORATION.

(a) POWERS AND AUTHORITIES.—

(1) GENERAL POWERS.—

(A) SUCCESSOR TO COVERED FINANCIAL COMPANY.—The Corporation shall, upon appointment as receiver for a covered financial company under this title, succeed to—

(i) all rights, titles, powers, and privileges of the covered financial company and its assets, and of any stockholder, member, officer, or director of such company; and

(ii) title to the books, records, and assets of any previous receiver or other legal custodian of such covered financial company.

(B) OPERATION OF THE COVERED FINANCIAL COMPANY DURING THE PERIOD OF ORDERLY LIQUIDATION.—The Corporation, as receiver for a covered financial company, may—

(i) take over the assets of and operate the covered financial company with all of the powers of the members or shareholders, the directors, and the officers of the covered financial company, and conduct all business of the covered financial company;

(ii) collect all obligations and money owed to the covered financial company;

(iii) perform all functions of the covered financial company, in the name of the covered financial company;

(iv) manage the assets and property of the covered financial company, consistent with maximization of the value of the assets in the context of the orderly liquidation; and

(v) provide by contract for assistance in fulfilling any function, activity, action, or duty of the Corporation as receiver.

(C) FUNCTIONS OF COVERED FINANCIAL COMPANY OFFICERS, DIRECTORS, AND SHAREHOLDERS.—The Corporation may provide for the exercise of any function by any member or stockholder, director, or officer of any covered financial company for which the Corporation has been appointed as receiver under this title.

(D) ADDITIONAL POWERS AS RECEIVER.—The Corporation shall, as receiver for a covered financial company, and subject to all legally enforceable and perfected security interests and all legally enforceable security entitlements in respect of assets held by the covered financial company, liquidate, and wind-up the affairs of a covered financial company, including taking steps to realize upon the assets of the covered financial company, in such manner as the Corporation deems appropriate, including through the sale of assets, the transfer of assets to a bridge financial company established under subsection (h), or the exercise of any other rights or privileges granted to the receiver under this section.

(E) ADDITIONAL POWERS WITH RESPECT TO FAILING SUBSIDIARIES OF A COVERED FINANCIAL COMPANY.—

(i) IN GENERAL.—In any case in which a receiver is appointed for a covered financial company under section 202, the Corporation may appoint itself as receiver of any covered subsidiary of the covered financial company that is organized under Federal law or the laws of any State, if the Corporation and the Secretary jointly determine that—

(I) the covered subsidiary is in default or in danger of default;

(II) such action would avoid or mitigate serious adverse effects on the financial stability or economic conditions of the United States; and

(III) such action would facilitate the orderly liquidation of the covered financial company.

(ii) TREATMENT AS COVERED FINANCIAL COMPANY.—If the Corporation is appointed as receiver of a covered subsidiary of a covered financial company under clause (i), the covered subsidiary shall thereafter be considered a covered financial company under this title, and the Corporation shall thereafter have all the powers and rights with respect to that covered subsidiary as it has with respect to a covered financial company under this title.

(F) ORGANIZATION OF BRIDGE COMPANIES.—The Corporation, as receiver for a covered financial company, may organize a bridge financial company under subsection (h).

(G) MERGER; TRANSFER OF ASSETS AND LIABILITIES.—

(i) IN GENERAL.—Subject to clauses (ii) and (iii), the Corporation, as receiver for a covered financial company, may—

(I) merge the covered financial company with another company; or

(II) transfer any asset or liability of the covered financial company (including any assets and liabilities held by the covered financial company for security entitlement holders, any customer property, or any assets and liabilities associated with any trust or custody business) without obtaining any approval, assignment, or consent with respect to such transfer.

(ii) FEDERAL AGENCY APPROVAL; ANTITRUST REVIEW.—With respect to a transaction described in

clause (i)(I) that requires approval by a Federal agency—

(I) the transaction may not be consummated before the 5th calendar day after the date of approval by the Federal agency responsible for such approval;

(II) if, in connection with any such approval, a report on competitive factors is required, the Federal agency responsible for such approval shall promptly notify the Attorney General of the United States of the proposed transaction, and the Attorney General shall provide the required report not later than 10 days after the date of the request; and

(III) if notification under section 7A of the Clayton Act is required with respect to such transaction, then the required waiting period shall end on the 15th day after the date on which the Attorney General and the Federal Trade Commission receive such notification, unless the waiting period is terminated earlier under subsection (b)(2) of such section 7A, or is extended pursuant to subsection (e)(2) of such section 7A.

(iii) SETOFF.—Subject to the other provisions of this title, any transferee of assets from a receiver, including a bridge financial company, shall be subject to such claims or rights as would prevail over the rights of such transferee in such assets under applicable noninsolvency law.

(H) PAYMENT OF VALID OBLIGATIONS.—The Corporation, as receiver for a covered financial company, shall, to the extent that funds are available, pay all valid obligations of the covered financial company that are due and payable at the time of the appointment of the Corporation as receiver, in accordance with the prescriptions and limitations of this title.

(I) APPLICABLE NONINSOLVENCY LAW.—Except as may otherwise be provided in this title, the applicable noninsolvency law shall be determined by the noninsolvency choice of law rules otherwise applicable to the claims, rights, titles, persons, or entities at issue.

(J) SUBPOENA AUTHORITY.—

(i) IN GENERAL.—The Corporation, as receiver for a covered financial company, may, for purposes of carrying out any power, authority, or duty with respect to the covered financial company (including determining any claim against the covered financial company and determining and realizing upon any asset of any person in the course of collecting money due the covered financial company), exercise any power established under section 8(n) of the Federal Deposit Insurance Act, as if the Corporation were the appropriate Federal banking agency for the covered financial company, and the covered financial company were an insured depository institution.

(ii) RULE OF CONSTRUCTION.—This subparagraph may not be construed as limiting any rights that the

Corporation, in any capacity, might otherwise have to exercise any powers described in clause (i) or under any other provision of law.

(K) INCIDENTAL POWERS.—The Corporation, as receiver for a covered financial company, may exercise all powers and authorities specifically granted to receivers under this title, and such incidental powers as shall be necessary to carry out such powers under this title.

(L) UTILIZATION OF PRIVATE SECTOR.—In carrying out its responsibilities in the management and disposition of assets from the covered financial company, the Corporation, as receiver for a covered financial company, may utilize the services of private persons, including real estate and loan portfolio asset management, property management, auction marketing, legal, and brokerage services, if such services are available in the private sector, and the Corporation determines that utilization of such services is practicable, efficient, and cost effective.

(M) SHAREHOLDERS AND CREDITORS OF COVERED FINANCIAL COMPANY.—Notwithstanding any other provision of law, the Corporation, as receiver for a covered financial company, shall succeed by operation of law to the rights, titles, powers, and privileges described in subparagraph (A), and shall terminate all rights and claims that the stockholders and creditors of the covered financial company may have against the assets of the covered financial company or the Corporation arising out of their status as stockholders or creditors, except for their right to payment, resolution, or other satisfaction of their claims, as permitted under this section. The Corporation shall ensure that shareholders and unsecured creditors bear losses, consistent with the priority of claims provisions under this section.

(N) COORDINATION WITH FOREIGN FINANCIAL AUTHORITIES.—The Corporation, as receiver for a covered financial company, shall coordinate, to the maximum extent possible, with the appropriate foreign financial authorities regarding the orderly liquidation of any covered financial company that has assets or operations in a country other than the United States.

(O) RESTRICTION ON TRANSFERS.—

(i) SELECTION OF ACCOUNTS FOR TRANSFER.—If the Corporation establishes one or more bridge financial companies with respect to a covered broker or dealer, the Corporation shall transfer to one of such bridge financial companies, all customer accounts of the covered broker or dealer, and all associated customer name securities and customer property, unless the Corporation, after consulting with the Commission and SIPC, determines that—

(I) the customer accounts, customer name securities, and customer property are likely to be promptly transferred to another broker or dealer that is registered with the Commission under section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 73o(b)) and is a member of SIPC; or

(II) the transfer of the accounts to a bridge financial company would materially interfere with

the ability of the Corporation to avoid or mitigate serious adverse effects on financial stability or economic conditions in the United States.

(ii) TRANSFER OF PROPERTY.—SIPC, as trustee for the liquidation of the covered broker or dealer, and the Commission shall provide any and all reasonable assistance necessary to complete such transfers by the Corporation.

(iii) CUSTOMER CONSENT AND COURT APPROVAL NOT REQUIRED.—Neither customer consent nor court approval shall be required to transfer any customer accounts or associated customer name securities or customer property to a bridge financial company in accordance with this section.

(iv) NOTIFICATION OF SIPC AND SHARING OF INFORMATION.—The Corporation shall identify to SIPC the customer accounts and associated customer name securities and customer property transferred to the bridge financial company. The Corporation and SIPC shall cooperate in the sharing of any information necessary for each entity to discharge its obligations under this title and under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.) including by providing access to the books and records of the covered financial company and any bridge financial company established in accordance with this title.

(2) DETERMINATION OF CLAIMS.—

(A) IN GENERAL.—The Corporation, as receiver for a covered financial company, shall report on claims, as set forth in section 203(c)(3). Subject to paragraph (4) of this subsection, the Corporation, as receiver for a covered financial company, shall determine claims in accordance with the requirements of this subsection and regulations prescribed under section 209.

(B) NOTICE REQUIREMENTS.—The Corporation, as receiver for a covered financial company, in any case involving the liquidation or winding up of the affairs of a covered financial company, shall—

(i) promptly publish a notice to the creditors of the covered financial company to present their claims, together with proof, to the receiver by a date specified in the notice, which shall be not earlier than 90 days after the date of publication of such notice; and

(ii) republish such notice 1 month and 2 months, respectively, after the date of publication under clause (i).

(C) MAILING REQUIRED.—The Corporation as receiver shall mail a notice similar to the notice published under clause (i) or (ii) of subparagraph (B), at the time of such publication, to any creditor shown on the books and records of the covered financial company—

(i) at the last address of the creditor appearing in such books;

(ii) in any claim filed by the claimant; or

(iii) upon discovery of the name and address of a claimant not appearing on the books and records of the covered financial company, not later than 30

days after the date of the discovery of such name and address.

(3) PROCEDURES FOR RESOLUTION OF CLAIMS.—

(A) DECISION PERIOD.—

(i) IN GENERAL.—Prior to the 180th day after the date on which a claim against a covered financial company is filed with the Corporation as receiver, or such later date as may be agreed as provided in clause (ii), the Corporation shall notify the claimant whether it allows or disallows the claim, in accordance with subparagraphs (B), (C), and (D).

(ii) EXTENSION OF TIME.—By written agreement executed not later than 180 days after the date on which a claim against a covered financial company is filed with the Corporation, the period described in clause (i) may be extended by written agreement between the claimant and the Corporation. Failure to notify the claimant of any disallowance within the time period set forth in clause (i), as it may be extended by agreement under this clause, shall be deemed to be a disallowance of such claim, and the claimant may file or continue an action in court, as provided in paragraph (4).

(iii) MAILING OF NOTICE SUFFICIENT.—The requirements of clause (i) shall be deemed to be satisfied if the notice of any decision with respect to any claim is mailed to the last address of the claimant which appears—

(I) on the books, records, or both of the covered financial company;

(II) in the claim filed by the claimant; or

(III) in documents submitted in proof of the claim.

(iv) CONTENTS OF NOTICE OF DISALLOWANCE.—If the Corporation as receiver disallows any claim filed under clause (i), the notice to the claimant shall contain—

(I) a statement of each reason for the disallowance; and

(II) the procedures required to file or continue an action in court, as provided in paragraph (4).

(B) ALLOWANCE OF PROVEN CLAIM.—The receiver shall allow any claim received by the receiver on or before the date specified in the notice under paragraph (2)(B)(i), which is proved to the satisfaction of the receiver.

(C) DISALLOWANCE OF CLAIMS FILED AFTER END OF FILING PERIOD.—

(i) IN GENERAL.—Except as provided in clause (ii), claims filed after the date specified in the notice published under paragraph (2)(B)(i) shall be disallowed, and such disallowance shall be final.

(ii) CERTAIN EXCEPTIONS.—Clause (i) shall not apply with respect to any claim filed by a claimant after the date specified in the notice published under paragraph (2)(B)(i), and such claim may be considered by the receiver under subparagraph (B), if—

(I) the claimant did not receive notice of the appointment of the receiver in time to file such claim before such date; and

(II) such claim is filed in time to permit payment of such claim.

(D) AUTHORITY TO DISALLOW CLAIMS.—

(i) IN GENERAL.—The Corporation may disallow any portion of any claim by a creditor or claim of a security, preference, setoff, or priority which is not proved to the satisfaction of the Corporation.

(ii) PAYMENTS TO UNDERSECURED CREDITORS.—In the case of a claim against a covered financial company that is secured by any property or other asset of such covered financial company, the receiver—

(I) may treat the portion of such claim which exceeds an amount equal to the fair market value of such property or other asset as an unsecured claim; and

(II) may not make any payment with respect to such unsecured portion of the claim, other than in connection with the disposition of all claims of unsecured creditors of the covered financial company.

(iii) EXCEPTIONS.—No provision of this paragraph shall apply with respect to—

(I) any extension of credit from any Federal reserve bank, or the Corporation, to any covered financial company; or

(II) subject to clause (ii), any legally enforceable and perfected security interest in the assets of the covered financial company securing any such extension of credit.

(E) LEGAL EFFECT OF FILING.—

(i) STATUTE OF LIMITATIONS TOLLED.—For purposes of any applicable statute of limitations, the filing of a claim with the receiver shall constitute a commencement of an action.

(ii) NO PREJUDICE TO OTHER ACTIONS.—Subject to paragraph (8), the filing of a claim with the receiver shall not prejudice any right of the claimant to continue any action which was filed before the date of appointment of the receiver for the covered financial company.

(4) JUDICIAL DETERMINATION OF CLAIMS.—

(A) IN GENERAL.—Subject to subparagraph (B), a claimant may file suit on a claim (or continue an action commenced before the date of appointment of the Corporation as receiver) in the district or territorial court of the United States for the district within which the principal place of business of the covered financial company is located (and such court shall have jurisdiction to hear such claim).

(B) TIMING.—A claim under subparagraph (A) may be filed before the end of the 60-day period beginning on the earlier of—

(i) the end of the period described in paragraph (3)(A)(i) (or, if extended by agreement of the Corporation and the claimant, the period described in paragraph (3)(A)(ii)) with respect to any claim against a

covered financial company for which the Corporation is receiver; or

(ii) the date of any notice of disallowance of such claim pursuant to paragraph (3)(A)(i).

(C) STATUTE OF LIMITATIONS.—If any claimant fails to file suit on such claim (or to continue an action on such claim commenced before the date of appointment of the Corporation as receiver) prior to the end of the 60-day period described in subparagraph (B), the claim shall be deemed to be disallowed (other than any portion of such claim which was allowed by the receiver) as of the end of such period, such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim.

(5) EXPEDITED DETERMINATION OF CLAIMS.—

(A) PROCEDURE REQUIRED.—The Corporation shall establish a procedure for expedited relief outside of the claims process established under paragraph (3), for any claimant that alleges—

(i) having a legally valid and enforceable or perfected security interest in property of a covered financial company or control of any legally valid and enforceable security entitlement in respect of any asset held by the covered financial company for which the Corporation has been appointed receiver; and

(ii) that irreparable injury will occur if the claims procedure established under paragraph (3) is followed.

(B) DETERMINATION PERIOD.—Prior to the end of the 90-day period beginning on the date on which a claim is filed in accordance with the procedures established pursuant to subparagraph (A), the Corporation shall—

(i) determine—

(I) whether to allow or disallow such claim, or any portion thereof; or

(II) whether such claim should be determined pursuant to the procedures established pursuant to paragraph (3);

(ii) notify the claimant of the determination; and

(iii) if the claim is disallowed, provide a statement of each reason for the disallowance and the procedure for obtaining a judicial determination.

(C) PERIOD FOR FILING OR RENEWING SUIT.—Any claimant who files a request for expedited relief shall be permitted to file suit (or continue a suit filed before the date of appointment of the Corporation as receiver seeking a determination of the rights of the claimant with respect to such security interest (or such security entitlement) after the earlier of—

(i) the end of the 90-day period beginning on the date of the filing of a request for expedited relief; or

(ii) the date on which the Corporation denies the claim or a portion thereof.

(D) STATUTE OF LIMITATIONS.—If an action described in subparagraph (C) is not filed, or the motion to renew a previously filed suit is not made, before the end of the 30-day period beginning on the date on which such action

or motion may be filed in accordance with subparagraph (C), the claim shall be deemed to be disallowed as of the end of such period (other than any portion of such claim which was allowed by the receiver), such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim.

(E) LEGAL EFFECT OF FILING.—

(i) STATUTE OF LIMITATIONS TOLLED.—For purposes of any applicable statute of limitations, the filing of a claim with the receiver shall constitute a commencement of an action.

(ii) NO PREJUDICE TO OTHER ACTIONS.—Subject to paragraph (8), the filing of a claim with the receiver shall not prejudice any right of the claimant to continue any action which was filed before the appointment of the Corporation as receiver for the covered financial company.

(6) AGREEMENTS AGAINST INTEREST OF THE RECEIVER.—No agreement that tends to diminish or defeat the interest of the Corporation as receiver in any asset acquired by the receiver under this section shall be valid against the receiver, unless such agreement—

(A) is in writing;

(B) was executed by an authorized officer or representative of the covered financial company, or confirmed in the ordinary course of business by the covered financial company; and

(C) has been, since the time of its execution, an official record of the company or the party claiming under the agreement provides documentation, acceptable to the receiver, of such agreement and its authorized execution or confirmation by the covered financial company.

(7) PAYMENT OF CLAIMS.—

(A) IN GENERAL.—Subject to subparagraph (B), the Corporation as receiver may, in its discretion and to the extent that funds are available, pay creditor claims, in such manner and amounts as are authorized under this section, which are—

(i) allowed by the receiver;

(ii) approved by the receiver pursuant to a final determination pursuant to paragraph (3) or (5), as applicable; or

(iii) determined by the final judgment of a court of competent jurisdiction.

(B) LIMITATION.—A creditor shall, in no event, receive less than the amount that the creditor is entitled to receive under paragraphs (2) and (3) of subsection (d), as applicable.

(C) PAYMENT OF DIVIDENDS ON CLAIMS.—The Corporation as receiver may, in its sole discretion, and to the extent otherwise permitted by this section, pay dividends on proven claims at any time, and no liability shall attach to the Corporation as receiver, by reason of any such payment or for failure to pay dividends to a claimant whose claim is not proved at the time of any such payment.

(D) RULEMAKING BY THE CORPORATION.—The Corporation may prescribe such rules, including definitions of

terms, as the Corporation deems appropriate to establish an interest rate for or to make payments of post-insolvency interest to creditors holding proven claims against the receivership estate of a covered financial company, except that no such interest shall be paid until the Corporation as receiver has satisfied the principal amount of all creditor claims.

(8) SUSPENSION OF LEGAL ACTIONS.—

(A) IN GENERAL.—After the appointment of the Corporation as receiver for a covered financial company, the Corporation may request a stay in any judicial action or proceeding in which such covered financial company is or becomes a party, for a period of not to exceed 90 days.

(B) GRANT OF STAY BY ALL COURTS REQUIRED.—Upon receipt of a request by the Corporation pursuant to subparagraph (A), the court shall grant such stay as to all parties.

(9) ADDITIONAL RIGHTS AND DUTIES.—

(A) PRIOR FINAL ADJUDICATION.—The Corporation shall abide by any final, non-appealable judgment of any court of competent jurisdiction that was rendered before the appointment of the Corporation as receiver.

(B) RIGHTS AND REMEDIES OF RECEIVER.—In the event of any appealable judgment, the Corporation as receiver shall—

(i) have all the rights and remedies available to the covered financial company (before the date of appointment of the Corporation as receiver under section 202) and the Corporation, including removal to Federal court and all appellate rights; and

(ii) not be required to post any bond in order to pursue such remedies.

(C) NO ATTACHMENT OR EXECUTION.—No attachment or execution may be issued by any court upon assets in the possession of the Corporation as receiver for a covered financial company.

(D) LIMITATION ON JUDICIAL REVIEW.—Except as otherwise provided in this title, no court shall have jurisdiction over—

(i) any claim or action for payment from, or any action seeking a determination of rights with respect to, the assets of any covered financial company for which the Corporation has been appointed receiver, including any assets which the Corporation may acquire from itself as such receiver; or

(ii) any claim relating to any act or omission of such covered financial company or the Corporation as receiver.

(E) DISPOSITION OF ASSETS.—In exercising any right, power, privilege, or authority as receiver in connection with any covered financial company for which the Corporation is acting as receiver under this section, the Corporation shall, to the greatest extent practicable, conduct its operations in a manner that—

(i) maximizes the net present value return from the sale or disposition of such assets;

(ii) minimizes the amount of any loss realized in the resolution of cases;

(iii) mitigates the potential for serious adverse effects to the financial system;

(iv) ensures timely and adequate competition and fair and consistent treatment of offerors; and

(v) prohibits discrimination on the basis of race, sex, or ethnic group in the solicitation and consideration of offers.

(10) STATUTE OF LIMITATIONS FOR ACTIONS BROUGHT BY RECEIVER.—

(A) IN GENERAL.—Notwithstanding any provision of any contract, the applicable statute of limitations with regard to any action brought by the Corporation as receiver for a covered financial company shall be—

(i) in the case of any contract claim, the longer of—

(I) the 6-year period beginning on the date on which the claim accrues; or

(II) the period applicable under State law; and

(ii) in the case of any tort claim, the longer of—

(I) the 3-year period beginning on the date on which the claim accrues; or

(II) the period applicable under State law.

(B) DATE ON WHICH A CLAIM ACCRUES.—For purposes of subparagraph (A), the date on which the statute of limitations begins to run on any claim described in subparagraph (A) shall be the later of—

(i) the date of the appointment of the Corporation as receiver under this title; or

(ii) the date on which the cause of action accrues.

(C) REVIVAL OF EXPIRED STATE CAUSES OF ACTION.—

(i) IN GENERAL.—In the case of any tort claim described in clause (ii) for which the applicable statute of limitations under State law has expired not more than 5 years before the date of appointment of the Corporation as receiver for a covered financial company, the Corporation may bring an action as receiver on such claim without regard to the expiration of the statute of limitations.

(ii) CLAIMS DESCRIBED.—A tort claim referred to in clause (i) is a claim arising from fraud, intentional misconduct resulting in unjust enrichment, or intentional misconduct resulting in substantial loss to the covered financial company.

(11) AVOIDABLE TRANSFERS.—

(A) FRAUDULENT TRANSFERS.—The Corporation, as receiver for any covered financial company, may avoid a transfer of any interest of the covered financial company in property, or any obligation incurred by the covered financial company, that was made or incurred at or within 2 years before the date on which the Corporation was appointed receiver, if—

(i) the covered financial company voluntarily or involuntarily—

(I) made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud

any entity to which the covered financial company was or became, on or after the date on which such transfer was made or such obligation was incurred, indebted; or

(II) received less than a reasonably equivalent value in exchange for such transferor obligation; and

(ii) the covered financial company voluntarily or involuntarily—

(I) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation;

(II) was engaged in business or a transaction, or was about to engage in business or a transaction, for which any property remaining with the covered financial company was an unreasonably small capital;

(III) intended to incur, or believed that the covered financial company would incur, debts that would be beyond the ability of the covered financial company to pay as such debts matured; or

(IV) made such transfer to or for the benefit of an insider, or incurred such obligation to or for the benefit of an insider, under an employment contract and not in the ordinary course of business.

(B) PREFERENTIAL TRANSFERS.—The Corporation as receiver for any covered financial company may avoid a transfer of an interest of the covered financial company in property—

(i) to or for the benefit of a creditor;

(ii) for or on account of an antecedent debt that was owed by the covered financial company before the transfer was made;

(iii) that was made while the covered financial company was insolvent;

(iv) that was made—

(I) 90 days or less before the date on which the Corporation was appointed receiver; or

(II) more than 90 days, but less than 1 year before the date on which the Corporation was appointed receiver, if such creditor at the time of the transfer was an insider; and

(v) that enables the creditor to receive more than the creditor would receive if—

(I) the covered financial company had been liquidated under chapter 7 of the Bankruptcy Code;

(II) the transfer had not been made; and

(III) the creditor received payment of such debt to the extent provided by the provisions of chapter 7 of the Bankruptcy Code.

(C) POST-RECEIVERSHIP TRANSACTIONS.—The Corporation as receiver for any covered financial company may avoid a transfer of property of the receivership that occurred after the Corporation was appointed receiver that

was not authorized under this title by the Corporation as receiver.

(D) RIGHT OF RECOVERY.—To the extent that a transfer is avoided under subparagraph (A), (B), or (C), the Corporation may recover, for the benefit of the covered financial company, the property transferred or, if a court so orders, the value of such property (at the time of such transfer) from—

(i) the initial transferee of such transfer or the person for whose benefit such transfer was made; or

(ii) any immediate or mediate transferee of any such initial transferee.

(E) RIGHTS OF TRANSFEREE OR OBLIGEE.—The Corporation may not recover under subparagraph (D)(ii) from—

(i) any transferee that takes for value, including in satisfaction of or to secure a present or antecedent debt, in good faith, and without knowledge of the voidability of the transfer avoided; or

(ii) any immediate or mediate good faith transferee of such transferee.

(F) DEFENSES.—Subject to the other provisions of this title—

(i) a transferee or obligee from which the Corporation seeks to recover a transfer or to avoid an obligation under subparagraph (A), (B), (C), or (D) shall have the same defenses available to a transferee or obligee from which a trustee seeks to recover a transfer or avoid an obligation under sections 547, 548, and 549 of the Bankruptcy Code; and

(ii) the authority of the Corporation to recover a transfer or avoid an obligation shall be subject to subsections (b) and (c) of section 546, section 547(c), and section 548(c) of the Bankruptcy Code.

(G) RIGHTS UNDER THIS SECTION.—The rights of the Corporation as receiver under this section shall be superior to any rights of a trustee or any other party (other than a Federal agency) under the Bankruptcy Code.

(H) RULES OF CONSTRUCTION; DEFINITIONS.—For purposes of—

(i) subparagraphs (A) and (B)—

(I) the term "insider" has the same meaning as in section 101(31) of the Bankruptcy Code;

(II) a transfer is made when such transfer is so perfected that a bona fide purchaser from the covered financial company against whom applicable law permits such transfer to be perfected cannot acquire an interest in the property transferred that is superior to the interest in such property of the transferee, but if such transfer is not so perfected before the date on which the Corporation is appointed as receiver for the covered financial company, such transfer is made immediately before the date of such appointment; and

(III) the term "value" means property, or satisfaction or securing of a present or antecedent debt of the covered financial company, but does not

include an unperformed promise to furnish support to the covered financial company; and

(ii) subparagraph (B)—

(I) the covered financial company is presumed to have been insolvent on and during the 90-day period immediately preceding the date of appointment of the Corporation as receiver; and

(II) the term "insolvent" has the same meaning as in section 101(32) of the Bankruptcy Code.

(12) SETOFF.—

(A) GENERALLY.—Except as otherwise provided in this title, any right of a creditor to offset a mutual debt owed by the creditor to any covered financial company that arose before the Corporation was appointed as receiver for the covered financial company against a claim of such creditor may be asserted if enforceable under applicable noninsolvency law, except to the extent that—

(i) the claim of the creditor against the covered financial company is disallowed;

(ii) the claim was transferred, by an entity other than the covered financial company, to the creditor—

(I) after the Corporation was appointed as receiver of the covered financial company; or

(II)(aa) after the 90-day period preceding the date on which the Corporation was appointed as receiver for the covered financial company; and

(bb) while the covered financial company was insolvent (except for a setoff in connection with a qualified financial contract); or

(iii) the debt owed to the covered financial company was incurred by the covered financial company—

(I) after the 90-day period preceding the date on which the Corporation was appointed as receiver for the covered financial company;

(II) while the covered financial company was insolvent; and

(III) for the purpose of obtaining a right of setoff against the covered financial company (except for a setoff in connection with a qualified financial contract).

(B) INSUFFICIENCY.—

(i) IN GENERAL.—Except with respect to a setoff in connection with a qualified financial contract, if a creditor offsets a mutual debt owed to the covered financial company against a claim of the covered financial company on or within the 90-day period preceding the date on which the Corporation is appointed as receiver for the covered financial company, the Corporation may recover from the creditor the amount so offset, to the extent that any insufficiency on the date of such setoff is less than the insufficiency on the later of—

(I) the date that is 90 days before the date on which the Corporation is appointed as receiver for the covered financial company; or

(II) the first day on which there is an insufficiency during the 90-day period preceding the date

on which the Corporation is appointed as receiver for the covered financial company.

(ii) DEFINITION OF INSUFFICIENCY.—In this subparagraph, the term "insufficiency" means the amount, if any, by which a claim against the covered financial company exceeds a mutual debt owed to the covered financial company by the holder of such claim.

(C) INSOLVENCY.—The term "insolvent" has the same meaning as in section 101(32) of the Bankruptcy Code.

(D) PRESUMPTION OF INSOLVENCY.—For purposes of this paragraph, the covered financial company is presumed to have been insolvent on and during the 90-day period preceding the date of appointment of the Corporation as receiver.

(E) LIMITATION.—Nothing in this paragraph (12) shall be the basis for any right of setoff where no such right exists under applicable noninsolvency law.

(F) PRIORITY CLAIM.—Except as otherwise provided in this title, the Corporation as receiver for the covered financial company may sell or transfer any assets free and clear of the setoff rights of any party, except that such party shall be entitled to a claim, subordinate to the claims payable under subparagraphs (A), (B), (C), and (D) of subsection (b)(1), but senior to all other unsecured liabilities defined in subsection (b)(1)(E), in an amount equal to the value of such setoff rights.

(13) ATTACHMENT OF ASSETS AND OTHER INJUNCTIVE RELIEF.—Subject to paragraph (14), any court of competent jurisdiction may, at the request of the Corporation as receiver for a covered financial company, issue an order in accordance with Rule 65 of the Federal Rules of Civil Procedure, including an order placing the assets of any person designated by the Corporation under the control of the court and appointing a trustee to hold such assets.

(14) STANDARDS.—

(A) SHOWING.—Rule 65 of the Federal Rules of Civil Procedure shall apply with respect to any proceeding under paragraph (13), without regard to the requirement that the applicant show that the injury, loss, or damage is irreparable and immediate.

(B) STATE PROCEEDING.—If, in the case of any proceeding in a State court, the court determines that rules of civil procedure available under the laws of the State provide substantially similar protections of the right of the parties to due process as provided under Rule 65 (as modified with respect to such proceeding by subparagraph (A)), the relief sought by the Corporation pursuant to paragraph (14) may be requested under the laws of such State.

(15) TREATMENT OF CLAIMS ARISING FROM BREACH OF CONTRACTS EXECUTED BY THE CORPORATION AS RECEIVER.—Notwithstanding any other provision of this title, any final and nonappealable judgment for monetary damages entered against the Corporation as receiver for a covered financial company for the breach of an agreement executed or approved by the Corporation after the date of its appointment shall be paid as an administrative expense of the receiver. Nothing in this paragraph shall be construed to limit the power of a receiver

to exercise any rights under contract or law, including to terminate, breach, cancel, or otherwise discontinue such agreement.

(16) ACCOUNTING AND RECORDKEEPING REQUIREMENTS.—

(A) IN GENERAL.—The Corporation as receiver for a covered financial company shall, consistent with the accounting and reporting practices and procedures established by the Corporation, maintain a full accounting of each receivership or other disposition of any covered financial company.

(B) ANNUAL ACCOUNTING OR REPORT.—With respect to each receivership to which the Corporation is appointed, the Corporation shall make an annual accounting or report, as appropriate, available to the Secretary and the Comptroller General of the United States.

(C) AVAILABILITY OF REPORTS.—Any report prepared pursuant to subparagraph (B) and section 203(c)(3) shall be made available to the public by the Corporation.

(D) RECORDKEEPING REQUIREMENT.—

(i) IN GENERAL.—The Corporation shall prescribe such regulations and establish such retention schedules as are necessary to maintain the documents and records of the Corporation generated in exercising the authorities of this title and the records of a covered financial company for which the Corporation is appointed receiver, with due regard for—

(I) the avoidance of duplicative record retention; and

(II) the expected evidentiary needs of the Corporation as receiver for a covered financial company and the public regarding the records of covered financial companies.

(ii) RETENTION OF RECORDS.—Unless otherwise required by applicable Federal law or court order, the Corporation may not, at any time, destroy any records that are subject to clause (i).

(iii) RECORDS DEFINED.—As used in this subparagraph, the terms "records" and "records of a covered financial company" mean any document, book, paper, map, photograph, microfiche, microfilm, computer or electronically-created record generated or maintained by the covered financial company in the course of and necessary to its transaction of business.

(b) PRIORITY OF EXPENSES AND UNSECURED CLAIMS.—

(1) IN GENERAL.—Unsecured claims against a covered financial company, or the Corporation as receiver for such covered financial company under this section, that are proven to the satisfaction of the receiver shall have priority in the following order:

(A) Administrative expenses of the receiver.

(B) Any amounts owed to the United States, unless the United States agrees or consents otherwise.

(C) Wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual (other than an individual described in subparagraph (G)), but only to the extent of $11,725 for each individual (as indexed for inflation, by regulation of the Corporation)

earned not later than 180 days before the date of appointment of the Corporation as receiver.

(D) Contributions owed to employee benefit plans arising from services rendered not later than 180 days before the date of appointment of the Corporation as receiver, to the extent of the number of employees covered by each such plan, multiplied by $11,725 (as indexed for inflation, by regulation of the Corporation), less the aggregate amount paid to such employees under subparagraph (C), plus the aggregate amount paid by the receivership on behalf of such employees to any other employee benefit plan.

(E) Any other general or senior liability of the covered financial company (which is not a liability described under subparagraph (F), (G), or (H)).

(F) Any obligation subordinated to general creditors (which is not an obligation described under subparagraph (G) or (H)).

(G) Any wages, salaries, or commissions, including vacation, severance, and sick leave pay earned, owed to senior executives and directors of the covered financial company.

(H) Any obligation to shareholders, members, general partners, limited partners, or other persons, with interests in the equity of the covered financial company arising as a result of their status as shareholders, members, general partners, limited partners, or other persons with interests in the equity of the covered financial company.

(2) POST-RECEIVERSHIP FINANCING PRIORITY.—In the event that the Corporation, as receiver for a covered financial company, is unable to obtain unsecured credit for the covered financial company from commercial sources, the Corporation as receiver may obtain credit or incur debt on the part of the covered financial company, which shall have priority over any or all administrative expenses of the receiver under paragraph (1)(A).

(3) CLAIMS OF THE UNITED STATES.—Unsecured claims of the United States shall, at a minimum, have a higher priority than liabilities of the covered financial company that count as regulatory capital.

(4) CREDITORS SIMILARLY SITUATED.—All claimants of a covered financial company that are similarly situated under paragraph (1) shall be treated in a similar manner, except that the Corporation may take any action (including making payments, subject to subsection (o)(1)(D)(i)) that does not comply with this subsection, if—

(A) the Corporation determines that such action is necessary—

(i) to maximize the value of the assets of the covered financial company;

(ii) to initiate and continue operations essential to implementation of the receivership or any bridge financial company;

(iii) to maximize the present value return from the sale or other disposition of the assets of the covered financial company; or

(iv) to minimize the amount of any loss realized upon the sale or other disposition of the assets of the covered financial company; and

(B) all claimants that are similarly situated under paragraph (1) receive not less than the amount provided in paragraphs (2) and (3) of subsection (d).

(5) SECURED CLAIMS UNAFFECTED.—This section shall not affect secured claims or security entitlements in respect of assets or property held by the covered financial company, except to the extent that the security is insufficient to satisfy the claim, and then only with regard to the difference between the claim and the amount realized from the security.

(6) PRIORITY OF EXPENSES AND UNSECURED CLAIMS IN THE ORDERLY LIQUIDATION OF SIPC MEMBER.—Where the Corporation is appointed as receiver for a covered broker or dealer, unsecured claims against such covered broker or dealer, or the Corporation as receiver for such covered broker or dealer under this section, that are proven to the satisfaction of the receiver under section 205(e), shall have the priority prescribed in paragraph (1), except that—

(A) SIPC shall be entitled to recover administrative expenses incurred in performing its responsibilities under section 205 on an equal basis with the Corporation, in accordance with paragraph (1)(A);

(B) the Corporation shall be entitled to recover any amounts paid to customers or to SIPC pursuant to section 205(f), in accordance with paragraph (1)(B);

(C) SIPC shall be entitled to recover any amounts paid out of the SIPC Fund to meet its obligations under section 205 and under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.), which claim shall be subordinate to the claims payable under subparagraphs (A) and (B) of paragraph (1), but senior to all other claims; and

(D) the Corporation may, after paying any proven claims to customers under section 205 and the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.), and as provided above, pay dividends on other proven claims, in its discretion, and to the extent that funds are available, in accordance with the priorities set forth in paragraph (1).

(c) PROVISIONS RELATING TO CONTRACTS ENTERED INTO BEFORE APPOINTMENT OF RECEIVER.—

(1) AUTHORITY TO REPUDIATE CONTRACTS.—In addition to any other rights that a receiver may have, the Corporation as receiver for any covered financial company may disaffirm or repudiate any contract or lease—

(A) to which the covered financial company is a party;

(B) the performance of which the Corporation as receiver, in the discretion of the Corporation, determines to be burdensome; and

(C) the disaffirmance or repudiation of which the Corporation as receiver determines, in the discretion of the Corporation, will promote the orderly administration of the affairs of the covered financial company.

(2) TIMING OF REPUDIATION.—The Corporation, as receiver for any covered financial company, shall determine whether

or not to exercise the rights of repudiation under this section within a reasonable period of time.

(3) CLAIMS FOR DAMAGES FOR REPUDIATION.—

(A) IN GENERAL.—Except as provided in paragraphs (4), (5), and (6) and in subparagraphs (C), (D), and (E) of this paragraph, the liability of the Corporation as receiver for a covered financial company for the disaffirmance or repudiation of any contract pursuant to paragraph (1) shall be—

(i) limited to actual direct compensatory damages; and

(ii) determined as of—

(I) the date of the appointment of the Corporation as receiver; or

(II) in the case of any contract or agreement referred to in paragraph (8), the date of the disaffirmance or repudiation of such contract or agreement.

(B) NO LIABILITY FOR OTHER DAMAGES.—For purposes of subparagraph (A), the term "actual direct compensatory damages" does not include—

(i) punitive or exemplary damages;

(ii) damages for lost profits or opportunity; or

(iii) damages for pain and suffering.

(C) MEASURE OF DAMAGES FOR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.—In the case of any qualified financial contract or agreement to which paragraph (8) applies, compensatory damages shall be—

(i) deemed to include normal and reasonable costs of cover or other reasonable measures of damages utilized in the industries for such contract and agreement claims; and

(ii) paid in accordance with this paragraph and subsection (d), except as otherwise specifically provided in this subsection.

(D) MEASURE OF DAMAGES FOR REPUDIATION OR DISAFFIRMANCE OF DEBT OBLIGATION.—In the case of any debt for borrowed money or evidenced by a security, actual direct compensatory damages shall be no less than the amount lent plus accrued interest plus any accreted original issue discount as of the date the Corporation was appointed receiver of the covered financial company and, to the extent that an allowed secured claim is secured by property the value of which is greater than the amount of such claim and any accrued interest through the date of repudiation or disaffirmance, such accrued interest pursuant to paragraph (1).

(E) MEASURE OF DAMAGES FOR REPUDIATION OR DISAFFIRMANCE OF CONTINGENT OBLIGATION.—In the case of any contingent obligation of a covered financial company consisting of any obligation under a guarantee, letter of credit, loan commitment, or similar credit obligation, the Corporation may, by rule or regulation, prescribe that actual direct compensatory damages shall be no less than the estimated value of the claim as of the date the Corporation was appointed receiver of the covered financial company, as such value is measured based on the likelihood

that such contingent claim would become fixed and the probable magnitude thereof.

(4) LEASES UNDER WHICH THE COVERED FINANCIAL COMPANY IS THE LESSEE.—

(A) IN GENERAL.—If the Corporation as receiver disaffirms or repudiates a lease under which the covered financial company is the lessee, the receiver shall not be liable for any damages (other than damages determined pursuant to subparagraph (B)) for the disaffirmance or repudiation of such lease.

(B) PAYMENTS OF RENT.—Notwithstanding subparagraph (A), the lessor under a lease to which subparagraph (A) would otherwise apply shall—

(i) be entitled to the contractual rent accruing before the later of the date on which—

(I) the notice of disaffirmance or repudiation is mailed; or

(II) the disaffirmance or repudiation becomes effective, unless the lessor is in default or breach of the terms of the lease;

(ii) have no claim for damages under any acceleration clause or other penalty provision in the lease; and

(iii) have a claim for any unpaid rent, subject to all appropriate offsets and defenses, due as of the date of the appointment which shall be paid in accordance with this paragraph and subsection (d).

(5) LEASES UNDER WHICH THE COVERED FINANCIAL COMPANY IS THE LESSOR.—

(A) IN GENERAL.—If the Corporation as receiver for a covered financial company repudiates an unexpired written lease of real property of the covered financial company under which the covered financial company is the lessor and the lessee is not, as of the date of such repudiation, in default, the lessee under such lease may either—

(i) treat the lease as terminated by such repudiation; or

(ii) remain in possession of the leasehold interest for the balance of the term of the lease, unless the lessee defaults under the terms of the lease after the date of such repudiation.

(B) PROVISIONS APPLICABLE TO LESSEE REMAINING IN POSSESSION.—If any lessee under a lease described in subparagraph (A) remains in possession of a leasehold interest pursuant to clause (ii) of subparagraph (A)—

(i) the lessee—

(I) shall continue to pay the contractual rent pursuant to the terms of the lease after the date of the repudiation of such lease; and

(II) may offset against any rent payment which accrues after the date of the repudiation of the lease, any damages which accrue after such date due to the nonperformance of any obligation of the covered financial company under the lease after such date; and

(ii) the Corporation as receiver shall not be liable to the lessee for any damages arising after such date

as a result of the repudiation, other than the amount of any offset allowed under clause (i)(II).

(6) CONTRACTS FOR THE SALE OF REAL PROPERTY.—

(A) IN GENERAL.—If the receiver repudiates any contract (which meets the requirements of subsection (a)(6)) for the sale of real property, and the purchaser of such real property under such contract is in possession and is not, as of the date of such repudiation, in default, such purchaser may either—

(i) treat the contract as terminated by such repudiation; or

(ii) remain in possession of such real property.

(B) PROVISIONS APPLICABLE TO PURCHASER REMAINING IN POSSESSION.—If any purchaser of real property under any contract described in subparagraph (A) remains in possession of such property pursuant to clause (ii) of subparagraph (A)—

(i) the purchaser—

(I) shall continue to make all payments due under the contract after the date of the repudiation of the contract; and

(II) may offset against any such payments any damages which accrue after such date due to the nonperformance (after such date) of any obligation of the covered financial company under the contract; and

(ii) the Corporation as receiver shall—

(I) not be liable to the purchaser for any damages arising after such date as a result of the repudiation, other than the amount of any offset allowed under clause (i)(II);

(II) deliver title to the purchaser in accordance with the provisions of the contract; and

(III) have no obligation under the contract other than the performance required under subclause (II).

(C) ASSIGNMENT AND SALE ALLOWED.—

(i) IN GENERAL.—No provision of this paragraph shall be construed as limiting the right of the Corporation as receiver to assign the contract described in subparagraph (A) and sell the property, subject to the contract and the provisions of this paragraph.

(ii) NO LIABILITY AFTER ASSIGNMENT AND SALE.—If an assignment and sale described in clause (i) is consummated, the Corporation as receiver shall have no further liability under the contract described in subparagraph (A) or with respect to the real property which was the subject of such contract.

(7) PROVISIONS APPLICABLE TO SERVICE CONTRACTS.—

(A) SERVICES PERFORMED BEFORE APPOINTMENT.—In the case of any contract for services between any person and any covered financial company for which the Corporation has been appointed receiver, any claim of such person for services performed before the date of appointment shall be—

(i) a claim to be paid in accordance with subsections (a), (b), and (d); and

(ii) deemed to have arisen as of the date on which the receiver was appointed.

(B) SERVICES PERFORMED AFTER APPOINTMENT AND PRIOR TO REPUDIATION.—If, in the case of any contract for services described in subparagraph (A), the Corporation as receiver accepts performance by the other person before making any determination to exercise the right of repudiation of such contract under this section—

(i) the other party shall be paid under the terms of the contract for the services performed; and

(ii) the amount of such payment shall be treated as an administrative expense of the receivership.

(C) ACCEPTANCE OF PERFORMANCE NO BAR TO SUBSEQUENT REPUDIATION.—The acceptance by the Corporation as receiver for services referred to in subparagraph (B) in connection with a contract described in subparagraph (B) shall not affect the right of the Corporation as receiver to repudiate such contract under this section at any time after such performance.

(8) CERTAIN QUALIFIED FINANCIAL CONTRACTS.—

(A) RIGHTS OF PARTIES TO CONTRACTS.—Subject to subsection (a)(8) and paragraphs (9) and (10) of this subsection, and notwithstanding any other provision of this section, any other provision of Federal law, or the law of any State, no person shall be stayed or prohibited from exercising—

(i) any right that such person has to cause the termination, liquidation, or acceleration of any qualified financial contract with a covered financial company which arises upon the date of appointment of the Corporation as receiver for such covered financial company or at any time after such appointment;

(ii) any right under any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts described in clause (i); or

(iii) any right to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more contracts or agreements described in clause (i), including any master agreement for such contracts or agreements.

(B) APPLICABILITY OF OTHER PROVISIONS.—Subsection (a)(8) shall apply in the case of any judicial action or proceeding brought against the Corporation as receiver referred to in subparagraph (A), or the subject covered financial company, by any party to a contract or agreement described in subparagraph (A)(i) with such covered financial company.

(C) CERTAIN TRANSFERS NOT AVOIDABLE.—

(i) IN GENERAL.—Notwithstanding subsection (a)(11), (a)(12), or (c)(12), section 5242 of the Revised Statutes of the United States, or any other provision of Federal or State law relating to the avoidance of preferential or fraudulent transfers, the Corporation, whether acting as the Corporation or as receiver for a covered financial company, may not avoid any transfer of money or other property in connection with

any qualified financial contract with a covered financial company.

(ii) EXCEPTION FOR CERTAIN TRANSFERS.—Clause (i) shall not apply to any transfer of money or other property in connection with any qualified financial contract with a covered financial company if the transferee had actual intent to hinder, delay, or defraud such company, the creditors of such company, or the Corporation as receiver appointed for such company.

(D) CERTAIN CONTRACTS AND AGREEMENTS DEFINED.—For purposes of this subsection, the following definitions shall apply:

(i) QUALIFIED FINANCIAL CONTRACT.—The term "qualified financial contract" means any securities contract, commodity contract, forward contract, repurchase agreement, swap agreement, and any similar agreement that the Corporation determines by regulation, resolution, or order to be a qualified financial contract for purposes of this paragraph.

(ii) SECURITIES CONTRACT.—The term "securities contract"—

(I) means a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan, any interest in a mortgage loan, a group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof), or any option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option, and including any repurchase or reverse repurchase transaction on any such security, certificate of deposit, mortgage loan, interest, group or index, or option (whether or not such repurchase or reverse repurchase transaction is a "repurchase agreement", as defined in clause (v));

(II) does not include any purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan unless the Corporation determines by regulation, resolution, or order to include any such agreement within the meaning of such term;

(III) means any option entered into on a national securities exchange relating to foreign currencies;

(IV) means the guarantee (including by novation) by or to any securities clearing agency of any settlement of cash, securities, certificates of deposit, mortgage loans or interests therein, group or index of securities, certificates of deposit or mortgage loans or interests therein (including any interest therein or based on the value thereof) or an option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option (whether or not such

settlement is in connection with any agreement or transaction referred to in subclauses (I) through (XII) (other than subclause (II)));

(V) means any margin loan;

(VI) means any extension of credit for the clearance or settlement of securities transactions;

(VII) means any loan transaction coupled with a securities collar transaction, any prepaid securities forward transaction, or any total return swap transaction coupled with a securities sale transaction;

(VIII) means any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

(IX) means any combination of the agreements or transactions referred to in this clause;

(X) means any option to enter into any agreement or transaction referred to in this clause;

(XI) means a master agreement that provides for an agreement or transaction referred to in any of subclauses (I) through (X), other than subclause (II), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a securities contract under this clause, except that the master agreement shall be considered to be a securities contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in any of subclauses (I) through (X), other than subclause (II); and

(XII) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.

(iii) COMMODITY CONTRACT.—The term "commodity contract" means—

(I) with respect to a futures commission merchant, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade;

(II) with respect to a foreign futures commission merchant, a foreign future;

(III) with respect to a leverage transaction merchant, a leverage transaction;

(IV) with respect to a clearing organization, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization, or commodity option traded on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization;

(V) with respect to a commodity options dealer, a commodity option;

(VI) any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

(VII) any combination of the agreements or transactions referred to in this clause;

(VIII) any option to enter into any agreement or transaction referred to in this clause;

(IX) a master agreement that provides for an agreement or transaction referred to in any of subclauses (I) through (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a commodity contract under this clause, except that the master agreement shall be considered to be a commodity contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in any of subclauses (I) through (VIII); or

(X) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.

(iv) FORWARD CONTRACT.—The term "forward contract" means—

(I) a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date that is more than 2 days after the date on which the contract is entered into, including a repurchase or reverse repurchase transaction (whether or not such repurchase or reverse repurchase transaction is a "repurchase agreement", as defined in clause (v)), consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or any other similar agreement;

(II) any combination of agreements or transactions referred to in subclauses (I) and (III);

(III) any option to enter into any agreement or transaction referred to in subclause (I) or (II);

(IV) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), or (III), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a forward contract under this clause, except that the master agreement shall be considered to be a forward contract under this clause only with respect to each agreement or transaction under the master

agreement that is referred to in subclause (I), (II), or (III); or

(V) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (II), (III), or (IV), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

(v) REPURCHASE AGREEMENT.—The term "repurchase agreement" (which definition also applies to a reverse repurchase agreement)—

(I) means an agreement, including related terms, which provides for the transfer of one or more certificates of deposit, mortgage related securities (as such term is defined in section 3 of the Securities Exchange Act of 1934), mortgage loans, interests in mortgage-related securities or mortgage loans, eligible bankers' acceptances, qualified foreign government securities (which, for purposes of this clause, means a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development, as determined by regulation or order adopted by the Board of Governors), or securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests as described above, at a date certain not later than 1 year after such transfers or on demand, against the transfer of funds, or any other similar agreement;

(II) does not include any repurchase obligation under a participation in a commercial mortgage loan, unless the Corporation determines, by regulation, resolution, or order to include any such participation within the meaning of such term;

(III) means any combination of agreements or transactions referred to in subclauses (I) and (IV);

(IV) means any option to enter into any agreement or transaction referred to in subclause (I) or (III);

(V) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a repurchase agreement under this clause, except

that the master agreement shall be considered to be a repurchase agreement under this subclause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), or (IV); and

(VI) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

(vi) SWAP AGREEMENT.—The term "swap agreement" means—

(I) any agreement, including the terms and conditions incorporated by reference in any such agreement, which is an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap; a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange, precious metals, or other commodity agreement; a currency swap, option, future, or forward agreement; an equity index or equity swap, option, future, or forward agreement; a debt index or debt swap, option, future, or forward agreement; a total return, credit spread or credit swap, option, future, or forward agreement; a commodity index or commodity swap, option, future, or forward agreement; weather swap, option, future, or forward agreement; an emissions swap, option, future, or forward agreement; or an inflation swap, option, future, or forward agreement;

(II) any agreement or transaction that is similar to any other agreement or transaction referred to in this clause and that is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap or other derivatives markets (including terms and conditions incorporated by reference in such agreement) and that is a forward, swap, future, option, or spot transaction on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value;

(III) any combination of agreements or transactions referred to in this clause;

(IV) any option to enter into any agreement or transaction referred to in this clause;

(V) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), or (IV), together with all supplements

to any such master agreement, without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this clause, except that the master agreement shall be considered to be a swap agreement under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), or (IV); and

(VI) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in any of subclauses (I) through (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such clause.

(vii) DEFINITIONS RELATING TO DEFAULT.—When used in this paragraph and paragraphs (9) and (10)—

(I) the term "default" means, with respect to a covered financial company, any adjudication or other official decision by any court of competent jurisdiction, or other public authority pursuant to which the Corporation has been appointed receiver; and

(II) the term "in danger of default" means a covered financial company with respect to which the Corporation or appropriate State authority has determined that—

(aa) in the opinion of the Corporation or such authority—

(AA) the covered financial company is not likely to be able to pay its obligations in the normal course of business; and

(BB) there is no reasonable prospect that the covered financial company will be able to pay such obligations without Federal assistance; or

(bb) in the opinion of the Corporation or such authority—

(AA) the covered financial company has incurred or is likely to incur losses that will deplete all or substantially all of its capital; and

(BB) there is no reasonable prospect that the capital will be replenished without Federal assistance.

(viii) TREATMENT OF MASTER AGREEMENT AS ONE AGREEMENT.—Any master agreement for any contract or agreement described in any of clauses (i) through (vi) (or any master agreement for such master agreement or agreements), together with all supplements to such master agreement, shall be treated as a single agreement and a single qualified financial contact. If a master agreement contains provisions relating to agreements or transactions that are not themselves qualified financial contracts, the master agreement

shall be deemed to be a qualified financial contract only with respect to those transactions that are themselves qualified financial contracts.

(ix) TRANSFER.—The term "transfer" means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the equity of redemption of the covered financial company.

(x) PERSON.—The term "person" includes any governmental entity in addition to any entity included in the definition of such term in section 1, title 1, United States Code.

(E) CLARIFICATION.—No provision of law shall be construed as limiting the right or power of the Corporation, or authorizing any court or agency to limit or delay, in any manner, the right or power of the Corporation to transfer any qualified financial contract or to disaffirm or repudiate any such contract in accordance with this subsection.

(F) WALKAWAY CLAUSES NOT EFFECTIVE.—

(i) IN GENERAL.—Notwithstanding the provisions of subparagraph (A) of this paragraph and sections 403 and 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, no walkaway clause shall be enforceable in a qualified financial contract of a covered financial company in default.

(ii) LIMITED SUSPENSION OF CERTAIN OBLIGATIONS.—In the case of a qualified financial contract referred to in clause (i), any payment or delivery obligations otherwise due from a party pursuant to the qualified financial contract shall be suspended from the time at which the Corporation is appointed as receiver until the earlier of—

(I) the time at which such party receives notice that such contract has been transferred pursuant to paragraph (10)(A); or

(II) 5:00 p.m. (eastern time) on the business day following the date of the appointment of the Corporation as receiver.

(iii) WALKAWAY CLAUSE DEFINED.—For purposes of this subparagraph, the term "walkaway clause" means any provision in a qualified financial contract that suspends, conditions, or extinguishes a payment obligation of a party, in whole or in part, or does not create a payment obligation of a party that would otherwise exist, solely because of the status of such party as a nondefaulting party in connection with the insolvency of a covered financial company that is a party to the contract or the appointment of or the exercise of rights or powers by the Corporation as receiver for such covered financial company, and not as a result of the exercise by a party of any right to offset, setoff, or net obligations that exist under the contract, any other contract between those parties, or applicable law.

(G) CERTAIN OBLIGATIONS TO CLEARING ORGANIZATIONS.—In the event that the Corporation has been appointed as receiver for a covered financial company which is a party to any qualified financial contract cleared by or subject to the rules of a clearing organization (as defined in paragraph (9)(D)), the receiver shall use its best efforts to meet all margin, collateral, and settlement obligations of the covered financial company that arise under qualified financial contracts (other than any margin, collateral, or settlement obligation that is not enforceable against the receiver under paragraph (8)(F)(i) or paragraph (10)(B)), as required by the rules of the clearing organization when due. Notwithstanding any other provision of this title, if the receiver fails to satisfy any such margin, collateral, or settlement obligations under the rules of the clearing organization, the clearing organization shall have the immediate right to exercise, and shall not be stayed from exercising, all of its rights and remedies under its rules and applicable law with respect to any qualified financial contract of the covered financial company, including, without limitation, the right to liquidate all positions and collateral of such covered financial company under the company's qualified financial contracts, and suspend or cease to act for such covered financial company, all in accordance with the rules of the clearing organization.

(H) RECORDKEEPING.—

(i) JOINT RULEMAKING.—The Federal primary financial regulatory agencies shall jointly prescribe regulations requiring that financial companies maintain such records with respect to qualified financial contracts (including market valuations) that the Federal primary financial regulatory agencies determine to be necessary or appropriate in order to assist the Corporation as receiver for a covered financial company in being able to exercise its rights and fulfill its obligations under this paragraph or paragraph (9) or (10).

(ii) TIME FRAME.—The Federal primary financial regulatory agencies shall prescribe joint final or interim final regulations not later than 24 months after the date of enactment of this Act.

(iii) BACK-UP RULEMAKING AUTHORITY.—If the Federal primary financial regulatory agencies do not prescribe joint final or interim final regulations within the time frame in clause (ii), the Chairperson of the Council shall prescribe, in consultation with the Corporation, the regulations required by clause (i).

(iv) CATEGORIZATION AND TIERING.—The joint regulations prescribed under clause (i) shall, as appropriate, differentiate among financial companies by taking into consideration their size, risk, complexity, leverage, frequency and dollar amount of qualified financial contracts, interconnectedness to the financial system, and any other factors deemed appropriate.

(9) TRANSFER OF QUALIFIED FINANCIAL CONTRACTS.—

(A) IN GENERAL.—In making any transfer of assets or liabilities of a covered financial company in default,

which includes any qualified financial contract, the Corporation as receiver for such covered financial company shall either—

(i) transfer to one financial institution, other than a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding—

(I) all qualified financial contracts between any person or any affiliate of such person and the covered financial company in default;

(II) all claims of such person or any affiliate of such person against such covered financial company under any such contract (other than any claim which, under the terms of any such contract, is subordinated to the claims of general unsecured creditors of such company);

(III) all claims of such covered financial company against such person or any affiliate of such person under any such contract; and

(IV) all property securing or any other credit enhancement for any contract described in subclause (I) or any claim described in subclause (II) or (III) under any such contract; or

(ii) transfer none of the qualified financial contracts, claims, property or other credit enhancement referred to in clause (i) (with respect to such person and any affiliate of such person).

(B) TRANSFER TO FOREIGN BANK, FINANCIAL INSTITUTION, OR BRANCH OR AGENCY THEREOF.—In transferring any qualified financial contracts and related claims and property under subparagraph (A)(i), the Corporation as receiver for the covered financial company shall not make such transfer to a foreign bank, financial institution organized under the laws of a foreign country, or a branch or agency of a foreign bank or financial institution unless, under the law applicable to such bank, financial institution, branch or agency, to the qualified financial contracts, and to any netting contract, any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts, the contractual rights of the parties to such qualified financial contracts, netting contracts, security agreements or arrangements, or other credit enhancements are enforceable substantially to the same extent as permitted under this section.

(C) TRANSFER OF CONTRACTS SUBJECT TO THE RULES OF A CLEARING ORGANIZATION.—In the event that the Corporation as receiver for a financial institution transfers any qualified financial contract and related claims, property, or credit enhancement pursuant to subparagraph (A)(i) and such contract is cleared by or subject to the rules of a clearing organization, the clearing organization shall not be required to accept the transferee as a member by virtue of the transfer.

(D) DEFINITIONS.—For purposes of this paragraph—

(i) the term "financial institution" means a broker or dealer, a depository institution, a futures commission merchant, a bridge financial company, or any other institution determined by the Corporation, by regulation, to be a financial institution; and

(ii) the term "clearing organization" has the same meaning as in section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991.

(10) NOTIFICATION OF TRANSFER.—

(A) IN GENERAL.—

(i) NOTICE.—The Corporation shall provide notice in accordance with clause (ii), if—

(I) the Corporation as receiver for a covered financial company in default or in danger of default transfers any assets or liabilities of the covered financial company; and

(II) the transfer includes any qualified financial contract.

(ii) TIMING.—The Corporation as receiver for a covered financial company shall notify any person who is a party to any contract described in clause (i) of such transfer not later than 5:00 p.m. (eastern time) on the business day following the date of the appointment of the Corporation as receiver.

(B) CERTAIN RIGHTS NOT ENFORCEABLE.—

(i) RECEIVERSHIP.—A person who is a party to a qualified financial contract with a covered financial company may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(A) solely by reason of or incidental to the appointment under this section of the Corporation as receiver for the covered financial company (or the insolvency or financial condition of the covered financial company for which the Corporation has been appointed as receiver)—

(I) until 5:00 p.m. (eastern time) on the business day following the date of the appointment; or

(II) after the person has received notice that the contract has been transferred pursuant to paragraph (9)(A).

(ii) NOTICE.—For purposes of this paragraph, the Corporation as receiver for a covered financial company shall be deemed to have notified a person who is a party to a qualified financial contract with such covered financial company, if the Corporation has taken steps reasonably calculated to provide notice to such person by the time specified in subparagraph (A).

(C) TREATMENT OF BRIDGE FINANCIAL COMPANY.—For purposes of paragraph (9), a bridge financial company shall not be considered to be a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed, or which is otherwise the subject of a bankruptcy or insolvency proceeding.

(D) BUSINESS DAY DEFINED.—For purposes of this paragraph, the term "business day" means any day other than any Saturday, Sunday, or any day on which either the

New York Stock Exchange or the Federal Reserve Bank of New York is closed.

(11) DISAFFIRMANCE OR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.—In exercising the rights of disaffirmance or repudiation of the Corporation as receiver with respect to any qualified financial contract to which a covered financial company is a party, the Corporation shall either—

(A) disaffirm or repudiate all qualified financial contracts between—

(i) any person or any affiliate of such person; and

(ii) the covered financial company in default; or

(B) disaffirm or repudiate none of the qualified financial contracts referred to in subparagraph (A) (with respect to such person or any affiliate of such person).

(12) CERTAIN SECURITY AND CUSTOMER INTERESTS NOT AVOIDABLE.—No provision of this subsection shall be construed as permitting the avoidance of any—

(A) legally enforceable or perfected security interest in any of the assets of any covered financial company, except in accordance with subsection (a)(11); or

(B) legally enforceable interest in customer property, security entitlements in respect of assets or property held by the covered financial company for any security entitlement holder.

(13) AUTHORITY TO ENFORCE CONTRACTS.—

(A) IN GENERAL.—The Corporation, as receiver for a covered financial company, may enforce any contract, other than a liability insurance contract of a director or officer, a financial institution bond entered into by the covered financial company, notwithstanding any provision of the contract providing for termination, default, acceleration, or exercise of rights upon, or solely by reason of, insolvency, the appointment of or the exercise of rights or powers by the Corporation as receiver, the filing of the petition pursuant to section 202(a)(1), or the issuance of the recommendations or determination, or any actions or events occurring in connection therewith or as a result thereof, pursuant to section 203.

(B) CERTAIN RIGHTS NOT AFFECTED.—No provision of this paragraph may be construed as impairing or affecting any right of the Corporation as receiver to enforce or recover under a liability insurance contract of a director or officer or financial institution bond under other applicable law.

(C) CONSENT REQUIREMENT AND IPSO FACTO CLAUSES.—

(i) IN GENERAL.—Except as otherwise provided by this section, no person may exercise any right or power to terminate, accelerate, or declare a default under any contract to which the covered financial company is a party (and no provision in any such contract providing for such default, termination, or acceleration shall be enforceable), or to obtain possession of or exercise control over any property of the covered financial company or affect any contractual rights of the covered financial company, without the consent of the

Corporation as receiver for the covered financial company during the 90 day period beginning from the appointment of the Corporation as receiver.

(ii) EXCEPTIONS.—No provision of this subparagraph shall apply to a director or officer liability insurance contract or a financial institution bond, to the rights of parties to certain qualified financial contracts pursuant to paragraph (8), or to the rights of parties to netting contracts pursuant to subtitle A of title IV of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4401 et seq.), or shall be construed as permitting the Corporation as receiver to fail to comply with otherwise enforceable provisions of such contract.

(D) CONTRACTS TO EXTEND CREDIT.—Notwithstanding any other provision in this title, if the Corporation as receiver enforces any contract to extend credit to the covered financial company or bridge financial company, any valid and enforceable obligation to repay such debt shall be paid by the Corporation as receiver, as an administrative expense of the receivership.

(14) EXCEPTION FOR FEDERAL RESERVE BANKS AND CORPORATION SECURITY INTEREST.—No provision of this subsection shall apply with respect to—

(A) any extension of credit from any Federal reserve bank or the Corporation to any covered financial company; or

(B) any security interest in the assets of the covered financial company securing any such extension of credit.

(15) SAVINGS CLAUSE.—The meanings of terms used in this subsection are applicable for purposes of this subsection only, and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any similar terms under any other statute, regulation, or rule, including the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000, the securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934), and the Commodity Exchange Act.

(16) ENFORCEMENT OF CONTRACTS GUARANTEED BY THE COVERED FINANCIAL COMPANY.—

(A) IN GENERAL.—The Corporation, as receiver for a covered financial company or as receiver for a subsidiary of a covered financial company (including an insured depository institution) shall have the power to enforce contracts of subsidiaries or affiliates of the covered financial company, the obligations under which are guaranteed or otherwise supported by or linked to the covered financial company, notwithstanding any contractual right to cause the termination, liquidation, or acceleration of such contracts based solely on the insolvency, financial condition, or receivership of the covered financial company, if—

(i) such guaranty or other support and all related assets and liabilities are transferred to and assumed by a bridge financial company or a third party (other than a third party for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed, or which is otherwise the subject of

a bankruptcy or insolvency proceeding) within the same period of time as the Corporation is entitled to transfer the qualified financial contracts of such covered financial company; or

(ii) the Corporation, as receiver, otherwise provides adequate protection with respect to such obligations.

(B) RULE OF CONSTRUCTION.—For purposes of this paragraph, a bridge financial company shall not be considered to be a third party for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed, or which is otherwise the subject of a bankruptcy or insolvency proceeding.

(d) VALUATION OF CLAIMS IN DEFAULT.—

(1) IN GENERAL.—Notwithstanding any other provision of Federal law or the law of any State, and regardless of the method utilized by the Corporation for a covered financial company, including transactions authorized under subsection (h), this subsection shall govern the rights of the creditors of any such covered financial company.

(2) MAXIMUM LIABILITY.—The maximum liability of the Corporation, acting as receiver for a covered financial company or in any other capacity, to any person having a claim against the Corporation as receiver or the covered financial company for which the Corporation is appointed shall equal the amount that such claimant would have received if—

(A) the Corporation had not been appointed receiver with respect to the covered financial company; and

(B) the covered financial company had been liquidated under chapter 7 of the Bankruptcy Code, or any similar provision of State insolvency law applicable to the covered financial company.

(3) SPECIAL PROVISION FOR ORDERLY LIQUIDATION BY SIPC.—The maximum liability of the Corporation, acting as receiver or in its corporate capacity for any covered broker or dealer to any customer of such covered broker or dealer, with respect to customer property of such customer, shall be—

(A) equal to the amount that such customer would have received with respect to such customer property in a case initiated by SIPC under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.); and

(B) determined as of the close of business on the date on which the Corporation is appointed as receiver.

(4) ADDITIONAL PAYMENTS AUTHORIZED.—

(A) IN GENERAL.—Subject to subsection (o)(1)(D)(i), the Corporation, with the approval of the Secretary, may make additional payments or credit additional amounts to or with respect to or for the account of any claimant or category of claimants of the covered financial company, if the Corporation determines that such payments or credits are necessary or appropriate to minimize losses to the Corporation as receiver from the orderly liquidation of the covered financial company under this section.

(B) LIMITATIONS.—

(i) PROHIBITION.—The Corporation shall not make any payments or credit amounts to any claimant or category of claimants that would result in any claimant receiving more than the face value amount of any

claim that is proven to the satisfaction of the Corporation.

(ii) NO OBLIGATION.—Notwithstanding any other provision of Federal or State law, or the Constitution of any State, the Corporation shall not be obligated, as a result of having made any payment under subparagraph (A) or credited any amount described in subparagraph (A) to or with respect to, or for the account, of any claimant or category of claimants, to make payments to any other claimant or category of claimants.

(C) MANNER OF PAYMENT.—The Corporation may make payments or credit amounts under subparagraph (A) directly to the claimants or may make such payments or credit such amounts to a company other than a covered financial company or a bridge financial company established with respect thereto in order to induce such other company to accept liability for such claims.

(e) LIMITATION ON COURT ACTION.—Except as provided in this title, no court may take any action to restrain or affect the exercise of powers or functions of the receiver hereunder, and any remedy against the Corporation or receiver shall be limited to money damages determined in accordance with this title.

(f) LIABILITY OF DIRECTORS AND OFFICERS.—

(1) IN GENERAL.—A director or officer of a covered financial company may be held personally liable for monetary damages in any civil action described in paragraph (2) by, on behalf of, or at the request or direction of the Corporation, which action is prosecuted wholly or partially for the benefit of the Corporation—

(A) acting as receiver for such covered financial company;

(B) acting based upon a suit, claim, or cause of action purchased from, assigned by, or otherwise conveyed by the Corporation as receiver; or

(C) acting based upon a suit, claim, or cause of action purchased from, assigned by, or otherwise conveyed in whole or in part by a covered financial company or its affiliate in connection with assistance provided under this title.

(2) ACTIONS COVERED.—Paragraph (1) shall apply with respect to actions for gross negligence, including any similar conduct or conduct that demonstrates a greater disregard of a duty of care (than gross negligence) including intentional tortious conduct, as such terms are defined and determined under applicable State law.

(3) SAVINGS CLAUSE.—Nothing in this subsection shall impair or affect any right of the Corporation under other applicable law.

(g) DAMAGES.—In any proceeding related to any claim against a director, officer, employee, agent, attorney, accountant, or appraiser of a covered financial company, or any other party employed by or providing services to a covered financial company, recoverable damages determined to result from the improvident or otherwise improper use or investment of any assets of the covered financial company shall include principal losses and appropriate interest.

(h) BRIDGE FINANCIAL COMPANIES.—

(1) ORGANIZATION.—

(A) PURPOSE.—The Corporation, as receiver for one or more covered financial companies or in anticipation of being appointed receiver for one or more covered financial companies, may organize one or more bridge financial companies in accordance with this subsection.

(B) AUTHORITIES.—Upon the creation of a bridge financial company under subparagraph (A) with respect to a covered financial company, such bridge financial company may—

(i) assume such liabilities (including liabilities associated with any trust or custody business, but excluding any liabilities that count as regulatory capital) of such covered financial company as the Corporation may, in its discretion, determine to be appropriate;

(ii) purchase such assets (including assets associated with any trust or custody business) of such covered financial company as the Corporation may, in its discretion, determine to be appropriate; and

(iii) perform any other temporary function which the Corporation may, in its discretion, prescribe in accordance with this section.

(2) CHARTER AND ESTABLISHMENT.—

(A) ESTABLISHMENT.—Except as provided in subparagraph (H), where the covered financial company is a covered broker or dealer, the Corporation, as receiver for a covered financial company, may grant a Federal charter to and approve articles of association for one or more bridge financial company or companies, with respect to such covered financial company which shall, by operation of law and immediately upon issuance of its charter and approval of its articles of association, be established and operate in accordance with, and subject to, such charter, articles, and this section.

(B) MANAGEMENT.—Upon its establishment, a bridge financial company shall be under the management of a board of directors appointed by the Corporation.

(C) ARTICLES OF ASSOCIATION.—The articles of association and organization certificate of a bridge financial company shall have such terms as the Corporation may provide, and shall be executed by such representatives as the Corporation may designate.

(D) TERMS OF CHARTER; RIGHTS AND PRIVILEGES.—Subject to and in accordance with the provisions of this subsection, the Corporation shall—

(i) establish the terms of the charter of a bridge financial company and the rights, powers, authorities, and privileges of a bridge financial company granted by the charter or as an incident thereto; and

(ii) provide for, and establish the terms and conditions governing, the management (including the bylaws and the number of directors of the board of directors) and operations of the bridge financial company.

(E) TRANSFER OF RIGHTS AND PRIVILEGES OF COVERED FINANCIAL COMPANY.—

(i) IN GENERAL.—Notwithstanding any other provision of Federal or State law, the Corporation may provide for a bridge financial company to succeed to and assume any rights, powers, authorities, or privileges of the covered financial company with respect to which the bridge financial company was established and, upon such determination by the Corporation, the bridge financial company shall immediately and by operation of law succeed to and assume such rights, powers, authorities, and privileges.

(ii) EFFECTIVE WITHOUT APPROVAL.—Any succession to or assumption by a bridge financial company of rights, powers, authorities, or privileges of a covered financial company under clause (i) or otherwise shall be effective without any further approval under Federal or State law, assignment, or consent with respect thereto.

(F) CORPORATE GOVERNANCE AND ELECTION AND DESIGNATION OF BODY OF LAW.—To the extent permitted by the Corporation and consistent with this section and any rules, regulations, or directives issued by the Corporation under this section, a bridge financial company may elect to follow the corporate governance practices and procedures that are applicable to a corporation incorporated under the general corporation law of the State of Delaware, or the State of incorporation or organization of the covered financial company with respect to which the bridge financial company was established, as such law may be amended from time to time.

(G) CAPITAL.—

(i) CAPITAL NOT REQUIRED.—Notwithstanding any other provision of Federal or State law, a bridge financial company may, if permitted by the Corporation, operate without any capital or surplus, or with such capital or surplus as the Corporation may in its discretion determine to be appropriate.

(ii) NO CONTRIBUTION BY THE CORPORATION REQUIRED.—The Corporation is not required to pay capital into a bridge financial company or to issue any capital stock on behalf of a bridge financial company established under this subsection.

(iii) AUTHORITY.—If the Corporation determines that such action is advisable, the Corporation may cause capital stock or other securities of a bridge financial company established with respect to a covered financial company to be issued and offered for sale in such amounts and on such terms and conditions as the Corporation may, in its discretion, determine.

(iv) OPERATING FUNDS IN LIEU OF CAPITAL AND IMPLEMENTATION PLAN.—Upon the organization of a bridge financial company, and thereafter as the Corporation may, in its discretion, determine to be necessary or advisable, the Corporation may make available to the bridge financial company, subject to the plan described in subsection (n)(9), funds for the operation of the bridge financial company in lieu of capital.

(H) BRIDGE BROKERS OR DEALERS.—

(i) IN GENERAL.—The Corporation, as receiver for a covered broker or dealer, may approve articles of association for one or more bridge financial companies with respect to such covered broker or dealer, which bridge financial company or companies shall, by operation of law and immediately upon approval of its articles of association—

(I) be established and deemed registered with the Commission under the Securities Exchange Act of 1934 and a member of SIPC;

(II) operate in accordance with such articles and this section; and

(III) succeed to any and all registrations and memberships of the covered financial company with or in any self-regulatory organizations.

(ii) OTHER REQUIREMENTS.—Except as provided in clause (i), and notwithstanding any other provision of this section, the bridge financial company shall be subject to the Federal securities laws and all requirements with respect to being a member of a self-regulatory organization, unless exempted from any such requirements by the Commission, as is necessary or appropriate in the public interest or for the protection of investors.

(iii) TREATMENT OF CUSTOMERS.—Except as otherwise provided by this title, any customer of the covered broker or dealer whose account is transferred to a bridge financial company shall have all the rights, privileges, and protections under section 205(f) and under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.), that such customer would have had if the account were not transferred from the covered financial company under this subparagraph.

(iv) OPERATION OF BRIDGE BROKERS OR DEALERS.—Notwithstanding any other provision of this title, the Corporation shall not operate any bridge financial company created by the Corporation under this title with respect to a covered broker or dealer in such a manner as to adversely affect the ability of customers to promptly access their customer property in accordance with applicable law.

(3) INTERESTS IN AND ASSETS AND OBLIGATIONS OF COVERED FINANCIAL COMPANY.—Notwithstanding paragraph (1) or (2) or any other provision of law—

(A) a bridge financial company shall assume, acquire, or succeed to the assets or liabilities of a covered financial company (including the assets or liabilities associated with any trust or custody business) only to the extent that such assets or liabilities are transferred by the Corporation to the bridge financial company in accordance with, and subject to the restrictions set forth in, paragraph (1)(B); and

(B) a bridge financial company shall not assume, acquire, or succeed to any obligation that a covered financial company for which the Corporation has been appointed receiver may have to any shareholder, member, general

partner, limited partner, or other person with an interest in the equity of the covered financial company that arises as a result of the status of that person having an equity claim in the covered financial company.

(4) BRIDGE FINANCIAL COMPANY TREATED AS BEING IN DEFAULT FOR CERTAIN PURPOSES.—A bridge financial company shall be treated as a covered financial company in default at such times and for such purposes as the Corporation may, in its discretion, determine.

(5) TRANSFER OF ASSETS AND LIABILITIES.—

(A) AUTHORITY OF CORPORATION.—The Corporation, as receiver for a covered financial company, may transfer any assets and liabilities of a covered financial company (including any assets or liabilities associated with any trust or custody business) to one or more bridge financial companies, in accordance with and subject to the restrictions of paragraph (1).

(B) SUBSEQUENT TRANSFERS.—At any time after the establishment of a bridge financial company with respect to a covered financial company, the Corporation, as receiver, may transfer any assets and liabilities of such covered financial company as the Corporation may, in its discretion, determine to be appropriate in accordance with and subject to the restrictions of paragraph (1).

(C) TREATMENT OF TRUST OR CUSTODY BUSINESS.—For purposes of this paragraph, the trust or custody business, including fiduciary appointments, held by any covered financial company is included among its assets and liabilities.

(D) EFFECTIVE WITHOUT APPROVAL.—The transfer of any assets or liabilities, including those associated with any trust or custody business of a covered financial company, to a bridge financial company shall be effective without any further approval under Federal or State law, assignment, or consent with respect thereto.

(E) EQUITABLE TREATMENT OF SIMILARLY SITUATED CREDITORS.—The Corporation shall treat all creditors of a covered financial company that are similarly situated under subsection (b)(1), in a similar manner in exercising the authority of the Corporation under this subsection to transfer any assets or liabilities of the covered financial company to one or more bridge financial companies established with respect to such covered financial company, except that the Corporation may take any action (including making payments, subject to subsection (o)(1)(D)(i)) that does not comply with this subparagraph, if—

(i) the Corporation determines that such action is necessary—

(I) to maximize the value of the assets of the covered financial company;

(II) to maximize the present value return from the sale or other disposition of the assets of the covered financial company; or

(III) to minimize the amount of any loss realized upon the sale or other disposition of the assets of the covered financial company; and

(ii) all creditors that are similarly situated under subsection (b)(1) receive not less than the amount provided under paragraphs (2) and (3) of subsection (d).

(F) LIMITATION ON TRANSFER OF LIABILITIES.—Notwithstanding any other provision of law, the aggregate amount of liabilities of a covered financial company that are transferred to, or assumed by, a bridge financial company from a covered financial company may not exceed the aggregate amount of the assets of the covered financial company that are transferred to, or purchased by, the bridge financial company from the covered financial company.

(6) STAY OF JUDICIAL ACTION.—Any judicial action to which a bridge financial company becomes a party by virtue of its acquisition of any assets or assumption of any liabilities of a covered financial company shall be stayed from further proceedings for a period of not longer than 45 days (or such longer period as may be agreed to upon the consent of all parties) at the request of the bridge financial company.

(7) AGREEMENTS AGAINST INTEREST OF THE BRIDGE FINANCIAL COMPANY.—No agreement that tends to diminish or defeat the interest of the bridge financial company in any asset of a covered financial company acquired by the bridge financial company shall be valid against the bridge financial company, unless such agreement—

(A) is in writing;

(B) was executed by an authorized officer or representative of the covered financial company or confirmed in the ordinary course of business by the covered financial company; and

(C) has been on the official record of the company, since the time of its execution, or with which, the party claiming under the agreement provides documentation of such agreement and its authorized execution or confirmation by the covered financial company that is acceptable to the receiver.

(8) NO FEDERAL STATUS.—

(A) AGENCY STATUS.—A bridge financial company is not an agency, establishment, or instrumentality of the United States.

(B) EMPLOYEE STATUS.—Representatives for purposes of paragraph (1)(B), directors, officers, employees, or agents of a bridge financial company are not, solely by virtue of service in any such capacity, officers or employees of the United States. Any employee of the Corporation or of any Federal instrumentality who serves at the request of the Corporation as a representative for purposes of paragraph (1)(B), director, officer, employee, or agent of a bridge financial company shall not—

(i) solely by virtue of service in any such capacity lose any existing status as an officer or employee of the United States for purposes of title 5, United States Code, or any other provision of law; or

(ii) receive any salary or benefits for service in any such capacity with respect to a bridge financial company in addition to such salary or benefits as are obtained through employment with the Corporation or such Federal instrumentality.

(9) FUNDING AUTHORIZED.—The Corporation may, subject to the plan described in subsection (n)(9), provide funding to facilitate any transaction described in subparagraph (A), (B), (C), or (D) of paragraph (13) with respect to any bridge financial company, or facilitate the acquisition by a bridge financial company of any assets, or the assumption of any liabilities, of a covered financial company for which the Corporation has been appointed receiver.

(10) EXEMPT TAX STATUS.—Notwithstanding any other provision of Federal or State law, a bridge financial company, its franchise, property, and income shall be exempt from all taxation now or hereafter imposed by the United States, by any territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority.

(11) FEDERAL AGENCY APPROVAL; ANTITRUST REVIEW.—If a transaction involving the merger or sale of a bridge financial company requires approval by a Federal agency, the transaction may not be consummated before the 5th calendar day after the date of approval by the Federal agency responsible for such approval with respect thereto. If, in connection with any such approval a report on competitive factors from the Attorney General is required, the Federal agency responsible for such approval shall promptly notify the Attorney General of the proposed transaction and the Attorney General shall provide the required report within 10 days of the request. If a notification is required under section 7A of the Clayton Act with respect to such transaction, the required waiting period shall end on the 15th day after the date on which the Attorney General and the Federal Trade Commission receive such notification, unless the waiting period is terminated earlier under section 7A(b)(2) of the Clayton Act, or extended under section 7A(e)(2) of that Act.

(12) DURATION OF BRIDGE FINANCIAL COMPANY.—Subject to paragraphs (13) and (14), the status of a bridge financial company as such shall terminate at the end of the 2-year period following the date on which it was granted a charter. The Corporation may, in its discretion, extend the status of the bridge financial company as such for no more than 3 additional 1-year periods.

(13) TERMINATION OF BRIDGE FINANCIAL COMPANY STATUS.—The status of any bridge financial company as such shall terminate upon the earliest of—

(A) the date of the merger or consolidation of the bridge financial company with a company that is not a bridge financial company;

(B) at the election of the Corporation, the sale of a majority of the capital stock of the bridge financial company to a company other than the Corporation and other than another bridge financial company;

(C) the sale of 80 percent, or more, of the capital stock of the bridge financial company to a person other than the Corporation and other than another bridge financial company;

(D) at the election of the Corporation, either the assumption of all or substantially all of the liabilities of the bridge financial company by a company that is not a bridge financial company, or the acquisition of all or

substantially all of the assets of the bridge financial company by a company that is not a bridge financial company, or other entity as permitted under applicable law; and

(E) the expiration of the period provided in paragraph (12), or the earlier dissolution of the bridge financial company, as provided in paragraph (15).

(14) EFFECT OF TERMINATION EVENTS.—

(A) MERGER OR CONSOLIDATION.—A merger or consolidation, described in paragraph (13)(A) shall be conducted in accordance with, and shall have the effect provided in, the provisions of applicable law. For the purpose of effecting such a merger or consolidation, the bridge financial company shall be treated as a corporation organized under the laws of the State of Delaware (unless the law of another State has been selected by the bridge financial company in accordance with paragraph (2)(F)), and the Corporation shall be treated as the sole shareholder thereof, notwithstanding any other provision of State or Federal law.

(B) CHARTER CONVERSION.—Following the sale of a majority of the capital stock of the bridge financial company, as provided in paragraph (13)(B), the Corporation may amend the charter of the bridge financial company to reflect the termination of the status of the bridge financial company as such, whereupon the company shall have all of the rights, powers, and privileges under its constituent documents and applicable Federal or State law. In connection therewith, the Corporation may take such steps as may be necessary or convenient to reincorporate the bridge financial company under the laws of a State and, notwithstanding any provisions of Federal or State law, such State-chartered corporation shall be deemed to succeed by operation of law to such rights, titles, powers, and interests of the bridge financial company as the Corporation may provide, with the same effect as if the bridge financial company had merged with the State-chartered corporation under provisions of the corporate laws of such State.

(C) SALE OF STOCK.—Following the sale of 80 percent or more of the capital stock of a bridge financial company, as provided in paragraph (13)(C), the company shall have all of the rights, powers, and privileges under its constituent documents and applicable Federal or State law. In connection therewith, the Corporation may take such steps as may be necessary or convenient to reincorporate the bridge financial company under the laws of a State and, notwithstanding any provisions of Federal or State law, the State-chartered corporation shall be deemed to succeed by operation of law to such rights, titles, powers and interests of the bridge financial company as the Corporation may provide, with the same effect as if the bridge financial company had merged with the State-chartered corporation under provisions of the corporate laws of such State.

(D) ASSUMPTION OF LIABILITIES AND SALE OF ASSETS.—Following the assumption of all or substantially all of the liabilities of the bridge financial company, or the sale of

all or substantially all of the assets of the bridge financial company, as provided in paragraph (13)(D), at the election of the Corporation, the bridge financial company may retain its status as such for the period provided in paragraph (12) or may be dissolved at the election of the Corporation.

(E) AMENDMENTS TO CHARTER.—Following the consummation of a transaction described in subparagraph (A), (B), (C), or (D) of paragraph (13), the charter of the resulting company shall be amended to reflect the termination of bridge financial company status, if appropriate.

(15) DISSOLUTION OF BRIDGE FINANCIAL COMPANY.—

(A) IN GENERAL.—Notwithstanding any other provision of Federal or State law, if the status of a bridge financial company as such has not previously been terminated by the occurrence of an event specified in subparagraph (A), (B), (C), or (D) of paragraph (13)—

(i) the Corporation may, in its discretion, dissolve the bridge financial company in accordance with this paragraph at any time; and

(ii) the Corporation shall promptly commence dissolution proceedings in accordance with this paragraph upon the expiration of the 2-year period following the date on which the bridge financial company was chartered, or any extension thereof, as provided in paragraph (12).

(B) PROCEDURES.—The Corporation shall remain the receiver for a bridge financial company for the purpose of dissolving the bridge financial company. The Corporation as receiver for a bridge financial company shall wind up the affairs of the bridge financial company in conformity with the provisions of law relating to the liquidation of covered financial companies under this title. With respect to any such bridge financial company, the Corporation as receiver shall have all the rights, powers, and privileges and shall perform the duties related to the exercise of such rights, powers, or privileges granted by law to the Corporation as receiver for a covered financial company under this title and, notwithstanding any other provision of law, in the exercise of such rights, powers, and privileges, the Corporation shall not be subject to the direction or supervision of any State agency or other Federal agency.

(16) AUTHORITY TO OBTAIN CREDIT.—

(A) IN GENERAL.—A bridge financial company may obtain unsecured credit and issue unsecured debt.

(B) INABILITY TO OBTAIN CREDIT.—If a bridge financial company is unable to obtain unsecured credit or issue unsecured debt, the Corporation may authorize the obtaining of credit or the issuance of debt by the bridge financial company—

(i) with priority over any or all of the obligations of the bridge financial company;

(ii) secured by a lien on property of the bridge financial company that is not otherwise subject to a lien; or

(iii) secured by a junior lien on property of the bridge financial company that is subject to a lien.

(C) LIMITATIONS.—

(i) IN GENERAL.—The Corporation, after notice and a hearing, may authorize the obtaining of credit or the issuance of debt by a bridge financial company that is secured by a senior or equal lien on property of the bridge financial company that is subject to a lien, only if—

(I) the bridge financial company is unable to otherwise obtain such credit or issue such debt; and

(II) there is adequate protection of the interest of the holder of the lien on the property with respect to which such senior or equal lien is proposed to be granted.

(ii) HEARING.—The hearing required pursuant to this subparagraph shall be before a court of the United States, which shall have jurisdiction to conduct such hearing and to authorize a bridge financial company to obtain secured credit under clause (i).

(D) BURDEN OF PROOF.—In any hearing under this paragraph, the Corporation has the burden of proof on the issue of adequate protection.

(E) QUALIFIED FINANCIAL CONTRACTS.—No credit or debt obtained or issued by a bridge financial company may contain terms that impair the rights of a counterparty to a qualified financial contract upon a default by the bridge financial company, other than the priority of such counterparty's unsecured claim (after the exercise of rights) relative to the priority of the bridge financial company's obligations in respect of such credit or debt, unless such counterparty consents in writing to any such impairment.

(17) EFFECT ON DEBTS AND LIENS.—The reversal or modification on appeal of an authorization under this subsection to obtain credit or issue debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so issued, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the issuance of such debt, or the granting of such priority or lien, were stayed pending appeal.

(i) SHARING RECORDS.—If the Corporation has been appointed as receiver for a covered financial company, other Federal regulators shall make all records relating to the covered financial company available to the Corporation, which may be used by the Corporation in any manner that the Corporation determines to be appropriate.

(j) EXPEDITED PROCEDURES FOR CERTAIN CLAIMS.—

(1) TIME FOR FILING NOTICE OF APPEAL.—The notice of appeal of any order, whether interlocutory or final, entered in any case brought by the Corporation against a director, officer, employee, agent, attorney, accountant, or appraiser of the covered financial company, or any other person employed by or providing services to a covered financial company, shall be filed not later than 30 days after the date of entry of the order. The hearing of the appeal shall be held not later than 120 days after the date of the notice of appeal. The appeal shall be decided not later than 180 days after the date of the notice of appeal.

(2) SCHEDULING.—The court shall expedite the consideration of any case brought by the Corporation against a director, officer, employee, agent, attorney, accountant, or appraiser of a covered financial company or any other person employed by or providing services to a covered financial company. As far as practicable, the court shall give such case priority on its docket.

(3) JUDICIAL DISCRETION.—The court may modify the schedule and limitations stated in paragraphs (1) and (2) in a particular case, based on a specific finding that the ends of justice that would be served by making such a modification would outweigh the best interest of the public in having the case resolved expeditiously.

(k) FOREIGN INVESTIGATIONS.—The Corporation, as receiver for any covered financial company, and for purposes of carrying out any power, authority, or duty with respect to a covered financial company—

(1) may request the assistance of any foreign financial authority and provide assistance to any foreign financial authority in accordance with section 8(v) of the Federal Deposit Insurance Act, as if the covered financial company were an insured depository institution, the Corporation were the appropriate Federal banking agency for the company, and any foreign financial authority were the foreign banking authority; and

(2) may maintain an office to coordinate foreign investigations or investigations on behalf of foreign financial authorities.

(l) PROHIBITION ON ENTERING SECRECY AGREEMENTS AND PROTECTIVE ORDERS.—The Corporation may not enter into any agreement or approve any protective order which prohibits the Corporation from disclosing the terms of any settlement of an administrative or other action for damages or restitution brought by the Corporation in its capacity as receiver for a covered financial company.

(m) LIQUIDATION OF CERTAIN COVERED FINANCIAL COMPANIES OR BRIDGE FINANCIAL COMPANIES.—

(1) IN GENERAL.—Except as specifically provided in this section, and notwithstanding any other provision of law, the Corporation, in connection with the liquidation of any covered financial company or bridge financial company with respect to which the Corporation has been appointed as receiver, shall—

(A) in the case of any covered financial company or bridge financial company that is a stockbroker, but is not a member of the Securities Investor Protection Corporation, apply the provisions of subchapter III of chapter 7 of the Bankruptcy Code, in respect of the distribution to any customer of all customer name security and customer property and member property, as if such covered financial company or bridge financial company were a debtor for purposes of such subchapter; or

(B) in the case of any covered financial company or bridge financial company that is a commodity broker, apply the provisions of subchapter IV of chapter 7 the Bankruptcy Code, in respect of the distribution to any customer of all customer property and member property, as if such covered financial company or bridge financial company were a debtor for purposes of such subchapter.

(2) DEFINITIONS.—For purposes of this subsection—

(A) the terms "customer", "customer name security", and "customer property and member property" have the same meanings as in sections 741 and 761 of title 11, United States Code; and

(B) the terms "commodity broker" and "stockbroker" have the same meanings as in section 101 of the Bankruptcy Code.

(n) ORDERLY LIQUIDATION FUND.—

(1) ESTABLISHMENT.—There is established in the Treasury of the United States a separate fund to be known as the "Orderly Liquidation Fund", which shall be available to the Corporation to carry out the authorities contained in this title, for the cost of actions authorized by this title, including the orderly liquidation of covered financial companies, payment of administrative expenses, the payment of principal and interest by the Corporation on obligations issued under paragraph (5), and the exercise of the authorities of the Corporation under this title.

(2) PROCEEDS.—Amounts received by the Corporation, including assessments received under subsection (o), proceeds of obligations issued under paragraph (5), interest and other earnings from investments, and repayments to the Corporation by covered financial companies, shall be deposited into the Fund.

(3) MANAGEMENT.—The Corporation shall manage the Fund in accordance with this subsection and the policies and procedures established under section 203(d).

(4) INVESTMENTS.—At the request of the Corporation, the Secretary may invest such portion of amounts held in the Fund that are not, in the judgment of the Corporation, required to meet the current needs of the Corporation, in obligations of the United States having suitable maturities, as determined by the Corporation. The interest on and the proceeds from the sale or redemption of such obligations shall be credited to the Fund.

(5) AUTHORITY TO ISSUE OBLIGATIONS.—

(A) CORPORATION AUTHORIZED TO ISSUE OBLIGATIONS.—Upon appointment by the Secretary of the Corporation as receiver for a covered financial company, the Corporation is authorized to issue obligations to the Secretary.

(B) SECRETARY AUTHORIZED TO PURCHASE OBLIGATIONS.—The Secretary may, under such terms and conditions as the Secretary may require, purchase or agree to purchase any obligations issued under subparagraph (A), and for such purpose, the Secretary is authorized to use as a public debt transaction the proceeds of the sale of any securities issued under chapter 31 of title 31, United States Code, and the purposes for which securities may be issued under chapter 31 of title 31, United States Code, are extended to include such purchases.

(C) INTEREST RATE.—Each purchase of obligations by the Secretary under this paragraph shall be upon such terms and conditions as to yield a return at a rate determined by the Secretary, taking into consideration the current average yield on outstanding marketable obligations of the United States of comparable maturity, plus an

interest rate surcharge to be determined by the Secretary, which shall be greater than the difference between—

(i) the current average rate on an index of corporate obligations of comparable maturity; and

(ii) the current average rate on outstanding marketable obligations of the United States of comparable maturity.

(D) SECRETARY AUTHORIZED TO SELL OBLIGATIONS.—The Secretary may sell, upon such terms and conditions as the Secretary shall determine, any of the obligations acquired under this paragraph.

(E) PUBLIC DEBT TRANSACTIONS.—All purchases and sales by the Secretary of such obligations under this paragraph shall be treated as public debt transactions of the United States, and the proceeds from the sale of any obligations acquired by the Secretary under this paragraph shall be deposited into the Treasury of the United States as miscellaneous receipts.

(6) MAXIMUM OBLIGATION LIMITATION.—The Corporation may not, in connection with the orderly liquidation of a covered financial company, issue or incur any obligation, if, after issuing or incurring the obligation, the aggregate amount of such obligations outstanding under this subsection for each covered financial company would exceed—

(A) an amount that is equal to 10 percent of the total consolidated assets of the covered financial company, based on the most recent financial statement available, during the 30-day period immediately following the date of appointment of the Corporation as receiver (or a shorter time period if the Corporation has calculated the amount described under subparagraph (B)); and

(B) the amount that is equal to 90 percent of the fair value of the total consolidated assets of each covered financial company that are available for repayment, after the time period described in subparagraph (A).

(7) RULEMAKING.—The Corporation and the Secretary shall jointly, in consultation with the Council, prescribe regulations governing the calculation of the maximum obligation limitation defined in this paragraph.

(8) RULE OF CONSTRUCTION.—

(A) IN GENERAL.—Nothing in this section shall be construed to affect the authority of the Corporation under subsection (a) or (b) of section 14 or section 15(c)(5) of the Federal Deposit Insurance Act (12 U.S.C. 1824, 1825(c)(5)), the management of the Deposit Insurance Fund by the Corporation, or the resolution of insured depository institutions, provided that—

(i) the authorities of the Corporation contained in this title shall not be used to assist the Deposit Insurance Fund or to assist any financial company under applicable law other than this Act;

(ii) the authorities of the Corporation relating to the Deposit Insurance Fund, or any other responsibilities of the Corporation under applicable law other than this title, shall not be used to assist a covered financial company pursuant to this title; and

(iii) the Deposit Insurance Fund may not be used in any manner to otherwise circumvent the purposes of this title.

(B) VALUATION.—For purposes of determining the amount of obligations under this subsection—

(i) the Corporation shall include as an obligation any contingent liability of the Corporation pursuant to this title; and

(ii) the Corporation shall value any contingent liability at its expected cost to the Corporation.

(9) ORDERLY LIQUIDATION AND REPAYMENT PLANS.—

(A) ORDERLY LIQUIDATION PLAN.—Amounts in the Fund shall be available to the Corporation with regard to a covered financial company for which the Corporation is appointed receiver after the Corporation has developed an orderly liquidation plan that is acceptable to the Secretary with regard to such covered financial company, including the provision and use of funds, including taking any actions specified under section 204(d) and subsection (h)(2)(G)(iv) and (h)(9) of this section, and payments to third parties. The orderly liquidation plan shall take into account actions to avoid or mitigate potential adverse effects on low income, minority, or underserved communities affected by the failure of the covered financial company, and shall provide for coordination with the primary financial regulatory agencies, as appropriate, to ensure that such actions are taken. The Corporation may, at any time, amend any orderly liquidation plan approved by the Secretary with the concurrence of the Secretary.

(B) MANDATORY REPAYMENT PLAN.—

(i) IN GENERAL.—No amount authorized under paragraph (6)(B) may be provided by the Secretary to the Corporation under paragraph (5), unless an agreement is in effect between the Secretary and the Corporation that—

(I) provides a specific plan and schedule to achieve the repayment of the outstanding amount of any borrowing under paragraph (5); and

(II) demonstrates that income to the Corporation from the liquidated assets of the covered financial company and assessments under subsection (o) will be sufficient to amortize the outstanding balance within the period established in the repayment schedule and pay the interest accruing on such balance within the time provided in subsection (o)(1)(B).

(ii) CONSULTATION WITH AND REPORT TO CONGRESS.—The Secretary and the Corporation shall—

(I) consult with the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the terms of any repayment schedule agreement; and

(II) submit a copy of the repayment schedule agreement to the Committees described in subclause (I) before the end of the 30-day period beginning on the date on which any amount is provided

by the Secretary to the Corporation under paragraph (5).

(10) IMPLEMENTATION EXPENSES.—

(A) IN GENERAL.—Reasonable implementation expenses of the Corporation incurred after the date of enactment of this Act shall be treated as expenses of the Council.

(B) REQUESTS FOR REIMBURSEMENT.—The Corporation shall periodically submit a request for reimbursement for implementation expenses to the Chairperson of the Council, who shall arrange for prompt reimbursement to the Corporation of reasonable implementation expenses.

(C) DEFINITION.—As used in this paragraph, the term "implementation expenses"—

(i) means costs incurred by the Corporation beginning on the date of enactment of this Act, as part of its efforts to implement this title that do not relate to a particular covered financial company; and

(ii) includes the costs incurred in connection with the development of policies, procedures, rules, and regulations and other planning activities of the Corporation consistent with carrying out this title.

(o) ASSESSMENTS.—

(1) RISK-BASED ASSESSMENTS.—

(A) ELIGIBLE FINANCIAL COMPANIES DEFINED.—For purposes of this subsection, the term "eligible financial company" means any bank holding company with total consolidated assets equal to or greater than $50,000,000,000 and any nonbank financial company supervised by the Board of Governors.

(B) ASSESSMENTS.—The Corporation shall charge one or more risk-based assessments in accordance with the provisions of subparagraph (D), if such assessments are necessary to pay in full the obligations issued by the Corporation to the Secretary under this title within 60 months of the date of issuance of such obligations.

(C) EXTENSIONS AUTHORIZED.—The Corporation may, with the approval of the Secretary, extend the time period under subparagraph (B), if the Corporation determines that an extension is necessary to avoid a serious adverse effect on the financial system of the United States.

(D) APPLICATION OF ASSESSMENTS.—To meet the requirements of subparagraph (B), the Corporation shall—

(i) impose assessments, as soon as practicable, on any claimant that received additional payments or amounts from the Corporation pursuant to subsection (b)(4), (d)(4), or (h)(5)(E), except for payments or amounts necessary to initiate and continue operations essential to implementation of the receivership or any bridge financial company, to recover on a cumulative basis, the entire difference between—

(I) the aggregate value the claimant received from the Corporation on a claim pursuant to this title (including pursuant to subsection (b)(4), (d)(4), and (h)(5)(E)), as of the date on which such value was received; and

(II) the value the claimant was entitled to receive from the Corporation on such claim solely

from the proceeds of the liquidation of the covered financial company under this title; and

(ii) if the amounts to be recovered on a cumulative basis under clause (i) are insufficient to meet the requirements of subparagraph (B), after taking into account the considerations set forth in paragraph (4), impose assessments on—

(I) eligible financial companies; and

(II) financial companies with total consolidated assets equal to or greater than $50,000,000,000 that are not eligible financial companies.

(E) PROVISION OF FINANCING.—Payments or amounts necessary to initiate and continue operations essential to implementation of the receivership or any bridge financial company described in subparagraph (D)(i) shall not include the provision of financing, as defined by rule of the Corporation, to third parties.

(2) GRADUATED ASSESSMENT RATE.—The Corporation shall impose assessments on a graduated basis, with financial companies having greater assets and risk being assessed at a higher rate.

(3) NOTIFICATION AND PAYMENT.—The Corporation shall notify each financial company of that company's assessment under this subsection. Any financial company subject to assessment under this subsection shall pay such assessment in accordance with the regulations prescribed pursuant to paragraph (6).

(4) RISK-BASED ASSESSMENT CONSIDERATIONS.—In imposing assessments under paragraph (1)(D)(ii), the Corporation shall use a risk matrix. The Council shall make a recommendation to the Corporation on the risk matrix to be used in imposing such assessments, and the Corporation shall take into account any such recommendation in the establishment of the risk matrix to be used to impose such assessments. In recommending or establishing such risk matrix, the Council and the Corporation, respectively, shall take into account—

(A) economic conditions generally affecting financial companies so as to allow assessments to increase during more favorable economic conditions and to decrease during less favorable economic conditions;

(B) any assessments imposed on a financial company or an affiliate of a financial company that—

(i) is an insured depository institution, assessed pursuant to section 7 or 13(c)(4)(G) of the Federal Deposit Insurance Act;

(ii) is a member of the Securities Investor Protection Corporation, assessed pursuant to section 4 of the Securities Investor Protection Act of 1970 (15 U.S.C. 78ddd);

(iii) is an insured credit union, assessed pursuant to section 202(c)(1)(A)(i) of the Federal Credit Union Act (12 U.S.C. 1782(c)(1)(A)(i)); or

(iv) is an insurance company, assessed pursuant to applicable State law to cover (or reimburse payments made to cover) the costs of the rehabilitation, liquidation, or other State insolvency proceeding with respect to 1 or more insurance companies;

(C) the risks presented by the financial company to the financial system and the extent to which the financial company has benefitted, or likely would benefit, from the orderly liquidation of a financial company under this title, including—

(i) the amount, different categories, and concentrations of assets of the financial company and its affiliates, including both on-balance sheet and off-balance sheet assets;

(ii) the activities of the financial company and its affiliates;

(iii) the relevant market share of the financial company and its affiliates;

(iv) the extent to which the financial company is leveraged;

(v) the potential exposure to sudden calls on liquidity precipitated by economic distress;

(vi) the amount, maturity, volatility, and stability of the company's financial obligations to, and relationship with, other financial companies;

(vii) the amount, maturity, volatility, and stability of the liabilities of the company, including the degree of reliance on short-term funding, taking into consideration existing systems for measuring a company's risk-based capital;

(viii) the stability and variety of the company's sources of funding;

(ix) the company's importance as a source of credit for households, businesses, and State and local governments and as a source of liquidity for the financial system;

(x) the extent to which assets are simply managed and not owned by the financial company and the extent to which ownership of assets under management is diffuse; and

(xi) the amount, different categories, and concentrations of liabilities, both insured and uninsured, contingent and noncontingent, including both on-balance sheet and off-balance sheet liabilities, of the financial company and its affiliates;

(D) any risks presented by the financial company during the 10-year period immediately prior to the appointment of the Corporation as receiver for the covered financial company that contributed to the failure of the covered financial company; and

(E) such other risk-related factors as the Corporation, or the Council, as applicable, may determine to be appropriate.

(5) COLLECTION OF INFORMATION.—The Corporation may impose on covered financial companies such collection of information requirements as the Corporation deems necessary to carry out this subsection after the appointment of the Corporation as receiver under this title.

(6) RULEMAKING.—

(A) IN GENERAL.—The Corporation shall prescribe regulations to carry out this subsection. The Corporation shall

consult with the Secretary in the development and finalization of such regulations.

(B) EQUITABLE TREATMENT.—The regulations prescribed under subparagraph (A) shall take into account the differences in risks posed to the financial stability of the United States by financial companies, the differences in the liability structures of financial companies, and the different bases for other assessments that such financial companies may be required to pay, to ensure that assessed financial companies are treated equitably and that assessments under this subsection reflect such differences.

(p) UNENFORCEABILITY OF CERTAIN AGREEMENTS.—

(1) IN GENERAL.—No provision described in paragraph (2) shall be enforceable against or impose any liability on any person, as such enforcement or liability shall be contrary to public policy.

(2) PROHIBITED PROVISIONS.—A provision described in this paragraph is any term contained in any existing or future standstill, confidentiality, or other agreement that, directly or indirectly—

(A) affects, restricts, or limits the ability of any person to offer to acquire or acquire;

(B) prohibits any person from offering to acquire or acquiring; or

(C) prohibits any person from using any previously disclosed information in connection with any such offer to acquire or acquisition of,

all or part of any covered financial company, including any liabilities, assets, or interest therein, in connection with any transaction in which the Corporation exercises its authority under this title.

(q) OTHER EXEMPTIONS.—

(1) IN GENERAL.—When acting as a receiver under this title—

(A) the Corporation, including its franchise, its capital, reserves and surplus, and its income, shall be exempt from all taxation imposed by any State, county, municipality, or local taxing authority, except that any real property of the Corporation shall be subject to State, territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed, except that, notwithstanding the failure of any person to challenge an assessment under State law of the value of such property, such value, and the tax thereon, shall be determined as of the period for which such tax is imposed;

(B) no property of the Corporation shall be subject to levy, attachment, garnishment, foreclosure, or sale without the consent of the Corporation, nor shall any involuntary lien attach to the property of the Corporation; and

(C) the Corporation shall not be liable for any amounts in the nature of penalties or fines, including those arising from the failure of any person to pay any real property, personal property, probate, or recording tax or any recording or filing fees when due; and

(D) the Corporation shall be exempt from all prosecution by the United States or any State, county, municipality, or local authority for any criminal offense arising

under Federal, State, county, municipal, or local law, which was allegedly committed by the covered financial company, or persons acting on behalf of the covered financial company, prior to the appointment of the Corporation as receiver.

(2) LIMITATION.—Paragraph (1) shall not apply with respect to any tax imposed (or other amount arising) under the Internal Revenue Code of 1986.

(r) CERTAIN SALES OF ASSETS PROHIBITED.—

(1) PERSONS WHO ENGAGED IN IMPROPER CONDUCT WITH, OR CAUSED LOSSES TO, COVERED FINANCIAL COMPANIES.—The Corporation shall prescribe regulations which, at a minimum, shall prohibit the sale of assets of a covered financial company by the Corporation to—

(A) any person who—

(i) has defaulted, or was a member of a partnership or an officer or director of a corporation that has defaulted, on 1 or more obligations, the aggregate amount of which exceeds $1,000,000, to such covered financial company;

(ii) has been found to have engaged in fraudulent activity in connection with any obligation referred to in clause (i); and

(iii) proposes to purchase any such asset in whole or in part through the use of the proceeds of a loan or advance of credit from the Corporation or from any covered financial company;

(B) any person who participated, as an officer or director of such covered financial company or of any affiliate of such company, in a material way in any transaction that resulted in a substantial loss to such covered financial company; or

(C) any person who has demonstrated a pattern or practice of defalcation regarding obligations to such covered financial company.

(2) CONVICTED DEBTORS.—Except as provided in paragraph (3), a person may not purchase any asset of such institution from the receiver, if that person—

(A) has been convicted of an offense under section 215, 656, 657, 1005, 1006, 1007, 1008, 1014, 1032, 1341, 1343, or 1344 of title 18, United States Code, or of conspiring to commit such an offense, affecting any covered financial company; and

(B) is in default on any loan or other extension of credit from such covered financial company which, if not paid, will cause substantial loss to the Fund or the Corporation.

(3) SETTLEMENT OF CLAIMS.—Paragraphs (1) and (2) shall not apply to the sale or transfer by the Corporation of any asset of any covered financial company to any person, if the sale or transfer of the asset resolves or settles, or is part of the resolution or settlement, of 1 or more claims that have been, or could have been, asserted by the Corporation against the person.

(4) DEFINITION OF DEFAULT.—For purposes of this subsection, the term "default" means a failure to comply with

the terms of a loan or other obligation to such an extent that the property securing the obligation is foreclosed upon.

(s) RECOUPMENT OF COMPENSATION FROM SENIOR EXECUTIVES AND DIRECTORS.—

(1) IN GENERAL.—The Corporation, as receiver of a covered financial company, may recover from any current or former senior executive or director substantially responsible for the failed condition of the covered financial company any compensation received during the 2-year period preceding the date on which the Corporation was appointed as the receiver of the covered financial company, except that, in the case of fraud, no time limit shall apply.

(2) COST CONSIDERATIONS.—In seeking to recover any such compensation, the Corporation shall weigh the financial and deterrent benefits of such recovery against the cost of executing the recovery.

(3) RULEMAKING.—The Corporation shall promulgate regulations to implement the requirements of this subsection, including defining the term "compensation" to mean any financial remuneration, including salary, bonuses, incentives, benefits, severance, deferred compensation, or golden parachute benefits, and any profits realized from the sale of the securities of the covered financial company.

SEC. 211. MISCELLANEOUS PROVISIONS.

(a) CLARIFICATION OF PROHIBITION REGARDING CONCEALMENT OF ASSETS FROM RECEIVER OR LIQUIDATING AGENT.—Section 1032(1) of title 18, United States Code, is amended by inserting "the Federal Deposit Insurance Corporation acting as receiver for a covered financial company, in accordance with title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act," before "or the National Credit".

(b) CONFORMING AMENDMENT.—Section 1032 of title 18, United States Code, is amended in the section heading, by striking "**of financial institution**".

(c) FEDERAL DEPOSIT INSURANCE CORPORATION IMPROVEMENT ACT OF 1991.—Section 403(a) of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4403(a)) is amended by inserting "section 210(c) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, section 1367 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617(d))," after "section 11(e) of the Federal Deposit Insurance Act,".

(d) FDIC INSPECTOR GENERAL REVIEWS.—

(1) SCOPE.—The Inspector General of the Corporation shall conduct, supervise, and coordinate audits and investigations of the liquidation of any covered financial company by the Corporation as receiver under this title, including collecting and summarizing—

(A) a description of actions taken by the Corporation as receiver;

(B) a description of any material sales, transfers, mergers, obligations, purchases, and other material transactions entered into by the Corporation;

(C) an evaluation of the adequacy of the policies and procedures of the Corporation under section 203(d) and orderly liquidation plan under section 210(n)(14);

(D) an evaluation of the utilization by the Corporation of the private sector in carrying out its functions, including the adequacy of any conflict-of-interest reviews; and

(E) an evaluation of the overall performance of the Corporation in liquidating the covered financial company, including administrative costs, timeliness of liquidation process, and impact on the financial system.

(2) FREQUENCY.—Not later than 6 months after the date of appointment of the Corporation as receiver under this title and every 6 months thereafter, the Inspector General of the Corporation shall conduct the audit and investigation described in paragraph (1).

(3) REPORTS AND TESTIMONY.—The Inspector General of the Corporation shall include in the semiannual reports required by section 5(a) of the Inspector General Act of 1978 (5 U.S.C. App.), a summary of the findings and evaluations under paragraph (1), and shall appear before the appropriate committees of Congress, if requested, to present each such report.

(4) FUNDING.—

(A) INITIAL FUNDING.—The expenses of the Inspector General of the Corporation in carrying out this subsection shall be considered administrative expenses of the receivership.

(B) ADDITIONAL FUNDING.—If the maximum amount available to the Corporation as receiver under this title is insufficient to enable the Inspector General of the Corporation to carry out the duties under this subsection, the Corporation shall pay such additional amounts from assessments imposed under section 210.

(5) TERMINATION OF RESPONSIBILITIES.—The duties and responsibilities of the Inspector General of the Corporation under this subsection shall terminate 1 year after the date of termination of the receivership under this title.

(e) TREASURY INSPECTOR GENERAL REVIEWS.—

(1) SCOPE.—The Inspector General of the Department of the Treasury shall conduct, supervise, and coordinate audits and investigations of actions taken by the Secretary related to the liquidation of any covered financial company under this title, including collecting and summarizing—

(A) a description of actions taken by the Secretary under this title;

(B) an analysis of the approval by the Secretary of the policies and procedures of the Corporation under section 203 and acceptance of the orderly liquidation plan of the Corporation under section 210; and

(C) an assessment of the terms and conditions underlying the purchase by the Secretary of obligations of the Corporation under section 210.

(2) FREQUENCY.—Not later than 6 months after the date of appointment of the Corporation as receiver under this title and every 6 months thereafter, the Inspector General of the Department of the Treasury shall conduct the audit and investigation described in paragraph (1).

(3) REPORTS AND TESTIMONY.—The Inspector General of the Department of the Treasury shall include in the semiannual reports required by section 5(a) of the Inspector General Act

of 1978 (5 U.S.C. App.), a summary of the findings and assessments under paragraph (1), and shall appear before the appropriate committees of Congress, if requested, to present each such report.

(4) TERMINATION OF RESPONSIBILITIES.—The duties and responsibilities of the Inspector General of the Department of the Treasury under this subsection shall terminate 1 year after the date on which the obligations purchased by the Secretary from the Corporation under section 210 are fully redeemed.

(f) PRIMARY FINANCIAL REGULATORY AGENCY INSPECTOR GENERAL REVIEWS.—

(1) SCOPE.—Upon the appointment of the Corporation as receiver for a covered financial company supervised by a Federal primary financial regulatory agency or the Board of Governors under section 165, the Inspector General of the agency or the Board of Governors shall make a written report reviewing the supervision by the agency or the Board of Governors of the covered financial company, which shall—

(A) evaluate the effectiveness of the agency or the Board of Governors in carrying out its supervisory responsibilities with respect to the covered financial company;

(B) identify any acts or omissions on the part of agency or Board of Governors officials that contributed to the covered financial company being in default or in danger of default;

(C) identify any actions that could have been taken by the agency or the Board of Governors that would have prevented the company from being in default or in danger of default; and

(D) recommend appropriate administrative or legislative action.

(2) REPORTS AND TESTIMONY.—Not later than 1 year after the date of appointment of the Corporation as receiver under this title, the Inspector General of the Federal primary financial regulatory agency or the Board of Governors shall provide the report required by paragraph (1) to such agency or the Board of Governors, and along with such agency or the Board of Governors, as applicable, shall appear before the appropriate committees of Congress, if requested, to present the report required by paragraph (1). Not later than 90 days after the date of receipt of the report required by paragraph (1), such agency or the Board of Governors, as applicable, shall provide a written report to Congress describing any actions taken in response to the recommendations in the report, and if no such actions were taken, describing the reasons why no actions were taken.

SEC. 212. PROHIBITION OF CIRCUMVENTION AND PREVENTION OF CONFLICTS OF INTEREST.

(a) NO OTHER FUNDING.—Funds for the orderly liquidation of any covered financial company under this title shall only be provided as specified under this title.

(b) LIMIT ON GOVERNMENTAL ACTIONS.—No governmental entity may take any action to circumvent the purposes of this title.

(c) CONFLICT OF INTEREST.—In the event that the Corporation is appointed receiver for more than 1 covered financial company or is appointed receiver for a covered financial company and receiver for any insured depository institution that is an affiliate of such covered financial company, the Corporation shall take appropriate action, as necessary to avoid any conflicts of interest that may arise in connection with multiple receiverships.

SEC. 213. BAN ON CERTAIN ACTIVITIES BY SENIOR EXECUTIVES AND DIRECTORS.

(a) PROHIBITION AUTHORITY.—The Board of Governors or, if the covered financial company was not supervised by the Board of Governors, the Corporation, may exercise the authority provided by this section.

(b) AUTHORITY TO ISSUE ORDER.—The appropriate agency described in subsection (a) may take any action authorized by subsection (c), if the agency determines that—

(1) a senior executive or a director of the covered financial company, prior to the appointment of the Corporation as receiver, has, directly or indirectly—

(A) violated—

(i) any law or regulation;

(ii) any cease-and-desist order which has become final;

(iii) any condition imposed in writing by a Federal agency in connection with any action on any application, notice, or request by such company or senior executive; or

(iv) any written agreement between such company and such agency;

(B) engaged or participated in any unsafe or unsound practice in connection with any financial company; or

(C) committed or engaged in any act, omission, or practice which constitutes a breach of the fiduciary duty of such senior executive or director;

(2) by reason of the violation, practice, or breach described in any subparagraph of paragraph (1), such senior executive or director has received financial gain or other benefit by reason of such violation, practice, or breach and such violation, practice, or breach contributed to the failure of the company; and

(3) such violation, practice, or breach—

(A) involves personal dishonesty on the part of such senior executive or director; or

(B) demonstrates willful or continuing disregard by such senior executive or director for the safety or soundness of such company.

(c) AUTHORIZED ACTIONS.—

(1) IN GENERAL.—The appropriate agency for a financial company, as described in subsection (a), may serve upon a senior executive or director described in subsection (b) a written notice of the intention of the agency to prohibit any further participation by such person, in any manner, in the conduct of the affairs of any financial company for a period of time determined by the appropriate agency to be commensurate with such violation, practice, or breach, provided such period shall be not less than 2 years.

(2) PROCEDURES.—The due process requirements and other procedures under section 8(e) of the Federal Deposit Insurance Act (12 U.S.C. 1818(e)) shall apply to actions under this section as if the covered financial company were an insured depository institution and the senior executive or director were an institution-affiliated party, as those terms are defined in that Act.

(d) REGULATIONS.—The Corporation and the Board of Governors, in consultation with the Council, shall jointly prescribe rules or regulations to administer and carry out this section, including rules, regulations, or guidelines to further define the term senior executive for the purposes of this section.

SEC. 214. PROHIBITION ON TAXPAYER FUNDING.

(a) LIQUIDATION REQUIRED.—All financial companies put into receivership under this title shall be liquidated. No taxpayer funds shall be used to prevent the liquidation of any financial company under this title.

(b) RECOVERY OF FUNDS.—All funds expended in the liquidation of a financial company under this title shall be recovered from the disposition of assets of such financial company, or shall be the responsibility of the financial sector, through assessments.

(c) NO LOSSES TO TAXPAYERS.—Taxpayers shall bear no losses from the exercise of any authority under this title.

SEC. 215. STUDY ON SECURED CREDITOR HAIRCUTS.

(a) STUDY REQUIRED.—The Council shall conduct a study evaluating the importance of maximizing United States taxpayer protections and promoting market discipline with respect to the treatment of fully secured creditors in the utilization of the orderly liquidation authority authorized by this Act. In carrying out such study, the Council shall—

(1) not be prejudicial to current or past laws or regulations with respect to secured creditor treatment in a resolution process;

(2) study the similarities and differences between the resolution mechanisms authorized by the Bankruptcy Code, the Federal Deposit Insurance Corporation Improvement Act of 1991, and the orderly liquidation authority authorized by this Act;

(3) determine how various secured creditors are treated in such resolution mechanisms and examine how a haircut (of various degrees) on secured creditors could improve market discipline and protect taxpayers;

(4) compare the benefits and dynamics of prudent lending practices by depository institutions in secured loans for consumers and small businesses to the lending practices of secured creditors to large, interconnected financial firms;

(5) consider whether credit differs according to different types of collateral and different terms and timing of the extension of credit; amd

(6) include an examination of stakeholders who were unsecured or under-collateralized and seek collateral when a firm is failing, and the impact that such behavior has on financial stability and an orderly resolution that protects taxpayers if the firm fails.

(b) REPORT.—Not later than the end of the 1-year period beginning on the date of enactment of this Act, the Council shall issue a report to the Congress containing all findings and conclusions

made by the Council in carrying out the study required under subsection (a).

SEC. 216. STUDY ON BANKRUPTCY PROCESS FOR FINANCIAL AND NONBANK FINANCIAL INSTITUTIONS.

(a) STUDY.—

(1) IN GENERAL.—Upon enactment of this Act, the Board of Governors, in consultation with the Administrative Office of the United States Courts, shall conduct a study regarding the resolution of financial companies under the Bankruptcy Code, under chapter 7 or 11 thereof .

(2) ISSUES TO BE STUDIED.—Issues to be studied under this section include—

(A) the effectiveness of chapter 7 and chapter 11 of the Bankruptcy Code in facilitating the orderly resolution or reorganization of systemic financial companies;

(B) whether a special financial resolution court or panel of special masters or judges should be established to oversee cases involving financial companies to provide for the resolution of such companies under the Bankruptcy Code, in a manner that minimizes adverse impacts on financial markets without creating moral hazard;

(C) whether amendments to the Bankruptcy Code should be adopted to enhance the ability of the Code to resolve financial companies in a manner that minimizes adverse impacts on financial markets without creating moral hazard;

(D) whether amendments should be made to the Bankruptcy Code, the Federal Deposit Insurance Act, and other insolvency laws to address the manner in which qualified financial contracts of financial companies are treated; and

(E) the implications, challenges, and benefits to creating a new chapter or subchapter of the Bankruptcy Code to deal with financial companies.

(b) REPORTS TO CONGRESS.—Not later than 1 year after the date of enactment of this Act, and in each successive year until the fifth year after the date of enactment of this Act, the Administrative Office of the United States courts shall submit to the Committees on Banking, Housing, and Urban Affairs and the Judiciary of the Senate and the Committees on Financial Services and the Judiciary of the House of Representatives a report summarizing the results of the study conducted under subsection (a).

SEC. 217. STUDY ON INTERNATIONAL COORDINATION RELATING TO BANKRUPTCY PROCESS FOR NONBANK FINANCIAL INSTITUTIONS.

(a) STUDY.—

(1) IN GENERAL.—The Board of Governors, in consultation with the Administrative Office of the United States Courts, shall conduct a study regarding international coordination relating to the resolution of systemic financial companies under the United States Bankruptcy Code and applicable foreign law.

(2) ISSUES TO BE STUDIED.—With respect to the bankruptcy process for financial companies, issues to be studied under this section include—

(A) the extent to which international coordination currently exists;

(B) current mechanisms and structures for facilitating international cooperation;

(C) barriers to effective international coordination; and

(D) ways to increase and make more effective international coordination of the resolution of financial companies, so as to minimize the impact on the financial system without creating moral hazard.

(b) REPORT TO CONGRESS.—Not later than 1 year after the date of enactment of this Act, the Administrative office of the United States Courts shall submit to the Committees on Banking, Housing, and Urban Affairs and the Judiciary of the Senate and the Committees on Financial Services and the Judiciary of the House of Representatives a report summarizing the results of the study conducted under subsection (a).

TITLE III—TRANSFER OF POWERS TO THE COMPTROLLER OF THE CURRENCY, THE CORPORATION, AND THE BOARD OF GOVERNORS

SEC. 300. SHORT TITLE.

This title may be cited as the "Enhancing Financial Institution Safety and Soundness Act of 2010".

SEC. 301. PURPOSES.

The purposes of this title are—

(1) to provide for the safe and sound operation of the banking system of the United States;

(2) to preserve and protect the dual system of Federal and State-chartered depository institutions;

(3) to ensure the fair and appropriate supervision of each depository institution, regardless of the size or type of charter of the depository institution; and

(4) to streamline and rationalize the supervision of depository institutions and the holding companies of depository institutions.

SEC. 302. DEFINITION.

In this title, the term "transferred employee" means, as the context requires, an employee transferred to the Office of the Comptroller of the Currency or the Corporation under section 322.

Subtitle A—Transfer of Powers and Duties

SEC. 311. TRANSFER DATE.

(a) TRANSFER DATE.—Except as provided in subsection (b), the term "transfer date" means the date that is 1 year after the date of enactment of this Act.

(b) EXTENSION PERMITTED.—

(1) NOTICE REQUIRED.—The Secretary, in consultation with the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Chairman of the Board of Governors, and the Chairperson of the Corporation, may extend the period under subsection (a) and designate a transfer date that is

not later than 18 months after the date of enactment of this Act, if the Secretary transmits to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives—

(A) a written determination that commencement of the orderly process to implement this title is not feasible by the date that is 1 year after the date of enactment of this Act;

(B) an explanation of why an extension is necessary to commence the process of orderly implementation of this title;

(C) the transfer date designated under this subsection; and

(D) a description of the steps that will be taken to initiate the process of an orderly and timely implementation of this title within the extended time period.

(2) PUBLICATION OF NOTICE.—Not later than 270 days after the date of enactment of this Act, the Secretary shall publish in the Federal Register notice of any transfer date designated under paragraph (1).

SEC. 312. POWERS AND DUTIES TRANSFERRED.

(a) EFFECTIVE DATE.—This section, and the amendments made by this section, shall take effect on the transfer date.

(b) FUNCTIONS OF THE OFFICE OF THRIFT SUPERVISION.—

(1) SAVINGS AND LOAN HOLDING COMPANY FUNCTIONS TRANSFERRED.—

(A) TRANSFER OF FUNCTIONS.—There are transferred to the Board of Governors all functions of the Office of Thrift Supervision and the Director of the Office of Thrift Supervision (including the authority to issue orders) relating to—

(i) the supervision of—

(I) any savings and loan holding company; and

(II) any subsidiary (other than a depository institution) of a savings and loan holding company; and

(ii) all rulemaking authority of the Office of Thrift Supervision and the Director of the Office of Thrift Supervision relating to savings and loan holding companies.

(B) POWERS, AUTHORITIES, RIGHTS, AND DUTIES.—The Board of Governors shall succeed to all powers, authorities, rights, and duties that were vested in the Office of Thrift Supervision and the Director of the Office of Thrift Supervision on the day before the transfer date relating to the functions and authority transferred under subparagraph (A).

(2) ALL OTHER FUNCTIONS TRANSFERRED.—

(A) BOARD OF GOVERNORS.—All rulemaking authority of the Office of Thrift Supervision and the Director of the Office of Thrift Supervision under section 11 of the Home Owners' Loan Act (12 U.S.C. 1468) relating to transactions with affiliates and extensions of credit to executive officers, directors, and principal shareholders and under section 5(q) of such Act relating to tying arrangements is transferred to the Board of Governors.

(B) COMPTROLLER OF THE CURRENCY.—Except as provided in paragraph (1) and subparagraph (A)—

(i) there are transferred to the Office of the Comptroller of the Currency and the Comptroller of the Currency—

(I) all functions of the Office of Thrift Supervision and the Director of the Office of Thrift Supervision, respectively, relating to Federal savings associations; and

(II) all rulemaking authority of the Office of Thrift Supervision and the Director of the Office of Thrift Supervision, respectively, relating to savings associations; and

(ii) the Office of the Comptroller of the Currency and the Comptroller of the Currency shall succeed to all powers, authorities, rights, and duties that were vested in the Office of Thrift Supervision and the Director of the Office of Thrift Supervision, respectively, on the day before the transfer date relating to the functions and authority transferred under clause (i).

(C) CORPORATION.—Except as provided in paragraph (1) and subparagraphs (A) and (B)—

(i) all functions of the Office of Thrift Supervision and the Director of the Office of Thrift Supervision relating to State savings associations are transferred to the Corporation; and

(ii) the Corporation shall succeed to all powers, authorities, rights, and duties that were vested in the Office of Thrift Supervision and the Director of the Office of Thrift Supervision on the day before the transfer date relating to the functions transferred under clause (i).

(c) CONFORMING AMENDMENTS.—Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) is amended—

(1) in subsection (q), by striking paragraphs (1) through (4) and inserting the following:

"(1) the Office of the Comptroller of the Currency, in the case of—

"(A) any national banking association;

"(B) any Federal branch or agency of a foreign bank; and

"(C) any Federal savings association;

"(2) the Federal Deposit Insurance Corporation, in the case of—

"(A) any State nonmember insured bank;

"(B) any foreign bank having an insured branch; and

"(C) any State savings association;

"(3) the Board of Governors of the Federal Reserve System, in the case of—

"(A) any State member bank;

"(B) any branch or agency of a foreign bank with respect to any provision of the Federal Reserve Act which is made applicable under the International Banking Act of 1978;

"(C) any foreign bank which does not operate an insured branch;

"(D) any agency or commercial lending company other than a Federal agency;

"(E) supervisory or regulatory proceedings arising from the authority given to the Board of Governors under section 7(c)(1) of the International Banking Act of 1978, including such proceedings under the Financial Institutions Supervisory Act of 1966;

"(F) any bank holding company and any subsidiary (other than a depository institution) of a bank holding company; and

"(G) any savings and loan holding company and any subsidiary (other than a depository institution) of a savings and loan holding company."; and

(2) in paragraphs (1) and (3) of subsection (u), by striking "(other than a bank holding company" and inserting "(other than a bank holding company or savings and loan holding company".

(d) CONSUMER PROTECTION.—Nothing in this section may be construed to limit or otherwise affect the transfer of powers under title X.

SEC. 313. ABOLISHMENT.

Effective 90 days after the transfer date, the Office of Thrift Supervision and the position of Director of the Office of Thrift Supervision are abolished.

SEC. 314. AMENDMENTS TO THE REVISED STATUTES.

(a) AMENDMENT TO SECTION 324.—Section 324 of the Revised Statutes of the United States (12 U.S.C. 1) is amended to read as follows:

"SEC. 324. COMPTROLLER OF THE CURRENCY.

"(a) OFFICE OF THE COMPTROLLER OF THE CURRENCY ESTABLISHED.—There is established in the Department of the Treasury a bureau to be known as the 'Office of the Comptroller of the Currency' which is charged with assuring the safety and soundness of, and compliance with laws and regulations, fair access to financial services, and fair treatment of customers by, the institutions and other persons subject to its jurisdiction.

"(b) COMPTROLLER OF THE CURRENCY.—

"(1) IN GENERAL.—The chief officer of the Office of the Comptroller of the Currency shall be known as the Comptroller of the Currency. The Comptroller of the Currency shall perform the duties of the Comptroller of the Currency under the general direction of the Secretary of the Treasury. The Secretary of the Treasury may not delay or prevent the issuance of any rule or the promulgation of any regulation by the Comptroller of the Currency, and may not intervene in any matter or proceeding before the Comptroller of the Currency (including agency enforcement actions), unless otherwise specifically provided by law.

"(2) ADDITIONAL AUTHORITY.—The Comptroller of the Currency shall have the same authority with respect to functions transferred to the Comptroller of the Currency under the Enhancing Financial Institution Safety and Soundness Act of 2010 as was vested in the Director of the Office of Thrift Supervision on the transfer date, as defined in section 311 of that Act.".

(b) SUPERVISION OF FEDERAL SAVINGS ASSOCIATIONS.—Chapter 9 of title VII of the Revised Statutes of the United States (12 U.S.C. 1 et seq.) is amended by inserting after section 327A (12 U.S.C. 4a) the following:

"SEC. 327B. DEPUTY COMPTROLLER FOR THE SUPERVISION AND EXAMINATION OF FEDERAL SAVINGS ASSOCIATIONS.

"The Comptroller of the Currency shall designate a Deputy Comptroller, who shall be responsible for the supervision and examination of Federal savings associations.".

(c) AMENDMENT TO SECTION 329.—Section 329 of the Revised Statutes of the United States (12 U.S.C. 11) is amended by inserting before the period at the end the following: "or any Federal savings association".

(d) EFFECTIVE DATE.—This section, and the amendments made by this section, shall take effect on the transfer date.

SEC. 315. FEDERAL INFORMATION POLICY.

Section 3502(5) of title 44, United States Code, is amended by inserting "Office of the Comptroller of the Currency," after "the Securities and Exchange Commission,".

SEC. 316. SAVINGS PROVISIONS.

(a) OFFICE OF THRIFT SUPERVISION.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Sections 312(b) and 313 shall not affect the validity of any right, duty, or obligation of the United States, the Director of the Office of Thrift Supervision, the Office of Thrift Supervision, or any other person, that existed on the day before the transfer date.

(2) CONTINUATION OF SUITS.—This title shall not abate any action or proceeding commenced by or against the Director of the Office of Thrift Supervision or the Office of Thrift Supervision before the transfer date, except that—

(A) for any action or proceeding arising out of a function of the Office of Thrift Supervision or the Director of the Office of Thrift Supervision transferred to the Board of Governors by this title, the Board of Governors shall be substituted for the Office of Thrift Supervision or the Director of the Office of Thrift Supervision as a party to the action or proceeding on and after the transfer date;

(B) for any action or proceeding arising out of a function of the Office of Thrift Supervision or the Director of the Office of Thrift Supervision transferred to the Office of the Comptroller of the Currency or the Comptroller of the Currency by this title, the Office of the Comptroller of the Currency or the Comptroller of the Currency shall be substituted for the Office of Thrift Supervision or the Director of the Office of Thrift Supervision, as the case may be, as a party to the action or proceeding on and after the transfer date; and

(C) for any action or proceeding arising out of a function of the Office of Thrift Supervision or the Director of the Office of Thrift Supervision transferred to the Corporation by this title, the Corporation shall be substituted for the Office of Thrift Supervision or the Director of the Office of Thrift Supervision as a party to the action or proceeding on and after the transfer date.

(b) CONTINUATION OF EXISTING OTS ORDERS, RESOLUTIONS, DETERMINATIONS, AGREEMENTS, REGULATIONS, ETC.—All orders, resolutions, determinations, agreements, and regulations, interpretative rules, other interpretations, guidelines, procedures, and other advisory materials, that have been issued, made, prescribed, or allowed to become effective by the Office of Thrift Supervision or the Director of the Office of Thrift Supervision, or by a court of competent jurisdiction, in the performance of functions that are transferred by this title and that are in effect on the day before the transfer date, shall continue in effect according to the terms of such orders, resolutions, determinations, agreements, and regulations, interpretative rules, other interpretations, guidelines, procedures, and other advisory materials, and shall be enforceable by or against—

(1) the Board of Governors, in the case of a function of the Office of Thrift Supervision or the Director of the Office of Thrift Supervision transferred to the Board of Governors, until modified, terminated, set aside, or superseded in accordance with applicable law by the Board of Governors, by any court of competent jurisdiction, or by operation of law;

(2) the Office of the Comptroller of the Currency or the Comptroller of the Currency, in the case of a function of the Office of Thrift Supervision or the Director of the Office of Thrift Supervision transferred to the Office of the Comptroller of the Currency or the Comptroller of the Currency, respectively, until modified, terminated, set aside, or superseded in accordance with applicable law by the Office of the Comptroller of the Currency or the Comptroller of the Currency, by any court of competent jurisdiction, or by operation of law; and

(3) the Corporation, in the case of a function of the Office of Thrift Supervision or the Director of the Office of Thrift Supervision transferred to the Corporation, until modified, terminated, set aside, or superseded in accordance with applicable law by the Corporation, by any court of competent jurisdiction, or by operation of law.

(c) IDENTIFICATION OF REGULATIONS CONTINUED.—

(1) BY THE BOARD OF GOVERNORS.—Not later than the transfer date, the Board of Governors shall—

(A) identify the regulations continued under subsection (b) that will be enforced by the Board of Governors; and

(B) publish a list of the regulations identified under subparagraph (A) in the Federal Register.

(2) BY OFFICE OF THE COMPTROLLER OF THE CURRENCY.—Not later than the transfer date, the Office of the Comptroller of the Currency shall—

(A) after consultation with the Corporation, identify the regulations continued under subsection (b) that will be enforced by the Office of the Comptroller of the Currency; and

(B) publish a list of the regulations identified under subparagraph (A) in the Federal Register.

(3) BY THE CORPORATION.—Not later than the transfer date, the Corporation shall—

(A) after consultation with the Office of the Comptroller of the Currency, identify the regulations continued under subsection (b) that will be enforced by the Corporation; and

(B) publish a list of the regulations identified under subparagraph (A) in the Federal Register.

(d) STATUS OF REGULATIONS PROPOSED OR NOT YET EFFECTIVE.—

(1) PROPOSED REGULATIONS.—Any proposed regulation of the Office of Thrift Supervision, which the Office of Thrift Supervision in performing functions transferred by this title, has proposed before the transfer date but has not published as a final regulation before such date, shall be deemed to be a proposed regulation of the Office of the Comptroller of the Currency or the Board of Governors, as appropriate, according to the terms of the proposed regulation.

(2) REGULATIONS NOT YET EFFECTIVE.—Any interim or final regulation of the Office of Thrift Supervision, which the Office of Thrift Supervision, in performing functions transferred by this title, has published before the transfer date but which has not become effective before that date, shall become effective as a regulation of the Office of the Comptroller of the Currency or the Board of Governors, as appropriate, according to the terms of the interim or final regulation, unless modified, terminated, set aside, or superseded in accordance with applicable law by the Office of the Comptroller of the Currency or the Board of Governors, as appropriate, by any court of competent jurisdiction, or by operation of law.

SEC. 317. REFERENCES IN FEDERAL LAW TO FEDERAL BANKING AGENCIES.

On and after the transfer date, any reference in Federal law to the Director of the Office of Thrift Supervision or the Office of Thrift Supervision, in connection with any function of the Director of the Office of Thrift Supervision or the Office of Thrift Supervision transferred under section 312(b) or any other provision of this subtitle, shall be deemed to be a reference to the Comptroller of the Currency, the Office of the Comptroller of the Currency, the Chairperson of the Corporation, the Corporation, the Chairman of the Board of Governors, or the Board of Governors, as appropriate and consistent with the amendments made in subtitle E.

SEC. 318. FUNDING.

(a) COMPENSATION OF EXAMINERS.—Section 5240 of the Revised Statutes of the United States (12 U.S.C. 481 et seq.) is amended—

(1) in the second undesignated paragraph (12 U.S.C. 481), in the fourth sentence, by striking "without regard to the provisions of other laws applicable to officers or employees of the United States" and inserting the following: "set and adjusted subject to chapter 71 of title 5, United States Code, and without regard to the provisions of other laws applicable to officers or employees of the United States"; and

(2) in the third undesignated paragraph (12 U.S.C. 482), in the first sentence, by striking "shall fix" and inserting "shall, subject to chapter 71 of title 5, United States Code, fix".

(b) FUNDING OF OFFICE OF THE COMPTROLLER OF THE CURRENCY.—Chapter 4 of title LXII of the Revised Statutes is amended by inserting after section 5240 (12 U.S.C. 481, 482) the following:

"SEC. 5240A. The Comptroller of the Currency may collect an assessment, fee, or other charge from any entity described in section 3(q)(1) of the Federal Deposit Insurance Act (12 U.S.C.

1813(q)(1)), as the Comptroller determines is necessary or appropriate to carry out the responsibilities of the Office of the Comptroller of the Currency. In establishing the amount of an assessment, fee, or charge collected from an entity under this section, the Comptroller of the Currency may take into account the nature and scope of the activities of the entity, the amount and type of assets that the entity holds, the financial and managerial condition of the entity, and any other factor, as the Comptroller of the Currency determines is appropriate. Funds derived from any assessment, fee, or charge collected or payment made pursuant to this section may be deposited by the Comptroller of the Currency in accordance with the provisions of section 5234. Such funds shall not be construed to be Government funds or appropriated monies, and shall not be subject to apportionment for purposes of chapter 15 of title 31, United States Code, or any other provision of law. The authority of the Comptroller of the Currency under this section shall be in addition to the authority under section 5240.

"The Comptroller of the Currency shall have sole authority to determine the manner in which the obligations of the Office of the Comptroller of the Currency shall be incurred and its disbursements and expenses allowed and paid, in accordance with this section, except as provided in chapter 71 of title 5, United States Code (with respect to compensation).".

(c) FUNDING OF BOARD OF GOVERNORS.—Section 11 of the Federal Reserve Act (12 U.S.C. 248) is amended by adding at the end the following:

"(s) ASSESSMENTS, FEES, AND OTHER CHARGES FOR CERTAIN COMPANIES.—

"(1) IN GENERAL.—The Board shall collect a total amount of assessments, fees, or other charges from the companies described in paragraph (2) that is equal to the total expenses the Board estimates are necessary or appropriate to carry out the supervisory and regulatory responsibilities of the Board with respect to such companies.

"(2) COMPANIES.—The companies described in this paragraph are—

"(A) all bank holding companies having total consolidated assets of $50,000,000,000 or more;

"(B) all savings and loan holding companies having total consolidated assets of $50,000,000,000 or more; and

"(C) all nonbank financial companies supervised by the Board under section 113 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.".

(d) CORPORATION EXAMINATION FEES.—Section 10(e) of the Federal Deposit Insurance Act (12 U.S.C. 1820(e)) is amended by striking paragraph (1) and inserting the following:

"(1) REGULAR AND SPECIAL EXAMINATIONS OF DEPOSITORY INSTITUTIONS.—The cost of conducting any regular examination or special examination of any depository institution under subsection (b)(2), (b)(3), or (d) or of any entity described in section 3(q)(2) may be assessed by the Corporation against the institution or entity to meet the expenses of the Corporation in carrying out such examinations.".

(e) EFFECTIVE DATE.—This section, and the amendments made by this section, shall take effect on the transfer date.

SEC. 319. CONTRACTING AND LEASING AUTHORITY.

Notwithstanding the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.) or any other provision of law (except the full and open competition requirements of the Competition in Contracting Act), the Office of the Comptroller of the Currency may—

(1) enter into and perform contracts, execute instruments, and acquire real property (or property interest) as the Comptroller deems necessary to carry out the duties and responsibilities of the Office of the Comptroller of the Currency; and

(2) hold, maintain, sell, lease, or otherwise dispose of the property (or property interest) acquired under paragraph (1).

Subtitle B—Transitional Provisions

SEC. 321. INTERIM USE OF FUNDS, PERSONNEL, AND PROPERTY OF THE OFFICE OF THRIFT SUPERVISION.

(a) IN GENERAL.—Before the transfer date, the Office of the Comptroller of the Currency, the Corporation, and the Board of Governors shall—

(1) consult and cooperate with the Office of Thrift Supervision to facilitate the orderly transfer of functions to the Office of the Comptroller of the Currency, the Corporation, and the Board of Governors in accordance with this title;

(2) determine jointly, from time to time—

(A) the amount of funds necessary to pay any expenses associated with the transfer of functions (including expenses for personnel, property, and administrative services) during the period beginning on the date of enactment of this Act and ending on the transfer date;

(B) which personnel are appropriate to facilitate the orderly transfer of functions by this title; and

(C) what property and administrative services are necessary to support the Office of the Comptroller of the Currency, the Corporation, and the Board of Governors during the period beginning on the date of enactment of this Act and ending on the transfer date; and

(3) take such actions as may be necessary to provide for the orderly implementation of this title.

(b) AGENCY CONSULTATION.—When requested jointly by the Office of the Comptroller of the Currency, the Corporation, and the Board of Governors to do so before the transfer date, the Office of Thrift Supervision shall—

(1) pay to the Office of the Comptroller of the Currency, the Corporation, or the Board of Governors, as applicable, from funds obtained by the Office of Thrift Supervision through assessments, fees, or other charges that the Office of Thrift Supervision is authorized by law to impose, such amounts as the Office of the Comptroller of the Currency, the Corporation, and the Board of Governors jointly determine to be necessary under subsection (a);

(2) detail to the Office of the Comptroller of the Currency, the Corporation, or the Board of Governors, as applicable, such personnel as the Office of the Comptroller of the Currency, the Corporation, and the Board of Governors jointly determine to be appropriate under subsection (a); and

(3) make available to the Office of the Comptroller of the Currency, the Corporation, or the Board of Governors, as applicable, such property and provide to the Office of the Comptroller of the Currency, the Corporation, or the Board of Governors, as applicable, such administrative services as the Office of the Comptroller of the Currency, the Corporation, and the Board of Governors jointly determine to be necessary under subsection (a).

(c) NOTICE REQUIRED.—The Office of the Comptroller of the Currency, the Corporation, and the Board of Governors shall jointly give the Office of Thrift Supervision reasonable prior notice of any request that the Office of the Comptroller of the Currency, the Corporation, and the Board of Governors jointly intend to make under subsection (b).

SEC. 322. TRANSFER OF EMPLOYEES.

(a) IN GENERAL.—

(1) OFFICE OF THRIFT SUPERVISION EMPLOYEES.—

(A) IN GENERAL.—Except as provided in section 1064, all employees of the Office of Thrift Supervision shall be transferred to the Office of the Comptroller of the Currency or the Corporation for employment in accordance with this section.

(B) ALLOCATING EMPLOYEES FOR TRANSFER TO RECEIVING AGENCIES.—The Director of the Office of Thrift Supervision, the Comptroller of the Currency, and the Chairperson of the Corporation shall—

(i) jointly determine the number of employees of the Office of Thrift Supervision necessary to perform or support the functions that are transferred to the Office of the Comptroller of the Currency or the Corporation by this title; and

(ii) consistent with the determination under clause (i), jointly identify employees of the Office of Thrift Supervision for transfer to the Office of the Comptroller of the Currency or the Corporation.

(2) EMPLOYEES TRANSFERRED; SERVICE PERIODS CREDITED.—For purposes of this section, periods of service with a Federal home loan bank, a joint office of Federal home loan banks, or a Federal reserve bank shall be credited as periods of service with a Federal agency.

(3) APPOINTMENT AUTHORITY FOR EXCEPTED SERVICE TRANSFERRED.—

(A) IN GENERAL.—Except as provided in subparagraph (B), any appointment authority of the Office of Thrift Supervision under Federal law that relates to the functions transferred under section 312, including the regulations of the Office of Personnel Management, for filling the positions of employees in the excepted service shall be transferred to the Comptroller of the Currency or the Chairperson of the Corporation, as appropriate.

(B) DECLINING TRANSFERS ALLOWED.—The Comptroller of the Currency or the Chairperson of the Corporation may decline to accept a transfer of authority under subparagraph (A) (and the employees appointed under that authority) to the extent that such authority relates to positions excepted from the competitive service because of their

confidential, policy-making, policy-determining, or policy-advocating character.

(4) ADDITIONAL APPOINTMENT AUTHORITY.—Notwithstanding any other provision of law, the Office of the Comptroller of the Currency and the Corporation may appoint transferred employees to positions in the Office of the Comptroller of the Currency or the Corporation, respectively.

(b) TIMING OF TRANSFERS AND POSITION ASSIGNMENTS.—Each employee to be transferred under subsection (a)(1) shall—

(1) be transferred not later than 90 days after the transfer date; and

(2) receive notice of the position assignment of the employee not later than 120 days after the effective date of the transfer of the employee.

(c) TRANSFER OF FUNCTIONS.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the transfer of employees under this subtitle shall be deemed a transfer of functions for the purpose of section 3503 of title 5, United States Code.

(2) PRIORITY.—If any provision of this subtitle conflicts with any protection provided to a transferred employee under section 3503 of title 5, United States Code, the provisions of this subtitle shall control.

(d) EMPLOYEE STATUS AND ELIGIBILITY.—The transfer of functions and employees under this subtitle, and the abolishment of the Office of Thrift Supervision under section 313, shall not affect the status of the transferred employees as employees of an agency of the United States under any provision of law.

(e) EQUAL STATUS AND TENURE POSITIONS.—

(1) STATUS AND TENURE.—Each transferred employee from the Office of Thrift Supervision shall be placed in a position at the Office of the Comptroller of the Currency or the Corporation with the same status and tenure as the transferred employee held on the day before the date on which the employee was transferred.

(2) FUNCTIONS.—To the extent practicable, each transferred employee shall be placed in a position at the Office of the Comptroller of the Currency or the Corporation, as applicable, responsible for the same functions and duties as the transferred employee had on the day before the date on which the employee was transferred, in accordance with the expertise and preferences of the transferred employee.

(f) NO ADDITIONAL CERTIFICATION REQUIREMENTS.—An examiner who is a transferred employee shall not be subject to any additional certification requirements before being placed in a comparable position at the Office of the Comptroller of the Currency or the Corporation, if the examiner carries out examinations of the same type of institutions as an employee of the Office of the Comptroller of the Currency or the Corporation as the employee was responsible for carrying out before the date on which the employee was transferred.

(g) PERSONNEL ACTIONS LIMITED.—

(1) PROTECTION.—

(A) IN GENERAL.—Except as provided in paragraph (2), each affected employee shall not, during the 30-month period beginning on the transfer date, be involuntarily

separated, or involuntarily reassigned outside his or her locality pay area.

(B) AFFECTED EMPLOYEES.—For purposes of this paragraph, the term "affected employee" means—

(i) an employee transferred from the Office of Thrift Supervision holding a permanent position on the day before the transfer date; and

(ii) an employee of the Office of the Comptroller of the Currency or the Corporation holding a permanent position on the day before the transfer date.

(2) EXCEPTIONS.—Paragraph (1) does not limit the right of the Office of the Comptroller of the Currency or the Corporation to—

(A) separate an employee for cause or for unacceptable performance;

(B) terminate an appointment to a position excepted from the competitive service because of its confidential policy-making, policy-determining, or policy-advocating character; or

(C) reassign an employee outside such employee's locality pay area when the Office of the Comptroller of the Currency or the Corporation determines that the reassignment is necessary for the efficient operation of the agency.

(h) PAY.—

(1) 30-MONTH PROTECTION.—Except as provided in paragraph (2), during the 30-month period beginning on the date on which the employee was transferred under this subtitle, a transferred employee shall be paid at a rate that is not less than the basic rate of pay, including any geographic differential, that the transferred employee received during the pay period immediately preceding the date on which the employee was transferred. Notwithstanding the preceding sentence, if the employee was receiving a higher rate of basic pay on a temporary basis (because of a temporary assignment, temporary promotion, or other temporary action) immediately before the transfer, the Agency may reduce the rate of basic pay on the date the rate would have been reduced but for the transfer, and the protected rate for the remainder of the 30-month period will be the reduced rate that would have applied but for the transfer.

(2) EXCEPTIONS.—The Comptroller of the Currency or the Corporation may reduce the rate of basic pay of a transferred employee—

(A) for cause, including for unacceptable performance; or

(B) with the consent of the transferred employee.

(3) PROTECTION ONLY WHILE EMPLOYED.—This subsection shall apply to a transferred employee only during the period that the transferred employee remains employed by Office of the Comptroller of the Currency or the Corporation.

(4) PAY INCREASES PERMITTED.—Nothing in this subsection shall limit the authority of the Comptroller of the Currency or the Chairperson of the Corporation to increase the pay of a transferred employee.

(i) BENEFITS.—

(1) RETIREMENT BENEFITS FOR TRANSFERRED EMPLOYEES.—

(A) IN GENERAL.—

(i) CONTINUATION OF EXISTING RETIREMENT PLAN.—Each transferred employee shall remain enrolled in the retirement plan of the transferred employee, for as long as the transferred employee is employed by the Office of the Comptroller of the Currency or the Corporation.

(ii) EMPLOYER'S CONTRIBUTION.—The Comptroller of the Currency or the Chairperson of the Corporation, as appropriate, shall pay any employer contributions to the existing retirement plan of each transferred employee, as required under each such existing retirement plan.

(B) DEFINITION.—In this paragraph, the term "existing retirement plan" means, with respect to a transferred employee, the retirement plan (including the Financial Institutions Retirement Fund), and any associated thrift savings plan, of the agency from which the employee was transferred in which the employee was enrolled on the day before the date on which the employee was transferred.

(2) BENEFITS OTHER THAN RETIREMENT BENEFITS.—

(A) DURING FIRST YEAR.—

(i) EXISTING PLANS CONTINUE.—During the 1-year period following the transfer date, each transferred employee may retain membership in any employee benefit program (other than a retirement benefit program) of the agency from which the employee was transferred under this title, including any dental, vision, long term care, or life insurance program to which the employee belonged on the day before the transfer date.

(ii) EMPLOYER'S CONTRIBUTION.—The Office of the Comptroller of the Currency or the Corporation, as appropriate, shall pay any employer cost required to extend coverage in the benefit program to the transferred employee as required under that program or negotiated agreements.

(B) DENTAL, VISION, OR LIFE INSURANCE AFTER FIRST YEAR.—If, after the 1-year period beginning on the transfer date, the Office of the Comptroller of the Currency or the Corporation determines that the Office of the Comptroller of the Currency or the Corporation, as the case may be, will not continue to participate in any dental, vision, or life insurance program of an agency from which an employee was transferred, a transferred employee who is a member of the program may, before the decision takes effect and without regard to any regularly scheduled open season, elect to enroll in—

(i) the enhanced dental benefits program established under chapter 89A of title 5, United States Code;

(ii) the enhanced vision benefits established under chapter 89B of title 5, United States Code; and

(iii) the Federal Employees' Group Life Insurance Program established under chapter 87 of title 5, United States Code, without regard to any requirement of insurability.

(C) LONG TERM CARE INSURANCE AFTER 1ST YEAR.—If, after the 1-year period beginning on the transfer date, the Office of the Comptroller of the Currency or the Corporation determines that the Office of the Comptroller of the Currency or the Corporation, as appropriate, will not continue to participate in any long term care insurance program of an agency from which an employee transferred, a transferred employee who is a member of such a program may, before the decision takes effect, elect to apply for coverage under the Federal Long Term Care Insurance Program established under chapter 90 of title 5, United States Code, under the underwriting requirements applicable to a new active workforce member, as described in part 875 of title 5, Code of Federal Regulations (or any successor thereto).

(D) CONTRIBUTION OF TRANSFERRED EMPLOYEE.—

(i) IN GENERAL.—Subject to clause (ii), a transferred employee who is enrolled in a plan under the Federal Employees Health Benefits Program shall pay any employee contribution required under the plan.

(ii) COST DIFFERENTIAL.—The Office of the Comptroller of the Currency or the Corporation, as applicable, shall pay any difference in cost between the employee contribution required under the plan provided to transferred employees by the agency from which the employee transferred on the date of enactment of this Act and the plan provided by the Office of the Comptroller of the Currency or the Corporation, as the case may be, under this section.

(iii) FUNDS TRANSFER.—The Office of the Comptroller of the Currency or the Corporation, as the case may be, shall transfer to the Employees Health Benefits Fund established under section 8909 of title 5, United States Code, an amount determined by the Director of the Office of Personnel Management, after consultation with the Comptroller of the Currency or the Chairperson of the Corporation, as the case may be, and the Office of Management and Budget, to be necessary to reimburse the Fund for the cost to the Fund of providing any benefits under this subparagraph that are not otherwise paid for by a transferred employee under clause (i).

(E) SPECIAL PROVISIONS TO ENSURE CONTINUATION OF LIFE INSURANCE BENEFITS.—

(i) IN GENERAL.—An annuitant, as defined in section 8901 of title 5, United States Code, who is enrolled in a life insurance plan administered by an agency from which employees are transferred under this title on the day before the transfer date shall be eligible for coverage by a life insurance plan under sections 8706(b), 8714a, 8714b, or 8714c of title 5, United States Code, or by a life insurance plan established by the Office of the Comptroller of the Currency or the Corporation, as applicable, without regard to any regularly scheduled open season or any requirement of insurability.

(ii) CONTRIBUTION OF TRANSFERRED EMPLOYEE.—

(I) IN GENERAL.—Subject to subclause (II), a transferred employee enrolled in a life insurance plan under this subparagraph shall pay any employee contribution required by the plan.

(II) COST DIFFERENTIAL.—The Office of the Comptroller of the Currency or the Corporation, as the case may be, shall pay any difference in cost between the benefits provided by the agency from which the employee transferred on the date of enactment of this Act and the benefits provided under this section.

(III) FUNDS TRANSFER.—The Office of the Comptroller of the Currency or the Corporation, as the case may be, shall transfer to the Federal Employees' Group Life Insurance Fund established under section 8714 of title 5, United States Code, an amount determined by the Director of the Office of Personnel Management, after consultation with the Comptroller of the Currency or the Chairperson of the Corporation, as the case may be, and the Office of Management and Budget, to be necessary to reimburse the Federal Employees' Group Life Insurance Fund for the cost to the Federal Employees' Group Life Insurance Fund of providing benefits under this subparagraph not otherwise paid for by a transferred employee under subclause (I).

(IV) CREDIT FOR TIME ENROLLED IN OTHER PLANS.—For any transferred employee, enrollment in a life insurance plan administered by the agency from which the employee transferred, immediately before enrollment in a life insurance plan under chapter 87 of title 5, United States Code, shall be considered as enrollment in a life insurance plan under that chapter for purposes of section 8706(b)(1)(A) of title 5, United States Code.

(j) INCORPORATION INTO AGENCY PAY SYSTEM.—Not later than 30 months after the transfer date, the Comptroller of the Currency and the Chairperson of the Corporation shall place each transferred employee into the established pay system and structure of the appropriate employing agency.

(k) EQUITABLE TREATMENT.—In administering the provisions of this section, the Comptroller of the Currency and the Chairperson of the Corporation—

(1) may not take any action that would unfairly disadvantage a transferred employee relative to any other employee of the Office of the Comptroller of the Currency or the Corporation on the basis of prior employment by the Office of Thrift Supervision;

(2) may take such action as is appropriate in an individual case to ensure that a transferred employee receives equitable treatment, with respect to the status, tenure, pay, benefits (other than benefits under programs administered by the Office of Personnel Management), and accrued leave or vacation time for prior periods of service with any Federal agency of the transferred employee;

(3) shall, jointly with the Director of the Office of Thrift Supervision, develop and adopt procedures and safeguards designed to ensure that the requirements of this subsection are met; and

(4) shall conduct a study detailing the position assignments of all employees transferred pursuant to subsection (a), describing the procedures and safeguards adopted pursuant to paragraph (3), and demonstrating that the requirements of this subsection have been met; and shall, not later than 365 days after the transfer date, submit a copy of such study to Congress.

(l) REORGANIZATION.—

(1) IN GENERAL.—If the Comptroller of the Currency or the Chairperson of the Corporation determines, during the 2-year period beginning 1 year after the transfer date, that a reorganization of the staff of the Office of the Comptroller of the Currency or the Corporation, respectively, is required, the reorganization shall be deemed a "major reorganization" for purposes of affording affected employees retirement under section 8336(d)(2) or 8414(b)(1)(B) of title 5, United States Code.

(2) SERVICE CREDIT.—For purposes of this subsection, periods of service with a Federal home loan bank or a joint office of Federal home loan banks shall be credited as periods of service with a Federal agency.

SEC. 323. PROPERTY TRANSFERRED.

(a) PROPERTY DEFINED.—For purposes of this section, the term "property" includes all real property (including leaseholds) and all personal property, including computers, furniture, fixtures, equipment, books, accounts, records, reports, files, memoranda, paper, reports of examination, work papers, and correspondence related to such reports, and any other information or materials.

(b) PROPERTY OF THE OFFICE OF THRIFT SUPERVISION.—

(1) IN GENERAL.—No later than 90 days after the transfer date, all property of the Office of Thrift Supervision (other than property described under paragraph (b)(2)) that the Comptroller of the Currency and the Chairperson of the Corporation jointly determine is used, on the day before the transfer date, to perform or support the functions of the Office of Thrift Supervision transferred to the Office of the Comptroller of the Currency or the Corporation under this title, shall be transferred to the Office of the Comptroller of the Currency or the Corporation in a manner consistent with the transfer of employees under this subtitle.

(2) PERSONAL PROPERTY.—All books, accounts, records, reports, files, memoranda, papers, documents, reports of examination, work papers, and correspondence of the Office of Thrift Supervision that the Comptroller of the Currency, the Chairperson of the Corporation, and the Chairman of the Board of Governors jointly determine is used, on the day before the transfer date, to perform or support the functions of the Office of Thrift Supervision transferred to the Board of Governors under this title shall be transferred to the Board of Governors in a manner consistent with the purposes of this title.

(c) CONTRACTS RELATED TO PROPERTY TRANSFERRED.—Each contract, agreement, lease, license, permit, and similar arrangement

relating to property transferred to the Office of the Comptroller of the Currency or the Corporation by this section shall be transferred to the Office of the Comptroller of the Currency or the Corporation, as appropriate, together with the property to which it relates.

(d) PRESERVATION OF PROPERTY.—Property identified for transfer under this section shall not be altered, destroyed, or deleted before transfer under this section.

SEC. 324. FUNDS TRANSFERRED.

The funds that, on the day before the transfer date, the Director of the Office of Thrift Supervision (in consultation with the Comptroller of the Currency, the Chairperson of the Corporation, and the Chairman of the Board of Governors) determines are not necessary to dispose of the affairs of the Office of Thrift Supervision under section 325 and are available to the Office of Thrift Supervision to pay the expenses of the Office of Thrift Supervision—

(1) relating to the functions of the Office of Thrift Supervision transferred under section 312(b)(2)(B), shall be transferred to the Office of the Comptroller of the Currency on the transfer date;

(2) relating to the functions of the Office of Thrift Supervision transferred under section 312(b)(2)(C), shall be transferred to the Corporation on the transfer date; and

(3) relating to the functions of the Office of Thrift Supervision transferred under section 312(b)(1)(A), shall be transferred to the Board of Governors on the transfer date.

SEC. 325. DISPOSITION OF AFFAIRS.

(a) AUTHORITY OF DIRECTOR.—During the 90-day period beginning on the transfer date, the Director of the Office of Thrift Supervision—

(1) shall, solely for the purpose of winding up the affairs of the Office of Thrift Supervision relating to any function transferred to the Office of the Comptroller of the Currency, the Corporation, or the Board of Governors under this title—

(A) manage the employees of the Office of Thrift Supervision who have not yet been transferred and provide for the payment of the compensation and benefits of the employees that accrue before the date on which the employees are transferred under this title; and

(B) manage any property of the Office of Thrift Supervision, until the date on which the property is transferred under section 323; and

(2) may take any other action necessary to wind up the affairs of the Office of Thrift Supervision.

(b) STATUS OF DIRECTOR.—

(1) IN GENERAL.—Notwithstanding the transfer of functions under this subtitle, during the 90-day period beginning on the transfer date, the Director of the Office of Thrift Supervision shall retain and may exercise any authority vested in the Director of the Office of Thrift Supervision on the day before the transfer date, only to the extent necessary—

(A) to wind up the Office of Thrift Supervision; and

(B) to carry out the transfer under this subtitle during such 90-day period.

(2) OTHER PROVISIONS.—For purposes of paragraph (1), the Director of the Office of Thrift Supervision shall, during the 90-day period beginning on the transfer date, continue to be—

(A) treated as an officer of the United States; and

(B) entitled to receive compensation at the same annual rate of basic pay that the Director of the Office of Thrift Supervision received on the day before the transfer date.

SEC. 326. CONTINUATION OF SERVICES.

Any agency, department, or other instrumentality of the United States, and any successor to any such agency, department, or instrumentality, that was, before the transfer date, providing support services to the Office of Thrift Supervision in connection with functions transferred to the Office of the Comptroller of the Currency, the Corporation or the Board of Governors under this title, shall—

(1) continue to provide such services, subject to reimbursement by the Office of the Comptroller of the Currency, the Corporation, or the Board of Governors, until the transfer of functions under this title is complete; and

(2) consult with the Comptroller of the Currency, the Chairperson of the Corporation, or the Chairman of the Board of Governors, as appropriate, to coordinate and facilitate a prompt and orderly transition.

SEC. 327. IMPLEMENTATION PLAN AND REPORTS.

(a) PLAN SUBMISSION.—Within 180 days of the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Board of Governors, the Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision, shall jointly submit a plan to the Committee on Banking, Housing, and Urban Affairs of the Senate, the Committee on Financial Services of the House of Representatives, and the Inspectors General of the Department of the Treasury, the Corporation, and the Board of Governors detailing the steps the Board of Governors, the Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision will take to implement the provisions of sections 301 through 326, and the provisions of the amendments made by such sections.

(b) INSPECTORS GENERAL REVIEW OF THE PLAN.—Within 60 days of receiving the plan required under subsection (a), the Inspectors General of the Department of the Treasury, the Corporation, and the Board of Governors shall jointly provide a written report to the Board of Governors, the Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision and shall submit a copy to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives detailing whether the plan conforms with the provisions of sections 301 through 326, and the provisions of the amendments made by such sections, including—

(1) whether the plan sufficiently takes into consideration the orderly transfer of personnel;

(2) whether the plan describes procedures and safeguards to ensure that the Office of Thrift Supervision employees are not unfairly disadvantaged relative to employees of the Office of the Comptroller of the Currency and the Corporation;

(3) whether the plan sufficiently takes into consideration the orderly transfer of authority and responsibilities;

(4) whether the plan sufficiently takes into consideration the effective transfer of funds;

(5) whether the plan sufficiently takes in consideration the orderly transfer of property; and

(6) any additional recommendations for an orderly and effective process.

(c) IMPLEMENTATION REPORTS.—Not later than 6 months after the date on which the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives receives the report required under subsection (b), and every 6 months thereafter until all aspects of the plan have been implemented, the Inspectors General of the Department of the Treasury, the Corporation, and the Board of Governors shall jointly provide a written report on the status of the implementation of the plan to the Board of Governors, the Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision and shall submit a copy to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

Subtitle C—Federal Deposit Insurance Corporation

SEC. 331. DEPOSIT INSURANCE REFORMS.

(a) SIZE DISTINCTIONS.—Section 7(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(2)) is amended—

(1) by striking subparagraph (D); and

(2) by redesignating subparagraph (C) as subparagraph (D).

(b) ASSESSMENT BASE.—The Corporation shall amend the regulations issued by the Corporation under section 7(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(2)) to define the term "assessment base" with respect to an insured depository institution for purposes of that section 7(b)(2), as an amount equal to—

(1) the average consolidated total assets of the insured depository institution during the assessment period; minus

(2) the sum of—

(A) the average tangible equity of the insured depository institution during the assessment period; and

(B) in the case of an insured depository institution that is a custodial bank (as defined by the Corporation, based on factors including the percentage of total revenues generated by custodial businesses and the level of assets under custody) or a banker's bank (as that term is used in section 5136 of the Revised Statutes (12 U.S.C. 24)), an amount that the Corporation determines is necessary to establish assessments consistent with the definition under section 7(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(1)) for a custodial bank or a banker's bank.

SEC. 332. ELIMINATION OF PROCYCLICAL ASSESSMENTS.

Section 7(e) of the Federal Deposit Insurance Act is amended—

(1) in paragraph (2)—

(A) by amending subparagraph (B) to read as follows:

"(B) LIMITATION.—The Board of Directors may, in its sole discretion, suspend or limit the declaration of payment of dividends under subparagraph (A).";

(B) by amending subparagraph (C) to read as follows:

"(C) NOTICE AND OPPORTUNITY FOR COMMENT.—The Corporation shall prescribe, by regulation, after notice and opportunity for comment, the method for the declaration, calculation, distribution, and payment of dividends under this paragraph"; and

(C) by striking subparagraphs (D) through (G); and

(2) in paragraph (4)(A) by striking "paragraphs (2)(D) and" and inserting "paragraphs (2) and".

SEC. 333. ENHANCED ACCESS TO INFORMATION FOR DEPOSIT INSURANCE PURPOSES.

(a) Section 7(a)(2)(B) of the Federal Deposit Insurance Act is amended by striking "agreement" and inserting "consultation".

(b) Section 7(b)(1)(E) of the Federal Deposit Insurance Act is amended—

(1) in clause (i), by striking "such as" and inserting "including"; and

(2) in clause (iii), by striking "Corporation" and inserting "Corporation, except as provided in section 7(a)(2)(B)".

SEC. 334. TRANSITION RESERVE RATIO REQUIREMENTS TO REFLECT NEW ASSESSMENT BASE.

(a) Section 7(b)(3)(B) of the Federal Deposit Insurance Act is amended to read as follows:

"(B) MINIMUM RESERVE RATIO.—The reserve ratio designated by the Board of Directors for any year may not be less than 1.35 percent of estimated insured deposits, or the comparable percentage of the assessment base set forth in paragraph (2)(C).".

(b) Section 3(y)(3) of the Federal Deposit Insurance Act is amended by inserting ", or such comparable percentage of the assessment base set forth in section 7(b)(2)(C)" before the period.

(c) For a period of not less than 5 years after the date of the enactment of this title, the Federal Deposit Insurance Corporation shall make available to the public the reserve ratio and the designated reserve ratio using both estimated insured deposits and the assessment base under section 7(b)(2)(C) of the Federal Deposit Insurance Act.

(d) RESERVE RATIO.—Notwithstanding the timing requirements of section 7(b)(3)(E)(ii) of the Federal Deposit Insurance Act, the Corporation shall take such steps as may be necessary for the reserve ratio of the Deposit Insurance Fund to reach 1.35 percent of estimated insured deposits by September 30, 2020.

(e) OFFSET.—In setting the assessments necessary to meet the requirements of subsection (d), the Corporation shall offset the effect of subsection (d) on insured depository institutions with total consolidated assets of less than $10,000,000,000.

SEC. 335. PERMANENT INCREASE IN DEPOSIT AND SHARE INSURANCE.

(a) PERMANENT INCREASE IN DEPOSIT INSURANCE.—Section 11(a)(1)(E) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(1)(E)) is amended—

(1) by striking "$100,000" and inserting "$250,000"; and

(2) by adding at the end the following new sentences: "Notwithstanding any other provision of law, the increase in the standard maximum deposit insurance amount to $250,000 shall apply to depositors in any institution for which the Corporation was appointed as receiver or conservator on or after January 1, 2008, and before October 3, 2008. The Corporation shall take such actions as are necessary to carry out the requirements of this section with respect to such depositors, without regard to any time limitations under this Act. In implementing this and the preceding 2 sentences, any payment on a deposit claim made by the Corporation as receiver or conservator to a depositor above the standard maximum deposit insurance amount in effect at the time of the appointment of the Corporation as receiver or conservator shall be deemed to be part of the net amount due to the depositor under subparagraph (B)."

(b) PERMANENT INCREASE IN SHARE INSURANCE.—Section 207(k)(5) of the Federal Credit Union Act (12 U.S.C. 1787(k)(5)) is amended by striking "$100,000" and inserting "$250,000".

SEC. 336. MANAGEMENT OF THE FEDERAL DEPOSIT INSURANCE CORPORATION.

(a) IN GENERAL.—Section 2 of the Federal Deposit Insurance Act (12 U.S.C. 1812) is amended—

(1) in subsection (a)(1)(B), by striking "Director of the Office of Thrift Supervision" and inserting "Director of the Consumer Financial Protection Bureau";

(2) by amending subsection (d)(2) to read as follows:

"(2) ACTING OFFICIALS MAY SERVE.—In the event of a vacancy in the office of the Comptroller of the Currency or the office of Director of the Consumer Financial Protection Bureau and pending the appointment of a successor, or during the absence or disability of the Comptroller of the Currency or the Director of the Consumer Financial Protection Bureau, the acting Comptroller of the Currency or the acting Director of the Consumer Financial Protection Bureau, as the case may be, shall be a member of the Board of Directors in the place of the Comptroller or Director."; and

(3) in subsection (f)(2), by striking "Office of Thrift Supervision" and inserting "Consumer Financial Protection Bureau".

(b) EFFECTIVE DATE.—This section, and the amendments made by this section, shall take effect on the transfer date.

Subtitle D—Other Matters

SEC. 341. BRANCHING.

Notwithstanding the Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.), the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), or any other provision of Federal or State law, a savings association that becomes a bank may—

(1) continue to operate any branch or agency that the savings association operated immediately before the savings association became a bank; and

(2) establish, acquire, and operate additional branches and agencies at any location within any State in which the savings association operated a branch immediately before the savings association became a bank, if the law of the State in which the branch is located, or is to be located, would permit establishment of the branch if the bank were a State bank chartered by such State.

SEC. 342. OFFICE OF MINORITY AND WOMEN INCLUSION.

(a) OFFICE OF MINORITY AND WOMEN INCLUSION.—

(1) ESTABLISHMENT.—

(A) IN GENERAL.—Except as provided in subparagraph (B), not later than 6 months after the date of enactment of this Act, each agency shall establish an Office of Minority and Women Inclusion that shall be responsible for all matters of the agency relating to diversity in management, employment, and business activities.

(B) BUREAU.—The Bureau shall establish an Office of Minority and Women Inclusion not later than 6 months after the designated transfer date established under section 1062.

(2) TRANSFER OF RESPONSIBILITIES.—Each agency that, on the day before the date of enactment of this Act, assigned the responsibilities described in paragraph (1) (or comparable responsibilities) to another office of the agency shall ensure that such responsibilities are transferred to the Office.

(3) DUTIES WITH RESPECT TO CIVIL RIGHTS LAWS.—The responsibilities described in paragraph (1) do not include enforcement of statutes, regulations, or executive orders pertaining to civil rights, except each Director shall coordinate with the agency administrator, or the designee of the agency administrator, regarding the design and implementation of any remedies resulting from violations of such statutes, regulations, or executive orders.

(b) DIRECTOR.—

(1) IN GENERAL.—The Director of each Office shall be appointed by, and shall report to, the agency administrator. The position of Director shall be a career reserved position in the Senior Executive Service, as that position is defined in section 3132 of title 5, United States Code, or an equivalent designation.

(2) DUTIES.—Each Director shall develop standards for—

(A) equal employment opportunity and the racial, ethnic, and gender diversity of the workforce and senior management of the agency;

(B) increased participation of minority-owned and women-owned businesses in the programs and contracts of the agency, including standards for coordinating technical assistance to such businesses; and

(C) assessing the diversity policies and practices of entities regulated by the agency.

(3) OTHER DUTIES.—Each Director shall advise the agency administrator on the impact of the policies and regulations of the agency on minority-owned and women-owned businesses.

(4) RULE OF CONSTRUCTION.—Nothing in paragraph (2)(C) may be construed to mandate any requirement on or otherwise affect the lending policies and practices of any regulated entity, or to require any specific action based on the findings of the assessment.

(c) INCLUSION IN ALL LEVELS OF BUSINESS ACTIVITIES.—

(1) IN GENERAL.—The Director of each Office shall develop and implement standards and procedures to ensure, to the maximum extent possible, the fair inclusion and utilization of minorities, women, and minority-owned and women-owned businesses in all business and activities of the agency at all levels, including in procurement, insurance, and all types of contracts.

(2) CONTRACTS.—The procedures established by each agency for review and evaluation of contract proposals and for hiring service providers shall include, to the extent consistent with applicable law, a component that gives consideration to the diversity of the applicant. Such procedure shall include a written statement, in a form and with such content as the Director shall prescribe, that a contractor shall ensure, to the maximum extent possible, the fair inclusion of women and minorities in the workforce of the contractor and, as applicable, subcontractors.

(3) TERMINATION.—

(A) DETERMINATION.—The standards and procedures developed and implemented under this subsection shall include a procedure for the Director to make a determination whether an agency contractor, and, as applicable, a subcontractor has failed to make a good faith effort to include minorities and women in their workforce.

(B) EFFECT OF DETERMINATION.—

(i) RECOMMENDATION TO AGENCY ADMINISTRATOR.—Upon a determination described in subparagraph (A), the Director shall make a recommendation to the agency administrator that the contract be terminated.

(ii) ACTION BY AGENCY ADMINISTRATOR.—Upon receipt of a recommendation under clause (i), the agency administrator may—

(I) terminate the contract;

(II) make a referral to the Office of Federal Contract Compliance Programs of the Department of Labor; or

(III) take other appropriate action.

(d) APPLICABILITY.—This section shall apply to all contracts of an agency for services of any kind, including the services of financial institutions, investment banking firms, mortgage banking firms, asset management firms, brokers, dealers, financial services entities, underwriters, accountants, investment consultants, and providers of legal services. The contracts referred to in this subsection include all contracts for all business and activities of an agency, at all levels, including contracts for the issuance or guarantee of any debt, equity, or security, the sale of assets, the management of the assets of the agency, the making of equity investments by the agency, and the implementation by the agency of programs to address economic recovery.

(e) REPORTS.—Each Office shall submit to Congress an annual report regarding the actions taken by the agency and the Office pursuant to this section, which shall include—

(1) a statement of the total amounts paid by the agency to contractors since the previous report;

(2) the percentage of the amounts described in paragraph (1) that were paid to contractors described in subsection (c)(1);

(3) the successes achieved and challenges faced by the agency in operating minority and women outreach programs;

(4) the challenges the agency may face in hiring qualified minority and women employees and contracting with qualified minority-owned and women-owned businesses; and

(5) any other information, findings, conclusions, and recommendations for legislative or agency action, as the Director determines appropriate.

(f) DIVERSITY IN AGENCY WORKFORCE.—Each agency shall take affirmative steps to seek diversity in the workforce of the agency at all levels of the agency in a manner consistent with applicable law. Such steps shall include—

(1) recruiting at historically black colleges and universities, Hispanic-serving institutions, women's colleges, and colleges that typically serve majority minority populations;

(2) sponsoring and recruiting at job fairs in urban communities;

(3) placing employment advertisements in newspapers and magazines oriented toward minorities and women;

(4) partnering with organizations that are focused on developing opportunities for minorities and women to place talented young minorities and women in industry internships, summer employment, and full-time positions;

(5) where feasible, partnering with inner-city high schools, girls' high schools, and high schools with majority minority populations to establish or enhance financial literacy programs and provide mentoring; and

(6) any other mass media communications that the Office determines necessary.

(g) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

(1) AGENCY.—The term "agency" means—

(A) the Departmental Offices of the Department of the Treasury;

(B) the Corporation;

(C) the Federal Housing Finance Agency;

(D) each of the Federal reserve banks;

(E) the Board;

(F) the National Credit Union Administration;

(G) the Office of the Comptroller of the Currency;

(H) the Commission; and

(I) the Bureau.

(2) AGENCY ADMINISTRATOR.—The term "agency administrator" means the head of an agency.

(3) MINORITY.—The term "minority" has the same meaning as in section 1204(c) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1811 note).

(4) MINORITY-OWNED BUSINESS.—The term "minority-owned business" has the same meaning as in section 21A(r)(4)(A)

of the Federal Home Loan Bank Act (12 U.S.C. 1441a(r)(4)(A)), as in effect on the day before the transfer date.

(5) OFFICE.—The term "Office" means the Office of Minority and Women Inclusion established by an agency under subsection (a).

(6) WOMEN-OWNED BUSINESS.—The term "women-owned business" has the meaning given the term "women's business" in section 21A(r)(4)(B) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(r)(4)(B)), as in effect on the day before the transfer date.

SEC. 343. INSURANCE OF TRANSACTION ACCOUNTS.

(a) BANKS AND SAVINGS ASSOCIATIONS.—

(1) AMENDMENTS.—Section 11(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(1)) is amended—

(A) in subparagraph (B)—

(i) by striking "The net amount" and inserting the following:

"(i) IN GENERAL.—Subject to clause (ii), the net amount"; and

(ii) by adding at the end the following new clauses:

"(ii) INSURANCE FOR NONINTEREST-BEARING TRANSACTION ACCOUNTS.—Notwithstanding clause (i), the Corporation shall fully insure the net amount that any depositor at an insured depository institution maintains in a noninterest-bearing transaction account. Such amount shall not be taken into account when computing the net amount due to such depositor under clause (i).

"(iii) NONINTEREST-BEARING TRANSACTION ACCOUNT DEFINED.—For purposes of this subparagraph, the term 'noninterest-bearing transaction account' means a deposit or account maintained at an insured depository institution—

"(I) with respect to which interest is neither accrued nor paid;

"(II) on which the depositor or account holder is permitted to make withdrawals by negotiable or transferable instrument, payment orders of withdrawal, telephone or other electronic media transfers, or other similar items for the purpose of making payments or transfers to third parties or others; and

"(III) on which the insured depository institution does not reserve the right to require advance notice of an intended withdrawal."; and

(B) in subparagraph (C), by striking "subparagraph (B)" and inserting "subparagraph (B)(i)".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect on December 31, 2010.

(3) PROSPECTIVE REPEAL.—Effective January 1, 2013, section 11(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(1)), as amended by paragraph (1), is amended—

(A) in subparagraph (B)—

(i) by striking "DEPOSIT.—" and all that follows through "clause (ii), the net amount" and insert "DEPOSIT.—The net amount"; and

(ii) by striking clauses (ii) and (iii); and

(B) in subparagraph (C), by striking "subparagraph (B)(i)" and inserting "subparagraph (B)".

(b) CREDIT UNIONS.—

(1) AMENDMENTS.—Section 207(k)(1) of the Federal Credit Union Act (12 U.S.C. 1787(k)(1)) is amended—

(A) in subparagraph (A)—

(i) by striking "Subject to the provisions of paragraph (2), the net amount" and inserting the following:

"(i) NET AMOUNT OF INSURANCE PAYABLE.—Subject to clause (ii) and the provisions of paragraph (2), the net amount"; and

(ii) by adding at the end the following new clauses:

"(ii) INSURANCE FOR NONINTEREST-BEARING TRANSACTION ACCOUNTS.—Notwithstanding clause (i), the Board shall fully insure the net amount that any member or depositor at an insured credit union maintains in a noninterest-bearing transaction account. Such amount shall not be taken into account when computing the net amount due to such member or depositor under clause (i).

"(iii) NONINTEREST-BEARING TRANSACTION ACCOUNT DEFINED.—For purposes of this subparagraph, the term 'noninterest-bearing transaction account' means an account or deposit maintained at an insured credit union—

"(I) with respect to which interest is neither accrued nor paid;

"(II) on which the account holder or depositor is permitted to make withdrawals by negotiable or transferable instrument, payment orders of withdrawal, telephone or other electronic media transfers, or other similar items for the purpose of making payments or transfers to third parties or others; and

"(III) on which the insured credit union does not reserve the right to require advance notice of an intended withdrawal."; and

(B) in subparagraph (B), by striking "subparagraph (A)" and inserting "subparagraph (A)(i)".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect upon the date of the enactment of this Act

(3) PROSPECTIVE REPEAL.—Effective January 1, 2013, section 207(k)(1) of the Federal Credit Union Act (12 U.S.C. 1787(k)(1)), as amended by paragraph (1), is amended—

(A) in subparagraph (A)—

(i) by striking "(i) NET AMOUNT OF INSURANCE PAYABLE.—" and all that follows through "paragraph (2), the net amount" and inserting "Subject to the provisions of paragraph (2), the net amount"; and

(ii) by striking clauses (ii) and (iii); and

(B) in subparagraph (B), by striking "subparagraph (A)(i)" and inserting "subparagraph (A)".

Subtitle E—Technical and Conforming Amendments

SEC. 351. EFFECTIVE DATE.

Except as provided in section 364(a), the amendments made by this subtitle shall take effect on the transfer date.

SEC. 352. BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT OF 1985.

Section 256(h) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 906(h)) is amended—

(1) in paragraph (4), by striking subparagraphs (C) and (G); and

(2) by redesignating subparagraphs (D), (E), (F), and (H) as subparagraphs (C), (D), (E), and (F), respectively.

SEC. 353. BANK ENTERPRISE ACT OF 1991.

Section 232(a) of the Bank Enterprise Act of 1991 (12 U.S.C. 1834(a)) is amended—

(1) in the subsection heading, by striking "BY FEDERAL RESERVE BOARD";

(2) in paragraph (1)—

(A) by striking "The Board of Governors of the Federal Reserve System," and inserting "The Comptroller of the Currency"; and

(B) by striking "section 7(b)(2)(H)" and inserting "section 7(b)(2)(E)";

(3) in paragraph (2)(A), by striking "Board" and inserting "Comptroller"; and

(4) in paragraph (3)—

(A) by redesignating subparagraphs (A) through (C) as subparagraphs (B) through (D), respectively; and

(B) by inserting before subparagraph (B) the following:

"(A) COMPTROLLER.—The term 'Comptroller' means the Comptroller of the Currency.".

SEC. 354. BANK HOLDING COMPANY ACT OF 1956.

The Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) is amended—

(1) in section 2(j)(3) (12 U.S.C. 1841(j)(3)), strike "Director of the Office of Thrift Supervision" and inserting "appropriate Federal banking agency";

(2) in section 4 (12 U.S.C. 1843)—

(A) in subsection (i)—

(i) in paragraph (4)—

(I) in subparagraph (A)—

(aa) in the subparagraph heading, by striking "TO DIRECTOR"; and

(bb) by striking "Board" and all that follows through the end of the subparagraph and inserting "Board shall solicit comments and recommendations from—

"(i) the Comptroller of the Currency, with respect to the acquisition of a Federal savings association; and

"(ii) the Federal Deposit Insurance Corporation, with respect to the acquisition of a State savings association.".

(II) in subparagraph (B), by striking "Director" each place that term appears and inserting "Comptroller of the Currency or the Federal Deposit Insurance Corporation, as applicable,";

(ii) in paragraph (5)—

(I) in subparagraph (B), by striking "Director with" and inserting "Comptroller of the Currency or the Federal Deposit Insurance Corporation, as applicable, with"; and

(II) by striking "Director" each place that term appears and inserting "Comptroller of the Currency or the Federal Deposit Insurance Corporation";

(iii) in paragraph (6), by striking "Director" and inserting "Comptroller of the Currency or the Federal Deposit Insurance Corporation, as applicable,"; and

(iv) by striking paragraph (7); and

(3) in section 5(f) (12 U.S.C. 1844(f))—

(A) by striking "subpena" each place that term appears and inserting "subpoena";

(B) by striking "subpenas" each place that term appears and inserting "subpoenas"; and

(C) by striking "subpenaed" and inserting "subpoenaed".

SEC. 355. BANK HOLDING COMPANY ACT AMENDMENTS OF 1970.

Section 106(b)(1) of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1972(1)) is amended in the undesignated matter following subparagraph (E) by inserting "issue such regulations as are necessary to carry out this section, and, in consultation with the Comptroller of the Currency and the Federal Deposit Insurance Company, may" after "The Board may".

SEC. 356. BANK PROTECTION ACT OF 1968.

The Bank Protection Act of 1968 (12 U.S.C. 1881 et seq.) is amended—

(1) in section 2 (12 U.S.C. 1881), by striking "the term" and all that follows through the end of the section and inserting "the term 'Federal supervisory agency' means the appropriate Federal banking agency, as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).";

(2) in section 3 (12 U.S.C. 1882), by striking "and loan" each place that term appears; and

(3) in section 5 (12 U.S.C. 1884), by striking "and loan".

SEC. 357. BANK SERVICE COMPANY ACT.

The Bank Service Company Act (12 U.S.C. 1861 et seq.) is amended—

(1) in section 1(b)(4) (12 U.S.C. 1861(b)(4))—

(A) by inserting after "an insured bank," the following: "a savings association,";

(B) by striking "Director of the Office of Thrift Supervision" and inserting "appropriate Federal banking agency"; and

(C) by striking ", the Federal Savings and Loan Insurance Corporation,";

(2) in section 1(b)(5), by striking "term 'insured depository institution' has the same meaning as in section 3(c)" and inserting "terms 'depository institution' and 'savings association' have the same meanings as in section 3"; and

(3) in section 7(c)(2) (12 U.S.C. 1867(c)(2)), by inserting "each" after "notify".

SEC. 358. COMMUNITY REINVESTMENT ACT OF 1977.

The Community Reinvestment Act of 1977 (12 U.S.C. 2901 et seq.) is amended—

(1) in section 803 (12 U.S.C. 2902)—

(A) in paragraph (1)—

(i) in subparagraph (A), by inserting "and Federal savings associations (the deposits of which are insured by the Federal Deposit Insurance Corporation)" after "banks";

(ii) in subparagraph (B), by striking "and bank holding companies" and inserting ", bank holding companies, and savings and loan holding companies"; and

(iii) in subparagraph (C), by striking "; and" and inserting ", and State savings associations (the deposits of which are insured by the Federal Deposit Insurance Corporation)."; and

(B) by striking paragraph (2) (relating to the Office of Thrift Supervision), as added by section 744(q) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Public Law 101–73; 103 Stat. 440); and

(2) in section 806 (12 U.S.C. 2905), by inserting ", except that the Comptroller of the Currency shall prescribe regulations applicable to savings associations and the Board of Governors shall prescribe regulations applicable to insured State member banks, bank holding companies and savings and loan holding companies," after "supervisory agency".

SEC. 359. CRIME CONTROL ACT OF 1990.

The Crime Control Act of 1990 is amended—

(1) in section 2539(c)(2) (28 U.S.C. 509 note)—

(A) by striking subparagraphs (C) and (D); and

(B) by redesignating subparagraphs (E) through (H) as subparagraphs (C) through (G), respectively; and

(2) in section 2554(b)(2) (Public Law 101–647; 104 Stat. 4890)—

(A) in subparagraph (A), by striking ", the Director of the Office of Thrift Supervision," and inserting "the Comptroller of the Currency"; and

(B) in subparagraph (B), by striking ", the Director" and all that follows through "Trust Corporation" and inserting "or the Federal Deposit Insurance Corporation".

SEC. 360. DEPOSITORY INSTITUTION MANAGEMENT INTERLOCKS ACT.

The Depository Institution Management Interlocks Act (12 U.S.C. 3201 et seq.) is amended—

(1) in section 207 (12 U.S.C. 3206)—

(A) in paragraph (1), by inserting before the comma at the end the following: "and Federal savings associations

(the deposits of which are insured by the Federal Deposit Insurance Corporation)";

(B) in paragraph (2), by striking ", and bank holding companies" and inserting ", bank holding companies, and savings and loan holding companies";

(C) in paragraph (3), by striking "Corporation," and inserting "Corporation and State savings associations (the deposits of which are insured by the Federal Deposit Insurance Corporation),";

(D) by striking paragraph (4);

(E) by redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively; and

(F) in paragraph (5), as so redesignated, by striking "through (5)" and inserting "through (4)";

(2) in section 209 (12 U.S.C. 3207)—

(A) in paragraph (1), by inserting before the comma at the end the following: "and Federal savings associations (the deposits of which are insured by the Federal Deposit Insurance Corporation)";

(B) in paragraph (2), by striking ", and bank holding companies" and inserting ", bank holding companies, and savings and loan holding companies";

(C) in paragraph (3), by striking "Corporation," and inserting "Corporation and State savings associations (the deposits of which are insured by the Federal Deposit Insurance Corporation),";

(D) by striking paragraph (4); and

(E) by redesignating paragraph (5) as paragraph (4); and

(3) in section 210(a) (12 U.S.C. 3208(a))—

(A) by striking "his" and inserting "the"; and

(B) by inserting "of the Attorney General" after "enforcement functions".

SEC. 361. EMERGENCY HOMEOWNERS' RELIEF ACT.

Section 110 of the Emergency Homeowners' Relief Act (12 U.S.C. 2709) is amended in the second sentence, by striking "Home Loan Bank Board, the Federal Savings and Loan Insurance Corporation" and inserting "Housing Finance Agency".

SEC. 362. FEDERAL CREDIT UNION ACT.

The Federal Credit Union Act (12 U.S.C. 1751 et seq.) is amended—

(1) in section 107(8) (12 U.S.C. 1757(8)), by striking "or the Federal Savings and Loan Insurance Corporation";

(2) in section 205 (12 U.S.C. 1785)—

(A) in subsection (b)(2)(G)(i), by striking "the Office of Thrift Supervision and"; and

(B) in subsection (i)(1), by striking "or the Federal Savings and Loan Insurance Corporation"; and

(3) in section 206(g)(7) (12 U.S.C. 1786(g)(7))—

(A) in subparagraph (A)—

(i) in clause (ii), by striking "(b)(8)" and inserting "(b)(9)";

(ii) in clause (v)—

(I) by striking "depository" and inserting "financial"; and

(II) by adding "and" at the end;

(iii) in clause (vi)—
(I) by striking "Board" and inserting "Agency"; and
(II) by striking "; and" and inserting a period; and
(iv) by striking clause (vii); and
(B) in subparagraph (D)—
(i) in clause (iii), by adding "and" at the end;
(ii) in clause (iv)—
(I) by striking "Board" and inserting "Agency"; and
(II) by striking "and" at the end; and
(iii) by striking clause (v).

SEC. 363. FEDERAL DEPOSIT INSURANCE ACT.

The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended—
(1) in section 3 (12 U.S.C. 1813)—
(A) in subsection (b)(1)(C), by striking "Director of the Office of Thrift Supervision" and inserting "Comptroller of the Currency";
(B) in subsection (l)(5), in the matter preceding subparagraph (A), by striking "Director of the Office of Thrift Supervision,"; and
(C) in subsection (z), by striking "the Director of the Office of Thrift Supervision,";
(2) in section 7 (12 U.S.C. 1817)—
(A) in subsection (a)—
(i) in paragraph (2)—
(I) in subparagraph (A)—
(aa) in the first sentence, by striking "the Director of the Office of Thrift Supervision,";
(bb) in the second sentence—
(AA) by striking "the Director of the Office of Thrift Supervision," and inserting "to"; and
(BB) by inserting "to" before "any Federal home"; and
(cc) by striking "Finance Board" each place that term appears and inserting "Finance Agency"; and
(II) in subparagraph (B), by striking "the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Director of the Office of Thrift Supervision," and inserting "the Comptroller of the Currency and the Board of Governors of the Federal Reserve System,";
(ii) in paragraph (3), in the first sentence, by striking "Comptroller of the Currency, the Chairman of the Board of Governors of the Federal Reserve System, and the Director of the Office of Thrift Supervision." and inserting "Comptroller of the Currency, and the Chairman of the Board of Governors of the Federal Reserve System.";
(iii) in paragraph (6), by striking "section 232(a)(3)(C)" and inserting "section 232(a)(3)(D)"; and

(iv) in paragraph (7), by striking ", the Director of the Office of Thrift Supervision,"; and

(B) in subsection (n)—

(i) in the heading, by striking "DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION" and inserting "COMPTROLLER OF THE CURRENCY";

(ii) in the first sentence—

(I) by striking "the Director of the Office of Thrift Supervision" and inserting "the Comptroller of the Currency"; and

(II) by inserting "Federal" before "savings associations";

(iii) in the third sentence, by striking ", the Financing Corporation, and the Resolution Funding Corporation"; and

(iv) by striking "the Director" each place that term appears and inserting "the Comptroller";

(3) in section 8 (12 U.S.C. 1818)—

(A) in subsection (a)(8)(B)(ii), in the last sentence, by striking "Director of the Office of Thrift Supervision" each place that term appears and inserting "Comptroller of the Currency";

(B) in subsection (b)(3)—

(i) by inserting "any savings and loan holding company and any subsidiary (other than a depository institution) of a savings and loan holding company (as such terms are defined in section 10 of Home Owners' Loan Act)), any noninsured State member bank" after "Bank Holding Company Act of 1956,"; and

(ii) by inserting "or against a savings and loan holding company or any subsidiary thereof (other than a depository institution or a subsidiary of such depository institution)" before the period at the end;

(C) by striking paragraph (9) of subsection (b) and inserting the following new paragraph:

"(9) [Repealed]".

(D) in subsection (e)(7)—

(i) in subparagraph (A)—

(I) in clause (v), by inserting "and" after the semicolon;

(II) in clause (vi)—

(aa) by striking "Board" and inserting "Agency"; and

(bb) by striking "; and" and inserting a period; and

(III) by striking clause (vii); and

(ii) in subparagraph (D)—

(I) in clause (iii), by inserting "and" after the semicolon;

(II) in clause (iv)—

(aa) by striking "Board" and inserting "Agency"; and

(bb) by striking "; and" and inserting a period; and

(III) by striking clause (v);

(E) in subsection (j)—

(i) in paragraph (2), by striking ", or as a savings association under subsection (b)(9) of this section";

(ii) in paragraph (3), by inserting "or" after the semicolon;

(iii) in paragraph (4), by striking "; or" and inserting a comma; and

(iv) by striking paragraph (5);

(F) in subsection (o), by striking "Director of the Office of Thrift Supervision" and inserting "Comptroller of the Currency"; and

(G) in subsection (w)(3)(A), by striking "and the Office of Thrift Supervision";

(4) in section 10 (12 U.S.C. 1820)—

(A) in subsection (d)(5), by striking "or the Resolution Trust Corporation" each place that term appears; and

(B) in subsection (k)(5)(B)—

(i) in clause (ii), by inserting "and" after the semicolon;

(ii) in clause (iii), by striking "; and" and inserting a period; and

(iii) by striking clause (iv);

(5) in section 11 (12 U.S.C. 1821)—

(A) in subsection (c)—

(i) in paragraph (2)(A)(ii), by striking "(other than section 21A of the Federal Home Loan Bank Act)";

(ii) in paragraph (4), by striking "Except as otherwise provided in section 21A of the Federal Home Loan Bank Act and notwithstanding" and inserting "Notwithstanding";

(iii) in paragraph (6)—

(I) in the heading, by striking "DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION" and inserting "COMPTROLLER OF THE CURRENCY";

(II) in subparagraph (A)—

(aa) by striking "or the Resolution Trust Corporation"; and

(bb) by striking "Director of the Office of Thrift Supervision" and inserting "Comptroller of the Currency"; and

(III) by amending subparagraph (B) to read as follows:

"(B) RECEIVER.—The Corporation may, at the discretion of the Comptroller of the Currency, be appointed receiver and the Corporation may accept any such appointment.";

(iv) in paragraph (12)(A), by striking "or the Resolution Trust Corporation";

(B) in subsection (d)—

(i) in paragraph (17)(A), by striking "or the Director of the Office of Thrift Supervision"; and

(ii) in paragraph (18)(B), by striking "or the Director of the Office of Thrift Supervision";

(C) in subsection (m)—

(i) in paragraph (9), by striking "or the Director of the Office of Thrift Supervision, as appropriate";

(ii) in paragraph (16), by striking "or the Director of the Office of Thrift Supervision, as appropriate" each place that term appears; and

(iii) in paragraph (18), by striking "or the Director of the Office of Thrift Supervision, as appropriate" each place that term appears;

(D) in subsection (n)—

(i) in paragraph (1)(A)—

(I) by striking ", or the Director of the Office of Thrift Supervision, with respect to" and inserting "or"; and

(II) by striking "applicable,," and inserting "applicable,";

(ii) in paragraph (2)(A), by striking "or the Director of the Office of Thrift Supervision";

(iii) in paragraph (4)(D), by striking "and the Director of the Office of Thrift Supervision, as appropriate,";

(iv) in paragraph (4)(G), by striking "and the Director of the Office of Thrift Supervision, as appropriate,"; and

(v) in paragraph (12)(B)—

(I) by inserting "as" after "shall appoint the Corporation";

(II) by striking "or the Director of the Office of Thrift Supervision, as appropriate," each place such term appears;

(E) in subsection (p)—

(i) in paragraph (2)(B), by striking "the Corporation, the FSLIC Resolution Fund, or the Resolution Trust Corporation," and inserting "or the Corporation,"; and

(ii) in paragraph (3)(B), by striking ", the FSLIC Resolution Fund, the Resolution Trust Corporation,"; and

(F) in subsection (r), by striking "and the Resolution Trust Corporation";

(6) in section 13(k)(1)(A)(iv) (12 U.S.C. 1823(k)(1)(A)(iv)), by striking "Director of the Office of Thrift Supervision" and inserting "Comptroller of the Currency";

(7) in section 18 (12 U.S.C. 1828)—

(A) in subsection (c)(2)—

(i) in subparagraph (A), by inserting "or a Federal savings association" before the semicolon;

(ii) in subparagraph (B), by adding "and" at the end;

(iii) in subparagraph (C), by striking "(except" and all that follows through "; and" and inserting "or a State savings association."; and

(iv) by striking subparagraph (D);

(B) in subsection (g)(1), by striking "the Director of the Office of Thrift Supervision"and inserting "the Comptroller of the Currency";

(C) in subsection (i)(2)(C), by striking "Director of the Office of Thrift Supervision" and inserting "Corporation"; and

(D) in subsection (m)—

(i) in paragraph (1)—

(I) in subparagraph (A), by striking "and the Director of the Office of Thrift Supervision" and inserting "or the Comptroller of the Currency, as appropriate,"; and

(II) in subparagraph (B), by striking "and orders of the Director of the Office of Thrift Supervision" and inserting "of the Comptroller of the Currency and orders of the Corporation and the Comptroller of the Currency";

(ii) in paragraph (2)—

(I) in subparagraph (A), by striking "Director of the Office of Thrift Supervision" and inserting "Comptroller of the Currency, as appropriate,"; and

(II) in subparagraph (B)—

(aa) in the matter before clause (i), by striking "Director of the Office of Thrift Supervision" and inserting "Corporation or the Comptroller of the Currency, as appropriate,"; and

(bb) in the matter following clause (ii)—

(AA) in the first sentence, by striking "Director of the Office of Thrift Supervision" and inserting "Office of the Comptroller of the Currency, as appropriate,"; and

(BB) by striking the second sentence and inserting the following: "The Corporation or the Comptroller of the Currency, as appropriate, may take any other corrective measures with respect to the subsidiary, including the authority to require the subsidiary to terminate the activities or operations posing such risks, as the Corporation or the Comptroller of the Currency, respectively, may deem appropriate."; and

(iii) in paragraph (3)—

(I) in subparagraph (A), in the second sentence—

(aa) by inserting ", in the case of a Federal savings association," before "consult with"; and

(bb) by striking "Director of the Office of Thrift Supervision" and inserting "Comptroller of the Currency"; and

(II) in subparagraph (B)—

(aa) in the subparagraph heading, by striking "DIRECTOR" and inserting "COMPTROLLER OF THE CURRENCY";

(bb) by striking "Office of Thrift Supervision" and inserting "Comptroller of the Currency";

(cc) by inserting a comma after "soundness"; and

(dd) by inserting "as to Federal savings associations" after "compliance";

(8) in section 19(e) (12 U.S.C. 1829(e))—

(A) in paragraph (1), by striking "Director of the Office of Thrift Supervision" and inserting "Board of Governors of the Federal Reserve System"; and

(B) in paragraph (2), by striking "Director of the Office of Thrift Supervision" and inserting "Board of Governors of the Federal Reserve System";

(9) in section 28 (12 U.S.C. 1831e)—

(A) in subsection (e)—

(i) in paragraph (2)—

(I) in subparagraph (A)(ii), by striking "Director of the Office of Thrift Supervision" and inserting "Comptroller of the Currency or the Corporation, as appropriate";

(II) in subparagraph (C), by striking "Director of the Office of Thrift Supervision" and inserting "Comptroller of the Currency or the Corporation, as appropriate,"; and

(III) in subparagraph (F), by striking "Director of the Office of Thrift Supervision" and inserting "Comptroller of the Currency or the Corporation, as appropriate"; and

(ii) in paragraph (3)—

(I) in subparagraph (A), by striking "Director of the Office of Thrift Supervision" and inserting "Comptroller of the Currency or the Corporation, as appropriate"; and

(II) in subparagraph (B), by striking "Director of the Office of Thrift Supervision" and inserting "Comptroller of the Currency or the Corporation, as appropriate,"; and

(B) in subsection (h)(2), by striking "Director of the Office of Thrift Supervision" and inserting "Comptroller of the Currency, of the Corporation,"; and

(10) in section 33(e) (12 U.S.C. 1831j(e)), by striking "Federal Housing Finance Board, the Comptroller of the Currency, and the Director of the Office of Thrift Supervision" and inserting "Federal Housing Finance Agency and the Comptroller of the Currency".

SEC. 364. FEDERAL HOME LOAN BANK ACT.

(a) REPEAL OF SECTION 18(c).—Effective 90 days after the transfer date, section 18(c) of the Federal Home Loan Bank Act (12 U.S.C. 1438(c)) is repealed.

(b) REPEAL OF SECTION 21A.—Section 21A of the Federal Home Loan Bank Act (12 U.S.C. 1441a) is repealed.

SEC. 365. FEDERAL HOUSING ENTERPRISES FINANCIAL SAFETY AND SOUNDNESS ACT OF 1992.

The Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 et seq.) is amended—

(1) in section 1315(b) (12 U.S.C. 4515(b)), by striking "the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision." and inserting "and the Federal Deposit Insurance Corporation."; and

(2) in section 1317(c) (12 U.S.C. 4517(c)), by striking "the Federal Deposit Insurance Corporation, or the Director of the Office of Thrift Supervision" and inserting "or the Federal Deposit Insurance Corporation".

SEC. 366. FEDERAL RESERVE ACT.

The Federal Reserve Act (12 U.S.C. 221 et seq.) is amended—

(1) in section 11(a)(2) (12 U.S.C. 248(a)(2))—

(A) by inserting "State savings associations that are insured depository institutions (as defined in section 3 of the Federal Deposit Insurance Act)," after "case of insured";

(B) by striking "Director of the Office of Thrift Supervision" and inserting "Comptroller of the Currency";

(C) by inserting "Federal" before "savings association which"; and

(D) by striking "savings and loan association" and inserting "savings association"; and

(2) in section 19(b) (12 U.S.C. 461(b))—

(A) in paragraph (1)(F), by striking "Director of the Office of Thrift Supervision" and inserting "Comptroller of the Currency"; and

(B) in paragraph (4)(B), by striking "Director of the Office of Thrift Supervision" and inserting "Comptroller of the Currency".

SEC. 367. FINANCIAL INSTITUTIONS REFORM, RECOVERY, AND ENFORCEMENT ACT OF 1989.

The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 is amended—

(1) in section 203 (12 U.S.C. 1812 note), by striking subsection (b);

(2) in section 302(1) (12 U.S.C. 1467a note), by striking "Director of the Office of Thrift Supervision" and inserting "Comptroller of the Currency";

(3) in section 305(12 U.S.C. 1464 note), by striking subsection (b);

(4) in section 308 (12 U.S.C. 1463 note)—

(A) in subsection (a), by striking "Director of the Office of Thrift Supervision" and inserting "Chairman of the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Chairman of the National Credit Union Administration,"; and

(B) by adding at the end the following new subsection:

"(c) REPORTS.—The Secretary of the Treasury, the Chairman of the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Chairman of the National Credit Union Administration, and the Chairperson of Board of Directors of the Federal Deposit Insurance Corporation shall each submit an annual report to the Congress containing a description of actions taken to carry out this section.";

(5) in section 402 (12 U.S.C. 1437 note)—

(A) in subsection (a), by striking "Director of the Office of Thrift Supervision" and inserting "Comptroller of the Currency";

(B) by striking subsection (b);

(C) in subsection (e)—

(i) in paragraph (1), by striking "Office of Thrift Supervision" and inserting "Comptroller of the Currency"; and

(ii) in each of paragraphs (2), (3), and (4), by striking "Director of the Office of Thrift Supervision"

each place that term appears and inserting "Comptroller of the Currency"; and

(D) by striking "Federal Housing Finance Board" each place that term appears and inserting "Federal Housing Finance Agency";

(6) in section 1103(a) (12 U.S.C. 3332(a)), by striking "and the Resolution Trust Corporation";

(7) in section 1205(b) (12 U.S.C. 1818 note)—

(A) in paragraph (1)—

(i) by striking subparagraph (B); and

(ii) by redesignating subparagraphs (C) through (F) as subparagraphs (B) through (E), respectively; and

(B) in paragraph (2), by striking "paragraph (1)(F)" and inserting "paragraph (1)(E)";

(8) in section 1206 (12 U.S.C. 1833b)—

(A) by striking "Board, the Oversight Board of the Resolution Trust Corporation" and inserting "Agency, and"; and

(B) by striking ", and the Office of Thrift Supervision";

(9) in section 1216 (12 U.S.C. 1833e)—

(A) in subsection (a)—

(i) in paragraph (3), by adding "and" at the end;

(ii) in paragraph (4), by striking the semicolon at the end and inserting a period;

(iii) by striking paragraphs (2), (5), and (6); and

(iv) by redesignating paragraphs (3) and (4), as paragraphs (2) and (3), respectively;

(B) in subsection (c)—

(i) by striking "the Director of the Office of Thrift Supervision," and inserting "and"; and

(ii) by striking "the Thrift Depositor Protection Oversight Board of the Resolution Trust Corporation, and the Resolution Trust Corporation"; and

(C) in subsection (d)—

(i) by striking paragraphs (3), (5), and (6); and

(ii) by redesignating paragraphs (4), (7), and (8) as paragraphs (3), (4), and (5), respectively.

SEC. 368. FLOOD DISASTER PROTECTION ACT OF 1973.

Section 3(a)(5) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4003(a)(5)) is amended by striking ", the Office of Thrift Supervision".

SEC. 369. HOME OWNERS' LOAN ACT.

The Home Owners' Loan Act (12 U.S.C. 1461 et seq.) is amended—

(1) in section 1 (12 U.S.C. 1461), by striking the table of contents;

(2) in section 2 (12 U.S.C. 1462), as amended by this Act—

(A) by striking paragraphs (1) and (3);

(B) by redesignating paragraph (2) as paragraph (1);

(C) by redesignating paragraphs (4) through (9) as paragraphs (2) through (7), respectively; and

(D) by adding at the end the following:

"(8) BOARD.—The term 'Board', other than in the context of the Board of Directors of the Corporation, means the Board of Governors of the Federal Reserve System.

"(9) COMPTROLLER.—The term 'Comptroller' means the Comptroller of the Currency.";

(3) in section 3 (12 U.S.C. 1462a)—

(A) by striking the section heading and inserting the following:

"SEC. 3. ADMINISTRATIVE PROVISIONS.";

(B) by striking subsections (a), (b), (c), (d), (g), (h), (i), and (j);

(C) by redesignating subsections (e) and (f) as subsections (a) and (b), respectively;

(D) in subsection (a), as so redesignated—

(i) in the heading by striking "OF THE DIRECTOR"; and

(ii) in the matter preceding paragraph (1), by striking "The Director" and inserting "In accordance with subtitle A of title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the appropriate Federal banking agency"; and

(E) in subsection (b), as so redesignated, by striking "Director" and inserting "appropriate Federal banking agency";

(4) in section 4 (12 U.S.C. 1463)—

(A) in subsection (a)—

(i) in the subsection heading, by striking "FEDERAL";

(ii) by striking paragraphs (1) and (2) and inserting the following:

"(1) EXAMINATION AND SAFE AND SOUND OPERATION.—

"(A) FEDERAL SAVINGS ASSOCIATIONS.—The Comptroller shall provide for the examination and safe and sound operation of Federal savings associations.

"(B) STATE SAVINGS ASSOCIATIONS.—The Corporation shall provide for the examination and safe and sound operation of State savings associations.

"(2) REGULATIONS FOR SAVINGS ASSOCIATIONS.—The Comptroller may prescribe regulations with respect to savings associations, as the Comptroller determines to be appropriate to carry out the purposes of this Act."; and

(iii) in paragraph (3), by striking "Director" each place that term appears and inserting "Comptroller and the Corporation";

(B) in subsection (b)—

(i) in paragraph (2)—

(I) in subparagraph (A), by adding "and" at the end;

(II) in subparagraph (B), by striking "; and" and inserting a period; and

(III) by striking subparagraph (C); and

(ii) by striking "Director" each place that term appears and inserting "Comptroller";

(C) in subsection (c)—

(i) by striking "All regulations and policies of the Director" and inserting "The regulations of the Comptroller and the policies of the Comptroller and the Corporation"; and

(ii) by striking "of the Currency";

(D) in subsection (e)(5), by striking "Director" and inserting "Comptroller";

(E) in subsection (f), by striking "Director" each place that term appears and inserting "appropriate Federal banking agency"; and

(F) in subsection (h), by striking "Director" each place that term appears and inserting "appropriate Federal banking agency";

(5) in section 5 (12 U.S.C. 1464)—

(A) in subsection (a), by striking "Director", each place such term appears and inserting "Comptroller of the Currency";

(B) in subsection (b), by striking "Director", each place such term appears and inserting "Comptroller of the Currency";

(C) in subsection (c)—

(i) in paragraph (5)—

(I) in subparagraph (A), by striking "Director" and inserting "appropriate Federal banking agency"; and

(II) in subparagraph (B)—

(aa) by striking "The Director" and inserting "The appropriate Federal banking agency"; and

(bb) by striking "the Director" and inserting "the appropriate Federal banking agency";

(D) in subsection (d)—

(i) in paragraph (1)—

(I) in subparagraph (A)—

(aa) in the first sentence, by striking "Director" and inserting "appropriate Federal banking agency";

(bb) in the second sentence—

(AA) by striking "Director's own name and through the Director's own attorneys" and inserting "name of the appropriate Federal banking agency and through the attorneys of the appropriate Federal banking agency"; and

(BB) by striking "Director" each place that term appears and inserting "appropriate Federal banking agency"; and

(cc) in the third sentence, by striking "Director" each place that term appears and inserting "Comptroller";

(II) in subparagraph (B)—

(aa) in clauses (i) through (iv), by striking "Director" each place that term appears and inserting "appropriate Federal banking agency";

(III) in clause (v)—

(aa) in the matter preceding subclause (I), by striking "Director" and inserting "appropriate Federal banking agency";

(bb) in subclause (II), by striking "subpenas" and inserting "subpoenas"; and

(cc) in the matter following subclause (II), by striking "subpena" and inserting "subpoena";

(IV) in clause (vi)—

(aa) in the first sentence, by striking "Director" and inserting "appropriate Federal banking agency"; and

(bb) in the second sentence, by striking "Director" and inserting "Comptroller";

(V) in clause (vii)—

(aa) in the first sentence, by striking "subpena" and inserting "subpoena";

(bb) in the second sentence, by striking "subpenaed" and inserting "subpoenaed"; and

(cc) in the third sentence, by striking "Director" and inserting "appropriate Federal banking agency";

(ii) in paragraph (2)—

(I) in subparagraph (A)—

(aa) by striking "Director of the Office of Thrift Supervision" and inserting "appropriate Federal banking agency";

(bb) by striking "any insured savings association" and inserting "an insured savings association"; and

(cc) by striking "Director determines, in the Director's discretion" and inserting "appropriate Federal banking agency determines, in the discretion of the appropriate Federal banking agency";

(II) in subparagraph (B), by striking "Director" each place that term appears and inserting "appropriate Federal banking agency";

(III) in subparagraphs (C) and (D), by striking "Director" and inserting "appropriate Federal banking agency";

(IV) in subparagraph (E)—

(aa) in clause (ii)—

(AA) in the clause heading, by striking "OR RTC"; and

(BB) by striking "or the Resolution Trust Corporation, as appropriate," each place that term appears; and

(bb) by striking "Director" each place that term appears and inserting "appropriate Federal banking agency"; and

(iii) in paragraph (3)—

(I) in subparagraph (A), by striking "Director" each place that term appears and inserting "Comptroller"; and

(II) in subparagraph (B)—

(aa) in the subparagraph heading, by striking "OR RTC";

(bb) by striking "Corporation or the Resolution Trust"; and

(cc) by striking "Director" and inserting "Comptroller";

(iv) in paragraph (4), by striking "Director" and inserting "appropriate Federal banking agency";

(v) in paragraph (6)—

(I) in subparagraph (A), by striking "Director" and inserting "Comptroller"; and

(II) in subparagraphs (B) and (C), by striking "Director" each place that term appears and inserting "appropriate Federal banking agency";

(vi) in paragraph (7)—

(I) in subparagraphs (A), (B), and (D), by striking "Director" each place that term appears and inserting "appropriate Federal banking agency";

(II) in subparagraph (C), by striking "Director" and inserting "Federal Deposit Insurance Corporation or the Comptroller, as appropriate,"; and

(III) by striking subparagraph (E) and inserting the following:

"(E) ADMINISTRATION BY THE COMPTROLLER AND THE CORPORATION.—The Comptroller may issue such regulations, and the appropriate Federal banking agency may issue such orders, including those issued pursuant to section 8 of the Federal Deposit Insurance Act, as may be necessary to administer and carry out this paragraph and to prevent evasion of this paragraph.";

(E) in subsection (e)(2), strike "Director" and insert "Comptroller";

(F) in subsection (i)—

(i) by striking "Director", each place such term appears, and inserting "Comptroller";

(ii) in paragraph (2), in the heading, by striking "DIRECTOR" and inserting "COMPTROLLER";

(iii) in paragraph (5)(A), by striking "of the Currency"; and

(iv) except as provided in clauses (i) through (iii), by striking "Director" each place such term appears and inserting "Comptroller";

(G) in subsection (o)—

(i) in paragraph (1), by striking "Director" and inserting "Comptroller"; and

(ii) in paragraph (2)(B), by striking "Director's determination" and inserting "determination of the Comptroller";

(H) in subsections (m), (n), (o), and (p), by striking "Director", each place such term appears, and inserting "Comptroller";

(I) in subsection (q)—

(i) in paragraph (6), by striking "of Governors of the Federal Reserve System";

(ii) by striking "Director" each place that term appears and inserting "Board"; and

(iii) by inserting "in consultation with the Comptroller and the Corporation," before "considers";

(J) in subsection (r)(3), by striking "Director" and inserting "Comptroller of the Currency";

(K) in subsection (s)—

(i) in paragraph (1), strike "Director" and insert "Comptroller of the Currency";

(ii) in paragraph (2), strike "Director" and insert "Comptroller of the Currency";

(iii) in paragraph (3), by striking "Director's discretion, the Director" and inserting "discretion of the appropriate Federal banking agency, the appropriate Federal banking agency,";

(iv) in paragraph (4), by striking "Director" each place that term appears and inserting "appropriate Federal banking agency"; and

(v) in paragraph (5)—

(I) by striking "Director", each place such term appears, and inserting "appropriate Federal banking agency"; and

(II) by striking "Director's approval" and inserting "approval of the appropriate Federal banking agency";

(L) in subsection (t)—

(i) in paragraph (1), by striking subparagraph (D);

(ii) by striking paragraph (3) and inserting the following:

"(3) [Repealed].";

(iii) in paragraph (5)—

(I) in subparagraph (B), by striking "Corporation, in its sole discretion" and inserting "appropriate Federal banking agency, in the sole discretion of the appropriate Federal banking agency"; and

(II) by striking subparagraph (D);

(iv) in paragraph (6)—

(I) by striking subparagraph (A) and inserting the following:

"(A) [Reserved].";

(II) in subparagraph (B), by striking "Director" each place that term appears and inserting "appropriate Federal banking agency";

(III) in subparagraph (C)—

(aa) in clause (i), by striking "Director's prior approval" and inserting "prior approval of the appropriate Federal banking agency";

(bb) in clause (ii), by striking "Director's discretion" and inserting "discretion of the appropriate Federal banking agency"; and

(cc) by striking "Director" each place that term appears and inserting "appropriate Federal banking agency";

(IV) in subparagraph (E), by striking "Director shall" and inserting "appropriate Federal banking agency may"; and

(V) in subparagraph (F), by striking "Director" and all that follows through the end of the

subparagraph and inserting "appropriate Federal banking agency under this Act or any other provision of law.";

(v) in paragraph (7), by striking "Director" each place that term appears and inserting "appropriate Federal banking agency";

(vi) by striking paragraph (8) and inserting the following:

"(8) [Repealed].";

(vii) in paragraph (9)—

(I) in subparagraph (A), by striking "Director" and inserting "Comptroller";

(II) in subparagraph (C), by striking "of the Currency"; and

(III) by striking subparagraph (B) and redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively; and

(viii) except as provided in clauses (i) through (vii), by striking "Director" each place that term appears and inserting "appropriate Federal banking agency";

(M) in subsection (u), by striking "Director" each place that term appears and inserting "appropriate Federal banking agency";

(N) in subsection (v)—

(i) in paragraph (2), by striking "Director's determinations" and inserting "determinations of the appropriate Federal banking agency"; and

(ii) by striking "Director" each place that term appears and inserting "appropriate Federal banking agency";

(O) in subsection (w)(1)—

(i) in subparagraph (A)(II), by striking "Director's intention" and inserting "intention of the Comptroller"; and

(ii) in subparagraph (B), by striking "Director's intention" and inserting "intention of the Comptroller"; and

(P) except as provided in subparagraphs (A) through (J), by striking "Director" each place that term appears and inserting "Comptroller";

(6) in section 8 (12 U.S.C. 1466a), by striking "Director" each place that term appears and inserting "Comptroller";

(7) in section 9 (12 U.S.C. 1467)—

(A) in subsection (a), by striking "assessed by the Director" and all that follows through the end of the subsection and inserting the following: "assessed by—

"(1) the Comptroller, against each such Federal savings association, as the Comptroller deems necessary or appropriate; and

"(2) the Corporation, against each such State savings association, as the Corporation deems necessary or appropriate.";

(B) in subsection (b), by striking "Director", each place such term appears, and inserting "Comptroller or Corporation, as appropriate";

(C) in subsection (e)—

(i) by striking "Only the Director" and inserting "The Comptroller"; and

(ii) by striking "Director's designee" and inserting "designee of the Comptroller";

(D) by striking subsection (f) and inserting the following:

"(f) [Reserved].";

(E) in subsection (g)—

(i) in paragraph (1), by striking "Director" and inserting "appropriate Federal banking agency"; and

(ii) in paragraph (2), by striking "Director, or the Corporation, as the case may be," and inserting "appropriate Federal banking agency for the savings association";

(F) in subsection (i), by striking "Director" each place that term appears and inserting "appropriate Federal banking agency";

(G) in subsection (j), by striking "Director's sole discretion" and inserting "sole discretion of the appropriate Federal banking agency";

(H) in subsection (k), by striking "Director may assess against institutions for which the Director is the appropriate Federal banking agency, as defined in section 3 of the Federal Deposit Insurance Act," and inserting "appropriate Federal banking agency may assess against an institution"; and

(I) except as provided in subparagraphs (A) through (G), by striking "Director" each place that term appears and inserting "appropriate Federal banking agency";

(8) in section 10 (12 U.S.C. 1467a)—

(A) in subsection (a)(1), by striking "Director" each place that term appears and inserting "appropriate Federal banking agency";

(B) in subsection (b)—

(i) in paragraph (2), by striking "and the regional office of the Director of the district in which its principal office is located,"; and

(ii) in paragraph (6), by striking "Director's own motion or application" and inserting "motion or application of the Board";

(C) in subsection (c)—

(i) in paragraph (2)(F), by striking "of Governors of the Federal Reserve System";

(ii) in paragraph (4)(B), in the subparagraph heading, by striking "BY DIRECTOR";

(iii) in paragraph (6)(D), in the subparagraph heading, by striking "BY DIRECTOR"; and

(iv) in paragraph (9)(E), by inserting "(in consultation with the appropriate Federal banking agency)" after "including a determination";

(D) in subsection (g)(5)(B), by striking "the Director's discretion" and inserting "the discretion of the Board";

(E) in subsection (l), by striking "Director" each place that term appears and inserting "appropriate Federal banking agency";

(F) in subsection (m), by striking "Director" and inserting "appropriate Federal banking agency";

(G) in subsection (p)—

(i) in paragraph (1)—

(I) by striking "Director determines" the 1st place such term appears and inserting "Board or the appropriate Federal banking agency for the savings association determines";

(II) by striking "Director may" and inserting "Board may"; and

(III) by striking "Director determines" the 2nd place such term appears and inserting "Board, in consultation with the appropriate Federal banking agency for the savings association determines"; and

(ii) in paragraph (2), by striking "Director", each place such term appears, and inserting "Board";

(H) in subsection (q), by striking "Director", each place such term appears, and inserting "Board";

(I) in subsection (r), by striking "Director", each place such term appears, and inserting "Board or appropriate Federal banking agency";

(J) in subsection (s)—

(i) in paragraph (2)—

(I) in subparagraph (B)(ii), by striking "Director's judgment" and inserting "judgment of the appropriate Federal banking agency for the savings association"; and

(II) by striking "Director" each place that term appears and inserting "appropriate Federal banking agency for the savings association"; and

(ii) in paragraph (4), by striking "Director" and inserting "Comptroller"; and

(K) except as provided in subparagraphs (A) through (J), by striking "Director" each place that term appears and inserting "Board";

(9) in section 11 (12 U.S.C. 1468), by striking "Director" each place that term appears and inserting "appropriate Federal banking agency";

(10) in section 12 (12 U.S.C. 1468a), by striking "the Director" and inserting "a Federal banking agency"; and

(11) in section 13 (12 U.S.C. 1468a) is amended by striking "Director" and inserting "a Federal banking agency".

SEC. 370. HOUSING ACT OF 1948.

Section 502(c) of the Housing Act of 1948 (12 U.S.C. 1701c(c)) is amended—

(1) in the matter preceding paragraph (1), by striking "and the Director of the Office of Thrift Supervision" and inserting ", the Comptroller of the Currency, and the Federal Deposit Insurance Corporation"; and

(2) in paragraph (3), by striking "Board" and inserting "Agency".

SEC. 371. HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1992.

Section 543 of the Housing and Community Development Act of 1992 (Public Law 102–550; 106 Stat. 3798) is amended—

(1) in subsection (c)(1)—

(A) by striking subparagraphs (D) through (F); and

(B) by redesignating subparagraphs (G) and (H) as subparagraphs (D) and (E), respectively; and

(2) in subsection (f)—

(A) in paragraph (2), by striking "the Office of Thrift Supervision," each place that term appears; and

(B) in paragraph (3)—

(i) in the matter preceding subparagraph (A), by striking "the Office of Thrift Supervision,"; and

(ii) in subparagraph (D), by striking "Office of Thrift Supervision,".

SEC. 372. HOUSING AND URBAN-RURAL RECOVERY ACT OF 1983.

Section 469 of the Housing and Urban-Rural Recovery Act of 1983 (12 U.S.C. 1701p–1) is amended in the first sentence, by striking "Federal Home Loan Bank Board" and inserting "Federal Housing Finance Agency".

SEC. 373. NATIONAL HOUSING ACT.

Section 202(f) of the National Housing Act (12 U.S.C. 1708(f)) is amended—

(1) by striking paragraph (5) and inserting the following:

"(5) if the mortgagee is a national bank, a subsidiary or affiliate of such bank, a Federal savings association or a subsidiary or affiliate of a savings association, the Comptroller of the Currency;";

(2) in paragraph (6), by adding "and" at the end;

(3) in paragraph (7)—

(A) by inserting "or State savings association" after "State bank"; and

(B) by striking "; and" and inserting a period; and

(4) by striking paragraph (8).

SEC. 374. NEIGHBORHOOD REINVESTMENT CORPORATION ACT.

Section 606(c)(3) of the Neighborhood Reinvestment Corporation Act (42 U.S.C. 8105(c)(3)) is amended by striking "Federal Home Loan Bank Board" and inserting "Federal Housing Finance Agency".

SEC. 375. PUBLIC LAW 93–100.

Section 5(d) of Public Law 93–100 (12 U.S.C. 1470(a)) is amended—

(1) in paragraph (1), by striking "Federal Savings and Loan Insurance Corporation with respect to insured institutions, the Board of Governors of the Federal Reserve System with respect to State member insured banks, and the Federal Deposit Insurance Corporation with respect to State nonmember insured banks" and inserting "appropriate Federal banking agency, with respect to the institutions subject to the jurisdiction of each such agency,"; and

(2) in paragraph (2), by striking "supervisory" and inserting "banking".

SEC. 376. SECURITIES EXCHANGE ACT OF 1934.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended—

(1) in section 3(a)(34) (15 U.S.C. 78c(a)(34))—

(A) in subparagraph (A)—

(i) in clause (i), by striking "or a subsidiary or a department or division of any such bank" and inserting "a subsidiary or a department or division of any such bank, a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(2))), the deposits of which are insured by the Federal Deposit Insurance Corporation, or a subsidiary or department or division of any such Federal savings association";

(ii) in clause (ii), by striking "or a subsidiary or a department or division of such subsidiary" and inserting "a subsidiary or a department or division of such subsidiary, or a savings and loan holding company";

(iii) in clause (iii), by striking "or a subsidiary or department or division thereof;" and inserting "a subsidiary or department or division of any such bank, a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3))), the deposits of which are insured by the Federal Deposit Insurance Corporation, or a subsidiary or a department or division of any such State savings association; and";

(iv) by striking clause (iv); and

(v) by redesignating clause (v) as clause (iv);

(B) in subparagraph (B)—

(i) in clause (i), by striking "or a subsidiary of any such bank" and inserting "a subsidiary of any such bank, a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(2))), the deposits of which are insured by the Federal Deposit Insurance Corporation, or a subsidiary of any such Federal savings association";

(ii) in clause (ii), by striking "or a subsidiary of a bank holding company which is a bank other than a bank specified in clause (i), (iii), or (iv) of this subparagraph" and inserting "a subsidiary of a bank holding company that is a bank other than a bank specified in clause (i) or (iii) of this subparagraph, or a savings and loan holding company";

(iii) in clause (iii), by striking "or a subsidiary thereof;" and inserting "a subsidiary of any such bank, a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3))), the deposits of which are insured by the Federal Deposit Insurance Corporation, or a subsidiary of any such State savings association; and";

(iv) by striking clause (iv); and

(v) by redesignating clause (v) as clause (iv);

(C) in subparagraph (C)—

(i) in clause (i), by striking "bank" and inserting "bank or a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(2))), the deposits of which are insured by the Federal Deposit Insurance Corporation";

(ii) in clause (ii), by striking "or a subsidiary of a bank holding company which is a bank other than a bank specified in clause (i), (iii), or (iv) of this subparagraph" and inserting "a subsidiary of a bank holding company that is a bank other than a bank specified in clause (i) or (iii) of this subparagraph, or a savings and loan holding company";

(iii) in clause (iii), by striking "System)" and inserting, "System) or a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3))), the deposits of which are insured by the Federal Deposit Insurance Corporation; and";

(iv) by striking clause (iv); and

(v) by redesignating clause (v) as clause (iv);

(D) in subparagraph (D)—

(i) in clause (i), by inserting after "bank" the following: "or a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(2))), the deposits of which are insured by the Federal Deposit Insurance Corporation";

(ii) in clause (ii), by adding "and" at the end;

(iii) by striking clause (iii);

(iv) by redesignating clause (iv) as clause (iii); and

(v) in clause (iii), as so redesignated, by inserting after "bank" the following: "or a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3))), the deposits of which are insured by the Federal Deposit Insurance Corporation";

(E) in subparagraph (F)—

(i) in clause (i), by inserting after "bank" the following: "or a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(2))), the deposits of which are insured by the Federal Deposit Insurance Corporation";

(ii) by striking clause (ii);

(iii) by redesignating clauses (iii), (iv), and (v) as clauses (ii), (iii), and (iv), respectively; and

(iv) in clause (iii), as so redesignated, by inserting before the semicolon the following: "or a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3))), the deposits of which are insured by the Federal Deposit Insurance Corporation";

(F) in subparagraph (G)—

(i) in clause (i), by inserting after "national bank" the following: ", a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act), the deposits of which are insured by the Federal Deposit Insurance Corporation,";

(ii) in clause (iii)—

(I) by inserting after "bank)" the following: ", a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act), the deposits of which are insured by the Federal Deposit Insurance Corporation,"; and

(II) by adding "and" at the end;

(iii) by striking clause (iv); and

(iv) by redesignating clause (v) as clause (iv); and

(G) in the undesignated matter following subparagraph (H), by striking ", and the term 'District of Columbia savings and loan association' means any association subject to examination and supervision by the Office of Thrift Supervision under section 8 of the Home Owners' Loan Act of 1933";

(2) in section 12(i) (15 U.S.C. 78l(i))—

(A) in paragraph (1), by inserting after "national banks" the following: "and Federal savings associations, the accounts of which are insured by the Federal Deposit Insurance Corporation";

(B) by striking "(3)" and all that follows through "vested in the Office of Thrift Supervision" and inserting "and (3) with respect to all other insured banks and State savings associations, the accounts of which are insured by the Federal Deposit Insurance Corporation, are vested in the Federal Deposit Insurance Corporation"; and

(C) in the second sentence, by striking "the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision" and inserting "and the Federal Deposit Insurance Corporation";

(3) in section 15C(g)(1) (15 U.S.C. 78o–5(g)(1)), by striking "the Director of the Office of Thrift Supervision, the Federal Savings and Loan Insurance Corporation,"; and

(4) in section 23(b)(1) (15 U.S.C. 78w(b)(1)), by striking ", other than the Office of Thrift Supervision,".

SEC. 377. TITLE 18, UNITED STATES CODE.

Title 18, United States Code, is amended—

(1) in section 212(c)(2)—

(A) by striking subparagraph (C); and

(B) by redesignating subparagraphs (D) through (H) as subparagraphs (C) through (G), respectively;

(2) in section 657, by striking "Office of Thrift Supervision, the Resolution Trust Corporation,";

(3) in section 981(a)(1)(D)—

(A) by striking "Resolution Trust Corporation,"; and

(B) by striking "or the Office of Thrift Supervision";

(4) in section 982(a)(3)—

(A) by striking "Resolution Trust Corporation,"; and

(B) by striking "or the Office of Thrift Supervision";

(5) in section 1006—

(A) by striking "Office of Thrift Supervision,"; and

(B) by striking "the Resolution Trust Corporation,";

(6) in section 1014—

(A) by striking "the Office of Thrift Supervision"; and

(B) by striking "the Resolution Trust Corporation,"; and

(7) in section 1032(1)—

(A) by striking "the Resolution Trust Corporation,"; and

(B) by striking "or the Director of the Office of Thrift Supervision".

SEC. 378. TITLE 31, UNITED STATES CODE.

Title 31, United States Code, is amended—

(1) in section 321—

(A) in subsection (c)—

(i) in paragraph (1), by adding "and" at the end;

(ii) in paragraph (2), by striking "; and" and inserting a period; and

(iii) by striking paragraph (3); and

(B) by striking subsection (e); and

(2) in section 714(a), by striking "the Office of the Comptroller of the Currency, and the Office of Thrift Supervision." and inserting "and the Office of the Comptroller of the Currency.".

TITLE IV—REGULATION OF ADVISERS TO HEDGE FUNDS AND OTHERS

SEC. 401. SHORT TITLE.

This title may be cited as the "Private Fund Investment Advisers Registration Act of 2010".

SEC. 402. DEFINITIONS.

(a) INVESTMENT ADVISERS ACT OF 1940 DEFINITIONS.—Section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)) is amended by adding at the end the following:

"(29) The term 'private fund' means an issuer that would be an investment company, as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3), but for section 3(c)(1) or 3(c)(7) of that Act.

"(30) The term 'foreign private adviser' means any investment adviser who—

"(A) has no place of business in the United States;

"(B) has, in total, fewer than 15 clients and investors in the United States in private funds advised by the investment adviser;

"(C) has aggregate assets under management attributable to clients in the United States and investors in the United States in private funds advised by the investment adviser of less than $25,000,000, or such higher amount as the Commission may, by rule, deem appropriate in accordance with the purposes of this title; and

"(D) neither—

"(i) holds itself out generally to the public in the United States as an investment adviser; nor

"(ii) acts as—

"(I) an investment adviser to any investment company registered under the Investment Company Act of 1940; or

"(II) a company that has elected to be a business development company pursuant to section 54 of the Investment Company Act of 1940 (15 U.S.C. 80a–53), and has not withdrawn its election.".

(b) OTHER DEFINITIONS.—As used in this title, the terms "investment adviser" and "private fund" have the same meanings as in section 202 of the Investment Advisers Act of 1940, as amended by this title.

SEC. 403. ELIMINATION OF PRIVATE ADVISER EXEMPTION; LIMITED EXEMPTION FOR FOREIGN PRIVATE ADVISERS; LIMITED INTRASTATE EXEMPTION.

Section 203(b) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(b)) is amended—

(1) in paragraph (1), by inserting ", other than an investment adviser who acts as an investment adviser to any private fund," before "all of whose";

(2) by striking paragraph (3) and inserting the following:

"(3) any investment adviser that is a foreign private adviser;"; and

(3) in paragraph (5), by striking "or" at the end;

(4) in paragraph (6)—

(A) by striking "any investment adviser" and inserting "(A) any investment adviser";

(B) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively; and

(C) in clause (ii) (as so redesignated), by striking the period at the end and inserting "; or"; and

(D) by adding at the end the following:

"(B) any investment adviser that is registered with the Commodity Futures Trading Commission as a commodity trading advisor and advises a private fund, provided that, if after the date of enactment of the Private Fund Investment Advisers Registration Act of 2010, the business of the advisor should become predominately the provision of securities-related advice, then such adviser shall register with the Commission.".

(5) by adding at the end the following:

"(7) any investment adviser, other than any entity that has elected to be regulated or is regulated as a business development company pursuant to section 54 of the Investment Company Act of 1940 (15 U.S.C. 80a–54), who solely advises—

"(A) small business investment companies that are licensees under the Small Business Investment Act of 1958;

"(B) entities that have received from the Small Business Administration notice to proceed to qualify for a license as a small business investment company under the Small Business Investment Act of 1958, which notice or license has not been revoked; or

"(C) applicants that are affiliated with 1 or more licensed small business investment companies described in subparagraph (A) and that have applied for another license under the Small Business Investment Act of 1958, which application remains pending.".

SEC. 404. COLLECTION OF SYSTEMIC RISK DATA; REPORTS; EXAMINATIONS; DISCLOSURES.

Section 204 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–4) is amended—

(1) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively; and

(2) by inserting after subsection (a) the following:

"(b) RECORDS AND REPORTS OF PRIVATE FUNDS.—

"(1) IN GENERAL.—The Commission may require any investment adviser registered under this title—

"(A) to maintain such records of, and file with the Commission such reports regarding, private funds advised

by the investment adviser, as necessary and appropriate in the public interest and for the protection of investors, or for the assessment of systemic risk by the Financial Stability Oversight Council (in this subsection referred to as the 'Council'); and

"(B) to provide or make available to the Council those reports or records or the information contained therein.

"(2) TREATMENT OF RECORDS.—The records and reports of any private fund to which an investment adviser registered under this title provides investment advice shall be deemed to be the records and reports of the investment adviser.

"(3) REQUIRED INFORMATION.—The records and reports required to be maintained by an investment adviser and subject to inspection by the Commission under this subsection shall include, for each private fund advised by the investment adviser, a description of—

"(A) the amount of assets under management and use of leverage, including off-balance-sheet leverage;

"(B) counterparty credit risk exposure;

"(C) trading and investment positions;

"(D) valuation policies and practices of the fund;

"(E) types of assets held;

"(F) side arrangements or side letters, whereby certain investors in a fund obtain more favorable rights or entitlements than other investors;

"(G) trading practices; and

"(H) such other information as the Commission, in consultation with the Council, determines is necessary and appropriate in the public interest and for the protection of investors or for the assessment of systemic risk, which may include the establishment of different reporting requirements for different classes of fund advisers, based on the type or size of private fund being advised.

"(4) MAINTENANCE OF RECORDS.—An investment adviser registered under this title shall maintain such records of private funds advised by the investment adviser for such period or periods as the Commission, by rule, may prescribe as necessary and appropriate in the public interest and for the protection of investors, or for the assessment of systemic risk.

"(5) FILING OF RECORDS.—The Commission shall issue rules requiring each investment adviser to a private fund to file reports containing such information as the Commission deems necessary and appropriate in the public interest and for the protection of investors or for the assessment of systemic risk.

"(6) EXAMINATION OF RECORDS.—

"(A) PERIODIC AND SPECIAL EXAMINATIONS.—The Commission—

"(i) shall conduct periodic inspections of the records of private funds maintained by an investment adviser registered under this title in accordance with a schedule established by the Commission; and

"(ii) may conduct at any time and from time to time such additional, special, and other examinations as the Commission may prescribe as necessary and appropriate in the public interest and for the protection of investors, or for the assessment of systemic risk.

"(B) AVAILABILITY OF RECORDS.—An investment adviser registered under this title shall make available to the Commission any copies or extracts from such records as may be prepared without undue effort, expense, or delay, as the Commission or its representatives may reasonably request.

"(7) INFORMATION SHARING.—

"(A) IN GENERAL.—The Commission shall make available to the Council copies of all reports, documents, records, and information filed with or provided to the Commission by an investment adviser under this subsection as the Council may consider necessary for the purpose of assessing the systemic risk posed by a private fund.

"(B) CONFIDENTIALITY.—The Council shall maintain the confidentiality of information received under this paragraph in all such reports, documents, records, and information, in a manner consistent with the level of confidentiality established for the Commission pursuant to paragraph (8). The Council shall be exempt from section 552 of title 5, United States Code, with respect to any information in any report, document, record, or information made available, to the Council under this subsection.".

"(8) COMMISSION CONFIDENTIALITY OF REPORTS.—Notwithstanding any other provision of law, the Commission may not be compelled to disclose any report or information contained therein required to be filed with the Commission under this subsection, except that nothing in this subsection authorizes the Commission—

"(A) to withhold information from Congress, upon an agreement of confidentiality; or

"(B) prevent the Commission from complying with—

"(i) a request for information from any other Federal department or agency or any self-regulatory organization requesting the report or information for purposes within the scope of its jurisdiction; or

"(ii) an order of a court of the United States in an action brought by the United States or the Commission.

"(9) OTHER RECIPIENTS CONFIDENTIALITY.—Any department, agency, or self-regulatory organization that receives reports or information from the Commission under this subsection shall maintain the confidentiality of such reports, documents, records, and information in a manner consistent with the level of confidentiality established for the Commission under paragraph (8).

"(10) PUBLIC INFORMATION EXCEPTION.—

"(A) IN GENERAL.—The Commission, the Council, and any other department, agency, or self-regulatory organization that receives information, reports, documents, records, or information from the Commission under this subsection, shall be exempt from the provisions of section 552 of title 5, United States Code, with respect to any such report, document, record, or information. Any proprietary information of an investment adviser ascertained by the Commission from any report required to be filed with the Commission pursuant to this subsection shall be subject to the same limitations on public disclosure as any facts

ascertained during an examination, as provided by section 210(b) of this title.

"(B) PROPRIETARY INFORMATION.—For purposes of this paragraph, proprietary information includes sensitive, non-public information regarding—

"(i) the investment or trading strategies of the investment adviser;

"(ii) analytical or research methodologies;

"(iii) trading data;

"(iv) computer hardware or software containing intellectual property; and

"(v) any additional information that the Commission determines to be proprietary.

"(11) ANNUAL REPORT TO CONGRESS.—The Commission shall report annually to Congress on how the Commission has used the data collected pursuant to this subsection to monitor the markets for the protection of investors and the integrity of the markets.".

SEC. 405. DISCLOSURE PROVISION AMENDMENT.

Section 210(c) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–10(c)) is amended by inserting before the period at the end the following: "or for purposes of assessment of potential systemic risk".

SEC. 406. CLARIFICATION OF RULEMAKING AUTHORITY.

Section 211 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–11) is amended—

(1) in subsection (a), by inserting before the period at the end of the first sentence the following: ", including rules and regulations defining technical, trade, and other terms used in this title, except that the Commission may not define the term 'client' for purposes of paragraphs (1) and (2) of section 206 to include an investor in a private fund managed by an investment adviser, if such private fund has entered into an advisory contract with such adviser"; and

(2) by adding at the end the following:

"(e) DISCLOSURE RULES ON PRIVATE FUNDS.—The Commission and the Commodity Futures Trading Commission shall, after consultation with the Council but not later than 12 months after the date of enactment of the Private Fund Investment Advisers Registration Act of 2010, jointly promulgate rules to establish the form and content of the reports required to be filed with the Commission under subsection 204(b) and with the Commodity Futures Trading Commission by investment advisers that are registered both under this title and the Commodity Exchange Act (7 U.S.C. 1a et seq.).".

SEC. 407. EXEMPTION OF AND REPORTING BY VENTURE CAPITAL FUND ADVISERS.

Section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3) is amended by adding at the end the following:

"(l) EXEMPTION OF VENTURE CAPITAL FUND ADVISERS.—No investment adviser that acts as an investment adviser solely to 1 or more venture capital funds shall be subject to the registration requirements of this title with respect to the provision of investment advice relating to a venture capital fund. Not later than 1 year after the date of enactment of this subsection, the Commission

shall issue final rules to define the term 'venture capital fund' for purposes of this subsection. The Commission shall require such advisers to maintain such records and provide to the Commission such annual or other reports as the Commission determines necessary or appropriate in the public interest or for the protection of investors.".

SEC. 408. EXEMPTION OF AND REPORTING BY CERTAIN PRIVATE FUND ADVISERS.

Section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3) is amended by adding at the end the following:

"(m) EXEMPTION OF AND REPORTING BY CERTAIN PRIVATE FUND ADVISERS.—

"(1) IN GENERAL.—The Commission shall provide an exemption from the registration requirements under this section to any investment adviser of private funds, if each of such investment adviser acts solely as an adviser to private funds and has assets under management in the United States of less than $150,000,000.

"(2) REPORTING.—The Commission shall require investment advisers exempted by reason of this subsection to maintain such records and provide to the Commission such annual or other reports as the Commission determines necessary or appropriate in the public interest or for the protection of investors.

"(n) REGISTRATION AND EXAMINATION OF MID-SIZED PRIVATE FUND ADVISERS.—In prescribing regulations to carry out the requirements of this section with respect to investment advisers acting as investment advisers to mid-sized private funds, the Commission shall take into account the size, governance, and investment strategy of such funds to determine whether they pose systemic risk, and shall provide for registration and examination procedures with respect to the investment advisers of such funds which reflect the level of systemic risk posed by such funds.".

SEC. 409. FAMILY OFFICES.

(a) IN GENERAL.—Section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11)) is amended by striking "or (G)" and inserting the following: "; (G) any family office, as defined by rule, regulation, or order of the Commission, in accordance with the purposes of this title; or (H)".

(b) RULEMAKING.—The rules, regulations, or orders issued by the Commission pursuant to section 202(a)(11)(G) of the Investment Advisers Act of 1940, as added by this section, regarding the definition of the term "family office" shall provide for an exemption that—

(1) is consistent with the previous exemptive policy of the Commission, as reflected in exemptive orders for family offices in effect on the date of enactment of this Act, and the grandfathering provisions in paragraph (3);

(2) recognizes the range of organizational, management, and employment structures and arrangements employed by family offices; and

(3) does not exclude any person who was not registered or required to be registered under the Investment Advisers Act of 1940 on January 1, 2010 from the definition of the term "family office", solely because such person provides investment advice to, and was engaged before January 1, 2010 in providing investment advice to—

(A) natural persons who, at the time of their applicable investment, are officers, directors, or employees of the family office who—

(i) have invested with the family office before January 1, 2010; and

(ii) are accredited investors, as defined in Regulation D of the Commission (or any successor thereto) under the Securities Act of 1933, or, as the Commission may prescribe by rule, the successors-in-interest thereto;

(B) any company owned exclusively and controlled by members of the family of the family office, or as the Commission may prescribe by rule;

(C) any investment adviser registered under the Investment Adviser Act of 1940 that provides investment advice to the family office and who identifies investment opportunities to the family office, and invests in such transactions on substantially the same terms as the family office invests, but does not invest in other funds advised by the family office, and whose assets as to which the family office directly or indirectly provides investment advice represent, in the aggregate, not more than 5 percent of the value of the total assets as to which the family office provides investment advice.

(c) ANTIFRAUD AUTHORITY.—A family office that would not be a family office, but for subsection (b)(3), shall be deemed to be an investment adviser for the purposes of paragraphs (1), (2) and (4) of section 206 of the Investment Advisers Act of 1940.

SEC. 410. STATE AND FEDERAL RESPONSIBILITIES; ASSET THRESHOLD FOR FEDERAL REGISTRATION OF INVESTMENT ADVISERS.

Section 203A(a) of the of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3a(a)) is amended—

(1) by redesignating paragraph (2) as paragraph (3); and

(2) by inserting after paragraph (1) the following:

"(2) TREATMENT OF MID-SIZED INVESTMENT ADVISERS.—

"(A) IN GENERAL.—No investment adviser described in subparagraph (B) shall register under section 203, unless the investment adviser is an adviser to an investment company registered under the Investment Company Act of 1940, or a company which has elected to be a business development company pursuant to section 54 of the Investment Company Act of 1940, and has not withdrawn the election, except that, if by effect of this paragraph an investment adviser would be required to register with 15 or more States, then the adviser may register under section 203.

"(B) COVERED PERSONS.—An investment adviser described in this subparagraph is an investment adviser that—

"(i) is required to be registered as an investment adviser with the securities commissioner (or any agency or office performing like functions) of the State in which it maintains its principal office and place of business and, if registered, would be subject to examination as an investment adviser by any such commissioner, agency, or office; and

"(ii) has assets under management between—

"(I) the amount specified under subparagraph (A) of paragraph (1), as such amount may have been adjusted by the Commission pursuant to that subparagraph; and

"(II) $100,000,000, or such higher amount as the Commission may, by rule, deem appropriate in accordance with the purposes of this title.".

SEC. 411. CUSTODY OF CLIENT ASSETS.

The Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) is amended by adding at the end the following new section:

"SEC. 223. CUSTODY OF CLIENT ACCOUNTS.

"An investment adviser registered under this title shall take such steps to safeguard client assets over which such adviser has custody, including, without limitation, verification of such assets by an independent public accountant, as the Commission may, by rule, prescribe.".

SEC. 412. COMPTROLLER GENERAL STUDY ON CUSTODY RULE COSTS.

The Comptroller General of the United States shall—

(1) conduct a study of—

(A) the compliance costs associated with the current Securities and Exchange Commission rules 204–2 (17 C.F.R. Parts 275.204–2) and rule 206(4)–2 (17 C.F.R. 275.206(4)–2) under the Investment Advisers Act of 1940 regarding custody of funds or securities of clients by investment advisers; and

(B) the additional costs if subsection (b)(6) of rule 206(4)–2 (17 C.F.R. 275.206(4)–2(b)(6)) relating to operational independence were eliminated; and

(2) submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the results of such study, not later than 3 years after the date of enactment of this Act.

SEC. 413. ADJUSTING THE ACCREDITED INVESTOR STANDARD.

(a) IN GENERAL.—The Commission shall adjust any net worth standard for an accredited investor, as set forth in the rules of the Commission under the Securities Act of 1933, so that the individual net worth of any natural person, or joint net worth with the spouse of that person, at the time of purchase, is more than $1,000,000 (as such amount is adjusted periodically by rule of the Commission), excluding the value of the primary residence of such natural person, except that during the 4-year period that begins on the date of enactment of this Act, any net worth standard shall be $1,000,000, excluding the value of the primary residence of such natural person.

(b) REVIEW AND ADJUSTMENT.—

(1) INITIAL REVIEW AND ADJUSTMENT.—

(A) INITIAL REVIEW.—The Commission may undertake a review of the definition of the term "accredited investor", as such term applies to natural persons, to determine whether the requirements of the definition, excluding the requirement relating to the net worth standard described in subsection (a), should be adjusted or modified for the

protection of investors, in the public interest, and in light of the economy.

(B) ADJUSTMENT OR MODIFICATION.—Upon completion of a review under subparagraph (A), the Commission may, by notice and comment rulemaking, make such adjustments to the definition of the term "accredited investor", excluding adjusting or modifying the requirement relating to the net worth standard described in subsection (a), as such term applies to natural persons, as the Commission may deem appropriate for the protection of investors, in the public interest, and in light of the economy.

(2) SUBSEQUENT REVIEWS AND ADJUSTMENT.—

(A) SUBSEQUENT REVIEWS.—Not earlier than 4 years after the date of enactment of this Act, and not less frequently than once every 4 years thereafter, the Commission shall undertake a review of the definition, in its entirety, of the term "accredited investor", as defined in section 230.215 of title 17, Code of Federal Regulations, or any successor thereto, as such term applies to natural persons, to determine whether the requirements of the definition should be adjusted or modified for the protection of investors, in the public interest, and in light of the economy.

(B) ADJUSTMENT OR MODIFICATION.—Upon completion of a review under subparagraph (A), the Commission may, by notice and comment rulemaking, make such adjustments to the definition of the term "accredited investor", as defined in section 230.215 of title 17, Code of Federal Regulations, or any successor thereto, as such term applies to natural persons, as the Commission may deem appropriate for the protection of investors, in the public interest, and in light of the economy.

SEC. 414. RULE OF CONSTRUCTION RELATING TO THE COMMODITIES EXCHANGE ACT.

The Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) is further amended by adding at the end the following new section:

"SEC. 224. RULE OF CONSTRUCTION RELATING TO THE COMMODITIES EXCHANGE ACT.

"Nothing in this title shall relieve any person of any obligation or duty, or affect the availability of any right or remedy available to the Commodity Futures Trading Commission or any private party, arising under the Commodity Exchange Act (7 U.S.C. 1 et seq.) governing commodity pools, commodity pool operators, or commodity trading advisors.".

SEC. 415. GAO STUDY AND REPORT ON ACCREDITED INVESTORS.

The Comptroller General of the United States shall conduct a study on the appropriate criteria for determining the financial thresholds or other criteria needed to qualify for accredited investor status and eligibility to invest in private funds, and shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the results of such study not later than 3 years after the date of enactment of this Act.

SEC. 416. GAO STUDY ON SELF-REGULATORY ORGANIZATION FOR PRIVATE FUNDS.

The Comptroller General of the United States shall—

(1) conduct a study of the feasibility of forming a self-regulatory organization to oversee private funds; and

(2) submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the results of such study, not later than 1 year after the date of enactment of this Act.

SEC. 417. COMMISSION STUDY AND REPORT ON SHORT SELLING.

(a) STUDIES.—The Division of Risk, Strategy, and Financial Innovation of the Commission shall conduct—

(1) a study, taking into account current scholarship, on the state of short selling on national securities exchanges and in the over-the-counter markets, with particular attention to the impact of recent rule changes and the incidence of—

(A) the failure to deliver shares sold short; or

(B) delivery of shares on the fourth day following the short sale transaction; and

(2) a study of—

(A) the feasibility, benefits, and costs of requiring reporting publicly, in real time short sale positions of publicly listed securities, or, in the alternative, reporting such short positions in real time only to the Commission and the Financial Industry Regulatory Authority; and

(B) the feasibility, benefits, and costs of conducting a voluntary pilot program in which public companies will agree to have all trades of their shares marked "short", "market maker short", "buy", "buy-to-cover", or "long", and reported in real time through the Consolidated Tape.

(b) REPORTS.—The Commission shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives—

(1) on the results of the study required under subsection (a)(1), including recommendations for market improvements, not later than 2 years after the date of enactment of this Act; and

(2) on the results of the study required under subsection (a)(2), not later than 1 year after the date of enactment of this Act.

SEC. 418. QUALIFIED CLIENT STANDARD.

Section 205(e) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–5(e)) is amended by adding at the end the following: "With respect to any factor used in any rule or regulation by the Commission in making a determination under this subsection, if the Commission uses a dollar amount test in connection with such factor, such as a net asset threshold, the Commission shall, by order, not later than 1 year after the date of enactment of the Private Fund Investment Advisers Registration Act of 2010, and every 5 years thereafter, adjust for the effects of inflation on such test. Any such adjustment that is not a multiple of $100,000 shall be rounded to the nearest multiple of $100,000.".

SEC. 419. TRANSITION PERIOD.

Except as otherwise provided in this title, this title and the amendments made by this title shall become effective 1 year after the date of enactment of this Act, except that any investment adviser may, at the discretion of the investment adviser, register with the Commission under the Investment Advisers Act of 1940 during that 1-year period, subject to the rules of the Commission.

TITLE V—INSURANCE

Subtitle A—Federal Insurance Office

SEC. 501. SHORT TITLE.

This subtitle may be cited as the "Federal Insurance Office Act of 2010".

SEC. 502. FEDERAL INSURANCE OFFICE.

(a) ESTABLISHMENT OF OFFICE.—Subchapter I of chapter 3 of subtitle I of title 31, United States Code, is amended—

(1) by redesignating section 312 as section 315;

(2) by redesignating section 313 as section 312; and

(3) by inserting after section 312 (as so redesignated) the following new sections:

"SEC. 313. FEDERAL INSURANCE OFFICE.

"(a) ESTABLISHMENT.—There is established within the Department of the Treasury the Federal Insurance Office.

"(b) LEADERSHIP.—The Office shall be headed by a Director, who shall be appointed by the Secretary of the Treasury. The position of Director shall be a career reserved position in the Senior Executive Service, as that position is defined under section 3132 of title 5, United States Code.

"(c) FUNCTIONS.—

"(1) AUTHORITY PURSUANT TO DIRECTION OF SECRETARY.—The Office, pursuant to the direction of the Secretary, shall have the authority—

"(A) to monitor all aspects of the insurance industry, including identifying issues or gaps in the regulation of insurers that could contribute to a systemic crisis in the insurance industry or the United States financial system;

"(B) to monitor the extent to which traditionally underserved communities and consumers, minorities (as such term is defined in section 1204(c) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1811 note)), and low- and moderate-income persons have access to affordable insurance products regarding all lines of insurance, except health insurance;

"(C) to recommend to the Financial Stability Oversight Council that it designate an insurer, including the affiliates of such insurer, as an entity subject to regulation as a nonbank financial company supervised by the Board of Governors pursuant to title I of the Dodd-Frank Wall Street Reform and Consumer Protection Act;

"(D) to assist the Secretary in administering the Terrorism Insurance Program established in the Department

of the Treasury under the Terrorism Risk Insurance Act of 2002 (15 U.S.C. 6701 note);

"(E) to coordinate Federal efforts and develop Federal policy on prudential aspects of international insurance matters, including representing the United States, as appropriate, in the International Association of Insurance Supervisors (or a successor entity) and assisting the Secretary in negotiating covered agreements (as such term is defined in subsection (r));

"(F) to determine, in accordance with subsection (f), whether State insurance measures are preempted by covered agreements;

"(G) to consult with the States (including State insurance regulators) regarding insurance matters of national importance and prudential insurance matters of international importance; and

"(H) to perform such other related duties and authorities as may be assigned to the Office by the Secretary.

"(2) ADVISORY FUNCTIONS.—The Office shall advise the Secretary on major domestic and prudential international insurance policy issues.

"(3) ADVISORY CAPACITY ON COUNCIL.—The Director shall serve in an advisory capacity on the Financial Stability Oversight Council established under the Financial Stability Act of 2010.

"(d) SCOPE.—The authority of the Office shall extend to all lines of insurance except—

"(1) health insurance, as determined by the Secretary in coordination with the Secretary of Health and Human Services based on section 2791 of the Public Health Service Act (42 U.S.C. 300gg–91);

"(2) long-term care insurance, except long-term care insurance that is included with life or annuity insurance components, as determined by the Secretary in coordination with the Secretary of Health and Human Services, and in the case of long-term care insurance that is included with such components, the Secretary shall coordinate with the Secretary of Health and Human Services in performing the functions of the Office; and

"(3) crop insurance, as established by the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.).

"(e) GATHERING OF INFORMATION.—

"(1) IN GENERAL.—In carrying out the functions required under subsection (c), the Office may—

"(A) receive and collect data and information on and from the insurance industry and insurers;

"(B) enter into information-sharing agreements;

"(C) analyze and disseminate data and information; and

"(D) issue reports regarding all lines of insurance except health insurance.

"(2) COLLECTION OF INFORMATION FROM INSURERS AND AFFILIATES.—

"(A) IN GENERAL.—Except as provided in paragraph (3), the Office may require an insurer, or any affiliate of an insurer, to submit such data or information as the

Office may reasonably require in carrying out the functions described under subsection (c).

"(B) RULE OF CONSTRUCTION.—Notwithstanding any other provision of this section, for purposes of subparagraph (A), the term 'insurer' means any entity that writes insurance or reinsures risks and issues contracts or policies in 1 or more States.

"(3) EXCEPTION FOR SMALL INSURERS.—Paragraph (2) shall not apply with respect to any insurer or affiliate thereof that meets a minimum size threshold that the Office may establish, whether by order or rule.

"(4) ADVANCE COORDINATION.—Before collecting any data or information under paragraph (2) from an insurer, or affiliate of an insurer, the Office shall coordinate with each relevant Federal agency and State insurance regulator (or other relevant Federal or State regulatory agency, if any, in the case of an affiliate of an insurer) and any publicly available sources to determine if the information to be collected is available from, and may be obtained in a timely manner by, such Federal agency or State insurance regulator, individually or collectively, other regulatory agency, or publicly available sources. If the Director determines that such data or information is available, and may be obtained in a timely manner, from such an agency, regulator, regulatory agency, or source, the Director shall obtain the data or information from such agency, regulator, regulatory agency, or source. If the Director determines that such data or information is not so available, the Director may collect such data or information from an insurer (or affiliate) only if the Director complies with the requirements of subchapter I of chapter 35 of title 44, United States Code (relating to Federal information policy; commonly known as the Paperwork Reduction Act), in collecting such data or information. Notwithstanding any other provision of law, each such relevant Federal agency and State insurance regulator or other Federal or State regulatory agency is authorized to provide to the Office such data or information.

"(5) CONFIDENTIALITY.—

"(A) RETENTION OF PRIVILEGE.—The submission of any nonpublicly available data and information to the Office under this subsection shall not constitute a waiver of, or otherwise affect, any privilege arising under Federal or State law (including the rules of any Federal or State court) to which the data or information is otherwise subject.

"(B) CONTINUED APPLICATION OF PRIOR CONFIDENTIALITY AGREEMENTS.—Any requirement under Federal or State law to the extent otherwise applicable, or any requirement pursuant to a written agreement in effect between the original source of any nonpublicly available data or information and the source of such data or information to the Office, regarding the privacy or confidentiality of any data or information in the possession of the source to the Office, shall continue to apply to such data or information after the data or information has been provided pursuant to this subsection to the Office.

"(C) INFORMATION-SHARING AGREEMENT.—Any data or information obtained by the Office may be made available

to State insurance regulators, individually or collectively, through an information-sharing agreement that—

"(i) shall comply with applicable Federal law; and

"(ii) shall not constitute a waiver of, or otherwise affect, any privilege under Federal or State law (including the rules of any Federal or State court) to which the data or information is otherwise subject.

"(D) AGENCY DISCLOSURE REQUIREMENTS.—Section 552 of title 5, United States Code, shall apply to any data or information submitted to the Office by an insurer or an affiliate of an insurer.

"(6) SUBPOENAS AND ENFORCEMENT.—The Director shall have the power to require by subpoena the production of the data or information requested under paragraph (2), but only upon a written finding by the Director that such data or information is required to carry out the functions described under subsection (c) and that the Office has coordinated with such regulator or agency as required under paragraph (4). Subpoenas shall bear the signature of the Director and shall be served by any person or class of persons designated by the Director for that purpose. In the case of contumacy or failure to obey a subpoena, the subpoena shall be enforceable by order of any appropriate district court of the United States. Any failure to obey the order of the court may be punished by the court as a contempt of court.

"(f) PREEMPTION OF STATE INSURANCE MEASURES.—

"(1) STANDARD.—A State insurance measure shall be preempted pursuant to this section or section 314 if, and only to the extent that the Director determines, in accordance with this subsection, that the measure—

"(A) results in less favorable treatment of a non-United States insurer domiciled in a foreign jurisdiction that is subject to a covered agreement than a United States insurer domiciled, licensed, or otherwise admitted in that State; and

"(B) is inconsistent with a covered agreement.

"(2) DETERMINATION.—

"(A) NOTICE OF POTENTIAL INCONSISTENCY.—Before making any determination under paragraph (1), the Director shall—

"(i) notify and consult with the appropriate State regarding any potential inconsistency or preemption;

"(ii) notify and consult with the United States Trade Representative regarding any potential inconsistency or preemption;

"(iii) cause to be published in the Federal Register notice of the issue regarding the potential inconsistency or preemption, including a description of each State insurance measure at issue and any applicable covered agreement;

"(iv) provide interested parties a reasonable opportunity to submit written comments to the Office; and

"(v) consider any comments received.

"(B) SCOPE OF REVIEW.—For purposes of this subsection, any determination of the Director regarding State insurance measures, and any preemption under paragraph (1) as a result of such determination, shall be limited

to the subject matter contained within the covered agreement involved and shall achieve a level of protection for insurance or reinsurance consumers that is substantially equivalent to the level of protection achieved under State insurance or reinsurance regulation.

"(C) NOTICE OF DETERMINATION OF INCONSISTENCY.—Upon making any determination under paragraph (1), the Director shall—

"(i) notify the appropriate State of the determination and the extent of the inconsistency;

"(ii) establish a reasonable period of time, which shall not be less than 30 days, before the determination shall become effective; and

"(iii) notify the Committees on Financial Services and Ways and Means of the House of Representatives and the Committees on Banking, Housing, and Urban Affairs and Finance of the Senate.

"(3) NOTICE OF EFFECTIVENESS.—Upon the conclusion of the period referred to in paragraph (2)(C)(ii), if the basis for such determination still exists, the determination shall become effective and the Director shall—

"(A) cause to be published a notice in the Federal Register that the preemption has become effective, as well as the effective date; and

"(B) notify the appropriate State.

"(4) LIMITATION.—No State may enforce a State insurance measure to the extent that such measure has been preempted under this subsection.

"(g) APPLICABILITY OF ADMINISTRATIVE PROCEDURES ACT.—Determinations of inconsistency made pursuant to subsection (f)(2) shall be subject to the applicable provisions of subchapter II of chapter 5 of title 5, United States Code (relating to administrative procedure), and chapter 7 of such title (relating to judicial review), except that in any action for judicial review of a determination of inconsistency, the court shall determine the matter de novo.

"(h) REGULATIONS, POLICIES, AND PROCEDURES.—The Secretary may issue orders, regulations, policies, and procedures to implement this section.

"(i) CONSULTATION.—The Director shall consult with State insurance regulators, individually or collectively, to the extent the Director determines appropriate, in carrying out the functions of the Office.

"(j) SAVINGS PROVISIONS.—Nothing in this section shall—

"(1) preempt—

"(A) any State insurance measure that governs any insurer's rates, premiums, underwriting, or sales practices;

"(B) any State coverage requirements for insurance;

"(C) the application of the antitrust laws of any State to the business of insurance; or

"(D) any State insurance measure governing the capital or solvency of an insurer, except to the extent that such State insurance measure results in less favorable treatment of a non-United State insurer than a United States insurer;

"(2) be construed to alter, amend, or limit any provision of the Consumer Financial Protection Agency Act of 2010; or

"(3) affect the preemption of any State insurance measure otherwise inconsistent with and preempted by Federal law.

"(k) RETENTION OF EXISTING STATE REGULATORY AUTHORITY.—Nothing in this section or section 314 shall be construed to establish or provide the Office or the Department of the Treasury with general supervisory or regulatory authority over the business of insurance.

"(l) RETENTION OF AUTHORITY OF FEDERAL FINANCIAL REGULATORY AGENCIES.—Nothing in this section or section 314 shall be construed to limit the authority of any Federal financial regulatory agency, including the authority to develop and coordinate policy, negotiate, and enter into agreements with foreign governments, authorities, regulators, and multinational regulatory committees and to preempt State measures to affect uniformity with international regulatory agreements.

"(m) RETENTION OF AUTHORITY OF UNITED STATES TRADE REPRESENTATIVE.—Nothing in this section or section 314 shall be construed to affect the authority of the Office of the United States Trade Representative pursuant to section 141 of the Trade Act of 1974 (19 U.S.C. 2171) or any other provision of law, including authority over the development and coordination of United States international trade policy and the administration of the United States trade agreements program.

"(n) ANNUAL REPORTS TO CONGRESS.—

"(1) SECTION 313(f) REPORTS.—Beginning September 30, 2011, the Director shall submit a report on or before September 30 of each calendar year to the President and to the Committees on Financial Services and Ways and Means of the House of Representatives and the Committees on Banking, Housing, and Urban Affairs and Finance of the Senate on any actions taken by the Office pursuant to subsection (f) (regarding preemption of inconsistent State insurance measures).

"(2) INSURANCE INDUSTRY.—Beginning September 30, 2011, the Director shall submit a report on or before September 30 of each calendar year to the President and to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on the insurance industry and any other information as deemed relevant by the Director or requested by such Committees.

"(o) REPORTS ON U.S. AND GLOBAL REINSURANCE MARKET.—The Director shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate—

"(1) a report received not later than September 30, 2012, describing the breadth and scope of the global reinsurance market and the critical role such market plays in supporting insurance in the United States; and

"(2) a report received not later than January 1, 2013, and updated not later than January 1, 2015, describing the impact of part II of the Nonadmitted and Reinsurance Reform Act of 2010 on the ability of State regulators to access reinsurance information for regulated companies in their jurisdictions.

"(p) STUDY AND REPORT ON REGULATION OF INSURANCE.—

"(1) IN GENERAL.—Not later than 18 months after the date of enactment of this section, the Director shall conduct a study and submit a report to Congress on how to modernize and improve the system of insurance regulation in the United States.

"(2) CONSIDERATIONS.—The study and report required under paragraph (1) shall be based on and guided by the following considerations:

"(A) Systemic risk regulation with respect to insurance.

"(B) Capital standards and the relationship between capital allocation and liabilities, including standards relating to liquidity and duration risk.

"(C) Consumer protection for insurance products and practices, including gaps in State regulation.

"(D) The degree of national uniformity of State insurance regulation.

"(E) The regulation of insurance companies and affiliates on a consolidated basis.

"(F) International coordination of insurance regulation.

"(3) ADDITIONAL FACTORS.—The study and report required under paragraph (1) shall also examine the following factors:

"(A) The costs and benefits of potential Federal regulation of insurance across various lines of insurance (except health insurance).

"(B) The feasibility of regulating only certain lines of insurance at the Federal level, while leaving other lines of insurance to be regulated at the State level.

"(C) The ability of any potential Federal regulation or Federal regulators to eliminate or minimize regulatory arbitrage.

"(D) The impact that developments in the regulation of insurance in foreign jurisdictions might have on the potential Federal regulation of insurance.

"(E) The ability of any potential Federal regulation or Federal regulator to provide robust consumer protection for policyholders.

"(F) The potential consequences of subjecting insurance companies to a Federal resolution authority, including the effects of any Federal resolution authority—

"(i) on the operation of State insurance guaranty fund systems, including the loss of guaranty fund coverage if an insurance company is subject to a Federal resolution authority;

"(ii) on policyholder protection, including the loss of the priority status of policyholder claims over other unsecured general creditor claims;

"(iii) in the case of life insurance companies, on the loss of the special status of separate account assets and separate account liabilities; and

"(iv) on the international competitiveness of insurance companies.

"(G) Such other factors as the Director determines necessary or appropriate, consistent with the principles set forth in paragraph (2).

"(4) REQUIRED RECOMMENDATIONS.—The study and report required under paragraph (1) shall also contain any legislative, administrative, or regulatory recommendations, as the Director determines appropriate, to carry out or effectuate the findings set forth in such report.

"(5) CONSULTATION.—With respect to the study and report required under paragraph (1), the Director shall consult with

the State insurance regulators, consumer organizations, representatives of the insurance industry and policyholders, and other organizations and experts, as appropriate.

"(q) USE OF EXISTING RESOURCES.—To carry out this section, the Office may employ personnel, facilities, and any other resource of the Department of the Treasury available to the Secretary and the Secretary shall dedicate specific personnel to the Office.

"(r) DEFINITIONS.—In this section and section 314, the following definitions shall apply:

"(1) AFFILIATE.—The term 'affiliate' means, with respect to an insurer, any person who controls, is controlled by, or is under common control with the insurer.

"(2) COVERED AGREEMENT.—The term 'covered agreement' means a written bilateral or multilateral agreement regarding prudential measures with respect to the business of insurance or reinsurance that—

"(A) is entered into between the United States and one or more foreign governments, authorities, or regulatory entities; and

"(B) relates to the recognition of prudential measures with respect to the business of insurance or reinsurance that achieves a level of protection for insurance or reinsurance consumers that is substantially equivalent to the level of protection achieved under State insurance or reinsurance regulation.

"(3) INSURER.—The term 'insurer' means any person engaged in the business of insurance, including reinsurance.

"(4) FEDERAL FINANCIAL REGULATORY AGENCY.—The term 'Federal financial regulatory agency' means the Department of the Treasury, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Federal Deposit Insurance Corporation, the Federal Housing Finance Agency, or the National Credit Union Administration.

"(5) NON-UNITED STATES INSURER.—The term 'non-United States insurer' means an insurer that is organized under the laws of a jurisdiction other than a State, but does not include any United States branch of such an insurer.

"(6) OFFICE.—The term 'Office' means the Federal Insurance Office established by this section.

"(7) STATE INSURANCE MEASURE.—The term 'State insurance measure' means any State law, regulation, administrative ruling, bulletin, guideline, or practice relating to or affecting prudential measures applicable to insurance or reinsurance.

"(8) STATE INSURANCE REGULATOR.—The term 'State insurance regulator' means any State regulatory authority responsible for the supervision of insurers.

"(9) SUBSTANTIALLY EQUIVALENT TO THE LEVEL OF PROTECTION ACHIEVED.—The term 'substantially equivalent to the level of protection achieved' means the prudential measures of a foreign government, authority, or regulatory entity achieve a similar outcome in consumer protection as the outcome achieved under State insurance or reinsurance regulation.

"(10) UNITED STATES INSURER.—The term 'United States insurer' means—

"(A) an insurer that is organized under the laws of a State; or

"(B) a United States branch of a non-United States insurer.

"(s) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for the Office for each fiscal year such sums as may be necessary.

"SEC. 314. COVERED AGREEMENTS.

"(a) AUTHORITY.—The Secretary and the United States Trade Representative are authorized, jointly, to negotiate and enter into covered agreements on behalf of the United States.

"(b) REQUIREMENTS FOR CONSULTATION WITH CONGRESS.—

"(1) IN GENERAL.—Before initiating negotiations to enter into a covered agreement under subsection (a), during such negotiations, and before entering into any such agreement, the Secretary and the United States Trade Representative shall jointly consult with the Committee on Financial Services and the Committee on Ways and Means of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs and the Committee on Finance of the Senate.

"(2) SCOPE.—The consultation described in paragraph (1) shall include consultation with respect to—

"(A) the nature of the agreement;

"(B) how and to what extent the agreement will achieve the applicable purposes, policies, priorities, and objectives of section 313 and this section; and

"(C) the implementation of the agreement, including the general effect of the agreement on existing State laws.

"(c) SUBMISSION AND LAYOVER PROVISIONS.—A covered agreement under subsection (a) may enter into force with respect to the United States only if—

"(1) the Secretary and the United States Trade Representative jointly submit to the congressional committees specified in subsection (b)(1), on a day on which both Houses of Congress are in session, a copy of the final legal text of the agreement; and

"(2) a period of 90 calendar days beginning on the date on which the copy of the final legal text of the agreement is submitted to the congressional committees under paragraph (1) has expired.".

(b) DUTIES OF SECRETARY.—Section 321(a) of title 31, United States Code, is amended—

(1) in paragraph (7), by striking "; and" and inserting a semicolon;

(2) in paragraph (8)(C), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(9) advise the President on major domestic and international prudential policy issues in connection with all lines of insurance except health insurance.".

(c) CLERICAL AMENDMENT.—The table of sections for subchapter I of chapter 3 of title 31, United States Code, is amended by striking the item relating to section 312 and inserting the following new items:

"Sec. 312. Terrorism and financial intelligence.
"Sec. 313. Federal Insurance Office.

Subtitle B—State-Based Insurance Reform

SEC. 511. SHORT TITLE.

This subtitle may be cited as the "Nonadmitted and Reinsurance Reform Act of 2010".

SEC. 512. EFFECTIVE DATE.

Except as otherwise specifically provided in this subtitle, this subtitle shall take effect upon the expiration of the 12-month period beginning on the date of the enactment of this subtitle.

PART I—NONADMITTED INSURANCE

SEC. 521. REPORTING, PAYMENT, AND ALLOCATION OF PREMIUM TAXES.

(a) HOME STATE'S EXCLUSIVE AUTHORITY.—No State other than the home State of an insured may require any premium tax payment for nonadmitted insurance.

(b) ALLOCATION OF NONADMITTED PREMIUM TAXES.—

(1) IN GENERAL.—The States may enter into a compact or otherwise establish procedures to allocate among the States the premium taxes paid to an insured's home State described in subsection (a).

(2) EFFECTIVE DATE.—Except as expressly otherwise provided in such compact or other procedures, any such compact or other procedures—

(A) if adopted on or before the expiration of the 330-day period that begins on the date of the enactment of this subtitle, shall apply to any premium taxes that, on or after such date of enactment, are required to be paid to any State that is subject to such compact or procedures; and

(B) if adopted after the expiration of such 330-day period, shall apply to any premium taxes that, on or after January 1 of the first calendar year that begins after the expiration of such 330-day period, are required to be paid to any State that is subject to such compact or procedures.

(3) REPORT.—Upon the expiration of the 330-day period referred to in paragraph (2), the NAIC may submit a report to the Committee on Financial Services and the Committee on the Judiciary of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate identifying and describing any compact or other procedures for allocation among the States of premium taxes that have been adopted during such period by any States.

(4) NATIONWIDE SYSTEM.—The Congress intends that each State adopt nationwide uniform requirements, forms, and procedures, such as an interstate compact, that provide for the reporting, payment, collection, and allocation of premium taxes for nonadmitted insurance consistent with this section.

(c) ALLOCATION BASED ON TAX ALLOCATION REPORT.—To facilitate the payment of premium taxes among the States, an insured's home State may require surplus lines brokers and insureds who

have independently procured insurance to annually file tax allocation reports with the insured's home State detailing the portion of the nonadmitted insurance policy premium or premiums attributable to properties, risks, or exposures located in each State. The filing of a nonadmitted insurance tax allocation report and the payment of tax may be made by a person authorized by the insured to act as its agent.

SEC. 522. REGULATION OF NONADMITTED INSURANCE BY INSURED'S HOME STATE.

(a) HOME STATE AUTHORITY.—Except as otherwise provided in this section, the placement of nonadmitted insurance shall be subject to the statutory and regulatory requirements solely of the insured's home State.

(b) BROKER LICENSING.—No State other than an insured's home State may require a surplus lines broker to be licensed in order to sell, solicit, or negotiate nonadmitted insurance with respect to such insured.

(c) ENFORCEMENT PROVISION.—With respect to section 521 and subsections (a) and (b) of this section, any law, regulation, provision, or action of any State that applies or purports to apply to nonadmitted insurance sold to, solicited by, or negotiated with an insured whose home State is another State shall be preempted with respect to such application.

(d) WORKERS' COMPENSATION EXCEPTION.—This section may not be construed to preempt any State law, rule, or regulation that restricts the placement of workers' compensation insurance or excess insurance for self-funded workers' compensation plans with a nonadmitted insurer.

SEC. 523. PARTICIPATION IN NATIONAL PRODUCER DATABASE.

After the expiration of the 2-year period beginning on the date of the enactment of this subtitle, a State may not collect any fees relating to licensing of an individual or entity as a surplus lines broker in the State unless the State has in effect at such time laws or regulations that provide for participation by the State in the national insurance producer database of the NAIC, or any other equivalent uniform national database, for the licensure of surplus lines brokers and the renewal of such licenses.

SEC. 524. UNIFORM STANDARDS FOR SURPLUS LINES ELIGIBILITY.

A State may not—

(1) impose eligibility requirements on, or otherwise establish eligibility criteria for, nonadmitted insurers domiciled in a United States jurisdiction, except in conformance with such requirements and criteria in sections 5A(2) and 5C(2)(a) of the Non-Admitted Insurance Model Act, unless the State has adopted nationwide uniform requirements, forms, and procedures developed in accordance with section 521(b) of this subtitle that include alternative nationwide uniform eligibility requirements; or

(2) prohibit a surplus lines broker from placing nonadmitted insurance with, or procuring nonadmitted insurance from, a nonadmitted insurer domiciled outside the United States that is listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the NAIC.

SEC. 525. STREAMLINED APPLICATION FOR COMMERCIAL PURCHASERS.

A surplus lines broker seeking to procure or place nonadmitted insurance in a State for an exempt commercial purchaser shall not be required to satisfy any State requirement to make a due diligence search to determine whether the full amount or type of insurance sought by such exempt commercial purchaser can be obtained from admitted insurers if—

(1) the broker procuring or placing the surplus lines insurance has disclosed to the exempt commercial purchaser that such insurance may or may not be available from the admitted market that may provide greater protection with more regulatory oversight; and

(2) the exempt commercial purchaser has subsequently requested in writing the broker to procure or place such insurance from a nonadmitted insurer.

SEC. 526. GAO STUDY OF NONADMITTED INSURANCE MARKET.

(a) IN GENERAL.—The Comptroller General of the United States shall conduct a study of the nonadmitted insurance market to determine the effect of the enactment of this part on the size and market share of the nonadmitted insurance market for providing coverage typically provided by the admitted insurance market.

(b) CONTENTS.—The study shall determine and analyze—

(1) the change in the size and market share of the nonadmitted insurance market and in the number of insurance companies and insurance holding companies providing such business in the 18-month period that begins upon the effective date of this subtitle;

(2) the extent to which insurance coverage typically provided by the admitted insurance market has shifted to the nonadmitted insurance market;

(3) the consequences of any change in the size and market share of the nonadmitted insurance market, including differences in the price and availability of coverage available in both the admitted and nonadmitted insurance markets;

(4) the extent to which insurance companies and insurance holding companies that provide both admitted and nonadmitted insurance have experienced shifts in the volume of business between admitted and nonadmitted insurance; and

(5) the extent to which there has been a change in the number of individuals who have nonadmitted insurance policies, the type of coverage provided under such policies, and whether such coverage is available in the admitted insurance market.

(c) CONSULTATION WITH NAIC.—In conducting the study under this section, the Comptroller General shall consult with the NAIC.

(d) REPORT.—The Comptroller General shall complete the study under this section and submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives regarding the findings of the study not later than 30 months after the effective date of this subtitle.

SEC. 527. DEFINITIONS.

For purposes of this part, the following definitions shall apply:

(1) ADMITTED INSURER.—The term "admitted insurer" means, with respect to a State, an insurer licensed to engage in the business of insurance in such State.

(2) AFFILIATE.—The term "affiliate" means, with respect to an insured, any entity that controls, is controlled by, or is under common control with the insured.

(3) AFFILIATED GROUP.—The term "affiliated group" means any group of entities that are all affiliated.

(4) CONTROL.—An entity has "control" over another entity if—

(A) the entity directly or indirectly or acting through 1 or more other persons owns, controls, or has the power to vote 25 percent or more of any class of voting securities of the other entity; or

(B) the entity controls in any manner the election of a majority of the directors or trustees of the other entity.

(5) EXEMPT COMMERCIAL PURCHASER.—The term "exempt commercial purchaser" means any person purchasing commercial insurance that, at the time of placement, meets the following requirements:

(A) The person employs or retains a qualified risk manager to negotiate insurance coverage.

(B) The person has paid aggregate nationwide commercial property and casualty insurance premiums in excess of $100,000 in the immediately preceding 12 months.

(C)(i) The person meets at least 1 of the following criteria:

(I) The person possesses a net worth in excess of $20,000,000, as such amount is adjusted pursuant to clause (ii).

(II) The person generates annual revenues in excess of $50,000,000, as such amount is adjusted pursuant to clause (ii).

(III) The person employs more than 500 full-time or full-time equivalent employees per individual insured or is a member of an affiliated group employing more than 1,000 employees in the aggregate.

(IV) The person is a not-for-profit organization or public entity generating annual budgeted expenditures of at least $30,000,000, as such amount is adjusted pursuant to clause (ii).

(V) The person is a municipality with a population in excess of 50,000 persons.

(ii) Effective on the fifth January 1 occurring after the date of the enactment of this subtitle and each fifth January 1 occurring thereafter, the amounts in subclauses (I), (II), and (IV) of clause (i) shall be adjusted to reflect the percentage change for such 5-year period in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

(6) HOME STATE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term "home State" means, with respect to an insured—

(i) the State in which an insured maintains its principal place of business or, in the case of an individual, the individual's principal residence; or

(ii) if 100 percent of the insured risk is located out of the State referred to in clause (i), the State to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

(B) AFFILIATED GROUPS.—If more than 1 insured from an affiliated group are named insureds on a single nonadmitted insurance contract, the term "home State" means the home State, as determined pursuant to subparagraph (A), of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract.

(7) INDEPENDENTLY PROCURED INSURANCE.—The term "independently procured insurance" means insurance procured directly by an insured from a nonadmitted insurer.

(8) NAIC.—The term "NAIC" means the National Association of Insurance Commissioners or any successor entity.

(9) NONADMITTED INSURANCE.—The term "nonadmitted insurance" means any property and casualty insurance permitted to be placed directly or through a surplus lines broker with a nonadmitted insurer eligible to accept such insurance.

(10) NON-ADMITTED INSURANCE MODEL ACT.—The term "Non-Admitted Insurance Model Act" means the provisions of the Non-Admitted Insurance Model Act, as adopted by the NAIC on August 3, 1994, and amended on September 30, 1996, December 6, 1997, October 2, 1999, and June 8, 2002.

(11) NONADMITTED INSURER.—The term "nonadmitted insurer"—

(A) means, with respect to a State, an insurer not licensed to engage in the business of insurance in such State; but

(B) does not include a risk retention group, as that term is defined in section 2(a)(4) of the Liability Risk Retention Act of 1986 (15 U.S.C. 3901(a)(4)).

(12) PREMIUM TAX.—The term "premium tax" means, with respect to surplus lines or independently procured insurance coverage, any tax, fee, assessment, or other charge imposed by a government entity directly or indirectly based on any payment made as consideration for an insurance contract for such insurance, including premium deposits, assessments, registration fees, and any other compensation given in consideration for a contract of insurance.

(13) QUALIFIED RISK MANAGER.—The term "qualified risk manager" means, with respect to a policyholder of commercial insurance, a person who meets all of the following requirements:

(A) The person is an employee of, or third-party consultant retained by, the commercial policyholder.

(B) The person provides skilled services in loss prevention, loss reduction, or risk and insurance coverage analysis, and purchase of insurance.

(C) The person—

(i)(I) has a bachelor's degree or higher from an accredited college or university in risk management, business administration, finance, economics, or any

other field determined by a State insurance commissioner or other State regulatory official or entity to demonstrate minimum competence in risk management; and

(II)(aa) has 3 years of experience in risk financing, claims administration, loss prevention, risk and insurance analysis, or purchasing commercial lines of insurance; or

(bb) has—

(AA) a designation as a Chartered Property and Casualty Underwriter (in this subparagraph referred to as "CPCU") issued by the American Institute for CPCU/Insurance Institute of America;

(BB) a designation as an Associate in Risk Management (ARM) issued by the American Institute for CPCU/Insurance Institute of America;

(CC) a designation as Certified Risk Manager (CRM) issued by the National Alliance for Insurance Education & Research;

(DD) a designation as a RIMS Fellow (RF) issued by the Global Risk Management Institute; or

(EE) any other designation, certification, or license determined by a State insurance commissioner or other State insurance regulatory official or entity to demonstrate minimum competency in risk management;

(ii)(I) has at least 7 years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance; and

(II) has any 1 of the designations specified in subitems (AA) through (EE) of clause (i)(II)(bb);

(iii) has at least 10 years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance; or

(iv) has a graduate degree from an accredited college or university in risk management, business administration, finance, economics, or any other field determined by a State insurance commissioner or other State regulatory official or entity to demonstrate minimum competence in risk management.

(14) REINSURANCE.—The term "reinsurance" means the assumption by an insurer of all or part of a risk undertaken originally by another insurer.

(15) SURPLUS LINES BROKER.—The term "surplus lines broker" means an individual, firm, or corporation which is licensed in a State to sell, solicit, or negotiate insurance on properties, risks, or exposures located or to be performed in a State with nonadmitted insurers.

(16) STATE.—The term "State" includes any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa.

PART II—REINSURANCE

SEC. 531. REGULATION OF CREDIT FOR REINSURANCE AND REINSURANCE AGREEMENTS.

(a) CREDIT FOR REINSURANCE.—If the State of domicile of a ceding insurer is an NAIC-accredited State, or has financial solvency requirements substantially similar to the requirements necessary for NAIC accreditation, and recognizes credit for reinsurance for the insurer's ceded risk, then no other State may deny such credit for reinsurance.

(b) ADDITIONAL PREEMPTION OF EXTRATERRITORIAL APPLICATION OF STATE LAW.—In addition to the application of subsection (a), all laws, regulations, provisions, or other actions of a State that is not the domiciliary State of the ceding insurer, except those with respect to taxes and assessments on insurance companies or insurance income, are preempted to the extent that they—

(1) restrict or eliminate the rights of the ceding insurer or the assuming insurer to resolve disputes pursuant to contractual arbitration to the extent such contractual provision is not inconsistent with the provisions of title 9, United States Code;

(2) require that a certain State's law shall govern the reinsurance contract, disputes arising from the reinsurance contract, or requirements of the reinsurance contract;

(3) attempt to enforce a reinsurance contract on terms different than those set forth in the reinsurance contract, to the extent that the terms are not inconsistent with this part; or

(4) otherwise apply the laws of the State to reinsurance agreements of ceding insurers not domiciled in that State.

SEC. 532. REGULATION OF REINSURER SOLVENCY.

(a) DOMICILIARY STATE REGULATION.—If the State of domicile of a reinsurer is an NAIC-accredited State or has financial solvency requirements substantially similar to the requirements necessary for NAIC accreditation, such State shall be solely responsible for regulating the financial solvency of the reinsurer.

(b) NONDOMICILIARY STATES.—

(1) LIMITATION ON FINANCIAL INFORMATION REQUIREMENTS.—If the State of domicile of a reinsurer is an NAIC-accredited State or has financial solvency requirements substantially similar to the requirements necessary for NAIC accreditation, no other State may require the reinsurer to provide any additional financial information other than the information the reinsurer is required to file with its domiciliary State.

(2) RECEIPT OF INFORMATION.—No provision of this section shall be construed as preventing or prohibiting a State that is not the State of domicile of a reinsurer from receiving a copy of any financial statement filed with its domiciliary State.

SEC. 533. DEFINITIONS.

For purposes of this part, the following definitions shall apply:

(1) CEDING INSURER.—The term "ceding insurer" means an insurer that purchases reinsurance.

(2) DOMICILIARY STATE.—The terms "State of domicile" and "domiciliary State" mean, with respect to an insurer or

reinsurer, the State in which the insurer or reinsurer is incorporated or entered through, and licensed.

(3) NAIC.—The term "NAIC" means the National Association of Insurance Commissioners or any successor entity.

(4) REINSURANCE.—The term "reinsurance" means the assumption by an insurer of all or part of a risk undertaken originally by another insurer.

(5) REINSURER.—

(A) IN GENERAL.—The term "reinsurer" means an insurer to the extent that the insurer—

(i) is principally engaged in the business of reinsurance;

(ii) does not conduct significant amounts of direct insurance as a percentage of its net premiums; and

(iii) is not engaged in an ongoing basis in the business of soliciting direct insurance.

(B) DETERMINATION.—A determination of whether an insurer is a reinsurer shall be made under the laws of the State of domicile in accordance with this paragraph.

(6) STATE.—The term "State" includes any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa.

PART III—RULE OF CONSTRUCTION

SEC. 541. RULE OF CONSTRUCTION.

Nothing in this subtitle or the amendments made by this subtitle shall be construed to modify, impair, or supersede the application of the antitrust laws. Any implied or actual conflict between this subtitle and any amendments to this subtitle and the antitrust laws shall be resolved in favor of the operation of the antitrust laws.

SEC. 542. SEVERABILITY.

If any section or subsection of this subtitle, or any application of such provision to any person or circumstance, is held to be unconstitutional, the remainder of this subtitle, and the application of the provision to any other person or circumstance, shall not be affected.

TITLE VI—IMPROVEMENTS TO REGULATION OF BANK AND SAVINGS ASSOCIATION HOLDING COMPANIES AND DEPOSITORY INSTITUTIONS

SEC. 601. SHORT TITLE.

This title may be cited as the "Bank and Savings Association Holding Company and Depository Institution Regulatory Improvements Act of 2010".

SEC. 602. DEFINITION.

For purposes of this title, a company is a "commercial firm" if the annual gross revenues derived by the company and all of its affiliates from activities that are financial in nature (as defined

in section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k))) and, if applicable, from the ownership or control of one or more insured depository institutions, represent less than 15 percent of the consolidated annual gross revenues of the company.

SEC. 603. MORATORIUM AND STUDY ON TREATMENT OF CREDIT CARD BANKS, INDUSTRIAL LOAN COMPANIES, AND CERTAIN OTHER COMPANIES UNDER THE BANK HOLDING COMPANY ACT OF 1956.

(a) MORATORIUM.—

(1) DEFINITIONS.—In this subsection—

(A) the term "credit card bank" means an institution described in section 2(c)(2)(F) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(F));

(B) the term "industrial bank" means an institution described in section 2(c)(2)(H) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(H)); and

(C) the term "trust bank" means an institution described in section 2(c)(2)(D) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(D)).

(2) MORATORIUM ON PROVISION OF DEPOSIT INSURANCE.—The Corporation may not approve an application for deposit insurance under section 5 of the Federal Deposit Insurance Act (12 U.S.C. 1815) that is received after November 23, 2009, for an industrial bank, a credit card bank, or a trust bank that is directly or indirectly owned or controlled by a commercial firm.

(3) CHANGE IN CONTROL.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the appropriate Federal banking agency shall disapprove a change in control, as provided in section 7(j) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)), of an industrial bank, a credit card bank, or a trust bank if the change in control would result in direct or indirect control of the industrial bank, credit card bank, or trust bank by a commercial firm.

(B) EXCEPTIONS.—Subparagraph (A) shall not apply to a change in control of an industrial bank, credit card bank, or trust bank—

(i) that—

(I) is in danger of default, as determined by the appropriate Federal banking agency;

(II) results from the merger or whole acquisition of a commercial firm that directly or indirectly controls the industrial bank, credit card bank, or trust bank in a bona fide merger with or acquisition by another commercial firm, as determined by the appropriate Federal banking agency; or

(III) results from an acquisition of voting shares of a publicly traded company that controls an industrial bank, credit card bank, or trust bank, if, after the acquisition, the acquiring shareholder (or group of shareholders acting in concert) holds less than 25 percent of any class of the voting shares of the company; and

(ii) that has obtained all regulatory approvals otherwise required for such change of control under any applicable Federal or State law, including section 7(j) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)).

(4) SUNSET.—This subsection shall cease to have effect 3 years after the date of enactment of this Act.

(b) GOVERNMENT ACCOUNTABILITY OFFICE STUDY OF EXCEPTIONS UNDER THE BANK HOLDING COMPANY ACT OF 1956.—

(1) STUDY REQUIRED.—The Comptroller General of the United States shall carry out a study to determine whether it is necessary, in order to strengthen the safety and soundness of institutions or the stability of the financial system, to eliminate the exceptions under section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841) for institutions described in—

(A) section 2(a)(5)(E) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a)(5)(E));

(B) section 2(a)(5)(F) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a)(5)(F));

(C) section 2(c)(2)(D) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(D));

(D) section 2(c)(2)(F) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(F));

(E) section 2(c)(2)(H) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(H)); and

(F) section 2(c)(2)(B) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(B)).

(2) CONTENT OF STUDY.—

(A) IN GENERAL.—The study required under paragraph (1), with respect to the institutions referenced in each of subparagraphs (A) through (E) of paragraph (1), shall, to the extent feasible be based on information provided to the Comptroller General by the appropriate Federal or State regulator, and shall—

(i) identify the types and number of institutions excepted from section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841) under each of the subparagraphs described in subparagraphs (A) through (E) of paragraph (1);

(ii) generally describe the size and geographic locations of the institutions described in clause (i);

(iii) determine the extent to which the institutions described in clause (i) are held by holding companies that are commercial firms;

(iv) determine whether the institutions described in clause (i) have any affiliates that are commercial firms;

(v) identify the Federal banking agency responsible for the supervision of the institutions described in clause (i) on and after the transfer date;

(vi) determine the adequacy of the Federal bank regulatory framework applicable to each category of institution described in clause (i), including any restrictions (including limitations on affiliate transactions or cross-marketing) that apply to transactions between

an institution, the holding company of the institution, and any other affiliate of the institution; and

(vii) evaluate the potential consequences of subjecting the institutions described in clause (i) to the requirements of the Bank Holding Company Act of 1956, including with respect to the availability and allocation of credit, the stability of the financial system and the economy, the safe and sound operation of each category of institution, and the impact on the types of activities in which such institutions, and the holding companies of such institutions, may engage.

(B) SAVINGS ASSOCIATIONS.—With respect to institutions described in paragraph (1)(F), the study required under paragraph (1) shall—

(i) determine the adequacy of the Federal bank regulatory framework applicable to such institutions, including any restrictions (including limitations on affiliate transactions or cross-marketing) that apply to transactions between an institution, the holding company of the institution, and any other affiliate of the institution; and

(ii) evaluate the potential consequences of subjecting the institutions described in paragraph (1)(F) to the requirements of the Bank Holding Company Act of 1956, including with respect to the availability and allocation of credit, the stability of the financial system and the economy, the safe and sound operation of such institutions, and the impact on the types of activities in which such institutions, and the holding companies of such institutions, may engage.

(3) REPORT.—Not later than 18 months after the date of enactment of this Act, the Comptroller General shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the study required under paragraph (1).

SEC. 604. REPORTS AND EXAMINATIONS OF HOLDING COMPANIES; REGULATION OF FUNCTIONALLY REGULATED SUBSIDIARIES.

(a) REPORTS BY BANK HOLDING COMPANIES.—Sections 5(c)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(c)(1)) is amended—

(1) by striking subclause (A)(ii) and inserting the following:

"(ii) compliance by the bank holding company or subsidiary with—

"(I) this Act;

"(II) Federal laws that the Board has specific jurisdiction to enforce against the company or subsidiary; and

"(III) other than in the case of an insured depository institution or functionally regulated subsidiary, any other applicable provision of Federal law.";

(2) by striking subparagraph (B) and inserting the following:

"(B) USE OF EXISTING REPORTS AND OTHER SUPERVISORY INFORMATION.—The Board shall, to the fullest extent possible, use—

"(i) reports and other supervisory information that the bank holding company or any subsidiary thereof has been required to provide to other Federal or State regulatory agencies;

"(ii) externally audited financial statements of the bank holding company or subsidiary;

"(iii) information otherwise available from Federal or State regulatory agencies; and

"(iv) information that is otherwise required to be reported publicly."; and

(3) by adding at the end the following:

"(C) AVAILABILITY.—Upon the request of the Board, the bank holding company or a subsidiary of the bank holding company shall promptly provide to the Board any information described in clauses (i) through (iii) of subparagraph (B).".

(b) EXAMINATIONS OF BANK HOLDING COMPANIES.—Section 5(c)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(c)(2)) is amended to read as follows:

"(2) EXAMINATIONS.—

"(A) IN GENERAL.—Subject to subtitle B of the Consumer Financial Protection Act of 2010, the Board may make examinations of a bank holding company and each subsidiary of a bank holding company in order to—

"(i) inform the Board of—

"(I) the nature of the operations and financial condition of the bank holding company and the subsidiary;

"(II) the financial, operational, and other risks within the bank holding company system that may pose a threat to—

"(aa) the safety and soundness of the bank holding company or of any depository institution subsidiary of the bank holding company; or

"(bb) the stability of the financial system of the United States; and

"(III) the systems of the bank holding company for monitoring and controlling the risks described in subclause (II); and

"(ii) monitor the compliance of the bank holding company and the subsidiary with—

"(I) this Act;

"(II) Federal laws that the Board has specific jurisdiction to enforce against the company or subsidiary; and

"(III) other than in the case of an insured depository institution or functionally regulated subsidiary, any other applicable provisions of Federal law.

"(B) USE OF REPORTS TO REDUCE EXAMINATIONS.—For purposes of this paragraph, the Board shall, to the fullest extent possible, rely on—

"(i) examination reports made by other Federal or State regulatory agencies relating to a bank holding company and any subsidiary of a bank holding company; and

"(ii) the reports and other information required under paragraph (1).

"(C) COORDINATION WITH OTHER REGULATORS.—The Board shall—

"(i) provide reasonable notice to, and consult with, the appropriate Federal banking agency, the Securities and Exchange Commission, the Commodity Futures Trading Commission, or State regulatory agency, as appropriate, for a subsidiary that is a depository institution or a functionally regulated subsidiary of a bank holding company before commencing an examination of the subsidiary under this section; and

"(ii) to the fullest extent possible, avoid duplication of examination activities, reporting requirements, and requests for information.".

(c) AUTHORITY TO REGULATE FUNCTIONALLY REGULATED SUBSIDIARIES OF BANK HOLDING COMPANIES.—The Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) is amended—

(1) in section 5(c)(5)(B) (12 U.S.C. 1844(c)(5)(B)), by striking clause (v) and inserting the following:

"(v) an entity that is subject to regulation by, or registration with, the Commodity Futures Trading Commission, with respect to activities conducted as a futures commission merchant, commodity trading adviser, commodity pool, commodity pool operator, swap execution facility, swap data repository, swap dealer, major swap participant, and activities that are incidental to such commodities and swaps activities."; and

(2) by striking section 10A (12 U.S.C. 1848a).

(d) ACQUISITIONS OF BANKS.—Section 3(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(c)) is amended by adding at the end the following:

"(7) FINANCIAL STABILITY.—In every case, the Board shall take into consideration the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risks to the stability of the United States banking or financial system.".

(e) ACQUISITIONS OF NONBANKS.—

(1) NOTICE PROCEDURES.—Section 4(j)(2)(A) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(j)(2)(A)) is amended by striking "or unsound banking practices" and inserting "unsound banking practices, or risk to the stability of the United States banking or financial system".

(2) ACTIVITIES THAT ARE FINANCIAL IN NATURE.—Section 4(k)(6)(B) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)(6)(B)) is amended to read as follows:

"(B) APPROVAL NOT REQUIRED FOR CERTAIN FINANCIAL ACTIVITIES.—

"(i) IN GENERAL.—Except as provided in subsection (j) with regard to the acquisition of a savings association and clause (ii), a financial holding company may

commence any activity, or acquire any company, pursuant to paragraph (4) or any regulation prescribed or order issued under paragraph (5), without prior approval of the Board.

"(ii) EXCEPTION.—A financial holding company may not acquire a company, without the prior approval of the Board, in a transaction in which the total consolidated assets to be acquired by the financial holding company exceed $10,000,000,000.

"(iii) HART-SCOTT-RODINO FILING REQUIREMENT.—Solely for purposes of section 7A(c)(8) of the Clayton Act (15 U.S.C. 18a(c)(8)), the transactions subject to the requirements of this paragraph shall be treated as if the approval of the Board is not required.".

(f) BANK MERGER ACT TRANSACTIONS.—Section 18(c)(5) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)(5)) is amended, in the matter immediately following subparagraph (B), by striking "and the convenience and needs of the community to be served" and inserting "the convenience and needs of the community to be served, and the risk to the stability of the United States banking or financial system".

(g) REPORTS BY SAVINGS AND LOAN HOLDING COMPANIES.—Section 10(b)(2) of the Home Owners' Loan Act (12 U.S.C. 1467a(b)(2) is amended—

(1) by striking "Each savings" and inserting the following:

"(A) IN GENERAL.—Each savings"; and

(2) by adding at the end the following:

"(B) USE OF EXISTING REPORTS AND OTHER SUPERVISORY INFORMATION.—The Board shall, to the fullest extent possible, use—

"(i) reports and other supervisory information that the savings and loan holding company or any subsidiary thereof has been required to provide to other Federal or State regulatory agencies;

"(ii) externally audited financial statements of the savings and loan holding company or subsidiary;

"(iii) information that is otherwise available from Federal or State regulatory agencies; and

"(iv) information that is otherwise required to be reported publicly.

"(C) AVAILABILITY.—Upon the request of the Board, a savings and loan holding company or a subsidiary of a savings and loan holding company shall promptly provide to the Board any information described in clauses (i) through (iii) of subparagraph (B).".

(h) EXAMINATION OF SAVINGS AND LOAN HOLDING COMPANIES.—

(1) DEFINITIONS.—Section 2 of the Home Owners' Loan Act (12 U.S.C. 1462) is amended by adding at the end the following:

"(10) APPROPRIATE FEDERAL BANKING AGENCY.—The term 'appropriate Federal banking agency' has the same meaning as in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

"(11) FUNCTIONALLY REGULATED SUBSIDIARY.—The term 'functionally regulated subsidiary' has the same meaning as in section 5(c)(5) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(c)(5)).".

(2) EXAMINATION.—Section 10(b) of the Home Owners' Loan Act (12 U.S.C. 1467a(b)) is amended by striking paragraph (4) and inserting the following:

"(4) EXAMINATIONS.—

"(A) IN GENERAL.—Subject to subtitle B of the Consumer Financial Protection Act of 2010, the Board may make examinations of a savings and loan holding company and each subsidiary of a savings and loan holding company system, in order to—

"(i) inform the Board of—

"(I) the nature of the operations and financial condition of the savings and loan holding company and the subsidiary;

"(II) the financial, operational, and other risks within the savings and loan holding company system that may pose a threat to—

"(aa) the safety and soundness of the savings and loan holding company or of any depository institution subsidiary of the savings and loan holding company; or

"(bb) the stability of the financial system of the United States; and

"(III) the systems of the savings and loan holding company for monitoring and controlling the risks described in subclause (II); and

"(ii) monitor the compliance of the savings and loan holding company and the subsidiary with—

"(I) this Act;

"(II) Federal laws that the Board has specific jurisdiction to enforce against the company or subsidiary; and

"(III) other than in the case of an insured depository institution or functionally regulated subsidiary, any other applicable provisions of Federal law.

"(B) USE OF REPORTS TO REDUCE EXAMINATIONS.—For purposes of this subsection, the Board shall, to the fullest extent possible, rely on—

"(i) the examination reports made by other Federal or State regulatory agencies relating to a savings and loan holding company and any subsidiary; and

"(ii) the reports and other information required under paragraph (2).

"(C) COORDINATION WITH OTHER REGULATORS.—The Board shall—

"(i) provide reasonable notice to, and consult with, the appropriate Federal banking agency, the Securities and Exchange Commission, the Commodity Futures Trading Commission, or State regulatory agency, as appropriate, for a subsidiary that is a depository institution or a functionally regulated subsidiary of a savings and loan holding company before commencing an examination of the subsidiary under this section; and

"(ii) to the fullest extent possible, avoid duplication of examination activities, reporting requirements, and requests for information.".

(i) DEFINITION OF THE TERM "SAVINGS AND LOAN HOLDING COMPANY".—Section 10(a)(1)(D)(ii) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)(1)(D)(ii)) is amended to read as follows:

"(ii) EXCLUSION.—The term 'savings and loan holding company' does not include—

"(I) a bank holding company that is registered under, and subject to, the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), or to any company directly or indirectly controlled by such company (other than a savings association);

"(II) a company that controls a savings association that functions solely in a trust or fiduciary capacity as described in section 2(c)(2)(D) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(D)); or

"(III) a company described in subsection (c)(9)(C) solely by virtue of such company's control of an intermediate holding company established pursuant to section 10A.".

(j) EFFECTIVE DATE.—The amendments made by this section shall take effect on the transfer date.

SEC. 605. ASSURING CONSISTENT OVERSIGHT OF PERMISSIBLE ACTIVITIES OF DEPOSITORY INSTITUTION SUBSIDIARIES OF HOLDING COMPANIES.

(a) IN GENERAL.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by inserting after section 25 the following new section:

"SEC. 26. ASSURING CONSISTENT OVERSIGHT OF SUBSIDIARIES OF HOLDING COMPANIES.

"(a) DEFINITIONS.—For purposes of this section:

"(1) BOARD.—The term 'Board' means the Board of Governors of the Federal Reserve System.

"(2) FUNCTIONALLY REGULATED SUBSIDIARY.—The term 'functionally regulated subsidiary' has the same meaning as in section 5(c)(5) of the Bank Holding Company Act.

"(3) LEAD INSURED DEPOSITORY INSTITUTION.—The term 'lead insured depository institution' has the same meaning as in section 2(o)(8) of the Bank Holding Company Act.

"(b) EXAMINATION REQUIREMENTS.—Subject to subtitle B of the Consumer Financial Protection Act of 2010, the Board shall examine the activities of a nondepository institution subsidiary (other than a functionally regulated subsidiary or a subsidiary of a depository institution) of a depository institution holding company that are permissible for the insured depository institution subsidiaries of the depository institution holding company in the same manner, subject to the same standards, and with the same frequency as would be required if such activities were conducted in the lead insured depository institution of the depository institution holding company.

"(c) STATE COORDINATION.—

"(1) CONSULTATION AND COORDINATION.—If a nondepository institution subsidiary is supervised by a State bank supervisor or other State regulatory authority, the Board, in conducting the examinations required in subsection (b), shall consult and coordinate with such State regulator.

"(2) ALTERNATING EXAMINATIONS PERMITTED.—The examinations required under subsection (b) may be conducted in joint or alternating manner with a State regulator, if the Board determines that an examination of a nondepository institution subsidiary conducted by the State carries out the purposes of this section.

"(d) APPROPRIATE FEDERAL BANKING AGENCY BACKUP EXAMINATION AUTHORITY.—

"(1) IN GENERAL.—In the event that the Board does not conduct examinations required under subsection (b) in the same manner, subject to the same standards, and with the same frequency as would be required if such activities were conducted by the lead insured depository institution subsidiary of the depository institution holding company, the appropriate Federal banking agency for the lead insured depository institution may recommend in writing (which shall include a written explanation of the concerns giving rise to the recommendation) that the Board perform the examination required under subsection (b).

"(2) EXAMINATION BY AN APPROPRIATE FEDERAL BANKING AGENCY.—If the Board does not, before the end of the 60-day period beginning on the date on which the Board receives a recommendation under paragraph (1), begin an examination as required under subsection (b) or provide a written explanation or plan to the appropriate Federal banking agency making such recommendation responding to the concerns raised by the appropriate Federal banking agency for the lead insured depository institution, the appropriate Federal banking agency for the lead insured depository institution may, subject to the Consumer Financial Protection Act of 2010, examine the activities that are permissible for a depository institution subsidiary conducted by such nondepository institution subsidiary (other than a functionally regulated subsidiary or a subsidiary of a depository institution) of the depository institution holding company as if the nondepository institution subsidiary were an insured depository institution for which the appropriate Federal banking agency of the lead insured depository institution was the appropriate Federal banking agency, to determine whether the activities—

"(A) pose a material threat to the safety and soundness of any insured depository institution subsidiary of the depository institution holding company;

"(B) are conducted in accordance with applicable Federal law; and

"(C) are subject to appropriate systems for monitoring and controlling the financial, operating, and other material risks of the activities that may pose a material threat to the safety and soundness of the insured depository institution subsidiaries of the holding company.

"(3) AGENCY COORDINATION WITH THE BOARD.—An appropriate Federal banking agency that conducts an examination pursuant to paragraph (2) shall coordinate examination of the activities of nondepository institution subsidiaries described in subsection (b) with the Board in a manner that—

"(A) avoids duplication;

"(B) shares information relevant to the supervision of the depository institution holding company;

"(C) achieves the objectives of subsection (b); and

"(D) ensures that the depository institution holding company and the subsidiaries of the depository institution holding company are not subject to conflicting supervisory demands by such agency and the Board.

"(4) FEE PERMITTED FOR EXAMINATION COSTS.—An appropriate Federal banking agency that conducts an examination or enforcement action pursuant to this section may collect an assessment, fee, or such other charge from the subsidiary as the appropriate Federal banking agency determines necessary or appropriate to carry out the responsibilities of the appropriate Federal banking agency in connection with such examination.

"(e) REFERRALS FOR ENFORCEMENT BY APPROPRIATE FEDERAL BANKING AGENCY.—

"(1) RECOMMENDATION OF ENFORCEMENT ACTION.—The appropriate Federal banking agency for the lead insured depository institution, based upon its examination of a nondepository institution subsidiary conducted pursuant to subsection (d), or other relevant information, may submit to the Board, in writing, a recommendation that the Board take enforcement action against such nondepository institution subsidiary, together with an explanation of the concerns giving rise to the recommendation, if the appropriate Federal banking agency determines (by a vote of its members, if applicable) that the activities of the nondepository institution subsidiary pose a material threat to the safety and soundness of any insured depository institution subsidiary of the depository institution holding company.

"(2) BACK-UP AUTHORITY OF THE APPROPRIATE FEDERAL BANKING AGENCY.—If, within the 60-day period beginning on the date on which the Board receives a recommendation under paragraph (1), the Board does not take enforcement action against the nondepository institution subsidiary or provide a plan for supervisory or enforcement action that is acceptable to the appropriate Federal banking agency that made the recommendation pursuant to paragraph (1), such agency may take the recommended enforcement action against the nondepository institution subsidiary, in the same manner as if the nondepository institution subsidiary were an insured depository institution for which the agency was the appropriate Federal banking agency.

"(f) COORDINATION AMONG APPROPRIATE FEDERAL BANKING AGENCIES.—Each Federal banking agency, prior to or when exercising authority under subsection (d) or (e) shall—

"(1) provide reasonable notice to, and consult with, the appropriate Federal banking agency or State bank supervisor (or other State regulatory agency) of the nondepository institution subsidiary of a depository institution holding company that is described in subsection (d) before commencing any examination of the subsidiary;

"(2) to the fullest extent possible—

"(A) rely on the examinations, inspections, and reports of the appropriate Federal banking agency or the State bank supervisor (or other State regulatory agency) of the subsidiary;

"(B) avoid duplication of examination activities, reporting requirements, and requests for information; and

"(C) ensure that the depository institution holding company and the subsidiaries of the depository institution holding company are not subject to conflicting supervisory demands by the appropriate Federal banking agencies.

"(g) RULE OF CONSTRUCTION.—No provision of this section shall be construed as limiting any authority of the Board, the Corporation, or the Comptroller of the Currency under any other provision of law.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the transfer date.

SEC. 606. REQUIREMENTS FOR FINANCIAL HOLDING COMPANIES TO REMAIN WELL CAPITALIZED AND WELL MANAGED.

(a) AMENDMENT.—Section 4(l)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(l)(1)) is amended—

(1) in subparagraph (B), by striking "and" at the end;

(2) by redesignating subparagraph (C) as subparagraph (D);

(3) by inserting after subparagraph (B) the following:

"(C) the bank holding company is well capitalized and well managed; and"; and

(4) in subparagraph (D)(ii), as so redesignated, by striking "subparagraphs (A) and (B)" and inserting "subparagraphs (A), (B), and (C)".

(b) HOME OWNERS' LOAN ACT AMENDMENT.—Section 10(c)(2) of the Home Owners' Loan Act (12 U.S.C. 1467a(c)(2)) is amended by adding at the end the following new subparagraph:

"(H) Any activity that is permissible for a financial holding company (as such term is defined under section 2(p) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(p)) to conduct under section 4(k) of the Bank Holding Company Act of 1956 if—

"(i) the savings and loan holding company meets all of the criteria to qualify as a financial holding company, and complies with all of the requirements applicable to a financial holding company, under sections 4(l) and 4(m) of the Bank Holding Company Act and section 804(c) of the Community Reinvestment Act of 1977 (12 U.S.C. 2903(c)) as if the savings and loan holding company was a bank holding company; and

"(ii) the savings and loan holding company conducts the activity in accordance with the same terms, conditions, and requirements that apply to the conduct of such activity by a bank holding company under the Bank Holding Company Act of 1956 and the Board's regulations and interpretations under such Act.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the transfer date.

SEC. 607. STANDARDS FOR INTERSTATE ACQUISITIONS.

(a) ACQUISITION OF BANKS.—Section 3(d)(1)(A) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(d)(1)(A)) is amended by striking "adequately capitalized and adequately managed" and inserting "well capitalized and well managed".

(b) INTERSTATE BANK MERGERS.—Section 44(b)(4)(B) of the Federal Deposit Insurance Act (12 U.S.C. 1831u(b)(4)(B)) is amended by striking "will continue to be adequately capitalized and adequately managed" and inserting "will be well capitalized and well managed".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the transfer date.

SEC. 608. ENHANCING EXISTING RESTRICTIONS ON BANK TRANSACTIONS WITH AFFILIATES.

(a) AFFILIATE TRANSACTIONS.—Section 23A of the Federal Reserve Act (12 U.S.C. 371c) is amended—

(1) in subsection (b)—

(A) in paragraph (1), by striking subparagraph (D) and inserting the following:

"(D) any investment fund with respect to which a member bank or affiliate thereof is an investment adviser; and"; and

(B) in paragraph (7)—

(i) in subparagraph (A), by inserting before the semicolon at the end the following: ", including a purchase of assets subject to an agreement to repurchase";

(ii) in subparagraph (C), by striking ", including assets subject to an agreement to repurchase,";

(iii) in subparagraph (D)—

(I) by inserting "or other debt obligations" after "acceptance of securities"; and

(II) by striking "or" at the end; and

(iv) by adding at the end the following:

"(F) a transaction with an affiliate that involves the borrowing or lending of securities, to the extent that the transaction causes a member bank or a subsidiary to have credit exposure to the affiliate; or

"(G) a derivative transaction, as defined in paragraph (3) of section 5200(b) of the Revised Statutes of the United States (12 U.S.C. 84(b)), with an affiliate, to the extent that the transaction causes a member bank or a subsidiary to have credit exposure to the affiliate;";

(2) in subsection (c)—

(A) in paragraph (1)—

(i) in the matter preceding subparagraph (A), by striking "subsidiary" and all that follows through "time of the transaction" and inserting "subsidiary, and any credit exposure of a member bank or a subsidiary to an affiliate resulting from a securities borrowing or lending transaction, or a derivative transaction, shall be secured at all times"; and

(ii) in each of subparagraphs (A) through (D), by striking "or letter of credit" and inserting "letter of credit, or credit exposure";

(B) by striking paragraph (2);

(C) by redesignating paragraphs (3) through (5) as paragraphs (2) through (4), respectively;

(D) in paragraph (2), as so redesignated, by inserting before the period at the end ", or credit exposure to an affiliate resulting from a securities borrowing or lending transaction, or derivative transaction"; and

(E) in paragraph (3), as so redesignated—

(i) by inserting "or other debt obligations" after "securities"; and

(ii) by striking "or guarantee" and all that follows through "behalf of," and inserting "guarantee, acceptance, or letter of credit issued on behalf of, or credit exposure from a securities borrowing or lending transaction, or derivative transaction to,";

(3) in subsection (d)(4), in the matter preceding subparagraph (A), by striking "or issuing" and all that follows through "behalf of," and inserting "issuing a guarantee, acceptance, or letter of credit on behalf of, or having credit exposure resulting from a securities borrowing or lending transaction, or derivative transaction to,"; and

(4) in subsection (f)—

(A) in paragraph (2)—

(i) by striking "or order";

(ii) by striking "if it finds" and all that follows through the end of the paragraph and inserting the following: "if—

"(i) the Board finds the exemption to be in the public interest and consistent with the purposes of this section, and notifies the Federal Deposit Insurance Corporation of such finding; and

"(ii) before the end of the 60-day period beginning on the date on which the Federal Deposit Insurance Corporation receives notice of the finding under clause (i), the Federal Deposit Insurance Corporation does not object, in writing, to the finding, based on a determination that the exemption presents an unacceptable risk to the Deposit Insurance Fund.";

(iii) by striking the Board and inserting the following:

"(A) IN GENERAL.—The Board"; and

(iv) by adding at the end the following:

"(B) ADDITIONAL EXEMPTIONS.—

"(i) NATIONAL BANKS.—The Comptroller of the Currency may, by order, exempt a transaction of a national bank from the requirements of this section if—

"(I) the Board and the Office of the Comptroller of the Currency jointly find the exemption to be in the public interest and consistent with the purposes of this section and notify the Federal Deposit Insurance Corporation of such finding; and

"(II) before the end of the 60-day period beginning on the date on which the Federal Deposit Insurance Corporation receives notice of the finding under subclause (I), the Federal Deposit Insurance Corporation does not object, in writing, to the finding, based on a determination that the exemption presents an unacceptable risk to the Deposit Insurance Fund.

"(ii) STATE BANKS.—The Federal Deposit Insurance Corporation may, by order, exempt a transaction of a State nonmember bank, and the Board may, by order, exempt a transaction of a State member bank, from the requirements of this section if—

"(I) the Board and the Federal Deposit Insurance Corporation jointly find that the exemption is in the public interest and consistent with the purposes of this section; and

"(II) the Federal Deposit Insurance Corporation finds that the exemption does not present an unacceptable risk to the Deposit Insurance Fund."; and

(B) by adding at the end the following:

"(4) AMOUNTS OF COVERED TRANSACTIONS.—The Board may issue such regulations or interpretations as the Board determines are necessary or appropriate with respect to the manner in which a netting agreement may be taken into account in determining the amount of a covered transaction between a member bank or a subsidiary and an affiliate, including the extent to which netting agreements between a member bank or a subsidiary and an affiliate may be taken into account in determining whether a covered transaction is fully secured for purposes of subsection (d)(4). An interpretation under this paragraph with respect to a specific member bank, subsidiary, or affiliate shall be issued jointly with the appropriate Federal banking agency for such member bank, subsidiary, or affiliate.".

(b) TRANSACTIONS WITH AFFILIATES.—Section 23B(e) of the Federal Reserve Act (12 U.S.C. 371c–1(e)) is amended—

(1) by striking the undesignated matter following subparagraph (B);

(2) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively, and adjusting the clause margins accordingly;

(3) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively, and adjusting the subparagraph margins accordingly;

(4) by striking "The Board" and inserting the following: "(1) IN GENERAL.—The Board";

(5) in paragraph (1)(B), as so redesignated—

(A) in the matter preceding clause (i), by inserting before "regulations" the following: "subject to paragraph (2), if the Board finds that an exemption or exclusion is in the public interest and is consistent with the purposes of this section, and notifies the Federal Deposit Insurance Corporation of such finding,"; and

(B) in clause (ii), by striking the comma at the end and inserting a period; and

(6) by adding at the end the following:

"(2) EXCEPTION.—The Board may grant an exemption or exclusion under this subsection only if, during the 60-day period beginning on the date of receipt of notice of the finding from the Board under paragraph (1)(B), the Federal Deposit Insurance Corporation does not object, in writing, to such exemption or exclusion, based on a determination that the exemption presents an unacceptable risk to the Deposit Insurance Fund.".

(c) HOME OWNERS' LOAN ACT.—Section 11 of the Home Owners' Loan Act (12 U.S.C. 1468) is amended by adding at the end the following:

"(d) EXEMPTIONS.—

"(1) FEDERAL SAVINGS ASSOCIATIONS.—The Comptroller of the Currency may, by order, exempt a transaction of a Federal savings association from the requirements of this section if—

"(A) the Board and the Office of the Comptroller of the Currency jointly find the exemption to be in the public interest and consistent with the purposes of this section and notify the Federal Deposit Insurance Corporation of such finding; and

"(B) before the end of the 60-day period beginning on the date on which the Federal Deposit Insurance Corporation receives notice of the finding under subparagraph (A), the Federal Deposit Insurance Corporation does not object, in writing, to the finding, based on a determination that the exemption presents an unacceptable risk to the Deposit Insurance Fund.

"(2) STATE SAVINGS ASSOCIATION.—The Federal Deposit Insurance Corporation may, by order, exempt a transaction of a State savings association from the requirements of this section if the Board and the Federal Deposit Insurance Corporation jointly find that—

"(A) the exemption is in the public interest and consistent with the purposes of this section; and

"(B) the exemption does not present an unacceptable risk to the Deposit Insurance Fund.".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect 1 year after the transfer date.

SEC. 609. ELIMINATING EXCEPTIONS FOR TRANSACTIONS WITH FINANCIAL SUBSIDIARIES.

(a) AMENDMENT.—Section 23A(e) of the Federal Reserve Act (12 U.S.C. 371c(e)) is amended—

(1) by striking paragraph (3); and

(2) by redesignating paragraph (4) as paragraph (3).

(b) PROSPECTIVE APPLICATION OF AMENDMENT.—The amendments made by this section shall apply with respect to any covered transaction between a bank and a subsidiary of the bank, as those terms are defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c), that is entered into on or after the date of enactment of this Act.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect 1 year after the transfer date.

SEC. 610. LENDING LIMITS APPLICABLE TO CREDIT EXPOSURE ON DERIVATIVE TRANSACTIONS, REPURCHASE AGREEMENTS, REVERSE REPURCHASE AGREEMENTS, AND SECURITIES LENDING AND BORROWING TRANSACTIONS.

(a) NATIONAL BANKS.—Section 5200(b) of the Revised Statutes of the United States (12 U.S.C. 84(b)) is amended—

(1) in paragraph (1), by striking "shall include" and all that follows through the end of the paragraph and inserting the following: "shall include—

"(A) all direct or indirect advances of funds to a person made on the basis of any obligation of that person to repay the funds or repayable from specific property pledged by or on behalf of the person;

"(B) to the extent specified by the Comptroller of the Currency, any liability of a national banking association

to advance funds to or on behalf of a person pursuant to a contractual commitment; and

"(C) any credit exposure to a person arising from a derivative transaction, repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction between the national banking association and the person;";

(2) in paragraph (2), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following:

"(3) the term 'derivative transaction' includes any transaction that is a contract, agreement, swap, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices, or other assets.".

(b) SAVINGS ASSOCIATIONS.—Section 5(u)(3) of the Home Owners' Loan Act (12 U.S.C. 1464(u)(3)) is amended by striking "Director" each place that term appears and inserting "Comptroller of the Currency".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect 1 year after the transfer date.

SEC. 611. CONSISTENT TREATMENT OF DERIVATIVE TRANSACTIONS IN LENDING LIMITS.

(a) AMENDMENT.—Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended by adding at the end the following:

"(y) STATE LENDING LIMIT TREATMENT OF DERIVATIVES TRANSACTIONS.—An insured State bank may engage in a derivative transaction, as defined in section 5200(b)(3) of the Revised Statutes of the United States (12 U.S.C. 84(b)(3)), only if the law with respect to lending limits of the State in which the insured State bank is chartered takes into consideration credit exposure to derivative transactions.".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect 18 months after the transfer date.

SEC. 612. RESTRICTION ON CONVERSIONS OF TROUBLED BANKS.

(a) CONVERSION OF A NATIONAL BANKING ASSOCIATION.—The Act entitled "An Act to provide for the conversion of national banking associations into and their merger or consolidation with State banks, and for other purposes." (12 U.S.C. 214 et seq.) is amended by adding at the end the following:

"SEC. 10. PROHIBITION ON CONVERSION.

"A national banking association may not convert to a State bank or State savings association during any period in which the national banking association is subject to a cease and desist order (or other formal enforcement order) issued by, or a memorandum of understanding entered into with, the Comptroller of the Currency with respect to a significant supervisory matter.".

(b) CONVERSION OF A STATE BANK OR SAVINGS ASSOCIATION.—Section 5154 of the Revised Statutes of the United States (12 U.S.C. 35) is amended by adding at the end the following: "The Comptroller of the Currency may not approve the conversion of a State bank or State savings association to a national banking association or Federal savings association during any period in which the State bank or State savings association is subject to

a cease and desist order (or other formal enforcement order) issued by, or a memorandum of understanding entered into with, a State bank supervisor or the appropriate Federal banking agency with respect to a significant supervisory matter or a final enforcement action by a State Attorney General.".

(c) CONVERSION OF A FEDERAL SAVINGS ASSOCIATION.—Section 5(i) of the Home Owners' Loan Act (12 U.S.C. 1464(i)) is amended by adding at the end the following:

"(6) LIMITATION ON CERTAIN CONVERSIONS BY FEDERAL SAVINGS ASSOCIATIONS.—A Federal savings association may not convert to a State bank or State savings association during any period in which the Federal savings association is subject to a cease and desist order (or other formal enforcement order) issued by, or a memorandum of understanding entered into with, the Office of Thrift Supervision or the Comptroller of the Currency with respect to a significant supervisory matter.".

(d) EXCEPTION.—The prohibition on the approval of conversions under the amendments made by subsections (a), (b), and (c) shall not apply, if—

(1) the Federal banking agency that would be the appropriate Federal banking agency after the proposed conversion gives the appropriate Federal banking agency or State bank supervisor that issued the cease and desist order (or other formal enforcement order) or memorandum of understanding, as appropriate, written notice of the proposed conversion including a plan to address the significant supervisory matter in a manner that is consistent with the safe and sound operation of the institution;

(2) within 30 days of receipt of the written notice required under paragraph (1), the appropriate Federal banking agency or State bank supervisor that issued the cease and desist order (or other formal enforcement order) or memorandum of understanding, as appropriate, does not object to the conversion or the plan to address the significant supervisory matter;

(3) after conversion of the insured depository institution, the appropriate Federal banking agency after the conversion implements such plan; and

(4) in the case of a final enforcement action by a State Attorney General, approval of the conversion is conditioned on compliance by the insured depository institution with the terms of such final enforcement action.

(e) NOTIFICATION OF PENDING ENFORCEMENT ACTIONS.—

(1) COPY OF CONVERSION APPLICATION.—At the time an insured depository institution files a conversion application, the insured depository institution shall transmit a copy of the conversion application to—

(A) the appropriate Federal banking agency for the insured depository institution; and

(B) the Federal banking agency that would be the appropriate Federal banking agency of the insured depository institution after the proposed conversion.

(2) NOTIFICATION AND ACCESS TO INFORMATION.—Upon receipt of a copy of the application described in paragraph (1), the appropriate Federal banking agency for the insured depository institution proposing the conversion shall—

(A) notify the Federal banking agency that would be the appropriate Federal banking agency for the institution

after the proposed conversion in writing of any ongoing supervisory or investigative proceedings that the appropriate Federal banking agency for the institution proposing to convert believes is likely to result, in the near term and absent the proposed conversion, in a cease and desist order (or other formal enforcement order) or memorandum of understanding with respect to a significant supervisory matter; and

(B) provide the Federal banking agency that would be the appropriate Federal banking agency for the institution after the proposed conversion access to all investigative and supervisory information relating to the proceedings described in subparagraph (A).

SEC. 613. DE NOVO BRANCHING INTO STATES.

(a) NATIONAL BANKS.—Section 5155(g)(1)(A) of the Revised Statutes of the United States (12 U.S.C. 36(g)(1)(A)) is amended to read as follows:

"(A) the law of the State in which the branch is located, or is to be located, would permit establishment of the branch, if the national bank were a State bank chartered by such State; and".

(b) STATE INSURED BANKS.—Section 18(d)(4)(A)(i) of the Federal Deposit Insurance Act (12 U.S.C. 1828(d)(4)(A)(i)) is amended to read as follows:

"(i) the law of the State in which the branch is located, or is to be located, would permit establishment of the branch, if the bank were a State bank chartered by such State; and".

SEC. 614. LENDING LIMITS TO INSIDERS.

(a) EXTENSIONS OF CREDIT.—Section 22(h)(9)(D)(i) of the Federal Reserve Act (12 U.S.C. 375b(9)(D)(i)) is amended—

(1) by striking the period at the end and inserting "; or";

(2) by striking "a person" and inserting "the person";

(3) by striking "extends credit by making" and inserting the following: "extends credit to a person by—

"(I) making"; and

(4) by adding at the end the following:

"(II) having credit exposure to the person arising from a derivative transaction (as defined in section 5200(b) of the Revised Statutes of the United States (12 U.S.C. 84(b))), repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction between the member bank and the person.".

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect 1 year after the transfer date.

SEC. 615. LIMITATIONS ON PURCHASES OF ASSETS FROM INSIDERS.

(a) AMENDMENT TO THE FEDERAL DEPOSIT INSURANCE ACT.—Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended by adding at the end the following:

"(z) GENERAL PROHIBITION ON SALE OF ASSETS.—

"(1) IN GENERAL.—An insured depository institution may not purchase an asset from, or sell an asset to, an executive officer, director, or principal shareholder of the insured depository institution, or any related interest of such person (as

such terms are defined in section 22(h) of Federal Reserve Act), unless—

"(A) the transaction is on market terms; and

"(B) if the transaction represents more than 10 percent of the capital stock and surplus of the insured depository institution, the transaction has been approved in advance by a majority of the members of the board of directors of the insured depository institution who do not have an interest in the transaction.

"(2) RULEMAKING.—The Board of Governors of the Federal Reserve System may issue such rules as may be necessary to define terms and to carry out the purposes this subsection. Before proposing or adopting a rule under this paragraph, the Board of Governors of the Federal Reserve System shall consult with the Comptroller of the Currency and the Corporation as to the terms of the rule.".

(b) AMENDMENTS TO THE FEDERAL RESERVE ACT.—Section 22(d) of the Federal Reserve Act (12 U.S.C. 375) is amended to read as follows:

"(d) [Reserved]".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the transfer date.

SEC. 616. REGULATIONS REGARDING CAPITAL LEVELS.

(a) CAPITAL LEVELS OF BANK HOLDING COMPANIES.—Section 5(b) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(b)) is amended—

(1) by inserting after "orders" the following: ", including regulations and orders relating to the capital requirements for bank holding companies,"; and

(2) by adding at the end the following: "In establishing capital regulations pursuant to this subsection, the Board shall seek to make such requirements countercyclical, so that the amount of capital required to be maintained by a company increases in times of economic expansion and decreases in times of economic contraction, consistent with the safety and soundness of the company.".

(b) CAPITAL LEVELS OF SAVINGS AND LOAN HOLDING COMPANIES.—Section 10(g)(1) of the Home Owners' Loan Act (12 U.S.C. 1467a(g)(1)) is amended—

(1) by inserting after "orders" the following: ", including regulations and orders relating to capital requirements for savings and loan holding companies,"; and

(2) by inserting at the end the following: "In establishing capital regulations pursuant to this subsection, the appropriate Federal banking agency shall seek to make such requirements countercyclical so that the amount of capital required to be maintained by a company increases in times of economic expansion and decreases in times of economic contraction, consistent with the safety and soundness of the company.".

(c) CAPITAL LEVELS OF INSURED DEPOSITORY INSTITUTIONS.—Section 908(a)(1) of the International Lending Supervision Act of 1983 (12 U.S.C. 3907(a)(1)) is amended by adding at the end the following: "Each appropriate Federal banking agency shall seek to make the capital standards required under this section or other provisions of Federal law for insured depository institutions countercyclical so that the amount of capital required to be maintained

by an insured depository institution increases in times of economic expansion and decreases in times of economic contraction, consistent with the safety and soundness of the insured depository institution."

(d) SOURCE OF STRENGTH.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by inserting after section 38 (12 U.S.C. 1831o) the following:

"SEC. 38A. SOURCE OF STRENGTH.

"(a) HOLDING COMPANIES.—The appropriate Federal banking agency for a bank holding company or savings and loan holding company shall require the bank holding company or savings and loan holding company to serve as a source of financial strength for any subsidiary of the bank holding company or savings and loan holding company that is a depository institution.

"(b) OTHER COMPANIES.—If an insured depository institution is not the subsidiary of a bank holding company or savings and loan holding company, the appropriate Federal banking agency for the insured depository institution shall require any company that directly or indirectly controls the insured depository institution to serve as a source of financial strength for such institution.

"(c) REPORTS.—The appropriate Federal banking agency for an insured depository institution described in subsection (b) may, from time to time, require the company, or a company that directly or indirectly controls the insured depository institution, to submit a report, under oath, for the purposes of—

"(1) assessing the ability of such company to comply with the requirement under subsection (b); and

"(2) enforcing the compliance of such company with the requirement under subsection (b).

"(d) RULES.—Not later than 1 year after the transfer date, as defined in section 311 of the Enhancing Financial Institution Safety and Soundness Act of 2010, the appropriate Federal banking agencies shall jointly issue final rules to carry out this section.

"(e) DEFINITION.—In this section, the term 'source of financial strength' means the ability of a company that directly or indirectly owns or controls an insured depository institution to provide financial assistance to such insured depository institution in the event of the financial distress of the insured depository institution.".

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on the transfer date.

SEC. 617. ELIMINATION OF ELECTIVE INVESTMENT BANK HOLDING COMPANY FRAMEWORK.

(a) AMENDMENT.—Section 17 of the Securities Exchange Act of 1934 (15 U.S.C. 78q) is amended—

(1) by striking subsection (i); and

(2) by redesignating subsections (j) and (k) as subsections (i) and (j), respectively.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the transfer date.

SEC. 618. SECURITIES HOLDING COMPANIES.

(a) DEFINITIONS.—In this section—

(1) the term "associated person of a securities holding company" means a person directly or indirectly controlling, controlled by, or under common control with, a securities holding company;

(2) the term "foreign bank" has the same meaning as in section 1(b)(7) of the International Banking Act of 1978 (12 U.S.C. 3101(7));

(3) the term "insured bank" has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(4) the term "securities holding company"—

(A) means—

(i) a person (other than a natural person) that owns or controls 1 or more brokers or dealers registered with the Commission; and

(ii) the associated persons of a person described in clause (i); and

(B) does not include a person that is—

(i) a nonbank financial company supervised by the Board under title I;

(ii) an insured bank (other than an institution described in subparagraphs (D), (F), or (H) of section 2(c)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)) or a savings association;

(iii) an affiliate of an insured bank (other than an institution described in subparagraphs (D), (F), or (H) of section 2(c)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)) or an affiliate of a savings association;

(iv) a foreign bank, foreign company, or company that is described in section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a));

(v) a foreign bank that controls, directly or indirectly, a corporation chartered under section 25A of the Federal Reserve Act (12 U.S.C. 611 et seq.); or

(vi) subject to comprehensive consolidated supervision by a foreign regulator;

(5) the term "supervised securities holding company" means a securities holding company that is supervised by the Board of Governors under this section; and

(6) the terms "affiliate", "bank", "bank holding company", "company", "control", "savings association", and "subsidiary" have the same meanings as in section 2 of the Bank Holding Company Act of 1956.

(b) SUPERVISION OF A SECURITIES HOLDING COMPANY NOT HAVING A BANK OR SAVINGS ASSOCIATION AFFILIATE.—

(1) IN GENERAL.—A securities holding company that is required by a foreign regulator or provision of foreign law to be subject to comprehensive consolidated supervision may register with the Board of Governors under paragraph (2) to become a supervised securities holding company. Any securities holding company filing such a registration shall be supervised in accordance with this section, and shall comply with the rules and orders prescribed by the Board of Governors applicable to supervised securities holding companies.

(2) REGISTRATION AS A SUPERVISED SECURITIES HOLDING COMPANY.—

(A) REGISTRATION.—A securities holding company that elects to be subject to comprehensive consolidated supervision shall register by filing with the Board of Governors

such information and documents as the Board of Governors, by regulation, may prescribe as necessary or appropriate in furtherance of the purposes of this section.

(B) EFFECTIVE DATE.—A securities holding company that registers under subparagraph (A) shall be deemed to be a supervised securities holding company, effective on the date that is 45 days after the date of receipt of the registration information and documents under subparagraph (A) by the Board of Governors, or within such shorter period as the Board of Governors, by rule or order, may determine.

(c) SUPERVISION OF SECURITIES HOLDING COMPANIES.—

(1) RECORDKEEPING AND REPORTING.—

(A) RECORDKEEPING AND REPORTING REQUIRED.—Each supervised securities holding company and each affiliate of a supervised securities holding company shall make and keep for periods determined by the Board of Governors such records, furnish copies of such records, and make such reports, as the Board of Governors determines to be necessary or appropriate to carry out this section, to prevent evasions thereof, and to monitor compliance by the supervised securities holding company or affiliate with applicable provisions of law.

(B) FORM AND CONTENTS.—

(i) IN GENERAL.—Any record or report required to be made, furnished, or kept under this paragraph shall—

(I) be prepared in such form and according to such specifications (including certification by a registered public accounting firm), as the Board of Governors may require; and

(II) be provided promptly to the Board of Governors at any time, upon request by the Board of Governors.

(ii) CONTENTS.—Records and reports required to be made, furnished, or kept under this paragraph may include—

(I) a balance sheet or income statement of the supervised securities holding company or an affiliate of a supervised securities holding company;

(II) an assessment of the consolidated capital and liquidity of the supervised securities holding company;

(III) a report by an independent auditor attesting to the compliance of the supervised securities holding company with the internal risk management and internal control objectives of the supervised securities holding company; and

(IV) a report concerning the extent to which the supervised securities holding company or affiliate has complied with the provisions of this section and any regulations prescribed and orders issued under this section.

(2) USE OF EXISTING REPORTS.—

(A) IN GENERAL.—The Board of Governors shall, to the fullest extent possible, accept reports in fulfillment

of the requirements of this paragraph that a supervised securities holding company or an affiliate of a supervised securities holding company has been required to provide to another regulatory agency or a self-regulatory organization.

(B) AVAILABILITY.—A supervised securities holding company or an affiliate of a supervised securities holding company shall promptly provide to the Board of Governors, at the request of the Board of Governors, any report described in subparagraph (A), as permitted by law.

(3) EXAMINATION AUTHORITY.—

(A) FOCUS OF EXAMINATION AUTHORITY.—The Board of Governors may make examinations of any supervised securities holding company and any affiliate of a supervised securities holding company to carry out this subsection, to prevent evasions thereof, and to monitor compliance by the supervised securities holding company or affiliate with applicable provisions of law.

(B) DEFERENCE TO OTHER EXAMINATIONS.—For purposes of this subparagraph, the Board of Governors shall, to the fullest extent possible, use the reports of examination made by other appropriate Federal or State regulatory authorities with respect to any functionally regulated subsidiary or any institution described in subparagraph (D), (F), or (H) of section 2(c)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)).

(d) CAPITAL AND RISK MANAGEMENT.—

(1) IN GENERAL.—The Board of Governors shall, by regulation or order, prescribe capital adequacy and other risk management standards for supervised securities holding companies that are appropriate to protect the safety and soundness of the supervised securities holding companies and address the risks posed to financial stability by supervised securities holding companies.

(2) DIFFERENTIATION.—In imposing standards under this subsection, the Board of Governors may differentiate among supervised securities holding companies on an individual basis, or by category, taking into consideration the requirements under paragraph (3).

(3) CONTENT.—Any standards imposed on a supervised securities holding company under this subsection shall take into account—

(A) the differences among types of business activities carried out by the supervised securities holding company;

(B) the amount and nature of the financial assets of the supervised securities holding company;

(C) the amount and nature of the liabilities of the supervised securities holding company, including the degree of reliance on short-term funding;

(D) the extent and nature of the off-balance sheet exposures of the supervised securities holding company;

(E) the extent and nature of the transactions and relationships of the supervised securities holding company with other financial companies;

(F) the importance of the supervised securities holding company as a source of credit for households, businesses,

and State and local governments, and as a source of liquidity for the financial system; and

(G) the nature, scope, and mix of the activities of the supervised securities holding company.

(4) NOTICE.—A capital requirement imposed under this subsection may not take effect earlier than 180 days after the date on which a supervised securities holding company is provided notice of the capital requirement.

(e) OTHER PROVISIONS OF LAW APPLICABLE TO SUPERVISED SECURITIES HOLDING COMPANIES.—

(1) FEDERAL DEPOSIT INSURANCE ACT.—Subsections (b), (c) through (s), and (u) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) shall apply to any supervised securities holding company, and to any subsidiary (other than a bank or an institution described in subparagraph (D), (F), or (H) of section 2(c)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2))) of a supervised securities holding company, in the same manner as such subsections apply to a bank holding company for which the Board of Governors is the appropriate Federal banking agency. For purposes of applying such subsections to a supervised securities holding company or a subsidiary (other than a bank or an institution described in subparagraph (D), (F), or (H) of section 2(c)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2))) of a supervised securities holding company, the Board of Governors shall be deemed the appropriate Federal banking agency for the supervised securities holding company or subsidiary.

(2) BANK HOLDING COMPANY ACT OF 1956.—Except as the Board of Governors may otherwise provide by regulation or order, a supervised securities holding company shall be subject to the provisions of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) in the same manner and to the same extent a bank holding company is subject to such provisions, except that a supervised securities holding company may not, by reason of this paragraph, be deemed to be a bank holding company for purposes of section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843).

SEC. 619. PROHIBITIONS ON PROPRIETARY TRADING AND CERTAIN RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.

The Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) is amended by adding at the end the following:

"SEC. 13. PROHIBITIONS ON PROPRIETARY TRADING AND CERTAIN RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.

"(a) IN GENERAL.—

"(1) PROHIBITION.—Unless otherwise provided in this section, a banking entity shall not—

"(A) engage in proprietary trading; or

"(B) acquire or retain any equity, partnership, or other ownership interest in or sponsor a hedge fund or a private equity fund.

"(2) NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD.—Any nonbank financial company supervised by the Board that engages in proprietary trading or takes or retains

any equity, partnership, or other ownership interest in or sponsors a hedge fund or a private equity fund shall be subject, by rule, as provided in subsection (b)(2), to additional capital requirements for and additional quantitative limits with regards to such proprietary trading and taking or retaining any equity, partnership, or other ownership interest in or sponsorship of a hedge fund or a private equity fund, except that permitted activities as described in subsection (d) shall not be subject to the additional capital and additional quantitative limits except as provided in subsection (d)(3), as if the nonbank financial company supervised by the Board were a banking entity.

"(b) STUDY AND RULEMAKING.—

"(1) STUDY.—Not later than 6 months after the date of enactment of this section, the Financial Stability Oversight Council shall study and make recommendations on implementing the provisions of this section so as to—

"(A) promote and enhance the safety and soundness of banking entities;

"(B) protect taxpayers and consumers and enhance financial stability by minimizing the risk that insured depository institutions and the affiliates of insured depository institutions will engage in unsafe and unsound activities;

"(C) limit the inappropriate transfer of Federal subsidies from institutions that benefit from deposit insurance and liquidity facilities of the Federal Government to unregulated entities;

"(D) reduce conflicts of interest between the self-interest of banking entities and nonbank financial companies supervised by the Board, and the interests of the customers of such entities and companies;

"(E) limit activities that have caused undue risk or loss in banking entities and nonbank financial companies supervised by the Board, or that might reasonably be expected to create undue risk or loss in such banking entities and nonbank financial companies supervised by the Board;

"(F) appropriately accommodate the business of insurance within an insurance company, subject to regulation in accordance with the relevant insurance company investment laws, while protecting the safety and soundness of any banking entity with which such insurance company is affiliated and of the United States financial system; and

"(G) appropriately time the divestiture of illiquid assets that are affected by the implementation of the prohibitions under subsection (a).

"(2) RULEMAKING.—

"(A) IN GENERAL.—Unless otherwise provided in this section, not later than 9 months after the completion of the study under paragraph (1), the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission, shall consider the findings of the study under paragraph (1) and adopt rules to carry out this section, as provided in subparagraph (B).

"(B) COORDINATED RULEMAKING.—

"(i) REGULATORY AUTHORITY.—The regulations issued under this paragraph shall be issued by—

"(I) the appropriate Federal banking agencies, jointly, with respect to insured depository institutions;

"(II) the Board, with respect to any company that controls an insured depository institution, or that is treated as a bank holding company for purposes of section 8 of the International Banking Act, any nonbank financial company supervised by the Board, and any subsidiary of any of the foregoing (other than a subsidiary for which an agency described in subclause (I), (III), or (IV) is the primary financial regulatory agency);

"(III) the Commodity Futures Trading Commission, with respect to any entity for which the Commodity Futures Trading Commission is the primary financial regulatory agency, as defined in section 2 of the Dodd-Frank Wall Street Reform and Consumer Protection Act; and

"(IV) the Securities and Exchange Commission, with respect to any entity for which the Securities and Exchange Commission is the primary financial regulatory agency, as defined in section 2 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

"(ii) COORDINATION, CONSISTENCY, AND COMPARABILITY.—In developing and issuing regulations pursuant to this section, the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall consult and coordinate with each other, as appropriate, for the purposes of assuring, to the extent possible, that such regulations are comparable and provide for consistent application and implementation of the applicable provisions of this section to avoid providing advantages or imposing disadvantages to the companies affected by this subsection and to protect the safety and soundness of banking entities and nonbank financial companies supervised by the Board.

"(iii) COUNCIL ROLE.—The Chairperson of the Financial Stability Oversight Council shall be responsible for coordination of the regulations issued under this section.

"(c) EFFECTIVE DATE.—

"(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), this section shall take effect on the earlier of—

"(A) 12 months after the date of the issuance of final rules under subsection (b); or

"(B) 2 years after the date of enactment of this section.

"(2) CONFORMANCE PERIOD FOR DIVESTITURE.—A banking entity or nonbank financial company supervised by the Board shall bring its activities and investments into compliance with the requirements of this section not later than 2 years after the date on which the requirements become effective pursuant

to this section or 2 years after the date on which the entity or company becomes a nonbank financial company supervised by the Board. The Board may, by rule or order, extend this two-year period for not more than one year at a time, if, in the judgment of the Board, such an extension is consistent with the purposes of this section and would not be detrimental to the public interest. The extensions made by the Board under the preceding sentence may not exceed an aggregate of 3 years.

"(3) EXTENDED TRANSITION FOR ILLIQUID FUNDS.—

"(A) APPLICATION.—The Board may, upon the application of a banking entity, extend the period during which the banking entity, to the extent necessary to fulfill a contractual obligation that was in effect on May 1, 2010, may take or retain its equity, partnership, or other ownership interest in, or otherwise provide additional capital to, an illiquid fund.

"(B) TIME LIMIT ON APPROVAL.—The Board may grant 1 extension under subparagraph (A), which may not exceed 5 years.

"(4) DIVESTITURE REQUIRED.—Except as otherwise provided in subsection (d)(1)(G), a banking entity may not engage in any activity prohibited under subsection (a)(1)(B) after the earlier of—

"(A) the date on which the contractual obligation to invest in the illiquid fund terminates; and

"(B) the date on which any extensions granted by the Board under paragraph (3) expire.

"(5) ADDITIONAL CAPITAL DURING TRANSITION PERIOD.—Notwithstanding paragraph (2), on the date on which the rules are issued under subsection (b)(2), the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall issue rules, as provided in subsection (b)(2), to impose additional capital requirements, and any other restrictions, as appropriate, on any equity, partnership, or ownership interest in or sponsorship of a hedge fund or private equity fund by a banking entity.

"(6) SPECIAL RULEMAKING.—Not later than 6 months after the date of enactment of this section, the Board shall issues rules to implement paragraphs (2) and (3).

"(d) PERMITTED ACTIVITIES.—

"(1) IN GENERAL.—Notwithstanding the restrictions under subsection (a), to the extent permitted by any other provision of Federal or State law, and subject to the limitations under paragraph (2) and any restrictions or limitations that the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission, may determine, the following activities (in this section referred to as 'permitted activities') are permitted:

"(A) The purchase, sale, acquisition, or disposition of obligations of the United States or any agency thereof, obligations, participations, or other instruments of or issued by the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, a Federal Home Loan Bank, the Federal Agricultural Mortgage Corporation, or a Farm Credit System institution chartered under and subject to

the provisions of the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.), and obligations of any State or of any political subdivision thereof.

"(B) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) in connection with underwriting or market-making-related activities, to the extent that any such activities permitted by this subparagraph are designed not to exceed the reasonably expected near term demands of clients, customers, or counterparties.

"(C) Risk-mitigating hedging activities in connection with and related to individual or aggregated positions, contracts, or other holdings of a banking entity that are designed to reduce the specific risks to the banking entity in connection with and related to such positions, contracts, or other holdings.

"(D) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) on behalf of customers.

"(E) Investments in one or more small business investment companies, as defined in section 102 of the Small Business Investment Act of 1958 (15 U.S.C. 662), investments designed primarily to promote the public welfare, of the type permitted under paragraph (11) of section 5136 of the Revised Statutes of the United States (12 U.S.C. 24), or investments that are qualified rehabilitation expenditures with respect to a qualified rehabilitated building or certified historic structure, as such terms are defined in section 47 of the Internal Revenue Code of 1986 or a similar State historic tax credit program.

"(F) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) by a regulated insurance company directly engaged in the business of insurance for the general account of the company and by any affiliate of such regulated insurance company, provided that such activities by any affiliate are solely for the general account of the regulated insurance company, if—

"(i) the purchase, sale, acquisition, or disposition is conducted in compliance with, and subject to, the insurance company investment laws, regulations, and written guidance of the State or jurisdiction in which each such insurance company is domiciled; and

"(ii) the appropriate Federal banking agencies, after consultation with the Financial Stability Oversight Council and the relevant insurance commissioners of the States and territories of the United States, have not jointly determined, after notice and comment, that a particular law, regulation, or written guidance described in clause (i) is insufficient to protect the safety and soundness of the banking entity, or of the financial stability of the United States.

"(G) Organizing and offering a private equity or hedge fund, including serving as a general partner, managing member, or trustee of the fund and in any manner selecting or controlling (or having employees, officers, directors, or agents who constitute) a majority of the directors, trustees,

or management of the fund, including any necessary expenses for the foregoing, only if—

"(i) the banking entity provides bona fide trust, fiduciary, or investment advisory services;

"(ii) the fund is organized and offered only in connection with the provision of bona fide trust, fiduciary, or investment advisory services and only to persons that are customers of such services of the banking entity;

"(iii) the banking entity does not acquire or retain an equity interest, partnership interest, or other ownership interest in the funds except for a de minimis investment subject to and in compliance with paragraph (4);

"(iv) the banking entity complies with the restrictions under paragraphs (1) and (2) of subparagraph (f);

"(v) the banking entity does not, directly or indirectly, guarantee, assume, or otherwise insure the obligations or performance of the hedge fund or private equity fund or of any hedge fund or private equity fund in which such hedge fund or private equity fund invests;

"(vi) the banking entity does not share with the hedge fund or private equity fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name;

"(vii) no director or employee of the banking entity takes or retains an equity interest, partnership interest, or other ownership interest in the hedge fund or private equity fund, except for any director or employee of the banking entity who is directly engaged in providing investment advisory or other services to the hedge fund or private equity fund; and

"(viii) the banking entity discloses to prospective and actual investors in the fund, in writing, that any losses in such hedge fund or private equity fund are borne solely by investors in the fund and not by the banking entity, and otherwise complies with any additional rules of the appropriate Federal banking agencies, the Securities and Exchange Commission, or the Commodity Futures Trading Commission, as provided in subsection (b)(2), designed to ensure that losses in such hedge fund or private equity fund are borne solely by investors in the fund and not by the banking entity.

"(H) Proprietary trading conducted by a banking entity pursuant to paragraph (9) or (13) of section 4(c), provided that the trading occurs solely outside of the United States and that the banking entity is not directly or indirectly controlled by a banking entity that is organized under the laws of the United States or of one or more States.

"(I) The acquisition or retention of any equity, partnership, or other ownership interest in, or the sponsorship of, a hedge fund or a private equity fund by a banking entity pursuant to paragraph (9) or (13) of section 4(c)

solely outside of the United States, provided that no ownership interest in such hedge fund or private equity fund is offered for sale or sold to a resident of the United States and that the banking entity is not directly or indirectly controlled by a banking entity that is organized under the laws of the United States or of one or more States.

"(J) Such other activity as the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission determine, by rule, as provided in subsection (b)(2), would promote and protect the safety and soundness of the banking entity and the financial stability of the United States.

"(2) LIMITATION ON PERMITTED ACTIVITIES.—

"(A) IN GENERAL.—No transaction, class of transactions, or activity may be deemed a permitted activity under paragraph (1) if the transaction, class of transactions, or activity—

"(i) would involve or result in a material conflict of interest (as such term shall be defined by rule as provided in subsection (b)(2)) between the banking entity and its clients, customers, or counterparties;

"(ii) would result, directly or indirectly, in a material exposure by the banking entity to high-risk assets or high-risk trading strategies (as such terms shall be defined by rule as provided in subsection (b)(2));

"(iii) would pose a threat to the safety and soundness of such banking entity; or

"(iv) would pose a threat to the financial stability of the United States.

"(B) RULEMAKING.—The appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall issue regulations to implement subparagraph (A), as part of the regulations issued under subsection (b)(2).

"(3) CAPITAL AND QUANTITATIVE LIMITATIONS.—The appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall, as provided in subsection (b)(2), adopt rules imposing additional capital requirements and quantitative limitations, including diversification requirements, regarding the activities permitted under this section if the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission determine that additional capital and quantitative limitations are appropriate to protect the safety and soundness of banking entities engaged in such activities.

"(4) DE MINIMIS INVESTMENT.—

"(A) IN GENERAL.—A banking entity may make and retain an investment in a hedge fund or private equity fund that the banking entity organizes and offers, subject to the limitations and restrictions in subparagraph (B) for the purposes of—

"(i) establishing the fund and providing the fund with sufficient initial equity for investment to permit the fund to attract unaffiliated investors; or

"(ii) making a de minimis investment.

"(B) LIMITATIONS AND RESTRICTIONS ON INVESTMENTS.—

"(i) REQUIREMENT TO SEEK OTHER INVESTORS.—A banking entity shall actively seek unaffiliated investors to reduce or dilute the investment of the banking entity to the amount permitted under clause (ii).

"(ii) LIMITATIONS ON SIZE OF INVESTMENTS.—Notwithstanding any other provision of law, investments by a banking entity in a hedge fund or private equity fund shall—

"(I) not later than 1 year after the date of establishment of the fund, be reduced through redemption, sale, or dilution to an amount that is not more than 3 percent of the total ownership interests of the fund;

"(II) be immaterial to the banking entity, as defined, by rule, pursuant to subsection (b)(2), but in no case may the aggregate of all of the interests of the banking entity in all such funds exceed 3 percent of the Tier 1 capital of the banking entity.

"(iii) CAPITAL.—For purposes of determining compliance with applicable capital standards under paragraph (3), the aggregate amount of the outstanding investments by a banking entity under this paragraph, including retained earnings, shall be deducted from the assets and tangible equity of the banking entity, and the amount of the deduction shall increase commensurate with the leverage of the hedge fund or private equity fund.

"(C) EXTENSION.—Upon an application by a banking entity, the Board may extend the period of time to meet the requirements under subparagraph (B)(ii)(I) for 2 additional years, if the Board finds that an extension would be consistent with safety and soundness and in the public interest.

"(e) ANTI-EVASION.—

"(1) RULEMAKING.—The appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall issue regulations, as part of the rulemaking provided for in subsection (b)(2), regarding internal controls and recordkeeping, in order to insure compliance with this section.

"(2) TERMINATION OF ACTIVITIES OR INVESTMENT.—Notwithstanding any other provision of law, whenever an appropriate Federal banking agency, the Securities and Exchange Commission, or the Commodity Futures Trading Commission, as appropriate, has reasonable cause to believe that a banking entity or nonbank financial company supervised by the Board under the respective agency's jurisdiction has made an investment or engaged in an activity in a manner that functions as an evasion of the requirements of this section (including through an abuse of any permitted activity) or otherwise violates the restrictions under this section, the appropriate Federal banking agency, the Securities and Exchange Commission, or the Commodity Futures Trading Commission, as appropriate, shall

order, after due notice and opportunity for hearing, the banking entity or nonbank financial company supervised by the Board to terminate the activity and, as relevant, dispose of the investment. Nothing in this paragraph shall be construed to limit the inherent authority of any Federal agency or State regulatory authority to further restrict any investments or activities under otherwise applicable provisions of law.

"(f) LIMITATIONS ON RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.—

"(1) IN GENERAL.—No banking entity that serves, directly or indirectly, as the investment manager, investment adviser, or sponsor to a hedge fund or private equity fund, or that organizes and offers a hedge fund or private equity fund pursuant to paragraph (d)(1)(G), and no affiliate of such entity, may enter into a transaction with the fund, or with any other hedge fund or private equity fund that is controlled by such fund, that would be a covered transaction, as defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c), with the hedge fund or private equity fund, as if such banking entity and the affiliate thereof were a member bank and the hedge fund or private equity fund were an affiliate thereof.

"(2) TREATMENT AS MEMBER BANK.—A banking entity that serves, directly or indirectly, as the investment manager, investment adviser, or sponsor to a hedge fund or private equity fund, or that organizes and offers a hedge fund or private equity fund pursuant to paragraph (d)(1)(G), shall be subject to section 23B of the Federal Reserve Act (12 U.S.C. 371c–1), as if such banking entity were a member bank and such hedge fund or private equity fund were an affiliate thereof.

"(3) PERMITTED SERVICES.—

"(A) IN GENERAL.—Notwithstanding paragraph (1), the Board may permit a banking entity to enter into any prime brokerage transaction with any hedge fund or private equity fund in which a hedge fund or private equity fund managed, sponsored, or advised by such banking entity has taken an equity, partnership, or other ownership interest, if—

"(i) the banking entity is in compliance with each of the limitations set forth in subsection (d)(1)(G) with regard to a hedge fund or private equity fund organized and offered by such banking entity;

"(ii) the chief executive officer (or equivalent officer) of the banking entity certifies in writing annually (with a duty to update the certification if the information in the certification materially changes) that the conditions specified in subsection (d)(1)(g)(v) are satisfied; and

"(iii) the Board has determined that such transaction is consistent with the safe and sound operation and condition of the banking entity.

"(B) TREATMENT OF PRIME BROKERAGE TRANSACTIONS.—For purposes of subparagraph (A), a prime brokerage transaction described in subparagraph (A) shall be subject to section 23B of the Federal Reserve Act (12 U.S.C. 371c-1) as if the counterparty were an affiliate of the banking entity.

"(4) APPLICATION TO NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD.—The appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall adopt rules, as provided in subsection (b)(2), imposing additional capital charges or other restrictions for nonbank financial companies supervised by the Board to address the risks to and conflicts of interest of banking entities described in paragraphs (1), (2), and (3) of this subsection.

"(g) RULES OF CONSTRUCTION.—

"(1) LIMITATION ON CONTRARY AUTHORITY.—Except as provided in this section, notwithstanding any other provision of law, the prohibitions and restrictions under this section shall apply to activities of a banking entity or nonbank financial company supervised by the Board, even if such activities are authorized for a banking entity or nonbank financial company supervised by the Board.

"(2) SALE OR SECURITIZATION OF LOANS.—Nothing in this section shall be construed to limit or restrict the ability of a banking entity or nonbank financial company supervised by the Board to sell or securitize loans in a manner otherwise permitted by law.

"(3) AUTHORITY OF FEDERAL AGENCIES AND STATE REGULATORY AUTHORITIES.—Nothing in this section shall be construed to limit the inherent authority of any Federal agency or State regulatory authority under otherwise applicable provisions of law.

"(h) DEFINITIONS.—In this section, the following definitions shall apply:

"(1) BANKING ENTITY.—The term 'banking entity' means any insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)), any company that controls an insured depository institution, or that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978, and any affiliate or subsidiary of any such entity. For purposes of this paragraph, the term 'insured depository institution' does not include an institution that functions solely in a trust or fiduciary capacity, if—

"(A) all or substantially all of the deposits of such institution are in trust funds and are received in a bona fide fiduciary capacity;

"(B) no deposits of such institution which are insured by the Federal Deposit Insurance Corporation are offered or marketed by or through an affiliate of such institution;

"(C) such institution does not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others or make commercial loans; and

"(D) such institution does not—

"(i) obtain payment or payment related services from any Federal Reserve bank, including any service referred to in section 11A of the Federal Reserve Act (12 U.S.C. 248a); or

"(ii) exercise discount or borrowing privileges pursuant to section 19(b)(7) of the Federal Reserve Act (12 U.S.C. 461(b)(7)).

"(2) HEDGE FUND; PRIVATE EQUITY FUND.—The terms 'hedge fund' and 'private equity fund' mean an issuer that would be an investment company, as defined in the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.), but for section 3(c)(1) or 3(c)(7) of that Act, or such similar funds as the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission may, by rule, as provided in subsection (b)(2), determine.

"(3) NONBANK FINANCIAL COMPANY SUPERVISED BY THE BOARD.—The term 'nonbank financial company supervised by the Board' means a nonbank financial company supervised by the Board of Governors, as defined in section 102 of the Financial Stability Act of 2010.

"(4) PROPRIETARY TRADING.—The term 'proprietary trading', when used with respect to a banking entity or nonbank financial company supervised by the Board, means engaging as a principal for the trading account of the banking entity or nonbank financial company supervised by the Board in any transaction to purchase or sell, or otherwise acquire or dispose of, any security, any derivative, any contract of sale of a commodity for future delivery, any option on any such security, derivative, or contract, or any other security or financial instrument that the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission may, by rule as provided in subsection (b)(2), determine.

"(5) SPONSOR.—The term to 'sponsor' a fund means—

"(A) to serve as a general partner, managing member, or trustee of a fund;

"(B) in any manner to select or to control (or to have employees, officers, or directors, or agents who constitute) a majority of the directors, trustees, or management of a fund; or

"(C) to share with a fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name.

"(6) TRADING ACCOUNT.—The term 'trading account' means any account used for acquiring or taking positions in the securities and instruments described in paragraph (4) principally for the purpose of selling in the near term (or otherwise with the intent to resell in order to profit from short-term price movements), and any such other accounts as the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission may, by rule as provided in subsection (b)(2), determine.

"(7) ILLIQUID FUND.—

"(A) IN GENERAL.—The term 'illiquid fund' means a hedge fund or private equity fund that—

"(i) as of May 1, 2010, was principally invested in, or was invested and contractually committed to principally invest in, illiquid assets, such as portfolio companies, real estate investments, and venture capital investments; and

"(ii) makes all investments pursuant to, and consistent with, an investment strategy to principally invest in illiquid assets. In issuing rules regarding

this subparagraph, the Board shall take into consideration the terms of investment for the hedge fund or private equity fund, including contractual obligations, the ability of the fund to divest of assets held by the fund, and any other factors that the Board determines are appropriate.

"(B) HEDGE FUND.—For the purposes of this paragraph, the term 'hedge fund' means any fund identified under subsection (h)(2), and does not include a private equity fund, as such term is used in section 203(m) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(m))."

SEC. 620. STUDY OF BANK INVESTMENT ACTIVITIES.

(a) STUDY.—

(1) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, the appropriate Federal banking agencies shall jointly review and prepare a report on the activities that a banking entity, as such term is defined in the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et. seq.), may engage in under Federal and State law, including activities authorized by statute and by order, interpretation and guidance.

(2) CONTENT.—In carrying out the study under paragraph (1), the appropriate Federal banking agencies shall review and consider—

(A) the type of activities or investments;

(B) any financial, operational, managerial, or reputation risks associated with or presented as a result of the banking entity engaged in the activity or making the investment; and

(C) risk mitigation activities undertaken by the banking entity with regard to the risks.

(b) REPORT AND RECOMMENDATIONS TO THE COUNCIL AND TO CONGRESS.—The appropriate Federal banking agencies shall submit to the Council, the Committee on Financial Services of the House of Representatives, and the Committee on Banking, Housing, and Urban Affairs of the Senate the study conducted pursuant to subsection (a) no later than 2 months after its completion. In addition to the information described in subsection (a), the report shall include recommendations regarding—

(1) whether each activity or investment has or could have a negative effect on the safety and soundness of the banking entity or the United States financial system;

(2) the appropriateness of the conduct of each activity or type of investment by banking entities; and

(3) additional restrictions as may be necessary to address risks to safety and soundness arising from the activities or types of investments described in subsection (a).

SEC. 621. CONFLICTS OF INTEREST.

(a) IN GENERAL.—The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended by inserting after section 27A the following:

"SEC. 27B. CONFLICTS OF INTEREST RELATING TO CERTAIN SECURITIZATIONS.

"(a) IN GENERAL.—An underwriter, placement agent, initial purchaser, or sponsor, or any affiliate or subsidiary of any such entity, of an asset-backed security (as such term is defined in

section 3 of the Securities and Exchange Act of 1934 (15 U.S.C. 78c), which for the purposes of this section shall include a synthetic asset-backed security), shall not, at any time for a period ending on the date that is one year after the date of the first closing of the sale of the asset-backed security, engage in any transaction that would involve or result in any material conflict of interest with respect to any investor in a transaction arising out of such activity.

"(b) RULEMAKING.—Not later than 270 days after the date of enactment of this section, the Commission shall issue rules for the purpose of implementing subsection (a).

"(c) EXCEPTION.—The prohibitions of subsection (a) shall not apply to—

"(1) risk-mitigating hedging activities in connection with positions or holdings arising out of the underwriting, placement, initial purchase, or sponsorship of an asset-backed security, provided that such activities are designed to reduce the specific risks to the underwriter, placement agent, initial purchaser, or sponsor associated with positions or holdings arising out of such underwriting, placement, initial purchase, or sponsorship; or

"(2) purchases or sales of asset-backed securities made pursuant to and consistent with—

"(A) commitments of the underwriter, placement agent, initial purchaser, or sponsor, or any affiliate or subsidiary of any such entity, to provide liquidity for the asset-backed security, or

"(B) bona fide market-making in the asset backed security.

"(d) RULE OF CONSTRUCTION.—This subsection shall not otherwise limit the application of section 15G of the Securities Exchange Act of 1934.".

(b) EFFECTIVE DATE.—Section 27B of the Securities Act of 1933, as added by this section, shall take effect on the effective date of final rules issued by the Commission under subsection (b) of such section 27B, except that subsections (b) and (d) of such section 27B shall take effect on the date of enactment of this Act.

SEC. 622. CONCENTRATION LIMITS ON LARGE FINANCIAL FIRMS.

The Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) is amended by adding at the end the following:

"SEC. 14. CONCENTRATION LIMITS ON LARGE FINANCIAL FIRMS.

"(a) DEFINITIONS.—In this section—

"(1) the term 'Council' means the Financial Stability Oversight Council;

"(2) the term 'financial company' means—

"(A) an insured depository institution;

"(B) a bank holding company;

"(C) a savings and loan holding company;

"(D) a company that controls an insured depository institution;

"(E) a nonbank financial company supervised by the Board under title I of the Dodd-Frank Wall Street Reform and Consumer Protection Act; and

"(F) a foreign bank or company that is treated as a bank holding company for purposes of this Act; and

"(3) the term 'liabilities' means—

"(A) with respect to a United States financial company—

"(i) the total risk-weighted assets of the financial company, as determined under the risk-based capital rules applicable to bank holding companies, as adjusted to reflect exposures that are deducted from regulatory capital; less

"(ii) the total regulatory capital of the financial company under the risk-based capital rules applicable to bank holding companies;

"(B) with respect to a foreign-based financial company—

"(i) the total risk-weighted assets of the United States operations of the financial company, as determined under the applicable risk-based capital rules, as adjusted to reflect exposures that are deducted from regulatory capital; less

"(ii) the total regulatory capital of the United States operations of the financial company, as determined under the applicable risk-based capital rules; and

"(C) with respect to an insurance company or other nonbank financial company supervised by the Board, such assets of the company as the Board shall specify by rule, in order to provide for consistent and equitable treatment of such companies.

"(b) CONCENTRATION LIMIT.—Subject to the recommendations by the Council under subsection (e), a financial company may not merge or consolidate with, acquire all or substantially all of the assets of, or otherwise acquire control of, another company, if the total consolidated liabilities of the acquiring financial company upon consummation of the transaction would exceed 10 percent of the aggregate consolidated liabilities of all financial companies at the end of the calendar year preceding the transaction.

"(c) EXCEPTION TO CONCENTRATION LIMIT.—With the prior written consent of the Board, the concentration limit under subsection (b) shall not apply to an acquisition—

"(1) of a bank in default or in danger of default;

"(2) with respect to which assistance is provided by the Federal Deposit Insurance Corporation under section 13(c) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)); or

"(3) that would result only in a de minimis increase in the liabilities of the financial company.

"(d) RULEMAKING AND GUIDANCE.—The Board shall issue regulations implementing this section in accordance with the recommendations of the Council under subsection (e), including the definition of terms, as necessary. The Board may issue interpretations or guidance regarding the application of this section to an individual financial company or to financial companies in general.

"(e) COUNCIL STUDY AND RULEMAKING.—

"(1) STUDY AND RECOMMENDATIONS.—Not later than 6 months after the date of enactment of this section, the Council shall—

"(A) complete a study of the extent to which the concentration limit under this section would affect financial stability, moral hazard in the financial system, the efficiency and competitiveness of United States financial firms

and financial markets, and the cost and availability of credit and other financial services to households and businesses in the United States; and

"(B) make recommendations regarding any modifications to the concentration limit that the Council determines would more effectively implement this section.

"(2) RULEMAKING.—Not later than 9 months after the date of completion of the study under paragraph (1), and notwithstanding subsections (b) and (d), the Board shall issue final regulations implementing this section, which shall reflect any recommendations by the Council under paragraph (1)(B).".

SEC. 623. INTERSTATE MERGER TRANSACTIONS.

(a) INTERSTATE MERGER TRANSACTIONS.—Section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)) is amended by adding at the end the following:

"(13)(A) Except as provided in subparagraph (B), the responsible agency may not approve an application for an interstate merger transaction if the resulting insured depository institution (including all insured depository institutions which are affiliates of the resulting insured depository institution), upon consummation of the transaction, would control more than 10 percent of the total amount of deposits of insured depository institutions in the United States.

"(B) Subparagraph (A) shall not apply to an interstate merger transaction that involves 1 or more insured depository institutions in default or in danger of default, or with respect to which the Corporation provides assistance under section 13.

"(C) In this paragraph—

"(i) the term 'interstate merger transaction' means a merger transaction involving 2 or more insured depository institutions that have different home States and that are not affiliates; and

"(ii) the term 'home State' means—

"(I) with respect to a national bank, the State in which the main office of the bank is located;

"(II) with respect to a State bank or State savings association, the State by which the State bank or State savings association is chartered; and

"(III) with respect to a Federal savings association, the State in which the home office (as defined by the regulations of the Director of the Office of Thrift Supervision, or, on and after the transfer date, the Comptroller of the Currency) of the Federal savings association is located.".

(b) ACQUISITIONS BY BANK HOLDING COMPANIES.—

(1) IN GENERAL.—Section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843) is amended—

(A) in subsection (i), by adding at the end the following:

"(8) INTERSTATE ACQUISITIONS.—

"(A) IN GENERAL.—The Board may not approve an application by a bank holding company to acquire an insured depository institution under subsection (c)(8) or any other provision of this Act if—

"(i) the home State of such insured depository institution is a State other than the home State of the bank holding company; and

"(ii) the applicant (including all insured depository institutions which are affiliates of the applicant) controls, or upon consummation of the transaction would control, more than 10 percent of the total amount of deposits of insured depository institutions in the United States.

"(B) EXCEPTION.—Subparagraph (A) shall not apply to an acquisition that involves an insured depository institution in default or in danger of default, or with respect to which the Federal Deposit Insurance Corporation provides assistance under section 13 of the Federal Deposit Insurance Act (12 U.S.C. 1823).''; and

(B) in subsection (k)(6)(B), by striking "savings association" and inserting "insured depository institution".

(2) DEFINITIONS.—Section 2(o)(4) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(o)(4)) is amended—

(A) in subparagraph (B), by striking "and" at the end;

(B) in subparagraph (C)(ii), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following:

"(D) with respect to a State savings association, the State by which the savings association is chartered; and

"(E) with respect to a Federal savings association, the State in which the home office (as defined by the regulations of the Director of the Office of Thrift Supervision, or, on and after the transfer date, the Comptroller of the Currency) of the Federal savings association is located.".

(c) ACQUISITIONS BY SAVINGS AND LOAN HOLDING COMPANIES.—Section 10(e)(2) of the Home Owners' Loan Act (12 U.S.C. 1467a(e)(2)) is amended—

(1) in paragraph (2)—

(A) in subparagraph (C), by striking "or" at the end;

(B) in subparagraph (D), by striking the period at the end and inserting ", or"; and

(C) by adding at the end the following:

"(E) in the case of an application by a savings and loan holding company to acquire an insured depository institution, if—

"(i) the home State of the insured depository institution is a State other than the home State of the savings and loan holding company;

"(ii) the applicant (including all insured depository institutions which are affiliates of the applicant) controls, or upon consummation of the transaction would control, more than 10 percent of the total amount of deposits of insured depository institutions in the United States; and

"(iii) the acquisition does not involve an insured depository institution in default or in danger of default, or with respect to which the Federal Deposit Insurance Corporation provides assistance under section 13 of the Federal Deposit Insurance Act (12 U.S.C. 1823).''; and

(2) by adding at the end the following:

"(7) DEFINITIONS.—For purposes of paragraph (2)(E)—

"(A) the terms 'default', 'in danger of default', and 'insured depository institution' have the same meanings

as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813); and

"(B) the term 'home State' means—

"(i) with respect to a national bank, the State in which the main office of the bank is located;

"(ii) with respect to a State bank or State savings association, the State by which the savings association is chartered;

"(iii) with respect to a Federal savings association, the State in which the home office (as defined by the regulations of the Director of the Office of Thrift Supervision, or, on and after the transfer date, the Comptroller of the Currency) of the Federal savings association is located; and

"(iv) with respect to a savings and loan holding company, the State in which the amount of total deposits of all insured depository institution subsidiaries of such company was the greatest on the date on which the company became a savings and loan holding company.".

SEC. 624. QUALIFIED THRIFT LENDERS.

Section 10(m)(3) of the Home Owners' Loan Act (12 U.S.C. 1467a(m)(3)) is amended—

(1) by striking subparagraph (A) and inserting the following:

"(A) IN GENERAL.—A savings association that fails to become or remain a qualified thrift lender shall immediately be subject to the restrictions under subparagraph (B).."; and

(2) in subparagraph (B)(i), by striking subclause (III) and inserting the following:

"(III) DIVIDENDS.—The savings association may not pay dividends, except for dividends that—

"(aa) would be permissible for a national bank;

"(bb) are necessary to meet obligations of a company that controls such savings association; and

"(cc) are specifically approved by the Comptroller of the Currency and the Board after a written request submitted to the Comptroller of the Currency and the Board by the savings association not later than 30 days before the date of the proposed payment.

"(IV) REGULATORY AUTHORITY.—A savings association that fails to become or remain a qualified thrift lender shall be deemed to have violated section 5 of the Home Owners' Loan Act (12 U.S.C. 1464) and subject to actions authorized by section 5(d) of the Home Owners' Loan Act (12 U.S.C. 1464(d)).".

SEC. 625. TREATMENT OF DIVIDENDS BY CERTAIN MUTUAL HOLDING COMPANIES.

(a) IN GENERAL.—Section 10(o) of the Home Owners' Loan Act (12 U.S.C. 1467a(o) is amended by adding at the end the following:

"(11) DIVIDENDS.—

"(A) DECLARATION OF DIVIDENDS.—

"(i) ADVANCE NOTICE REQUIRED.—Each subsidiary of a mutual holding company that is a savings association shall give the appropriate Federal banking agency and the Board notice not later than 30 days before the date of a proposed declaration by the board of directors of the savings association of any dividend on the guaranty, permanent, or other nonwithdrawable stock of the savings association.

"(ii) INVALID DIVIDENDS.—Any dividend described in clause (i) that is declared without giving notice to the appropriate Federal banking agency and the Board under clause (i), or that is declared during the 30-day period preceding the date of a proposed declaration for which notice is given to the appropriate Federal banking agency and the Board under clause (i), shall be invalid and shall confer no rights or benefits upon the holder of any such stock.

"(B) WAIVER OF DIVIDENDS.—A mutual holding company may waive the right to receive any dividend declared by a subsidiary of the mutual holding company, if—

"(i) no insider of the mutual holding company, associate of an insider, or tax-qualified or non-tax-qualified employee stock benefit plan of the mutual holding company holds any share of the stock in the class of stock to which the waiver would apply; or

"(ii) the mutual holding company gives written notice to the Board of the intent of the mutual holding company to waive the right to receive dividends, not later than 30 days before the date of the proposed date of payment of the dividend, and the Board does not object to the waiver.

"(C) RESOLUTION INCLUDED IN WAIVER NOTICE.—A notice of a waiver under subparagraph (B) shall include a copy of the resolution of the board of directors of the mutual holding company, in such form and substance as the Board may determine, together with any supporting materials relied upon by the board of directors of the mutual holding company, concluding that the proposed dividend waiver is consistent with the fiduciary duties of the board of directors to the mutual members of the mutual holding company.

"(D) STANDARDS FOR WAIVER OF DIVIDEND.—The Board may not object to a waiver of dividends under subparagraph (B) if—

"(i) the waiver would not be detrimental to the safe and sound operation of the savings association;

"(ii) the board of directors of the mutual holding company expressly determines that a waiver of the dividend by the mutual holding company is consistent with the fiduciary duties of the board of directors to the mutual members of the mutual holding company; and

"(iii) the mutual holding company has, prior to December 1, 2009—

"(I) reorganized into a mutual holding company under subsection (o);

"(II) issued minority stock either from its mid-tier stock holding company or its subsidiary stock savings association; and

"(III) waived dividends it had a right to receive from the subsidiary stock savings association.

"(E) VALUATION.—

"(i) IN GENERAL.—The appropriate Federal banking agency shall consider waived dividends in determining an appropriate exchange ratio in the event of a full conversion to stock form.

"(ii) EXCEPTION.—In the case of a savings association that has reorganized into a mutual holding company, has issued minority stock from a mid-tier stock holding company or a subsidiary stock savings association of the mutual holding company, and has waived dividends it had a right to receive from a subsidiary savings association before December 1, 2009, the appropriate Federal banking agency shall not consider waived dividends in determining an appropriate exchange ratio in the event of a full conversion to stock form.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the transfer date.

SEC. 626. INTERMEDIATE HOLDING COMPANIES.

The Home Owners' Loan Act (12 U.S.C. 1461 et seq.) is amended by inserting after section 10 (12 U.S.C. 1467a) the following new section:

"SEC. 10A. INTERMEDIATE HOLDING COMPANIES.

"(a) DEFINITION.—For purposes of this section:

"(1) FINANCIAL ACTIVITIES.—The term 'financial activities' means activities described in clauses (i) and (ii) of section 10(c)(9)(A).

"(2) GRANDFATHERED UNITARY SAVINGS AND LOAN HOLDING COMPANY.—The term 'grandfathered unitary savings and loan holding company' means a company described in section 10(c)(9)(C).

"(3) INTERNAL FINANCIAL ACTIVITIES.—The term 'internal financial activities' includes—

"(A) internal financial activities conducted by a grandfathered savings and loan holding company or any affiliate; and

"(B) internal treasury, investment, and employee benefit functions.

"(b) REQUIREMENT.—

"(1) IN GENERAL.—

"(A) ACTIVITIES OTHER THAN FINANCIAL ACTIVITIES.—If a grandfathered unitary savings and loan holding company conducts activities other than financial activities, the Board may require such company to establish and conduct all or a portion of such financial activities in or through an intermediate holding company, which shall be a savings and loan holding company, established pursuant to regulations of the Board, not later than 90 days (or such longer

period as the Board may deem appropriate) after the transfer date.

"(B) OTHER ACTIVITIES.—Notwithstanding subparagraph (A), the Board shall require a grandfathered unitary savings and loan holding company to establish an intermediate holding company if the Board makes a determination that the establishment of such intermediate holding company is necessary—

"(i) to appropriately supervise activities that are determined to be financial activities; or

"(ii) to ensure that supervision by the Board does not extend to the activities of such company that are not financial activities.

"(2) INTERNAL FINANCIAL ACTIVITIES.—

"(A) TREATMENT OF INTERNAL FINANCIAL ACTIVITIES.—For purposes of this subsection, the internal financial activities of a grandfathered unitary savings and loan holding company shall not be required to be placed in an intermediate holding company.

"(B) GRANDFATHERED ACTIVITIES.—A grandfathered unitary savings and loan holding company may continue to engage in an internal financial activity, subject to review by the Board to determine whether engaging in such activity presents undue risk to the grandfathered unitary savings and loan holding company or to the financial stability of the United States, if—

"(i) the grandfathered unitary savings and loan holding company engaged in the activity during the year before the date of enactment of this section; and

"(ii) at least ⅔ of the assets or ⅔ of the revenues generated from the activity are from or attributable to the grandfathered unitary savings and loan holding company.

"(3) SOURCE OF STRENGTH.—A grandfathered unitary savings and loan holding company that directly or indirectly controls an intermediate holding company established under this section shall serve as a source of strength to its subsidiary intermediate holding company.

"(4) PARENT COMPANY REPORTS.—The Board, may from time to time, examine and require reports under oath from a grandfathered unitary savings and loan holding company that controls an intermediate holding company, and from the appropriate officers or directors of such company, solely for purposes of ensuring compliance with the provisions of this section, including assessing the ability of the company to serve as a source of strength to its subsidiary intermediate holding company as required under paragraph (3) and enforcing compliance with such requirement.

"(5) LIMITED PARENT COMPANY ENFORCEMENT.—

"(A) IN GENERAL.—In addition to any other authority of the Board, the Board may enforce compliance with the provisions of this subsection that are applicable to any company described in paragraph (1)(A) that controls an intermediate holding company under section 8 of the Federal Deposit Insurance Act, and a company described in paragraph (1)(A) shall be subject to such section (solely for purposes of this subparagraph) in the same manner

and to the same extent as if the company described in paragraph (1)(A) were a savings and loan holding company.

"(B) APPLICATION OF OTHER ACT.—Any violation of this subsection by a grandfathered unitary savings and loan holding company that controls an intermediate holding company may also be treated as a violation of the Federal Deposit Insurance Act for purposes of subparagraph (A).

"(C) NO EFFECT ON OTHER AUTHORITY.—No provision of this paragraph shall be construed as limiting any authority of the Board or any other Federal agency under any other provision of law.

"(c) REGULATIONS.—The Board—

"(1) shall promulgate regulations to establish the criteria for determining whether to require a grandfathered unitary savings and loan holding company to establish an intermediate holding company under subsection (b); and

"(2) may promulgate regulations to establish any restrictions or limitations on transactions between an intermediate holding company or a parent of such company and its affiliates, as necessary to prevent unsafe and unsound practices in connection with transactions between the intermediate holding company, or any subsidiary thereof, and its parent company or affiliates that are not subsidiaries of the intermediate holding company, except that such regulations shall not restrict or limit any transaction in connection with the bona fide acquisition or lease by an unaffiliated person of assets, goods, or services.

"(d) RULES OF CONSTRUCTION.—

"(1) ACTIVITIES.—Nothing in this section shall be construed to require a grandfathered unitary savings and loan holding company to conform its activities to permissible activities.

"(2) PERMISSIBLE CORPORATE REORGANIZATION.—The formation of an intermediate holding company as required in subsection (b) shall be presumed to be a permissible corporate reorganization as described in section 10(c)(9)(D).".

SEC. 627. INTEREST-BEARING TRANSACTION ACCOUNTS AUTHORIZED.

(a) REPEAL OF PROHIBITION ON PAYMENT OF INTEREST ON DEMAND DEPOSITS.—

(1) FEDERAL RESERVE ACT.—Section 19(i) of the Federal Reserve Act (12 U.S.C. 371a) is amended to read as follows: "(i) [Repealed]".

(2) HOME OWNERS' LOAN ACT.—The first sentence of section 5(b)(1)(B) of the Home Owners' Loan Act (12 U.S.C. 1464(b)(1)(B)) is amended by striking "savings association may not—" and all that follows through "(ii) permit any" and inserting "savings association may not permit any".

(3) FEDERAL DEPOSIT INSURANCE ACT.—Section 18(g) of the Federal Deposit Insurance Act (12 U.S.C. 1828(g)) is amended to read as follows:

"(g) [Repealed]".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect 1 year after the date of the enactment of this Act.

SEC. 628. CREDIT CARD BANK SMALL BUSINESS LENDING.

Section 2(c)(2)(F)(v) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(F)(v)) is amended by inserting before the

period the following: ", other than credit card loans that are made to businesses that meet the criteria for a small business concern to be eligible for business loans under regulations established by the Small Business Administration under part 121 of title 13, Code of Federal Regulations".

TITLE VII—WALL STREET TRANSPARENCY AND ACCOUNTABILITY

SEC. 701. SHORT TITLE.

This title may be cited as the "Wall Street Transparency and Accountability Act of 2010".

Subtitle A—Regulation of Over-the-Counter Swaps Markets

PART I—REGULATORY AUTHORITY

SEC. 711. DEFINITIONS.

In this subtitle, the terms "prudential regulator", "swap", "swap dealer", "major swap participant", "swap data repository", "associated person of a swap dealer or major swap participant", "eligible contract participant", "swap execution facility", "security-based swap", "security-based swap dealer", "major security-based swap participant", and "associated person of a security-based swap dealer or major security-based swap participant" have the meanings given the terms in section 1a of the Commodity Exchange Act (7 U.S.C. 1a), including any modification of the meanings under section 721(b) of this Act.

SEC. 712. REVIEW OF REGULATORY AUTHORITY.

(a) CONSULTATION.—

(1) COMMODITY FUTURES TRADING COMMISSION.—Before commencing any rulemaking or issuing an order regarding swaps, swap dealers, major swap participants, swap data repositories, derivative clearing organizations with regard to swaps, persons associated with a swap dealer or major swap participant, eligible contract participants, or swap execution facilities pursuant to this subtitle, the Commodity Futures Trading Commission shall consult and coordinate to the extent possible with the Securities and Exchange Commission and the prudential regulators for the purposes of assuring regulatory consistency and comparability, to the extent possible.

(2) SECURITIES AND EXCHANGE COMMISSION.—Before commencing any rulemaking or issuing an order regarding security-based swaps, security-based swap dealers, major security-based swap participants, security-based swap data repositories, clearing agencies with regard to security-based swaps, persons associated with a security-based swap dealer or major security-based swap participant, eligible contract participants with regard to security-based swaps, or security-based swap execution facilities pursuant to subtitle B, the Securities and Exchange Commission shall consult and coordinate to the

extent possible with the Commodity Futures Trading Commission and the prudential regulators for the purposes of assuring regulatory consistency and comparability, to the extent possible.

(3) PROCEDURES AND DEADLINE.—Such regulations shall be prescribed in accordance with applicable requirements of title 5, United States Code, and shall be issued in final form not later than 360 days after the date of enactment of this Act.

(4) APPLICABILITY.—The requirements of paragraphs (1) and (2) shall not apply to an order issued—

(A) in connection with or arising from a violation or potential violation of any provision of the Commodity Exchange Act (7 U.S.C. 1 et seq.);

(B) in connection with or arising from a violation or potential violation of any provision of the securities laws; or

(C) in any proceeding that is conducted on the record in accordance with sections 556 and 557 of title 5, United States Code.

(5) EFFECT.—Nothing in this subsection authorizes any consultation or procedure for consultation that is not consistent with the requirements of subchapter II of chapter 5, and chapter 7, of title 5, United States Code (commonly known as the "Administrative Procedure Act").

(6) RULES; ORDERS.—In developing and promulgating rules or orders pursuant to this subsection, each Commission shall consider the views of the prudential regulators.

(7) TREATMENT OF SIMILAR PRODUCTS AND ENTITIES.—

(A) IN GENERAL.—In adopting rules and orders under this subsection, the Commodity Futures Trading Commission and the Securities and Exchange Commission shall treat functionally or economically similar products or entities described in paragraphs (1) and (2) in a similar manner.

(B) EFFECT.—Nothing in this subtitle requires the Commodity Futures Trading Commission or the Securities and Exchange Commission to adopt joint rules or orders that treat functionally or economically similar products or entities described in paragraphs (1) and (2) in an identical manner.

(8) MIXED SWAPS.—The Commodity Futures Trading Commission and the Securities and Exchange Commission, after consultation with the Board of Governors, shall jointly prescribe such regulations regarding mixed swaps, as described in section 1a(47)(D) of the Commodity Exchange Act (7 U.S.C. 1a(47)(D)) and in section 3(a)(68)(D) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(68)(D)), as may be necessary to carry out the purposes of this title.

(b) LIMITATION.—

(1) COMMODITY FUTURES TRADING COMMISSION.—Nothing in this title, unless specifically provided, confers jurisdiction on the Commodity Futures Trading Commission to issue a rule, regulation, or order providing for oversight or regulation of—

(A) security-based swaps; or

(B) with regard to its activities or functions concerning security-based swaps—

(i) security-based swap dealers;
(ii) major security-based swap participants;
(iii) security-based swap data repositories;
(iv) associated persons of a security-based swap dealer or major security-based swap participant;
(v) eligible contract participants with respect to security-based swaps; or
(vi) swap execution facilities with respect to security-based swaps.

(2) SECURITIES AND EXCHANGE COMMISSION.—Nothing in this title, unless specifically provided, confers jurisdiction on the Securities and Exchange Commission or State securities regulators to issue a rule, regulation, or order providing for oversight or regulation of—

(A) swaps; or
(B) with regard to its activities or functions concerning swaps—
(i) swap dealers;
(ii) major swap participants;
(iii) swap data repositories;
(iv) persons associated with a swap dealer or major swap participant;
(v) eligible contract participants with respect to swaps; or
(vi) swap execution facilities with respect to swaps.

(3) PROHIBITION ON CERTAIN FUTURES ASSOCIATIONS AND NATIONAL SECURITIES ASSOCIATIONS.—

(A) FUTURES ASSOCIATIONS.—Notwithstanding any other provision of law (including regulations), unless otherwise authorized by this title, no futures association registered under section 17 of the Commodity Exchange Act (7 U.S.C. 21) may issue a rule, regulation, or order for the oversight or regulation of, or otherwise assert jurisdiction over, for any purpose, any security-based swap, except that this subparagraph shall not limit the authority of a registered futures association to examine for compliance with, and enforce, its rules on capital adequacy.

(B) NATIONAL SECURITIES ASSOCIATIONS.—Notwithstanding any other provision of law (including regulations), unless otherwise authorized by this title, no national securities association registered under section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o–3) may issue a rule, regulation, or order for the oversight or regulation of, or otherwise assert jurisdiction over, for any purpose, any swap, except that this subparagraph shall not limit the authority of a national securities association to examine for compliance with, and enforce, its rules on capital adequacy.

(c) OBJECTION TO COMMISSION REGULATION.—

(1) FILING OF PETITION FOR REVIEW.—

(A) IN GENERAL.—If either Commission referred to in this section determines that a final rule, regulation, or order of the other Commission conflicts with subsection (a)(7) or (b), then the complaining Commission may obtain review of the final rule, regulation, or order in the United States Court of Appeals for the District of Columbia Circuit by filing in the court, not later than 60 days after the

date of publication of the final rule, regulation, or order, a written petition requesting that the rule, regulation, or order be set aside.

(B) EXPEDITED PROCEEDING.—A proceeding described in subparagraph (A) shall be expedited by the United States Court of Appeals for the District of Columbia Circuit.

(2) TRANSMITTAL OF PETITION AND RECORD.—

(A) IN GENERAL.—A copy of a petition described in paragraph (1) shall be transmitted not later than 1 business day after the date of filing by the complaining Commission to the Secretary of the responding Commission.

(B) DUTY OF RESPONDING COMMISSION.—On receipt of the copy of a petition described in paragraph (1), the responding Commission shall file with the United States Court of Appeals for the District of Columbia Circuit—

(i) a copy of the rule, regulation, or order under review (including any documents referred to therein); and

(ii) any other materials prescribed by the United States Court of Appeals for the District of Columbia Circuit.

(3) STANDARD OF REVIEW.—The United States Court of Appeals for the District of Columbia Circuit shall—

(A) give deference to the views of neither Commission; and

(B) determine to affirm or set aside a rule, regulation, or order of the responding Commission under this subsection, based on the determination of the court as to whether the rule, regulation, or order is in conflict with subsection (a)(7) or (b), as applicable.

(4) JUDICIAL STAY.—The filing of a petition by the complaining Commission pursuant to paragraph (1) shall operate as a stay of the rule, regulation, or order until the date on which the determination of the United States Court of Appeals for the District of Columbia Circuit is final (including any appeal of the determination).

(d) JOINT RULEMAKING.—

(1) IN GENERAL.—Notwithstanding any other provision of this title and subsections (b) and (c), the Commodity Futures Trading Commission and the Securities and Exchange Commission, in consultation with the Board of Governors, shall further define the terms "swap", "security-based swap", "swap dealer", "security-based swap dealer", "major swap participant", "major security-based swap participant", "eligible contract participant", and "security-based swap agreement" in section 1a(47)(A)(v) of the Commodity Exchange Act (7 U.S.C. 1a(47)(A)(v)) and section 3(a)(78) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(78)).

(2) AUTHORITY OF THE COMMISSIONS.—

(A) IN GENERAL.—Notwithstanding any other provision of this title, the Commodity Futures Trading Commission and the Securities and Exchange Commission, in consultation with the Board of Governors, shall jointly adopt such other rules regarding such definitions as the Commodity Futures Trading Commission and the Securities and

Exchange Commission determine are necessary and appropriate, in the public interest, and for the protection of investors.

(B) TRADE REPOSITORY RECORDKEEPING.—Notwithstanding any other provision of this title, the Commodity Futures Trading Commission and the Securities and Exchange Commission, in consultation with the Board of Governors, shall engage in joint rulemaking to jointly adopt a rule or rules governing the books and records that are required to be kept and maintained regarding security-based swap agreements by persons that are registered as swap data repositories under the Commodity Exchange Act, including uniform rules that specify the data elements that shall be collected and maintained by each repository.

(C) BOOKS AND RECORDS.—Notwithstanding any other provision of this title, the Commodity Futures Trading Commission and the Securities and Exchange Commission, in consultation with the Board of Governors, shall engage in joint rulemaking to jointly adopt a rule or rules governing books and records regarding security-based swap agreements, including daily trading records, for swap dealers, major swap participants, security-based swap dealers, and security-based swap participants.

(D) COMPARABLE RULES.—Rules and regulations prescribed jointly under this title by the Commodity Futures Trading Commission and the Securities and Exchange Commission shall be comparable to the maximum extent possible, taking into consideration differences in instruments and in the applicable statutory requirements.

(E) TRACKING UNCLEARED TRANSACTIONS.—Any rules prescribed under subparagraph (A) shall require the maintenance of records of all activities relating to security-based swap agreement transactions defined under subparagraph (A) that are not cleared.

(F) SHARING OF INFORMATION.—The Commodity Futures Trading Commission shall make available to the Securities and Exchange Commission information relating to security-based swap agreement transactions defined in subparagraph (A) that are not cleared.

(3) FINANCIAL STABILITY OVERSIGHT COUNCIL.—In the event that the Commodity Futures Trading Commission and the Securities and Exchange Commission fail to jointly prescribe rules pursuant to paragraph (1) or (2) in a timely manner, at the request of either Commission, the Financial Stability Oversight Council shall resolve the dispute—

(A) within a reasonable time after receiving the request;

(B) after consideration of relevant information provided by each Commission; and

(C) by agreeing with 1 of the Commissions regarding the entirety of the matter or by determining a compromise position.

(4) JOINT INTERPRETATION.—Any interpretation of, or guidance by either Commission regarding, a provision of this title, shall be effective only if issued jointly by the Commodity Futures Trading Commission and the Securities and Exchange Commission, after consultation with the Board of Governors,

if this title requires the Commodity Futures Trading Commission and the Securities and Exchange Commission to issue joint regulations to implement the provision.

(e) GLOBAL RULEMAKING TIMEFRAME.—Unless otherwise provided in this title, or an amendment made by this title, the Commodity Futures Trading Commission or the Securities and Exchange Commission, or both, shall individually, and not jointly, promulgate rules and regulations required of each Commission under this title or an amendment made by this title not later than 360 days after the date of enactment of this Act.

(f) RULES AND REGISTRATION BEFORE FINAL EFFECTIVE DATES.—Beginning on the date of enactment of this Act and notwithstanding the effective date of any provision of this Act, the Commodity Futures Trading Commission and the Securities and Exchange Commission may, in order to prepare for the effective dates of the provisions of this Act—

(1) promulgate rules, regulations, or orders permitted or required by this Act;

(2) conduct studies and prepare reports and recommendations required by this Act;

(3) register persons under the provisions of this Act; and

(4) exempt persons, agreements, contracts, or transactions from provisions of this Act, under the terms contained in this Act,

provided, however, that no action by the Commodity Futures Trading Commission or the Securities and Exchange Commission described in paragraphs (1) through (4) shall become effective prior to the effective date applicable to such action under the provisions of this Act.

SEC. 713. PORTFOLIO MARGINING CONFORMING CHANGES.

(a) SECURITIES EXCHANGE ACT OF 1934.—Section 15(c)(3) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(c)(3)) is amended by adding at the end the following:

"(C) Notwithstanding any provision of sections 2(a)(1)(C)(i) or 4d(a)(2) of the Commodity Exchange Act and the rules and regulations thereunder, and pursuant to an exemption granted by the Commission under section 36 of this title or pursuant to a rule or regulation, cash and securities may be held by a broker or dealer registered pursuant to subsection (b)(1) and also registered as a futures commission merchant pursuant to section 4f(a)(1) of the Commodity Exchange Act, in a portfolio margining account carried as a futures account subject to section 4d of the Commodity Exchange Act and the rules and regulations thereunder, pursuant to a portfolio margining program approved by the Commodity Futures Trading Commission, and subject to subchapter IV of chapter 7 of title 11 of the United States Code and the rules and regulations thereunder. The Commission shall consult with the Commodity Futures Trading Commission to adopt rules to ensure that such transactions and accounts are subject to comparable requirements to the extent practicable for similar products.".

(b) COMMODITY EXCHANGE ACT.—Section 4d of the Commodity Exchange Act (7 U.S.C. 6d) is amended by adding at the end the following:

"(h) Notwithstanding subsection (a)(2) or the rules and regulations thereunder, and pursuant to an exemption granted by the Commission under section 4(c) of this Act or pursuant to a rule or regulation, a futures commission merchant that is registered pursuant to section 4f(a)(1) of this Act and also registered as a broker or dealer pursuant to section 15(b)(1) of the Securities Exchange Act of 1934 may, pursuant to a portfolio margining program approved by the Securities and Exchange Commission pursuant to section 19(b) of the Securities Exchange Act of 1934, hold in a portfolio margining account carried as a securities account subject to section 15(c)(3) of the Securities Exchange Act of 1934 and the rules and regulations thereunder, a contract for the purchase or sale of a commodity for future delivery or an option on such a contract, and any money, securities or other property received from a customer to margin, guarantee or secure such a contract, or accruing to a customer as the result of such a contract. The Commission shall consult with the Securities and Exchange Commission to adopt rules to ensure that such transactions and accounts are subject to comparable requirements to the extent practical for similar products.".

(c) DUTY OF COMMODITY FUTURES TRADING COMMISSION.—Section 20 of the Commodity Exchange Act (7 U.S.C. 24) is amended by adding at the end the following:

"(c) The Commission shall exercise its authority to ensure that securities held in a portfolio margining account carried as a futures account are customer property and the owners of those accounts are customers for the purposes of subchapter IV of chapter 7 of title 11 of the United States Code.".

SEC. 714. ABUSIVE SWAPS.

The Commodity Futures Trading Commission or the Securities and Exchange Commission, or both, individually may, by rule or order—

(1) collect information as may be necessary concerning the markets for any types of—

(A) swap (as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a)); or

(B) security-based swap (as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a)); and

(2) issue a report with respect to any types of swaps or security-based swaps that the Commodity Futures Trading Commission or the Securities and Exchange Commission determines to be detrimental to—

(A) the stability of a financial market; or

(B) participants in a financial market.

SEC. 715. AUTHORITY TO PROHIBIT PARTICIPATION IN SWAP ACTIVITIES.

Except as provided in section 4 of the Commodity Exchange Act (7 U.S.C. 6), if the Commodity Futures Trading Commission or the Securities and Exchange Commission determines that the regulation of swaps or security-based swaps markets in a foreign country undermines the stability of the United States financial system, either Commission, in consultation with the Secretary of the Treasury, may prohibit an entity domiciled in the foreign country from participating in the United States in any swap or security-based swap activities.

SEC. 716. PROHIBITION AGAINST FEDERAL GOVERNMENT BAILOUTS OF SWAPS ENTITIES.

(a) PROHIBITION ON FEDERAL ASSISTANCE.—Notwithstanding any other provision of law (including regulations), no Federal assistance may be provided to any swaps entity with respect to any swap, security-based swap, or other activity of the swaps entity.

(b) DEFINITIONS.—In this section:

(1) FEDERAL ASSISTANCE.—The term "Federal assistance" means the use of any advances from any Federal Reserve credit facility or discount window that is not part of a program or facility with broad-based eligibility under section 13(3)(A) of the Federal Reserve Act, Federal Deposit Insurance Corporation insurance or guarantees for the purpose of—

(A) making any loan to, or purchasing any stock, equity interest, or debt obligation of, any swaps entity;

(B) purchasing the assets of any swaps entity;

(C) guaranteeing any loan or debt issuance of any swaps entity; or

(D) entering into any assistance arrangement (including tax breaks), loss sharing, or profit sharing with any swaps entity.

(2) SWAPS ENTITY.—

(A) IN GENERAL.—The term "swaps entity" means any swap dealer, security-based swap dealer, major swap participant, major security-based swap participant, that is registered under—

(i) the Commodity Exchange Act (7 U.S.C. 1 et seq.); or

(ii) the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

(B) EXCLUSION.—The term "swaps entity" does not include any major swap participant or major security-based swap participant that is an insured depository institution.

(c) AFFILIATES OF INSURED DEPOSITORY INSTITUTIONS.—The prohibition on Federal assistance contained in subsection (a) does not apply to and shall not prevent an insured depository institution from having or establishing an affiliate which is a swaps entity, as long as such insured depository institution is part of a bank holding company, or savings and loan holding company, that is supervised by the Federal Reserve and such swaps entity affiliate complies with sections 23A and 23B of the Federal Reserve Act and such other requirements as the Commodity Futures Trading Commission or the Securities Exchange Commission, as appropriate, and the Board of Governors of the Federal Reserve System, may determine to be necessary and appropriate.

(d) ONLY BONA FIDE HEDGING AND TRADITIONAL BANK ACTIVITIES PERMITTED.—The prohibition in subsection (a) shall apply to any insured depository institution unless the insured depository institution limits its swap or security-based swap activities to:

(1) Hedging and other similar risk mitigating activities directly related to the insured depository institution's activities.

(2) Acting as a swaps entity for swaps or security-based swaps involving rates or reference assets that are permissible for investment by a national bank under the paragraph designated as "Seventh." of section 5136 of the Revised Statutes of the United States (12 U.S.C. 24), other than as described in paragraph (3).

(3) LIMITATION ON CREDIT DEFAULT SWAPS.—Acting as a swaps entity for credit default swaps, including swaps or security-based swaps referencing the credit risk of asset-backed securities as defined in section 3(a)(77) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(77)) (as amended by this Act) shall not be considered a bank permissible activity for purposes of subsection (d)(2) unless such swaps or security-based swaps are cleared by a derivatives clearing organization (as such term is defined in section la of the Commodity Exchange Act (7 U.S.C. la)) or a clearing agency (as such term is defined in section 3 of the Securities Exchange Act (15 U.S.C. 78c)) that is registered, or exempt from registration, as a derivatives clearing organization under the Commodity Exchange Act or as a clearing agency under the Securities Exchange Act, respectively.

(e) EXISTING SWAPS AND SECURITY-BASED SWAPS.—The prohibition in subsection (a) shall only apply to swaps or security-based swaps entered into by an insured depository institution after the end of the transition period described in subsection (f).

(f) TRANSITION PERIOD.—To the extent an insured depository institution qualifies as a "swaps entity" and would be subject to the Federal assistance prohibition in subsection (a), the appropriate Federal banking agency, after consulting with and considering the views of the Commodity Futures Trading Commission or the Securities Exchange Commission, as appropriate, shall permit the insured depository institution up to 24 months to divest the swaps entity or cease the activities that require registration as a swaps entity. In establishing the appropriate transition period to effect such divestiture or cessation of activities, which may include making the swaps entity an affiliate of the insured depository institution, the appropriate Federal banking agency shall take into account and make written findings regarding the potential impact of such divestiture or cessation of activities on the insured depository institution's (1) mortgage lending, (2) small business lending, (3) job creation, and (4) capital formation versus the potential negative impact on insured depositors and the Deposit Insurance Fund of the Federal Deposit Insurance Corporation. The appropriate Federal banking agency may consider such other factors as may be appropriate. The appropriate Federal banking agency may place such conditions on the insured depository institution's divestiture or ceasing of activities of the swaps entity as it deems necessary and appropriate. The transition period under this subsection may be extended by the appropriate Federal banking agency, after consultation with the Commodity Futures Trading Commission and the Securities and Exchange Commission, for a period of up to 1 additional year.

(g) EXCLUDED ENTITIES.—For purposes of this section, the term "swaps entity" shall not include any insured depository institution under the Federal Deposit Insurance Act or a covered financial company under title II which is in a conservatorship, receivership, or a bridge bank operated by the Federal Deposit Insurance Corporation.

(h) EFFECTIVE DATE.—The prohibition in subsection (a) shall be effective 2 years following the date on which this Act is effective.

(i) LIQUIDATION REQUIRED.—

(1) IN GENERAL.—

(A) FDIC INSURED INSTITUTIONS.—All swaps entities that are FDIC insured institutions that are put into receivership or declared insolvent as a result of swap or security-based swap activity of the swaps entities shall be subject to the termination or transfer of that swap or security-based swap activity in accordance with applicable law prescribing the treatment of those contracts. No taxpayer funds shall be used to prevent the receivership of any swap entity resulting from swap or security-based swap activity of the swaps entity.

(B) INSTITUTIONS THAT POSE A SYSTEMIC RISK AND ARE SUBJECT TO HEIGHTENED PRUDENTIAL SUPERVISION AS REGULATED UNDER SECTION 113.—All swaps entities that are institutions that pose a systemic risk and are subject to heightened prudential supervision as regulated under section 113, that are put into receivership or declared insolvent as a result of swap or security-based swap activity of the swaps entities shall be subject to the termination or transfer of that swap or security-based swap activity in accordance with applicable law prescribing the treatment of those contracts. No taxpayer funds shall be used to prevent the receivership of any swap entity resulting from swap or security-based swap activity of the swaps entity.

(C) NON-FDIC INSURED, NON-SYSTEMICALLY SIGNIFICANT INSTITUTIONS NOT SUBJECT TO HEIGHTENED PRUDENTIAL SUPERVISION AS REGULATED UNDER SECTION 113.—No taxpayer resources shall be used for the orderly liquidation of any swaps entities that are non-FDIC insured, non-systemically significant institutions not subject to heightened prudential supervision as regulated under section 113.

(2) RECOVERY OF FUNDS.—All funds expended on the termination or transfer of the swap or security-based swap activity of the swaps entity shall be recovered in accordance with applicable law from the disposition of assets of such swap entity or through assessments, including on the financial sector as provided under applicable law.

(3) NO LOSSES TO TAXPAYERS.—Taxpayers shall bear no losses from the exercise of any authority under this title.

(j) PROHIBITION ON UNREGULATED COMBINATION OF SWAPS ENTITIES AND BANKING.—At no time following adoption of the rules in subsection (k) may a bank or bank holding company be permitted to be or become a swap entity unless it conducts its swap or security-based swap activity in compliance with such minimum standards set by its prudential regulator as are reasonably calculated to permit the swaps entity to conduct its swap or security-based swap activities in a safe and sound manner and mitigate systemic risk.

(k) RULES.—In prescribing rules, the prudential regulator for a swaps entity shall consider the following factors:

(1) The expertise and managerial strength of the swaps entity, including systems for effective oversight.

(2) The financial strength of the swaps entity.

(3) Systems for identifying, measuring and controlling risks arising from the swaps entity's operations.

(4) Systems for identifying, measuring and controlling the swaps entity's participation in existing markets.

(5) Systems for controlling the swaps entity's participation or entry into in new markets and products.

(l) AUTHORITY OF THE FINANCIAL STABILITY OVERSIGHT COUNCIL.—The Financial Stability Oversight Council may determine that, when other provisions established by this Act are insufficient to effectively mitigate systemic risk and protect taxpayers, that swaps entities may no longer access Federal assistance with respect to any swap, security-based swap, or other activity of the swaps entity. Any such determination by the Financial Stability Oversight Council of a prohibition of federal assistance shall be made on an institution-by-institution basis, and shall require the vote of not fewer than two-thirds of the members of the Financial Stability Oversight Council, which must include the vote by the Chairman of the Council, the Chairman of the Board of Governors of the Federal Reserve System, and the Chairperson of the Federal Deposit Insurance Corporation. Notice and hearing requirements for such determinations shall be consistent with the standards provided in title I.

(m) BAN ON PROPRIETARY TRADING IN DERIVATIVES.—An insured depository institution shall comply with the prohibition on proprietary trading in derivatives as required by section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

SEC. 717. NEW PRODUCT APPROVAL CFTC—SEC PROCESS.

(a) AMENDMENTS TO THE COMMODITY EXCHANGE ACT.—Section 2(a)(1)(C) of the Commodity Exchange Act (7 U.S.C. 2(a)(1)(C)) is amended—

(1) in clause (i) by striking "This" and inserting "(I) Except as provided in subclause (II), this"; and

(2) by adding at the end of clause (i) the following:

"(II) This Act shall apply to and the Commission shall have jurisdiction with respect to accounts, agreements, and transactions involving, and may permit the listing for trading pursuant to section 5c(c) of, a put, call, or other option on 1 or more securities (as defined in section 2(a)(1) of the Securities Act of 1933 or section 3(a)(10) of the Securities Exchange Act of 1934 on the date of enactment of the Futures Trading Act of 1982), including any group or index of such securities, or any interest therein or based on the value thereof, that is exempted by the Securities and Exchange Commission pursuant to section 36(a)(1) of the Securities Exchange Act of 1934 with the condition that the Commission exercise concurrent jurisdiction over such put, call, or other option; provided, however, that nothing in this paragraph shall be construed to affect the jurisdiction and authority of the Securities and Exchange Commission over such put, call, or other option.".

(b) AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.—The Securities Exchange Act of 1934 is amended by adding the following section after section 3A (15 U.S.C. 78c–1):

"SEC. 3B. SECURITIES-RELATED DERIVATIVES.

"(a) Any agreement, contract, or transaction (or class thereof) that is exempted by the Commodity Futures Trading Commission

pursuant to section 4(c)(1) of the Commodity Exchange Act (7 U.S.C. 6(c)(1)) with the condition that the Commission exercise concurrent jurisdiction over such agreement, contract, or transaction (or class thereof) shall be deemed a security for purposes of the securities laws.

"(b) With respect to any agreement, contract, or transaction (or class thereof) that is exempted by the Commodity Futures Trading Commission pursuant to section 4(c)(1) of the Commodity Exchange Act (7 U.S.C. 6(c)(1)) with the condition that the Commission exercise concurrent jurisdiction over such agreement, contract, or transaction (or class thereof), references in the securities laws to the 'purchase' or 'sale' of a security shall be deemed to include the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under such agreement, contract, or transaction, as the context may require.".

(c) AMENDMENT TO SECURITIES EXCHANGE ACT OF 1934.—Section 19(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(b)) is amended by adding at the end the following:

"(10) Notwithstanding paragraph (2), the time period within which the Commission is required by order to approve a proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved is stayed pending a determination by the Commission upon the request of the Commodity Futures Trading Commission or its Chairman that the Commission issue a determination as to whether a product that is the subject of such proposed rule change is a security pursuant to section 718 of the Wall Street Transparency and Accountability Act of 2010.".

(d) AMENDMENT TO COMMODITY EXCHANGE ACT.—Section 5c(c)(1) of the Commodity Exchange Act (7 U.S.C. 7a–2(c)(1)) is amended—

(1) by striking "Subject to paragraph (2)" and inserting the following:

"(A) ELECTION.—Subject to paragraph (2)"; and

(2) by adding at the end the following:

"(B) CERTIFICATION.—The certification of a product pursuant to this paragraph shall be stayed pending a determination by the Commission upon the request of the Securities and Exchange Commission or its Chairman that the Commission issue a determination as to whether the product that is the subject of such certification is a contract of sale of a commodity for future delivery, an option on such a contract, or an option on a commodity pursuant to section 718 of the Wall Street Transparency and Accountability Act of 2010.".

SEC. 718. DETERMINING STATUS OF NOVEL DERIVATIVE PRODUCTS.

(a) PROCESS FOR DETERMINING THE STATUS OF A NOVEL DERIVATIVE PRODUCT.—

(1) NOTICE.—

(A) IN GENERAL.—Any person filing a proposal to list or trade a novel derivative product that may have elements of both securities and contracts of sale of a commodity for future delivery (or options on such contracts or options on commodities) may concurrently provide notice and furnish a copy of such filing with the Securities and Exchange

Commission and the Commodity Futures Trading Commission. Any such notice shall state that notice has been made with both Commissions.

(B) NOTIFICATION.—If no concurrent notice is made pursuant to subparagraph (A), within 5 business days after determining that a proposal that seeks to list or trade a novel derivative product may have elements of both securities and contracts of sale of a commodity for future delivery (or options on such contracts or options on commodities), the Securities and Exchange Commission or the Commodity Futures Trading Commission, as applicable, shall notify the other Commission and provide a copy of such filing to the other Commission.

(2) REQUEST FOR DETERMINATION.—

(A) IN GENERAL.—No later than 21 days after receipt of a notice under paragraph (1), or upon its own initiative if no such notice is received, the Commodity Futures Trading Commission may request that the Securities and Exchange Commission issue a determination as to whether a product is a security, as defined in section 3(a)(10) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(10)).

(B) REQUEST.—No later than 21 days after receipt of a notice under paragraph (1), or upon its own initiative if no such notice is received, the Securities and Exchange Commission may request that the Commodity Futures Trading Commission issue a determination as to whether a product is a contract of sale of a commodity for future delivery, an option on such a contract, or an option on a commodity subject to the Commodity Futures Trading Commission's exclusive jurisdiction under section 2(a)(1)(A) of the Commodity Exchange Act (7 U.S.C. 2(a)(1)(A)).

(C) REQUIREMENT RELATING TO REQUEST.—A request under subparagraph (A) or (B) shall be made by submitting such request, in writing, to the Securities and Exchange Commission or the Commodity Futures Trading Commission, as applicable.

(D) EFFECT.—Nothing in this paragraph shall be construed to prevent—

(i) the Commodity Futures Trading Commission from requesting that the Securities and Exchange Commission grant an exemption pursuant to section 36(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78mm(a)(1)) with respect to a product that is the subject of a filing under paragraph (1); or

(ii) the Securities and Exchange Commission from requesting that the Commodity Futures Trading Commission grant an exemption pursuant to section 4(c)(1) of the Commodity Exchange Act (7 U.S.C. 6(c)(1)) with respect to a product that is the subject of a filing under paragraph (1),

Provided, however, that nothing in this subparagraph shall be construed to require the Commodity Futures Trading Commission or the Securities and Exchange Commission to issue an exemption requested pursuant to this subparagraph; *provided further*, That an order granting or denying an exemption described in this subparagraph and issued

under paragraph (3)(B) shall not be subject to judicial review pursuant to subsection (b).

(E) WITHDRAWAL OF REQUEST.—A request under subparagraph (A) or (B) may be withdrawn by the Commission making the request at any time prior to a determination being made pursuant to paragraph (3) for any reason by providing written notice to the head of the other Commission.

(3) DETERMINATION.—Notwithstanding any other provision of law, no later than 120 days after the date of receipt of a request—

(A) under subparagraph (A) or (B) of paragraph (2), unless such request has been withdrawn pursuant to paragraph (2)(E), the Securities and Exchange Commission or the Commodity Futures Trading Commission, as applicable, shall, by order, issue the determination requested in subparagraph (A) or (B) of paragraph (2), as applicable, and the reasons therefor; or

(B) under paragraph (2)(D), unless such request has been withdrawn, the Securities and Exchange Commission or the Commodity Futures Trading Commission, as applicable, shall grant an exemption or provide reasons for not granting such exemption, provided that any decision by the Securities and Exchange Commission not to grant such exemption shall not be reviewable under section 25 of the Securities Exchange Act of 1934 (15 U.S.C. 78y).

(b) JUDICIAL RESOLUTION.—

(1) IN GENERAL.—The Commodity Futures Trading Commission or the Securities and Exchange Commission may petition the United States Court of Appeals for the District of Columbia Circuit for review of a final order of the other Commission issued pursuant to subsection (a)(3)(A), with respect to a novel derivative product that may have elements of both securities and contracts of sale of a commodity for future delivery (or options on such contracts or options on commodities) that it believes affects its statutory jurisdiction within 60 days after the date of entry of such order, a written petition requesting a review of the order. Any such proceeding shall be expedited by the Court of Appeals.

(2) TRANSMITTAL OF PETITION AND RECORD.—A copy of a petition described in paragraph (1) shall be transmitted not later than 1 business day after filing by the complaining Commission to the responding Commission. On receipt of the petition, the responding Commission shall file with the court a copy of the order under review and any documents referred to therein, and any other materials prescribed by the court.

(3) STANDARD OF REVIEW.—The court, in considering a petition filed pursuant to paragraph (1), shall give no deference to, or presumption in favor of, the views of either Commission.

(4) JUDICIAL STAY.—The filing of a petition by the complaining Commission pursuant to paragraph (1) shall operate as a stay of the order, until the date on which the determination of the court is final (including any appeal of the determination).

SEC. 719. STUDIES.

(a) STUDY ON EFFECTS OF POSITION LIMITS ON TRADING ON EXCHANGES IN THE UNITED STATES.—

(1) STUDY.—The Commodity Futures Trading Commission, in consultation with each entity that is a designated contract market under the Commodity Exchange Act, shall conduct a study of the effects (if any) of the position limits imposed pursuant to the other provisions of this title on excessive speculation and on the movement of transactions from exchanges in the United States to trading venues outside the United States.

(2) REPORT TO THE CONGRESS.—Within 12 months after the imposition of position limits pursuant to the other provisions of this title, the Commodity Futures Trading Commission, in consultation with each entity that is a designated contract market under the Commodity Exchange Act, shall submit to the Congress a report on the matters described in paragraph (1).

(3) REQUIRED HEARING.—Within 30 legislative days after the submission to the Congress of the report described in paragraph (2), the Committee on Agriculture of the House of Representatives shall hold a hearing examining the findings of the report.

(4) BIENNIAL REPORTING.—In addition to the study required in paragraph (1), the Chairman of the Commodity Futures Trading Commission shall prepare and submit to the Congress biennial reports on the growth or decline of the derivatives markets in the United States and abroad, which shall include assessments of the causes of any such growth or decline, the effectiveness of regulatory regimes in managing systemic risk, a comparison of the costs of compliance at the time of the report for market participants subject to regulation by the United States with the costs of compliance in December 2008 for the market participants, and the quality of the available data. In preparing the report, the Chairman shall solicit the views of, consult with, and address the concerns raised by, market participants, regulators, legislators, and other interested parties.

(b) STUDY ON FEASIBILITY OF REQUIRING USE OF STANDARDIZED ALGORITHMIC DESCRIPTIONS FOR FINANCIAL DERIVATIVES.—

(1) IN GENERAL.—The Securities and Exchange Commission and the Commodity Futures Trading Commission shall conduct a joint study of the feasibility of requiring the derivatives industry to adopt standardized computer-readable algorithmic descriptions which may be used to describe complex and standardized financial derivatives.

(2) GOALS.—The algorithmic descriptions defined in the study shall be designed to facilitate computerized analysis of individual derivative contracts and to calculate net exposures to complex derivatives. The algorithmic descriptions shall be optimized for simultaneous use by—

(A) commercial users and traders of derivatives;

(B) derivative clearing houses, exchanges and electronic trading platforms;

(C) trade repositories and regulator investigations of market activities; and

(D) systemic risk regulators.

The study will also examine the extent to which the algorithmic description, together with standardized and extensible legal

definitions, may serve as the binding legal definition of derivative contracts. The study will examine the logistics of possible implementations of standardized algorithmic descriptions for derivatives contracts. The study shall be limited to electronic formats for exchange of derivative contract descriptions and will not contemplate disclosure of proprietary valuation models.

(3) INTERNATIONAL COORDINATION.—In conducting the study, the Securities and Exchange Commission and the Commodity Futures Trading Commission shall coordinate the study with international financial institutions and regulators as appropriate and practical.

(4) REPORT.—Within 8 months after the date of the enactment of this Act, the Securities and Exchange Commission and the Commodity Futures Trading Commission shall jointly submit to the Committees on Agriculture and on Financial Services of the House of Representatives and the Committees on Agriculture, Nutrition, and Forestry and on Banking, Housing, and Urban Affairs of the Senate a written report which contains the results of the study required by paragraphs (1) through (3).

(c) INTERNATIONAL SWAP REGULATION.—

(1) IN GENERAL.—The Commodity Futures Trading Commission and the Securities and Exchange Commission shall jointly conduct a study—

(A) relating to—

(i) swap regulation in the United States, Asia, and Europe; and

(ii) clearing house and clearing agency regulation in the United States, Asia, and Europe; and

(B) that identifies areas of regulation that are similar in the United States, Asia and Europe and other areas of regulation that could be harmonized

(2) REPORT.—Not later than 18 months after the date of enactment of this Act, the Commodity Futures Trading Commission and the Securities and Exchange Commission shall submit to the Committee on Agriculture, Nutrition, and Forestry and the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Agriculture and the Committee on Financial Services of the House of Representatives a report that includes a description of the results of the study under subsection (a), including—

(A) identification of the major exchanges and their regulator in each geographic area for the trading of swaps and security-based swaps including a listing of the major contracts and their trading volumes and notional values as well as identification of the major swap dealers participating in such markets;

(B) identification of the major clearing houses and clearing agencies and their regulator in each geographic area for the clearing of swaps and security-based swaps, including a listing of the major contracts and the clearing volumes and notional values as well as identification of the major clearing members of such clearing houses and clearing agencies in such markets;

(C) a description of the comparative methods of clearing swaps in the United States, Asia, and Europe; and

(D) a description of the various systems used for establishing margin on individual swaps, security-based swaps, and swap portfolios.

(d) STABLE VALUE CONTRACTS.—

(1) DETERMINATION.—

(A) STATUS.—Not later than 15 months after the date of the enactment of this Act, the Securities and Exchange Commission and the Commodity Futures Trading Commission shall, jointly, conduct a study to determine whether stable value contracts fall within the definition of a swap. In making the determination required under this subparagraph, the Commissions jointly shall consult with the Department of Labor, the Department of the Treasury, and the State entities that regulate the issuers of stable value contracts.

(B) REGULATIONS.—If the Commissions determine that stable value contracts fall within the definition of a swap, the Commissions jointly shall determine if an exemption for stable value contracts from the definition of swap is appropriate and in the public interest. The Commissions shall issue regulations implementing the determinations required under this paragraph. Until the effective date of such regulations, and notwithstanding any other provision of this title, the requirements of this title shall not apply to stable value contracts.

(C) LEGAL CERTAINTY.—Stable value contracts in effect prior to the effective date of the regulations described in subparagraph (B) shall not be considered swaps.

(2) DEFINITION.—For purposes of this subsection, the term "stable value contract" means any contract, agreement, or transaction that provides a crediting interest rate and guaranty or financial assurance of liquidity at contract or book value prior to maturity offered by a bank, insurance company, or other State or federally regulated financial institution for the benefit of any individual or commingled fund available as an investment in an employee benefit plan (as defined in section 3(3) of the Employee Retirement Income Security Act of 1974, including plans described in section 3(32) of such Act) subject to participant direction, an eligible deferred compensation plan (as defined in section 457(b) of the Internal Revenue Code of 1986) that is maintained by an eligible employer described in section 457(e)(1)(A) of such Code, an arrangement described in section 403(b) of such Code, or a qualified tuition program (as defined in section 529 of such Code).

SEC. 720. MEMORANDUM.

(a)(1) The Commodity Futures Trading Commission and the Federal Energy Regulatory Commission shall, not later than 180 days after the date of the enactment of this Act, negotiate a memorandum of understanding to establish procedures for—

(A) applying their respective authorities in a manner so as to ensure effective and efficient regulation in the public interest;

(B) resolving conflicts concerning overlapping jurisdiction between the 2 agencies; and

(C) avoiding, to the extent possible, conflicting or duplicative regulation.

(2) Such memorandum and any subsequent amendments to the memorandum shall be promptly submitted to the appropriate committees of Congress.

(b) The Commodity Futures Trading Commission and the Federal Energy Regulatory Commission shall, not later than 180 days after the date of the enactment of this section, negotiate a memorandum of understanding to share information that may be requested where either Commission is conducting an investigation into potential manipulation, fraud, or market power abuse in markets subject to such Commission's regulation or oversight. Shared information shall remain subject to the same restrictions on disclosure applicable to the Commission initially holding the information.

PART II—REGULATION OF SWAP MARKETS

SEC. 721. DEFINITIONS.

(a) IN GENERAL.—Section 1a of the Commodity Exchange Act (7 U.S.C. 1a) is amended—

(1) by redesignating paragraphs (2), (3) and (4), (5) through (17), (18) through (23), (24) through (28), (29), (30), (31) through (33), and (34) as paragraphs (6), (8) and (9), (11) through (23), (26) through (31), (34) through (38), (40), (41), (44) through (46), and (51), respectively;

(2) by inserting after paragraph (1) the following:

"(2) APPROPRIATE FEDERAL BANKING AGENCY.—The term 'appropriate Federal banking agency'—

"(A) has the meaning given the term in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

"(B) means the Board in the case of a noninsured State bank; and

"(C) is the Farm Credit Administration for farm credit system institutions.

"(3) ASSOCIATED PERSON OF A SECURITY-BASED SWAP DEALER OR MAJOR SECURITY-BASED SWAP PARTICIPANT.—The term 'associated person of a security-based swap dealer or major security-based swap participant' has the meaning given the term in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

"(4) ASSOCIATED PERSON OF A SWAP DEALER OR MAJOR SWAP PARTICIPANT.—

"(A) IN GENERAL.—The term 'associated person of a swap dealer or major swap participant' means a person who is associated with a swap dealer or major swap participant as a partner, officer, employee, or agent (or any person occupying a similar status or performing similar functions), in any capacity that involves—

"(i) the solicitation or acceptance of swaps; or

"(ii) the supervision of any person or persons so engaged.

"(B) EXCLUSION.—Other than for purposes of section 4s(b)(6), the term 'associated person of a swap dealer or major swap participant' does not include any person associated with a swap dealer or major swap participant the functions of which are solely clerical or ministerial.

"(5) BOARD.—The term 'Board' means the Board of Governors of the Federal Reserve System.";

(3) by inserting after paragraph (6) (as redesignated by paragraph (1)) the following:

"(7) CLEARED SWAP.—The term 'cleared swap' means any swap that is, directly or indirectly, submitted to and cleared by a derivatives clearing organization registered with the Commission.";

(4) in paragraph (9) (as redesignated by paragraph (1)), by striking "except onions" and all that follows through the period at the end and inserting the following: "except onions (as provided by the first section of Public Law 85–839 (7 U.S.C. 13–1)) and motion picture box office receipts (or any index, measure, value, or data related to such receipts), and all services, rights, and interests (except motion picture box office receipts, or any index, measure, value or data related to such receipts) in which contracts for future delivery are presently or in the future dealt in.";

(5) by inserting after paragraph (9) (as redesignated by paragraph (1)) the following:

"(10) COMMODITY POOL.—

"(A) IN GENERAL.—The term 'commodity pool' means any investment trust, syndicate, or similar form of enterprise operated for the purpose of trading in commodity interests, including any—

"(i) commodity for future delivery, security futures product, or swap;

"(ii) agreement, contract, or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i);

"(iii) commodity option authorized under section 4c; or

"(iv) leverage transaction authorized under section 19.

"(B) FURTHER DEFINITION.—The Commission, by rule or regulation, may include within, or exclude from, the term 'commodity pool' any investment trust, syndicate, or similar form of enterprise if the Commission determines that the rule or regulation will effectuate the purposes of this Act.";

(6) by striking paragraph (11) (as redesignated by paragraph (1)) and inserting the following:

"(11) COMMODITY POOL OPERATOR.—

"(A) IN GENERAL.—The term 'commodity pool operator' means any person—

"(i) engaged in a business that is of the nature of a commodity pool, investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in commodity interests, including any—

"(I) commodity for future delivery, security futures product, or swap;

"(II) agreement, contract, or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i);

"(III) commodity option authorized under section 4c; or

"(IV) leverage transaction authorized under section 19; or

"(ii) who is registered with the Commission as a commodity pool operator.

"(B) FURTHER DEFINITION.—The Commission, by rule or regulation, may include within, or exclude from, the term 'commodity pool operator' any person engaged in a business that is of the nature of a commodity pool, investment trust, syndicate, or similar form of enterprise if the Commission determines that the rule or regulation will effectuate the purposes of this Act.";

(7) in paragraph (12) (as redesignated by paragraph (1)), in subparagraph (A)—

(A) in clause (i)—

(i) in subclause (I), by striking "made or to be made on or subject to the rules of a contract market or derivatives transaction execution facility" and inserting ", security futures product, or swap";

(ii) by redesignating subclauses (II) and (III) as subclauses (III) and (IV);

(iii) by inserting after subclause (I) the following:

"(II) any agreement, contract, or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i)"; and

(iv) in subclause (IV) (as so redesignated), by striking "or";

(B) in clause (ii), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following:

"(iii) is registered with the Commission as a commodity trading advisor; or

"(iv) the Commission, by rule or regulation, may include if the Commission determines that the rule or regulation will effectuate the purposes of this Act.";

(8) in paragraph (17) (as redesignated by paragraph (1)), in subparagraph (A), in the matter preceding clause (i), by striking "paragraph (12)(A)" and inserting "paragraph (18)(A)";

(9) in paragraph (18) (as redesignated by paragraph (1))—

(A) in subparagraph (A)—

(i) in the matter following clause (vii)(III)—

(I) by striking "section 1a (11)(A)" and inserting "paragraph (17)(A)"; and

(II) by striking "$25,000,000" and inserting "$50,000,000"; and

(ii) in clause (xi), in the matter preceding subclause (I), by striking "total assets in an amount" and inserting "amounts invested on a discretionary basis, the aggregate of which is";

(10) by striking paragraph (22) (as redesignated by paragraph (1)) and inserting the following:

"(22) FLOOR BROKER.—

"(A) IN GENERAL.—The term 'floor broker' means any person—

"(i) who, in or surrounding any pit, ring, post, or other place provided by a contract market for the meeting of persons similarly engaged, shall purchase or sell for any other person—

"(I) any commodity for future delivery, security futures product, or swap; or

"(II) any commodity option authorized under section 4c; or

"(ii) who is registered with the Commission as a floor broker.

"(B) FURTHER DEFINITION.—The Commission, by rule or regulation, may include within, or exclude from, the term 'floor broker' any person in or surrounding any pit, ring, post, or other place provided by a contract market for the meeting of persons similarly engaged who trades for any other person if the Commission determines that the rule or regulation will effectuate the purposes of this Act.";

(11) by striking paragraph (23) (as redesignated by paragraph (1)) and inserting the following:

"(23) FLOOR TRADER.—

"(A) IN GENERAL.—The term 'floor trader' means any person—

"(i) who, in or surrounding any pit, ring, post, or other place provided by a contract market for the meeting of persons similarly engaged, purchases, or sells solely for such person's own account—

"(I) any commodity for future delivery, security futures product, or swap; or

"(II) any commodity option authorized under section 4c; or

"(ii) who is registered with the Commission as a floor trader.

"(B) FURTHER DEFINITION.—The Commission, by rule or regulation, may include within, or exclude from, the term 'floor trader' any person in or surrounding any pit, ring, post, or other place provided by a contract market for the meeting of persons similarly engaged who trades solely for such person's own account if the Commission determines that the rule or regulation will effectuate the purposes of this Act.";

(12) by inserting after paragraph (23) (as redesignated by paragraph (1)) the following:

"(24) FOREIGN EXCHANGE FORWARD.—The term 'foreign exchange forward' means a transaction that solely involves the exchange of 2 different currencies on a specific future date at a fixed rate agreed upon on the inception of the contract covering the exchange.

"(25) FOREIGN EXCHANGE SWAP.—The term 'foreign exchange swap' means a transaction that solely involves—

"(A) an exchange of 2 different currencies on a specific date at a fixed rate that is agreed upon on the inception of the contract covering the exchange; and

"(B) a reverse exchange of the 2 currencies described in subparagraph (A) at a later date and at a fixed rate that is agreed upon on the inception of the contract covering the exchange.";

(13) by striking paragraph (28) (as redesignated by paragraph (1)) and inserting the following:

"(28) FUTURES COMMISSION MERCHANT.—

"(A) IN GENERAL.—The term 'futures commission merchant' means an individual, association, partnership, corporation, or trust—

"(i) that—

"(I) is—

"(aa) engaged in soliciting or in accepting orders for—

"(AA) the purchase or sale of a commodity for future delivery;

"(BB) a security futures product;

"(CC) a swap;

"(DD) any agreement, contract, or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i);

"(EE) any commodity option authorized under section 4c; or

"(FF) any leverage transaction authorized under section 19; or

"(bb) acting as a counterparty in any agreement, contract, or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i); and

"(II) in or in connection with the activities described in items (aa) or (bb) of subclause (I), accepts any money, securities, or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom; or

"(ii) that is registered with the Commission as a futures commission merchant.

"(B) FURTHER DEFINITION.—The Commission, by rule or regulation, may include within, or exclude from, the term 'futures commission merchant' any person who engages in soliciting or accepting orders for, or acting as a counterparty in, any agreement, contract, or transaction subject to this Act, and who accepts any money, securities, or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom, if the Commission determines that the rule or regulation will effectuate the purposes of this Act.";

(14) in paragraph (30) (as redesignated by paragraph (1)), in subparagraph (B), by striking "state" and inserting "State";

(15) by striking paragraph (31) (as redesignated by paragraph (1)) and inserting the following:

"(31) INTRODUCING BROKER.—

"(A) IN GENERAL.—The term 'introducing broker' means any person (except an individual who elects to be and is registered as an associated person of a futures commission merchant)—

"(i) who—

"(I) is engaged in soliciting or in accepting orders for—

"(aa) the purchase or sale of any commodity for future delivery, security futures product, or swap;

"(bb) any agreement, contract, or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i);

"(cc) any commodity option authorized under section 4c; or

"(dd) any leverage transaction authorized under section 19; and

"(II) does not accept any money, securities, or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom; or

"(ii) who is registered with the Commission as an introducing broker.

"(B) FURTHER DEFINITION.—The Commission, by rule or regulation, may include within, or exclude from, the term 'introducing broker' any person who engages in soliciting or accepting orders for any agreement, contract, or transaction subject to this Act, and who does not accept any money, securities, or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom, if the Commission determines that the rule or regulation will effectuate the purposes of this Act.";

(16) by inserting after paragraph (31) (as redesignated by paragraph (1)) the following:

"(32) MAJOR SECURITY-BASED SWAP PARTICIPANT.—The term 'major security-based swap participant' has the meaning given the term in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

"(33) MAJOR SWAP PARTICIPANT.—

"(A) IN GENERAL.—The term 'major swap participant' means any person who is not a swap dealer, and—

"(i) maintains a substantial position in swaps for any of the major swap categories as determined by the Commission, excluding—

"(I) positions held for hedging or mitigating commercial risk; and

"(II) positions maintained by any employee benefit plan (or any contract held by such a plan) as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002) for the primary purpose of hedging or mitigating any risk directly associated with the operation of the plan;

"(ii) whose outstanding swaps create substantial counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets; or

"(iii)(I) is a financial entity that is highly leveraged relative to the amount of capital it holds and that is not subject to capital requirements established by an appropriate Federal banking agency; and

"(II) maintains a substantial position in outstanding swaps in any major swap category as determined by the Commission.

"(B) DEFINITION OF SUBSTANTIAL POSITION.—For purposes of subparagraph (A), the Commission shall define

by rule or regulation the term 'substantial position' at the threshold that the Commission determines to be prudent for the effective monitoring, management, and oversight of entities that are systemically important or can significantly impact the financial system of the United States. In setting the definition under this subparagraph, the Commission shall consider the person's relative position in uncleared as opposed to cleared swaps and may take into consideration the value and quality of collateral held against counterparty exposures.

"(C) SCOPE OF DESIGNATION.—For purposes of subparagraph (A), a person may be designated as a major swap participant for 1 or more categories of swaps without being classified as a major swap participant for all classes of swaps.

"(D) EXCLUSIONS.—The definition under this paragraph shall not include an entity whose primary business is providing financing, and uses derivatives for the purpose of hedging underlying commercial risks related to interest rate and foreign currency exposures, 90 percent or more of which arise from financing that facilitates the purchase or lease of products, 90 percent or more of which are manufactured by the parent company or another subsidiary of the parent company.";

(17) by inserting after paragraph (38) (as redesignated by paragraph (1)) the following:

"(39) PRUDENTIAL REGULATOR.—The term 'prudential regulator' means—

"(A) the Board in the case of a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant that is—

"(i) a State-chartered bank that is a member of the Federal Reserve System;

"(ii) a State-chartered branch or agency of a foreign bank;

"(iii) any foreign bank which does not operate an insured branch;

"(iv) any organization operating under section 25A of the Federal Reserve Act or having an agreement with the Board under section 225 of the Federal Reserve Act;

"(v) any bank holding company (as defined in section 2 of the Bank Holding Company Act of 1965 (12 U.S.C. 1841)), any foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978 (12 U.S.C. 3101(b)(7)) that is treated as a bank holding company under section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a)), and any subsidiary of such a company or foreign bank (other than a subsidiary that is described in subparagraph (A) or (B) or that is required to be registered with the Commission as a swap dealer or major swap participant under this Act or with the Securities and Exchange Commission as a security-based swap dealer or major security-based swap participant);

"(vi) after the transfer date (as defined in section 311 of the Dodd-Frank Wall Street Reform and Consumer Protection Act), any savings and loan holding company (as defined in section 10 of the Home Owners' Loan Act (12 U.S.C. 1467a)) and any subsidiary of such company (other than a subsidiary that is described in subparagraph (A) or (B) or that is required to be registered as a swap dealer or major swap participant with the Commission under this Act or with the Securities and Exchange Commission as a security-based swap dealer or major security-based swap participant); or

"(vii) any organization operating under section 25A of the Federal Reserve Act (12U.S.C. 611 et seq.) or having an agreement with the Board under section 25 of the Federal Reserve Act (12 U.S.C. 601 et seq.);

"(B) the Office of the Comptroller of the Currency in the case of a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant that is—

"(i) a national bank;

"(ii) a federally chartered branch or agency of a foreign bank; or

"(iii) any Federal savings association;

"(C) the Federal Deposit Insurance Corporation in the case of a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant that is—

"(i) a State-chartered bank that is not a member of the Federal Reserve System; or

"(ii) any State savings association;

"(D) the Farm Credit Administration, in the case of a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant that is an institution chartered under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.); and

"(E) the Federal Housing Finance Agency in the case of a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant that is a regulated entity (as such term is defined in section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992).";

(18) in paragraph (40) (as redesignated by paragraph (1))—

(A) by striking subparagraph (B);

(B) by redesignating subparagraphs (C), (D), and (E) as subparagraphs (B), (C), and (F), respectively;

(C) in subparagraph (C) (as so redesignated), by striking "and"; and

(D) by inserting after subparagraph (C) (as so redesignated) the following:

"(D) a swap execution facility registered under section 5h;

"(E) a swap data repository registered under section 21; and";

(19) by inserting after paragraph (41) (as redesignated by paragraph (1)) the following:

"(42) SECURITY-BASED SWAP.—The term 'security-based swap' has the meaning given the term in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

"(43) SECURITY-BASED SWAP DEALER.—The term 'security-based swap dealer' has the meaning given the term in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).";

(20) in paragraph (46) (as redesignated by paragraph (1)), by striking "subject to section 2(h)(7)" and inserting "subject to section 2(h)(5)";

(21) by inserting after paragraph (46) (as redesignated by paragraph (1)) the following:

"(47) SWAP.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'swap' means any agreement, contract, or transaction—

"(i) that is a put, call, cap, floor, collar, or similar option of any kind that is for the purchase or sale, or based on the value, of 1 or more interest or other rates, currencies, commodities, securities, instruments of indebtedness, indices, quantitative measures, or other financial or economic interests or property of any kind;

"(ii) that provides for any purchase, sale, payment, or delivery (other than a dividend on an equity security) that is dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence;

"(iii) that provides on an executory basis for the exchange, on a fixed or contingent basis, of 1 or more payments based on the value or level of 1 or more interest or other rates, currencies, commodities, securities, instruments of indebtedness, indices, quantitative measures, or other financial or economic interests or property of any kind, or any interest therein or based on the value thereof, and that transfers, as between the parties to the transaction, in whole or in part, the financial risk associated with a future change in any such value or level without also conveying a current or future direct or indirect ownership interest in an asset (including any enterprise or investment pool) or liability that incorporates the financial risk so transferred, including any agreement, contract, or transaction commonly known as—

"(I) an interest rate swap;
"(II) a rate floor;
"(III) a rate cap;
"(IV) a rate collar;
"(V) a cross-currency rate swap;
"(VI) a basis swap;
"(VII) a currency swap;
"(VIII) a foreign exchange swap;
"(IX) a total return swap;
"(X) an equity index swap;
"(XI) an equity swap;
"(XII) a debt index swap;
"(XIII) a debt swap;

"(XIV) a credit spread;
"(XV) a credit default swap;
"(XVI) a credit swap;
"(XVII) a weather swap;
"(XVIII) an energy swap;
"(XIX) a metal swap;
"(XX) an agricultural swap;
"(XXI) an emissions swap; and
"(XXII) a commodity swap;

"(iv) that is an agreement, contract, or transaction that is, or in the future becomes, commonly known to the trade as a swap;

"(v) including any security-based swap agreement which meets the definition of 'swap agreement' as defined in section 206A of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note) of which a material term is based on the price, yield, value, or volatility of any security or any group or index of securities, or any interest therein; or

"(vi) that is any combination or permutation of, or option on, any agreement, contract, or transaction described in any of clauses (i) through (v).

"(B) EXCLUSIONS.—The term 'swap' does not include—

"(i) any contract of sale of a commodity for future delivery (or option on such a contract), leverage contract authorized under section 19, security futures product, or agreement, contract, or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i);

"(ii) any sale of a nonfinancial commodity or security for deferred shipment or delivery, so long as the transaction is intended to be physically settled;

"(iii) any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest therein or based on the value thereof, that is subject to—

"(I) the Securities Act of 1933 (15 U.S.C. 77a et seq.); and

"(II) the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

"(iv) any put, call, straddle, option, or privilege relating to a foreign currency entered into on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a));

"(v) any agreement, contract, or transaction providing for the purchase or sale of 1 or more securities on a fixed basis that is subject to—

"(I) the Securities Act of 1933 (15 U.S.C. 77a et seq.); and

"(II) the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

"(vi) any agreement, contract, or transaction providing for the purchase or sale of 1 or more securities on a contingent basis that is subject to the Securities Act of 1933 (15 U.S.C. 77a et seq.) and the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), unless the agreement, contract, or transaction predicates the

purchase or sale on the occurrence of a bona fide contingency that might reasonably be expected to affect or be affected by the creditworthiness of a party other than a party to the agreement, contract, or transaction;

"(vii) any note, bond, or evidence of indebtedness that is a security, as defined in section 2(a)(1) of the Securities Act of 1933 (15 U.S.C. 77b(a)(1));

"(viii) any agreement, contract, or transaction that is—

"(I) based on a security; and

"(II) entered into directly or through an underwriter (as defined in section 2(a)(11) of the Securities Act of 1933 (15 U.S.C. 77b(a)(11)) by the issuer of such security for the purposes of raising capital, unless the agreement, contract, or transaction is entered into to manage a risk associated with capital raising;

"(ix) any agreement, contract, or transaction a counterparty of which is a Federal Reserve bank, the Federal Government, or a Federal agency that is expressly backed by the full faith and credit of the United States; and

"(x) any security-based swap, other than a security-based swap as described in subparagraph (D).

"(C) RULE OF CONSTRUCTION REGARDING MASTER AGREEMENTS.—

"(i) IN GENERAL.—Except as provided in clause (ii), the term 'swap' includes a master agreement that provides for an agreement, contract, or transaction that is a swap under subparagraph (A), together with each supplement to any master agreement, without regard to whether the master agreement contains an agreement, contract, or transaction that is not a swap pursuant to subparagraph (A).

"(ii) EXCEPTION.—For purposes of clause (i), the master agreement shall be considered to be a swap only with respect to each agreement, contract, or transaction covered by the master agreement that is a swap pursuant to subparagraph (A).

"(D) MIXED SWAP.—The term 'security-based swap' includes any agreement, contract, or transaction that is as described in section 3(a)(68)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(68)(A)) and also is based on the value of 1 or more interest or other rates, currencies, commodities, instruments of indebtedness, indices, quantitative measures, other financial or economic interest or property of any kind (other than a single security or a narrow-based security index), or the occurrence, non-occurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence (other than an event described in subparagraph (A)(iii)).

"(E) TREATMENT OF FOREIGN EXCHANGE SWAPS AND FORWARDS.—

"(i) IN GENERAL.—Foreign exchange swaps and foreign exchange forwards shall be considered swaps under this paragraph unless the Secretary makes a

written determination under section 1b that either foreign exchange swaps or foreign exchange forwards or both—

"(I) should be not be regulated as swaps under this Act; and

"(II) are not structured to evade the Dodd-Frank Wall Street Reform and Consumer Protection Act in violation of any rule promulgated by the Commission pursuant to section 721(c) of that Act.

"(ii) CONGRESSIONAL NOTICE; EFFECTIVENESS.—The Secretary shall submit any written determination under clause (i) to the appropriate committees of Congress, including the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Representatives. Any such written determination by the Secretary shall not be effective until it is submitted to the appropriate committees of Congress.

"(iii) REPORTING.—Notwithstanding a written determination by the Secretary under clause (i), all foreign exchange swaps and foreign exchange forwards shall be reported to either a swap data repository, or, if there is no swap data repository that would accept such swaps or forwards, to the Commission pursuant to section 4r within such time period as the Commission may by rule or regulation prescribe.

"(iv) BUSINESS STANDARDS.—Notwithstanding a written determination by the Secretary pursuant to clause (i), any party to a foreign exchange swap or forward that is a swap dealer or major swap participant shall conform to the business conduct standards contained in section 4s(h).

"(v) SECRETARY.—For purposes of this subparagraph, the term 'Secretary' means the Secretary of the Treasury.

"(F) EXCEPTION FOR CERTAIN FOREIGN EXCHANGE SWAPS AND FORWARDS.—

"(i) REGISTERED ENTITIES.—Any foreign exchange swap and any foreign exchange forward that is listed and traded on or subject to the rules of a designated contract market or a swap execution facility, or that is cleared by a derivatives clearing organization, shall not be exempt from any provision of this Act or amendments made by the Wall Street Transparency and Accountability Act of 2010 prohibiting fraud or manipulation.

"(ii) RETAIL TRANSACTIONS.—Nothing in subparagraph (E) shall affect, or be construed to affect, the applicability of this Act or the jurisdiction of the Commission with respect to agreements, contracts, or transactions in foreign currency pursuant to section 2(c)(2).

"(48) SWAP DATA REPOSITORY.—The term 'swap data repository' means any person that collects and maintains information or records with respect to transactions or positions in, or the terms and conditions of, swaps entered into by third parties

for the purpose of providing a centralized recordkeeping facility for swaps.

"(49) SWAP DEALER.—

"(A) IN GENERAL.—The term 'swap dealer' means any person who—

"(i) holds itself out as a dealer in swaps;

"(ii) makes a market in swaps;

"(iii) regularly enters into swaps with counterparties as an ordinary course of business for its own account; or

"(iv) engages in any activity causing the person to be commonly known in the trade as a dealer or market maker in swaps,

provided however, in no event shall an insured depository institution be considered to be a swap dealer to the extent it offers to enter into a swap with a customer in connection with originating a loan with that customer.

"(B) INCLUSION.—A person may be designated as a swap dealer for a single type or single class or category of swap or activities and considered not to be a swap dealer for other types, classes, or categories of swaps or activities.

"(C) EXCEPTION.—The term 'swap dealer' does not include a person that enters into swaps for such person's own account, either individually or in a fiduciary capacity, but not as a part of a regular business.

"(D) DE MINIMIS EXCEPTION.—The Commission shall exempt from designation as a swap dealer an entity that engages in a de minimis quantity of swap dealing in connection with transactions with or on behalf of its customers. The Commission shall promulgate regulations to establish factors with respect to the making of this determination to exempt.

"(50) SWAP EXECUTION FACILITY.—The term 'swap execution facility' means a trading system or platform in which multiple participants have the ability to execute or trade swaps by accepting bids and offers made by multiple participants in the facility or system, through any means of interstate commerce, including any trading facility, that—

"(A) facilitates the execution of swaps between persons; and

"(B) is not a designated contract market.".

(22) in paragraph (51) (as redesignated by paragraph (1)), in subparagraph (A)(i), by striking "partipants" and inserting "participants".

(b) AUTHORITY TO DEFINE TERMS.—The Commodity Futures Trading Commission may adopt a rule to define—

(1) the term "commercial risk"; and

(2) any other term included in an amendment to the Commodity Exchange Act (7 U.S.C. 1 et seq.) made by this subtitle.

(c) MODIFICATION OF DEFINITIONS.—To include transactions and entities that have been structured to evade this subtitle (or an amendment made by this subtitle), the Commodity Futures Trading Commission shall adopt a rule to further define the terms "swap", "swap dealer", "major swap participant", and "eligible contract participant".

(d) EXEMPTIONS.—Section 4(c)(1) of the Commodity Exchange Act (7 U.S.C. 6(c)(1)) is amended by striking "except that" and all that follows through the period at the end and inserting the following: "except that—

"(A) unless the Commission is expressly authorized by any provision described in this subparagraph to grant exemptions, with respect to amendments made by subtitle A of the Wall Street Transparency and Accountability Act of 2010—

"(i) with respect to—

"(I) paragraphs (2), (3), (4), (5), and (7), paragraph (18)(A)(vii)(III), paragraphs (23), (24), (31), (32), (38), (39), (41), (42), (46), (47), (48), and (49) of section 1a, and sections 2(a)(13), 2(c)(1)(D), 4a(a), 4a(b), 4d(c), 4d(d), 4r, 4s, 5b(a), 5b(b), 5(d), 5(g), 5(h), 5b(c), 5b(i), 8e, and 21; and

"(II) section 206(e) of the Gramm-Leach-Bliley Act (Public Law 106–102; 15 U.S.C. 78c note); and

"(ii) in sections 721(c) and 742 of the Dodd-Frank Wall Street Reform and Consumer Protection Act; and

"(B) the Commission and the Securities and Exchange Commission may by rule, regulation, or order jointly exclude any agreement, contract, or transaction from section 2(a)(1)(D)) if the Commissions determine that the exemption would be consistent with the public interest.".

(e) CONFORMING AMENDMENTS.—

(1) Section 2(c)(2)(B)(i)(II) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)(B)(i)(II)) is amended—

(A) in item (cc)—

(i) in subitem (AA), by striking "section 1a(20)" and inserting "section 1a"; and

(ii) in subitem (BB), by striking "section 1a(20)" and inserting "section 1a"; and

(B) in item (dd), by striking "section 1a(12)(A)(ii)" and inserting "section 1a(18)(A)(ii)".

(2) Section 4m(3) of the Commodity Exchange Act (7 U.S.C. 6m(3)) is amended by striking "section 1a(6)" and inserting "section 1a".

(3) Section 4q(a)(1) of the Commodity Exchange Act (7 U.S.C. 6o–1(a)(1)) is amended by striking "section 1a(4)" and inserting "section 1a(9)".

(4) Section 5(e)(1) of the Commodity Exchange Act (7 U.S.C. 7(e)(1)) is amended by striking "section 1a(4)" and inserting "section 1a(9)".

(5) Section 5a(b)(2)(F) of the Commodity Exchange Act (7 U.S.C. 7a(b)(2)(F)) is amended by striking "section 1a(4)" and inserting "section 1a(9)".

(6) Section 5b(a) of the Commodity Exchange Act (7 U.S.C. 7a–1(a)) is amended, in the matter preceding paragraph (1), by striking "section 1a(9)" and inserting "section 1a".

(7) Section 5c(c)(2)(B) of the Commodity Exchange Act (7 U.S.C. 7a–2(c)(2)(B)) is amended by striking "section 1a(4)" and inserting "section 1a(9)".

(8) Section 6(g)(5)(B)(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(g)(5)(B)(i)) is amended—

(A) in subclause (I), by striking "section 1a(12)(B)(ii)" and inserting "section 1a(18)(B)(ii)"; and

(B) in subclause (II), by striking "section 1a(12)" and inserting "section 1a(18)".

(9) Section 402 of the Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27 et seq.) is amended—

(A) in subsection (a)(7), by striking "section 1a(20)" and inserting "section 1a";

(B) in subsection (b)(2), by striking "section 1a(12)" and inserting "section 1a"; and

(C) in subsection (c), by striking "section 1a(4)" and inserting "section 1a".

(10) The first section of Public Law 85–839 (7 U.S.C. 13–1) is amended in subsection (a), in the first sentence, by inserting "motion picture box office receipts (or any index, measure, value, or data related to such receipts) or" after "sale of".

(f) EFFECTIVE DATE.—Notwithstanding any other provision of this Act, the amendments made by subsection (a)(4) shall take effect on June 1, 2010.

SEC. 722. JURISDICTION.

(a) EXCLUSIVE JURISDICTION.—Section 2(a)(1) of the Commodity Exchange Act (7 U.S.C. 2(a)(1)) is amended—

(1) in subparagraph (A), in the first sentence—

(A) by inserting "the Wall Street Transparency and Accountability Act of 2010 (including an amendment made by that Act) and" after "otherwise provided in";

(B) by striking "(C) and (D)" and inserting "(C), (D), and (I)";

(C) by striking "(c) through (i) of this section" and inserting "(c) and (f)";

(D) by striking "contracts of sale" and inserting "swaps or contracts of sale"; and

(E) by striking "or derivatives transaction execution facility registered pursuant to section 5 or 5a" and inserting "pursuant to section 5 or a swap execution facility pursuant to section 5h"; and

(2) by adding at the end the following:

"(G)(i) Nothing in this paragraph shall limit the jurisdiction conferred on the Securities and Exchange Commission by the Wall Street Transparency and Accountability Act of 2010 with regard to security-based swap agreements as defined pursuant to section 3(a)(78) of the Securities Exchange Act of 1934, and security-based swaps.

"(ii) In addition to the authority of the Securities and Exchange Commission described in clause (i), nothing in this subparagraph shall limit or affect any statutory authority of the Commission with respect to an agreement, contract, or transaction described in clause (i).

"(H) Notwithstanding any other provision of law, the Wall Street Transparency and Accountability Act of 2010 shall not apply to, and the Commodity Futures Trading Commission shall have no jurisdiction under such Act (or any amendments to the Commodity Exchange Act made by such Act) with respect to, any security other than a security-based swap.".

(b) REGULATION OF SWAPS UNDER FEDERAL AND STATE LAW.—Section 12 of the Commodity Exchange Act (7 U.S.C. 16) is amended by adding at the end the following:

"(h) REGULATION OF SWAPS AS INSURANCE UNDER STATE LAW.—A swap—

"(1) shall not be considered to be insurance; and

"(2) may not be regulated as an insurance contract under the law of any State.".

(c) AGREEMENTS, CONTRACTS, AND TRANSACTIONS TRADED ON AN ORGANIZED EXCHANGE.—Section 2(c)(2)(A) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)(A)) is amended—

(1) in clause (i), by striking "or" at the end;

(2) by redesignating clause (ii) as clause (iii); and

(3) by inserting after clause (i) the following:

"(ii) a swap; or".

(d) APPLICABILITY.—Section 2 of the Commodity Exchange Act (7 U.S.C. 2) (as amended by section 723(a)(3)) is amended by adding at the end the following:

"(i) APPLICABILITY.—The provisions of this Act relating to swaps that were enacted by the Wall Street Transparency and Accountability Act of 2010 (including any rule prescribed or regulation promulgated under that Act), shall not apply to activities outside the United States unless those activities—

"(1) have a direct and significant connection with activities in, or effect on, commerce of the United States; or

"(2) contravene such rules or regulations as the Commission may prescribe or promulgate as are necessary or appropriate to prevent the evasion of any provision of this Act that was enacted by the Wall Street Transparency and Accountability Act of 2010.".

(e) FEDERAL ENERGY REGULATORY COMMISSION.—Section 2(a)(1) of the Commodity Exchange Act (7 U.S.C. 2(a)(1)) is amended by adding at the end the following:

"(I)(i) Nothing in this Act shall limit or affect any statutory authority of the Federal Energy Regulatory Commission or a State regulatory authority (as defined in section 3(21) of the Federal Power Act (16 U.S.C. 796(21)) with respect to an agreement, contract, or transaction that is entered into pursuant to a tariff or rate schedule approved by the Federal Energy Regulatory Commission or a State regulatory authority and is—

"(I) not executed, traded, or cleared on a registered entity or trading facility; or

"(II) executed, traded, or cleared on a registered entity or trading facility owned or operated by a regional transmission organization or independent system operator.

"(ii) In addition to the authority of the Federal Energy Regulatory Commission or a State regulatory authority described in clause (i), nothing in this subparagraph shall limit or affect—

"(I) any statutory authority of the Commission with respect to an agreement, contract, or transaction described in clause (i); or

"(II) the jurisdiction of the Commission under subparagraph (A) with respect to an agreement, contract, or transaction that is executed, traded, or cleared

on a registered entity or trading facility that is not owned or operated by a regional transmission organization or independent system operator (as defined by sections 3(27) and (28) of the Federal Power Act (16 U.S.C. 796(27), 796(28)).".

(f) PUBLIC INTEREST WAIVER.—Section 4(c) of the Commodity Exchange Act (7 U.S.C. 6(c)) (as amended by section 721(d)) is amended by adding at the end the following:

"(6) If the Commission determines that the exemption would be consistent with the public interest and the purposes of this Act, the Commission shall, in accordance with paragraphs (1) and (2), exempt from the requirements of this Act an agreement, contract, or transaction that is entered into—

"(A) pursuant to a tariff or rate schedule approved or permitted to take effect by the Federal Energy Regulatory Commission;

"(B) pursuant to a tariff or rate schedule establishing rates or charges for, or protocols governing, the sale of electric energy approved or permitted to take effect by the regulatory authority of the State or municipality having jurisdiction to regulate rates and charges for the sale of electric energy within the State or municipality; or

"(C) between entities described in section 201(f) of the Federal Power Act (16 U.S.C. 824(f)).".

(g) AUTHORITY OF FERC.—Nothing in the Wall Street Transparency and Accountability Act of 2010 or the amendments to the Commodity Exchange Act made by such Act shall limit or affect any statutory enforcement authority of the Federal Energy Regulatory Commission pursuant to section 222 of the Federal Power Act and section 4A of the Natural Gas Act that existed prior to the date of enactment of the Wall Street Transparency and Accountability Act of 2010.

(h) DETERMINATION.—The Commodity Exchange Act is amended by inserting after section 1a (7 U.S.C. 1a) the following:

"SEC. 1b. REQUIREMENTS OF SECRETARY OF THE TREASURY REGARDING EXEMPTION OF FOREIGN EXCHANGE SWAPS AND FOREIGN EXCHANGE FORWARDS FROM DEFINITION OF THE TERM 'SWAP'.

"(a) REQUIRED CONSIDERATIONS.—In determining whether to exempt foreign exchange swaps and foreign exchange forwards from the definition of the term 'swap', the Secretary of the Treasury (referred to in this section as the 'Secretary') shall consider—

"(1) whether the required trading and clearing of foreign exchange swaps and foreign exchange forwards would create systemic risk, lower transparency, or threaten the financial stability of the United States;

"(2) whether foreign exchange swaps and foreign exchange forwards are already subject to a regulatory scheme that is materially comparable to that established by this Act for other classes of swaps;

"(3) the extent to which bank regulators of participants in the foreign exchange market provide adequate supervision, including capital and margin requirements;

"(4) the extent of adequate payment and settlement systems; and

"(5) the use of a potential exemption of foreign exchange swaps and foreign exchange forwards to evade otherwise applicable regulatory requirements.

"(b) DETERMINATION.—If the Secretary makes a determination to exempt foreign exchange swaps and foreign exchange forwards from the definition of the term 'swap', the Secretary shall submit to the appropriate committees of Congress a determination that contains—

"(1) an explanation regarding why foreign exchange swaps and foreign exchange forwards are qualitatively different from other classes of swaps in a way that would make the foreign exchange swaps and foreign exchange forwards ill-suited for regulation as swaps; and

"(2) an identification of the objective differences of foreign exchange swaps and foreign exchange forwards with respect to standard swaps that warrant an exempted status.

"(c) EFFECT OF DETERMINATION.—A determination by the Secretary under subsection (b) shall not exempt any foreign exchange swaps and foreign exchange forwards traded on a designated contract market or swap execution facility from any applicable antifraud and antimanipulation provision under this title.".

SEC. 723. CLEARING.

(a) CLEARING REQUIREMENT.—

(1) IN GENERAL.—Section 2 of the Commodity Exchange Act (7 U.S.C. 2) is amended—

(A) by striking subsections (d), (e), (g), and (h); and

(B) by redesignating subsection (i) as subsection (g).

(2) SWAPS; LIMITATION ON PARTICIPATION.—Section 2 of the Commodity Exchange Act (7 U.S.C. 2) (as amended by paragraph (1)) is amended by inserting after subsection (c) the following:

"(d) SWAPS.—Nothing in this Act (other than subparagraphs (A), (B), (C), (D), (G), and (H) of subsection (a)(1), subsections (f) and (g), sections 1a, 2(a)(13), 2(c)(2)(A)(ii), 2(e), 2(h), 4(c), 4a, 4b, and 4b–1, subsections (a), (b), and (g) of section 4c, sections 4d, 4e, 4f, 4g, 4h, 4i, 4j, 4k, 4l, 4m, 4n, 4o, 4p, 4r, 4s, 4t, 5, 5b, 5c, 5e, and 5h, subsections (c) and (d) of section 6, sections 6c, 6d, 8, 8a, and 9, subsections (e)(2), (f), and (h) of section 12, subsections (a) and (b) of section 13, sections 17, 20, 21, and 22(a)(4), and any other provision of this Act that is applicable to registered entities or Commission registrants) governs or applies to a swap.

"(e) LIMITATION ON PARTICIPATION.—It shall be unlawful for any person, other than an eligible contract participant, to enter into a swap unless the swap is entered into on, or subject to the rules of, a board of trade designated as a contract market under section 5.".

(3) MANDATORY CLEARING OF SWAPS.—Section 2 of the Commodity Exchange Act (7 U.S.C. 2) is amended by inserting after subsection (g) (as redesignated by paragraph (1)(B)) the following:

"(h) CLEARING REQUIREMENT.—

"(1) IN GENERAL.—

"(A) STANDARD FOR CLEARING.—It shall be unlawful for any person to engage in a swap unless that person submits such swap for clearing to a derivatives clearing

organization that is registered under this Act or a derivatives clearing organization that is exempt from registration under this Act if the swap is required to be cleared.

"(B) OPEN ACCESS.—The rules of a derivatives clearing organization described in subparagraph (A) shall—

"(i) prescribe that all swaps (but not contracts of sale of a commodity for future delivery or options on such contracts) submitted to the derivatives clearing organization with the same terms and conditions are economically equivalent within the derivatives clearing organization and may be offset with each other within the derivatives clearing organization; and

"(ii) provide for non-discriminatory clearing of a swap (but not a contract of sale of a commodity for future delivery or option on such contract) executed bilaterally or on or through the rules of an unaffiliated designated contract market or swap execution facility.

"(2) COMMISSION REVIEW.—

"(A) COMMISSION-INITIATED REVIEW.—

"(i) The Commission on an ongoing basis shall review each swap, or any group, category, type, or class of swaps to make a determination as to whether the swap or group, category, type, or class of swaps should be required to be cleared.

"(ii) The Commission shall provide at least a 30-day public comment period regarding any determination made under clause (i).

"(B) SWAP SUBMISSIONS.—

"(i) A derivatives clearing organization shall submit to the Commission each swap, or any group, category, type, or class of swaps that it plans to accept for clearing, and provide notice to its members (in a manner to be determined by the Commission) of the submission.

"(ii) Any swap or group, category, type, or class of swaps listed for clearing by a derivative clearing organization as of the date of enactment of this subsection shall be considered submitted to the Commission.

"(iii) The Commission shall—

"(I) make available to the public submissions received under clauses (i) and (ii);

"(II) review each submission made under clauses (i) and (ii), and determine whether the swap, or group, category, type, or class of swaps described in the submission is required to be cleared; and

"(III) provide at least a 30-day public comment period regarding its determination as to whether the clearing requirement under paragraph (1)(A) shall apply to the submission.

"(C) DEADLINE.—The Commission shall make its determination under subparagraph (B)(iii) not later than 90 days after receiving a submission made under subparagraphs (B)(i) and (B)(ii), unless the submitting derivatives clearing organization agrees to an extension for the time limitation established under this subparagraph.

"(D) DETERMINATION.—

"(i) In reviewing a submission made under subparagraph (B), the Commission shall review whether the submission is consistent with section 5b(c)(2).

"(ii) In reviewing a swap, group of swaps, or class of swaps pursuant to subparagraph (A) or a submission made under subparagraph (B), the Commission shall take into account the following factors:

"(I) The existence of significant outstanding notional exposures, trading liquidity, and adequate pricing data.

"(II) The availability of rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear the contract on terms that are consistent with the material terms and trading conventions on which the contract is then traded.

"(III) The effect on the mitigation of systemic risk, taking into account the size of the market for such contract and the resources of the derivatives clearing organization available to clear the contract.

"(IV) The effect on competition, including appropriate fees and charges applied to clearing.

"(V) The existence of reasonable legal certainty in the event of the insolvency of the relevant derivatives clearing organization or 1 or more of its clearing members with regard to the treatment of customer and swap counterparty positions, funds, and property.

"(iii) In making a determination under subparagraph (A) or (B)(iii) that the clearing requirement shall apply, the Commission may require such terms and conditions to the requirement as the Commission determines to be appropriate.

"(E) RULES.—Not later than 1 year after the date of the enactment of this subsection, the Commission shall adopt rules for a derivatives clearing organization's submission for review, pursuant to this paragraph, of a swap, or a group, category, type, or class of swaps, that it seeks to accept for clearing. Nothing in this subparagraph limits the Commission from making a determination under subparagraph (B)(iii) for swaps described in subparagraph (B)(ii).

"(3) STAY OF CLEARING REQUIREMENT.—

"(A) IN GENERAL.—After making a determination pursuant to paragraph (2)(B), the Commission, on application of a counterparty to a swap or on its own initiative, may stay the clearing requirement of paragraph (1) until the Commission completes a review of the terms of the swap (or the group, category, type, or class of swaps) and the clearing arrangement.

"(B) DEADLINE.—The Commission shall complete a review undertaken pursuant to subparagraph (A) not later than 90 days after issuance of the stay, unless the derivatives clearing organization that clears the swap, or group,

category, type, or class of swaps agrees to an extension of the time limitation established under this subparagraph.

"(C) DETERMINATION.—Upon completion of the review undertaken pursuant to subparagraph (A), the Commission may—

"(i) determine, unconditionally or subject to such terms and conditions as the Commission determines to be appropriate, that the swap, or group, category, type, or class of swaps must be cleared pursuant to this subsection if it finds that such clearing is consistent with paragraph (2)(D); or

"(ii) determine that the clearing requirement of paragraph (1) shall not apply to the swap, or group, category, type, or class of swaps.

"(D) RULES.—Not later than 1 year after the date of the enactment of the Wall Street Transparency and Accountability Act of 2010, the Commission shall adopt rules for reviewing, pursuant to this paragraph, a derivatives clearing organization's clearing of a swap, or a group, category, type, or class of swaps, that it has accepted for clearing.

"(4) PREVENTION OF EVASION.—

"(A) IN GENERAL.—The Commission shall prescribe rules under this subsection (and issue interpretations of rules prescribed under this subsection) as determined by the Commission to be necessary to prevent evasions of the mandatory clearing requirements under this Act.

"(B) DUTY OF COMMISSION TO INVESTIGATE AND TAKE CERTAIN ACTIONS.—To the extent the Commission finds that a particular swap, group, category, type, or class of swaps would otherwise be subject to mandatory clearing but no derivatives clearing organization has listed the swap, group, category, type, or class of swaps for clearing, the Commission shall—

"(i) investigate the relevant facts and circumstances;

"(ii) within 30 days issue a public report containing the results of the investigation; and

"(iii) take such actions as the Commission determines to be necessary and in the public interest, which may include requiring the retaining of adequate margin or capital by parties to the swap, group, category, type, or class of swaps.

"(C) EFFECT ON AUTHORITY.—Nothing in this paragraph—

"(i) authorizes the Commission to adopt rules requiring a derivatives clearing organization to list for clearing a swap, group, category, type, or class of swaps if the clearing of the swap, group, category, type, or class of swaps would threaten the financial integrity of the derivatives clearing organization; and

"(ii) affects the authority of the Commission to enforce the open access provisions of paragraph (1)(B) with respect to a swap, group, category, type, or class of swaps that is listed for clearing by a derivatives clearing organization.

"(5) REPORTING TRANSITION RULES.—Rules adopted by the Commission under this section shall provide for the reporting of data, as follows:

"(A) Swaps entered into before the date of the enactment of this subsection shall be reported to a registered swap data repository or the Commission no later than 180 days after the effective date of this subsection.

"(B) Swaps entered into on or after such date of enactment shall be reported to a registered swap data repository or the Commission no later than the later of—

"(i) 90 days after such effective date; or

"(ii) such other time after entering into the swap as the Commission may prescribe by rule or regulation.

"(6) CLEARING TRANSITION RULES.—

"(A) Swaps entered into before the date of the enactment of this subsection are exempt from the clearing requirements of this subsection if reported pursuant to paragraph (5)(A).

"(B) Swaps entered into before application of the clearing requirement pursuant to this subsection are exempt from the clearing requirements of this subsection if reported pursuant to paragraph (5)(B).

"(7) EXCEPTIONS.—

"(A) IN GENERAL.—The requirements of paragraph (1)(A) shall not apply to a swap if 1 of the counterparties to the swap—

"(i) is not a financial entity;

"(ii) is using swaps to hedge or mitigate commercial risk; and

"(iii) notifies the Commission, in a manner set forth by the Commission, how it generally meets its financial obligations associated with entering into non-cleared swaps.

"(B) OPTION TO CLEAR.—The application of the clearing exception in subparagraph (A) is solely at the discretion of the counterparty to the swap that meets the conditions of clauses (i) through (iii) of subparagraph (A).

"(C) FINANCIAL ENTITY DEFINITION.—

"(i) IN GENERAL.—For the purposes of this paragraph, the term 'financial entity' means—

"(I) a swap dealer;

"(II) a security-based swap dealer;

"(III) a major swap participant;

"(IV) a major security-based swap participant;

"(V) a commodity pool;

"(VI) a private fund as defined in section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80-b-2(a));

"(VII) an employee benefit plan as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002);

"(VIII) a person predominantly engaged in activities that are in the business of banking, or in activities that are financial in nature, as defined in section 4(k) of the Bank Holding Company Act of 1956.

"(ii) EXCLUSION.—The Commission shall consider whether to exempt small banks, savings associations, farm credit system institutions, and credit unions, including—

"(I) depository institutions with total assets of $10,000,000,000 or less;

"(II) farm credit system institutions with total assets of $10,000,000,000 or less; or

"(III) credit unions with total assets of $10,000,000,000 or less.

"(iii) LIMITATION.—Such definition shall not include an entity whose primary business is providing financing, and uses derivatives for the purpose of hedging underlying commercial risks related to interest rate and foreign currency exposures, 90 percent or more of which arise from financing that facilitates the purchase or lease of products, 90 percent or more of which are manufactured by the parent company or another subsidiary of the parent company.

"(D) TREATMENT OF AFFILIATES.—

"(i) IN GENERAL.—An affiliate of a person that qualifies for an exception under subparagraph (A) (including affiliate entities predominantly engaged in providing financing for the purchase of the merchandise or manufactured goods of the person) may qualify for the exception only if the affiliate, acting on behalf of the person and as an agent, uses the swap to hedge or mitigate the commercial risk of the person or other affiliate of the person that is not a financial entity.

"(ii) PROHIBITION RELATING TO CERTAIN AFFILIATES.—The exception in clause (i) shall not apply if the affiliate is—

"(I) a swap dealer;

"(II) a security-based swap dealer;

"(III) a major swap participant;

"(IV) a major security-based swap participant;

"(V) an issuer that would be an investment company, as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3), but for paragraph (1) or (7) of subsection (c) of that Act (15 U.S.C. 80a–3(c));

"(VI) a commodity pool; or

"(VII) a bank holding company with over $50,000,000,000 in consolidated assets.

"(iii) TRANSITION RULE FOR AFFILIATES.—An affiliate, subsidiary, or a wholly owned entity of a person that qualifies for an exception under subparagraph (A) and is predominantly engaged in providing financing for the purchase or lease of merchandise or manufactured goods of the person shall be exempt from the margin requirement described in section 4s(e) and the clearing requirement described in paragraph (1) with regard to swaps entered into to mitigate the risk of the financing activities for not less than a 2-year period beginning on the date of enactment of this clause.

"(E) ELECTION OF COUNTERPARTY.—

"(i) SWAPS REQUIRED TO BE CLEARED.—With respect to any swap that is subject to the mandatory clearing requirement under this subsection and entered into by a swap dealer or a major swap participant with a counterparty that is not a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant, the counterparty shall have the sole right to select the derivatives clearing organization at which the swap will be cleared.

"(ii) SWAPS NOT REQUIRED TO BE CLEARED.—With respect to any swap that is not subject to the mandatory clearing requirement under this subsection and entered into by a swap dealer or a major swap participant with a counterparty that is not a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant, the counterparty—

"(I) may elect to require clearing of the swap; and

"(II) shall have the sole right to select the derivatives clearing organization at which the swap will be cleared.

"(F) ABUSE OF EXCEPTION.—The Commission may prescribe such rules or issue interpretations of the rules as the Commission determines to be necessary to prevent abuse of the exceptions described in this paragraph. The Commission may also request information from those persons claiming the clearing exception as necessary to prevent abuse of the exceptions described in this paragraph.

"(8) TRADE EXECUTION.—

"(A) IN GENERAL.—With respect to transactions involving swaps subject to the clearing requirement of paragraph (1), counterparties shall—

"(i) execute the transaction on a board of trade designated as a contract market under section 5; or

"(ii) execute the transaction on a swap execution facility registered under 5h or a swap execution facility that is exempt from registration under section 5h(f) of this Act.

"(B) EXCEPTION.—The requirements of clauses (i) and (ii) of subparagraph (A) shall not apply if no board of trade or swap execution facility makes the swap available to trade or for swap transactions subject to the clearing exception under paragraph (7).".

(b) COMMODITY EXCHANGE ACT.—Section 2 of the Commodity Exchange Act (7 U.S.C. 2) is amended by adding at the end the following:

"(j) COMMITTEE APPROVAL BY BOARD.—Exemptions from the requirements of subsection (h)(1) to clear a swap and subsection (h)(8) to execute a swap through a board of trade or swap execution facility shall be available to a counterparty that is an issuer of securities that are registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l) or that is required to file reports pursuant to section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o) only if an appropriate committee of the issuer's board or governing body has reviewed and approved its decision to enter into swaps that are subject to such exemptions.".

(c) GRANDFATHER PROVISIONS.—

(1) LEGAL CERTAINTY FOR CERTAIN TRANSACTIONS IN EXEMPT COMMODITIES.—Not later than 60 days after the date of enactment of this Act, a person may submit to the Commodity Futures Trading Commission a petition to remain subject to section 2(h) of the Commodity Exchange Act (7 U.S.C. 2(h)) (as in effect on the day before the date of enactment of this Act).

(2) CONSIDERATION; AUTHORITY OF COMMODITY FUTURES TRADING COMMISSION.—The Commodity Futures Trading Commission—

(A) shall consider any petition submitted under subparagraph (A) in a prompt manner; and

(B) may allow a person to continue operating subject to section 2(h) of the Commodity Exchange Act (7 U.S.C. 2(h)) (as in effect on the day before the date of enactment of this Act) for not longer than a 1-year period.

(3) AGRICULTURAL SWAPS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), no person shall offer to enter into, enter into, or confirm the execution of, any swap in an agricultural commodity (as defined by the Commodity Futures Trading Commission).

(B) EXCEPTION.—Notwithstanding subparagraph (A), a person may offer to enter into, enter into, or confirm the execution of, any swap in an agricultural commodity pursuant to section 4(c) of the Commodity Exchange Act (7 U.S.C. 6(c)) or any rule, regulation, or order issued thereunder (including any rule, regulation, or order in effect as of the date of enactment of this Act) by the Commodity Futures Trading Commission to allow swaps under such terms and conditions as the Commission shall prescribe.

(4) REQUIRED REPORTING.—If the exception described in section 2(h)(8)(B) of the Commodity Exchange Act applies, the counterparties shall comply with any recordkeeping and transaction reporting requirements that may be prescribed by the Commission with respect to swaps subject to section 2(h)(8)(B) of the Commodity Exchange Act.

SEC. 724. SWAPS; SEGREGATION AND BANKRUPTCY TREATMENT.

(a) SEGREGATION REQUIREMENTS FOR CLEARED SWAPS.—Section 4d of the Commodity Exchange Act (7 U.S.C. 6d) (as amended by section 732) is amended by adding at the end the following:

"(f) SWAPS.—

"(1) REGISTRATION REQUIREMENT.—It shall be unlawful for any person to accept any money, securities, or property (or to extend any credit in lieu of money, securities, or property) from, for, or on behalf of a swaps customer to margin, guarantee, or secure a swap cleared by or through a derivatives clearing organization (including money, securities, or property accruing to the customer as the result of such a swap), unless the person shall have registered under this Act with the Commission as a futures commission merchant, and the registration shall not have expired nor been suspended nor revoked.

"(2) CLEARED SWAPS.—

"(A) SEGREGATION REQUIRED.—A futures commission merchant shall treat and deal with all money, securities, and property of any swaps customer received to margin, guarantee, or secure a swap cleared by or though a derivatives clearing organization (including money, securities, or property accruing to the swaps customer as the result of such a swap) as belonging to the swaps customer.

"(B) COMMINGLING PROHIBITED.—Money, securities, and property of a swaps customer described in subparagraph (A) shall be separately accounted for and shall not be commingled with the funds of the futures commission merchant or be used to margin, secure, or guarantee any trades or contracts of any swaps customer or person other than the person for whom the same are held.

"(3) EXCEPTIONS.—

"(A) USE OF FUNDS.—

"(i) IN GENERAL.—Notwithstanding paragraph (2), money, securities, and property of swap customers of a futures commission merchant described in paragraph (2) may, for convenience, be commingled and deposited in the same account or accounts with any bank or trust company or with a derivatives clearing organization.

"(ii) WITHDRAWAL.—Notwithstanding paragraph (2), such share of the money, securities, and property described in clause (i) as in the normal course of business shall be necessary to margin, guarantee, secure, transfer, adjust, or settle a cleared swap with a derivatives clearing organization, or with any member of the derivatives clearing organization, may be withdrawn and applied to such purposes, including the payment of commissions, brokerage, interest, taxes, storage, and other charges, lawfully accruing in connection with the cleared swap.

"(B) COMMISSION ACTION.—Notwithstanding paragraph (2), in accordance with such terms and conditions as the Commission may prescribe by rule, regulation, or order, any money, securities, or property of the swaps customers of a futures commission merchant described in paragraph (2) may be commingled and deposited in customer accounts with any other money, securities, or property received by the futures commission merchant and required by the Commission to be separately accounted for and treated and dealt with as belonging to the swaps customer of the futures commission merchant.

"(4) PERMITTED INVESTMENTS.—Money described in paragraph (2) may be invested in obligations of the United States, in general obligations of any State or of any political subdivision of a State, and in obligations fully guaranteed as to principal and interest by the United States, or in any other investment that the Commission may by rule or regulation prescribe, and such investments shall be made in accordance with such rules and regulations and subject to such conditions as the Commission may prescribe.

"(5) COMMODITY CONTRACT.—A swap cleared by or through a derivatives clearing organization shall be considered to be a commodity contract as such term is defined in section 761

of title 11, United States Code, with regard to all money, securities, and property of any swaps customer received by a futures commission merchant or a derivatives clearing organization to margin, guarantee, or secure the swap (including money, securities, or property accruing to the customer as the result of the swap).

"(6) PROHIBITION.—It shall be unlawful for any person, including any derivatives clearing organization and any depository institution, that has received any money, securities, or property for deposit in a separate account or accounts as provided in paragraph (2) to hold, dispose of, or use any such money, securities, or property as belonging to the depositing futures commission merchant or any person other than the swaps customer of the futures commission merchant.".

(b) BANKRUPTCY TREATMENT OF CLEARED SWAPS.—Section 761 of title 11, United States Code, is amended—

(1) in paragraph (4), by striking subparagraph (F) and inserting the following:

"(F)(i) any other contract, option, agreement, or transaction that is similar to a contract, option, agreement, or transaction referred to in this paragraph; and

"(ii) with respect to a futures commission merchant or a clearing organization, any other contract, option, agreement, or transaction, in each case, that is cleared by a clearing organization;"; and

(2) in paragraph (9)(A)(i), by striking "the commodity futures account" and inserting "a commodity contract account".

(c) SEGREGATION REQUIREMENTS FOR UNCLEARED SWAPS.—Section 4s of the Commodity Exchange Act (as added by section 731) is amended by adding at the end the following:

"(l) SEGREGATION REQUIREMENTS.—

"(1) SEGREGATION OF ASSETS HELD AS COLLATERAL IN UNCLEARED SWAP TRANSACTIONS.—

"(A) NOTIFICATION.—A swap dealer or major swap participant shall be required to notify the counterparty of the swap dealer or major swap participant at the beginning of a swap transaction that the counterparty has the right to require segregation of the funds or other property supplied to margin, guarantee, or secure the obligations of the counterparty.

"(B) SEGREGATION AND MAINTENANCE OF FUNDS.—At the request of a counterparty to a swap that provides funds or other property to a swap dealer or major swap participant to margin, guarantee, or secure the obligations of the counterparty, the swap dealer or major swap participant shall—

"(i) segregate the funds or other property for the benefit of the counterparty; and

"(ii) in accordance with such rules and regulations as the Commission may promulgate, maintain the funds or other property in a segregated account separate from the assets and other interests of the swap dealer or major swap participant.

"(2) APPLICABILITY.—The requirements described in paragraph (1) shall—

"(A) apply only to a swap between a counterparty and a swap dealer or major swap participant that is not submitted for clearing to a derivatives clearing organization; and

"(B)(i) not apply to variation margin payments; or

"(ii) not preclude any commercial arrangement regarding—

"(I) the investment of segregated funds or other property that may only be invested in such investments as the Commission may permit by rule or regulation; and

"(II) the related allocation of gains and losses resulting from any investment of the segregated funds or other property.

"(3) USE OF INDEPENDENT THIRD-PARTY CUSTODIANS.—The segregated account described in paragraph (1) shall be—

"(A) carried by an independent third-party custodian; and

"(B) designated as a segregated account for and on behalf of the counterparty.

"(4) REPORTING REQUIREMENT.—If the counterparty does not choose to require segregation of the funds or other property supplied to margin, guarantee, or secure the obligations of the counterparty, the swap dealer or major swap participant shall report to the counterparty of the swap dealer or major swap participant on a quarterly basis that the back office procedures of the swap dealer or major swap participant relating to margin and collateral requirements are in compliance with the agreement of the counterparties.".

SEC. 725. DERIVATIVES CLEARING ORGANIZATIONS.

(a) REGISTRATION REQUIREMENT.—Section 5b of the Commodity Exchange Act (7 U.S.C. 7a–1) is amended by striking subsections (a) and (b) and inserting the following:

"(a) REGISTRATION REQUIREMENT.—

"(1) IN GENERAL.—Except as provided in paragraph (2), it shall be unlawful for a derivatives clearing organization, directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a derivatives clearing organization with respect to—

"(A) a contract of sale of a commodity for future delivery (or an option on the contract of sale) or option on a commodity, in each case, unless the contract or option is—

"(i) excluded from this Act by subsection (a)(1)(C)(i), (c), or (f) of section 2; or

"(ii) a security futures product cleared by a clearing agency registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.); or

"(B) a swap.

"(2) EXCEPTION.—Paragraph (1) shall not apply to a derivatives clearing organization that is registered with the Commission.

"(b) VOLUNTARY REGISTRATION.—A person that clears 1 or more agreements, contracts, or transactions that are not required to

be cleared under this Act may register with the Commission as a derivatives clearing organization.".

(b) REGISTRATION FOR DEPOSITORY INSTITUTIONS AND CLEARING AGENCIES; EXEMPTIONS; COMPLIANCE OFFICER; ANNUAL REPORTS.—Section 5b of the Commodity Exchange Act (7 U.S.C. 7a–1) is amended by adding at the end the following:

"(g) EXISTING DEPOSITORY INSTITUTIONS AND CLEARING AGENCIES.—

"(1) IN GENERAL.—A depository institution or clearing agency registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) that is required to be registered as a derivatives clearing organization under this section is deemed to be registered under this section to the extent that, before the date of enactment of this subsection—

"(A) the depository institution cleared swaps as a multilateral clearing organization; or

"(B) the clearing agency cleared swaps.

"(2) CONVERSION OF DEPOSITORY INSTITUTIONS.—A depository institution to which this subsection applies may, by the vote of the shareholders owning not less than 51 percent of the voting interests of the depository institution, be converted into a State corporation, partnership, limited liability company, or similar legal form pursuant to a plan of conversion, if the conversion is not in contravention of applicable State law.

"(3) SHARING OF INFORMATION.—The Securities and Exchange Commission shall make available to the Commission, upon request, all information determined to be relevant by the Securities and Exchange Commission regarding a clearing agency deemed to be registered with the Commission under paragraph (1).

"(h) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, a derivatives clearing organization from registration under this section for the clearing of swaps if the Commission determines that the derivatives clearing organization is subject to comparable, comprehensive supervision and regulation by the Securities and Exchange Commission or the appropriate government authorities in the home country of the organization. Such conditions may include, but are not limited to, requiring that the derivatives clearing organization be available for inspection by the Commission and make available all information requested by the Commission.

"(i) DESIGNATION OF CHIEF COMPLIANCE OFFICER.—

"(1) IN GENERAL.—Each derivatives clearing organization shall designate an individual to serve as a chief compliance officer.

"(2) DUTIES.—The chief compliance officer shall—

"(A) report directly to the board or to the senior officer of the derivatives clearing organization;

"(B) review the compliance of the derivatives clearing organization with respect to the core principles described in subsection (c)(2);

"(C) in consultation with the board of the derivatives clearing organization, a body performing a function similar to the board of the derivatives clearing organization, or the senior officer of the derivatives clearing organization, resolve any conflicts of interest that may arise;

"(D) be responsible for administering each policy and procedure that is required to be established pursuant to this section;

"(E) ensure compliance with this Act (including regulations) relating to agreements, contracts, or transactions, including each rule prescribed by the Commission under this section;

"(F) establish procedures for the remediation of noncompliance issues identified by the compliance officer through any—

"(i) compliance office review;

"(ii) look-back;

"(iii) internal or external audit finding;

"(iv) self-reported error; or

"(v) validated complaint; and

"(G) establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.

"(3) ANNUAL REPORTS.—

"(A) IN GENERAL.—In accordance with rules prescribed by the Commission, the chief compliance officer shall annually prepare and sign a report that contains a description of—

"(i) the compliance of the derivatives clearing organization of the compliance officer with respect to this Act (including regulations); and

"(ii) each policy and procedure of the derivatives clearing organization of the compliance officer (including the code of ethics and conflict of interest policies of the derivatives clearing organization).

"(B) REQUIREMENTS.—A compliance report under subparagraph (A) shall—

"(i) accompany each appropriate financial report of the derivatives clearing organization that is required to be furnished to the Commission pursuant to this section; and

"(ii) include a certification that, under penalty of law, the compliance report is accurate and complete.".

(c) CORE PRINCIPLES FOR DERIVATIVES CLEARING ORGANIZATIONS.—Section 5b(c) of the Commodity Exchange Act (7 U.S.C. 7a–1(c)) is amended by striking paragraph (2) and inserting the following:

"(2) CORE PRINCIPLES FOR DERIVATIVES CLEARING ORGANIZATIONS.—

"(A) COMPLIANCE.—

"(i) IN GENERAL.—To be registered and to maintain registration as a derivatives clearing organization, a derivatives clearing organization shall comply with each core principle described in this paragraph and any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5).

"(ii) DISCRETION OF DERIVATIVES CLEARING ORGANIZATION.—Subject to any rule or regulation prescribed by the Commission, a derivatives clearing organization shall have reasonable discretion in establishing the manner by which the derivatives clearing

organization complies with each core principle described in this paragraph.

"(B) FINANCIAL RESOURCES.—

"(i) IN GENERAL.—Each derivatives clearing organization shall have adequate financial, operational, and managerial resources, as determined by the Commission, to discharge each responsibility of the derivatives clearing organization.

"(ii) MINIMUM AMOUNT OF FINANCIAL RESOURCES.—Each derivatives clearing organization shall possess financial resources that, at a minimum, exceed the total amount that would—

"(I) enable the organization to meet its financial obligations to its members and participants notwithstanding a default by the member or participant creating the largest financial exposure for that organization in extreme but plausible market conditions; and

"(II) enable the derivatives clearing organization to cover the operating costs of the derivatives clearing organization for a period of 1 year (as calculated on a rolling basis).

"(C) PARTICIPANT AND PRODUCT ELIGIBILITY.—

"(i) IN GENERAL.—Each derivatives clearing organization shall establish—

"(I) appropriate admission and continuing eligibility standards (including sufficient financial resources and operational capacity to meet obligations arising from participation in the derivatives clearing organization) for members of, and participants in, the derivatives clearing organization; and

"(II) appropriate standards for determining the eligibility of agreements, contracts, or transactions submitted to the derivatives clearing organization for clearing.

"(ii) REQUIRED PROCEDURES.—Each derivatives clearing organization shall establish and implement procedures to verify, on an ongoing basis, the compliance of each participation and membership requirement of the derivatives clearing organization.

"(iii) REQUIREMENTS.—The participation and membership requirements of each derivatives clearing organization shall—

"(I) be objective;

"(II) be publicly disclosed; and

"(III) permit fair and open access.

"(D) RISK MANAGEMENT.—

"(i) IN GENERAL.—Each derivatives clearing organization shall ensure that the derivatives clearing organization possesses the ability to manage the risks associated with discharging the responsibilities of the derivatives clearing organization through the use of appropriate tools and procedures.

"(ii) MEASUREMENT OF CREDIT EXPOSURE.—Each derivatives clearing organization shall—

"(I) not less than once during each business day of the derivatives clearing organization,

measure the credit exposures of the derivatives clearing organization to each member and participant of the derivatives clearing organization; and

"(II) monitor each exposure described in subclause (I) periodically during the business day of the derivatives clearing organization.

"(iii) LIMITATION OF EXPOSURE TO POTENTIAL LOSSES FROM DEFAULTS.—Each derivatives clearing organization, through margin requirements and other risk control mechanisms, shall limit the exposure of the derivatives clearing organization to potential losses from defaults by members and participants of the derivatives clearing organization to ensure that—

"(I) the operations of the derivatives clearing organization would not be disrupted; and

"(II) nondefaulting members or participants would not be exposed to losses that nondefaulting members or participants cannot anticipate or control.

"(iv) MARGIN REQUIREMENTS.—The margin required from each member and participant of a derivatives clearing organization shall be sufficient to cover potential exposures in normal market conditions.

"(v) REQUIREMENTS REGARDING MODELS AND PARAMETERS.—Each model and parameter used in setting margin requirements under clause (iv) shall be—

"(I) risk-based; and

"(II) reviewed on a regular basis.

"(E) SETTLEMENT PROCEDURES.—Each derivatives clearing organization shall—

"(i) complete money settlements on a timely basis (but not less frequently than once each business day);

"(ii) employ money settlement arrangements to eliminate or strictly limit the exposure of the derivatives clearing organization to settlement bank risks (including credit and liquidity risks from the use of banks to effect money settlements);

"(iii) ensure that money settlements are final when effected;

"(iv) maintain an accurate record of the flow of funds associated with each money settlement;

"(v) possess the ability to comply with each term and condition of any permitted netting or offset arrangement with any other clearing organization;

"(vi) regarding physical settlements, establish rules that clearly state each obligation of the derivatives clearing organization with respect to physical deliveries; and

"(vii) ensure that each risk arising from an obligation described in clause (vi) is identified and managed.

"(F) TREATMENT OF FUNDS.—

"(i) REQUIRED STANDARDS AND PROCEDURES.—Each derivatives clearing organization shall establish standards and procedures that are designed to protect and ensure the safety of member and participant funds and assets.

"(ii) HOLDING OF FUNDS AND ASSETS.—Each derivatives clearing organization shall hold member and participant funds and assets in a manner by which to minimize the risk of loss or of delay in the access by the derivatives clearing organization to the assets and funds.

"(iii) PERMISSIBLE INVESTMENTS.—Funds and assets invested by a derivatives clearing organization shall be held in instruments with minimal credit, market, and liquidity risks.

"(G) DEFAULT RULES AND PROCEDURES.—

"(i) IN GENERAL.—Each derivatives clearing organization shall have rules and procedures designed to allow for the efficient, fair, and safe management of events during which members or participants—

"(I) become insolvent; or

"(II) otherwise default on the obligations of the members or participants to the derivatives clearing organization.

"(ii) DEFAULT PROCEDURES.—Each derivatives clearing organization shall—

"(I) clearly state the default procedures of the derivatives clearing organization;

"(II) make publicly available the default rules of the derivatives clearing organization; and

"(III) ensure that the derivatives clearing organization may take timely action—

"(aa) to contain losses and liquidity pressures; and

"(bb) to continue meeting each obligation of the derivatives clearing organization.

"(H) RULE ENFORCEMENT.—Each derivatives clearing organization shall—

"(i) maintain adequate arrangements and resources for—

"(I) the effective monitoring and enforcement of compliance with the rules of the derivatives clearing organization; and

"(II) the resolution of disputes;

"(ii) have the authority and ability to discipline, limit, suspend, or terminate the activities of a member or participant due to a violation by the member or participant of any rule of the derivatives clearing organization; and

"(iii) report to the Commission regarding rule enforcement activities and sanctions imposed against members and participants as provided in clause (ii).

"(I) SYSTEM SAFEGUARDS.—Each derivatives clearing organization shall—

"(i) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk through the development of appropriate controls and procedures, and automated systems, that are reliable, secure, and have adequate scalable capacity;

"(ii) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allows for—

"(I) the timely recovery and resumption of operations of the derivatives clearing organization; and

"(II) the fulfillment of each obligation and responsibility of the derivatives clearing organization; and

"(iii) periodically conduct tests to verify that the backup resources of the derivatives clearing organization are sufficient to ensure daily processing, clearing, and settlement.

"(J) REPORTING.—Each derivatives clearing organization shall provide to the Commission all information that the Commission determines to be necessary to conduct oversight of the derivatives clearing organization.

"(K) RECORDKEEPING.—Each derivatives clearing organization shall maintain records of all activities related to the business of the derivatives clearing organization as a derivatives clearing organization—

"(i) in a form and manner that is acceptable to the Commission; and

"(ii) for a period of not less than 5 years.

"(L) PUBLIC INFORMATION.—

"(i) IN GENERAL.—Each derivatives clearing organization shall provide to market participants sufficient information to enable the market participants to identify and evaluate accurately the risks and costs associated with using the services of the derivatives clearing organization.

"(ii) AVAILABILITY OF INFORMATION.—Each derivatives clearing organization shall make information concerning the rules and operating and default procedures governing the clearing and settlement systems of the derivatives clearing organization available to market participants.

"(iii) PUBLIC DISCLOSURE.—Each derivatives clearing organization shall disclose publicly and to the Commission information concerning—

"(I) the terms and conditions of each contract, agreement, and transaction cleared and settled by the derivatives clearing organization;

"(II) each clearing and other fee that the derivatives clearing organization charges the members and participants of the derivatives clearing organization;

"(III) the margin-setting methodology, and the size and composition, of the financial resource package of the derivatives clearing organization;

"(IV) daily settlement prices, volume, and open interest for each contract settled or cleared by the derivatives clearing organization; and

"(V) any other matter relevant to participation in the settlement and clearing activities of the derivatives clearing organization.

"(M) INFORMATION-SHARING.—Each derivatives clearing organization shall—

"(i) enter into, and abide by the terms of, each appropriate and applicable domestic and international information-sharing agreement; and

"(ii) use relevant information obtained from each agreement described in clause (i) in carrying out the risk management program of the derivatives clearing organization.

"(N) ANTITRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve the purposes of this Act, a derivatives clearing organization shall not—

"(i) adopt any rule or take any action that results in any unreasonable restraint of trade; or

"(ii) impose any material anticompetitive burden.

"(O) GOVERNANCE FITNESS STANDARDS.—

"(i) GOVERNANCE ARRANGEMENTS.—Each derivatives clearing organization shall establish governance arrangements that are transparent—

"(I) to fulfill public interest requirements; and

"(II) to permit the consideration of the views of owners and participants.

"(ii) FITNESS STANDARDS.—Each derivatives clearing organization shall establish and enforce appropriate fitness standards for—

"(I) directors;

"(II) members of any disciplinary committee;

"(III) members of the derivatives clearing organization;

"(IV) any other individual or entity with direct access to the settlement or clearing activities of the derivatives clearing organization; and

"(V) any party affiliated with any individual or entity described in this clause.

"(P) CONFLICTS OF INTEREST.—Each derivatives clearing organization shall—

"(i) establish and enforce rules to minimize conflicts of interest in the decision-making process of the derivatives clearing organization; and

"(ii) establish a process for resolving conflicts of interest described in clause (i).

"(Q) COMPOSITION OF GOVERNING BOARDS.—Each derivatives clearing organization shall ensure that the composition of the governing board or committee of the derivatives clearing organization includes market participants.

"(R) LEGAL RISK.—Each derivatives clearing organization shall have a well-founded, transparent, and enforceable legal framework for each aspect of the activities of the derivatives clearing organization.".

(d) CONFLICTS OF INTEREST.—The Commodity Futures Trading Commission shall adopt rules mitigating conflicts of interest in connection with the conduct of business by a swap dealer or a major swap participant with a derivatives clearing organization, board of trade, or a swap execution facility that clears or trades swaps in which the swap dealer or major swap participant has a material debt or material equity investment.

(e) REPORTING REQUIREMENTS.—Section 5b of the Commodity Exchange Act (7 U.S.C. 7a–1) (as amended by subsection (b)) is amended by adding at the end the following:

"(k) REPORTING REQUIREMENTS.—

"(1) DUTY OF DERIVATIVES CLEARING ORGANIZATIONS.—Each derivatives clearing organization that clears swaps shall provide to the Commission all information that is determined by the Commission to be necessary to perform each responsibility of the Commission under this Act.

"(2) DATA COLLECTION AND MAINTENANCE REQUIREMENTS.—The Commission shall adopt data collection and maintenance requirements for swaps cleared by derivatives clearing organizations that are comparable to the corresponding requirements for—

"(A) swaps data reported to swap data repositories; and

"(B) swaps traded on swap execution facilities.

"(3) REPORTS ON SECURITY-BASED SWAP AGREEMENTS TO BE SHARED WITH THE SECURITIES AND EXCHANGE COMMISSION.—

"(A) IN GENERAL.—A derivatives clearing organization that clears security-based swap agreements (as defined in section 1a(47)(A)(v)) shall, upon request, open to inspection and examination to the Securities and Exchange Commission all books and records relating to such security-based swap agreements, consistent with the confidentiality and disclosure requirements of section 8.

"(B) JURISDICTION.—Nothing in this paragraph shall affect the exclusive jurisdiction of the Commission to prescribe recordkeeping and reporting requirements for a derivatives clearing organization that is registered with the Commission.

"(4) INFORMATION SHARING.—Subject to section 8, and upon request, the Commission shall share information collected under paragraph (2) with—

"(A) the Board;

"(B) the Securities and Exchange Commission;

"(C) each appropriate prudential regulator;

"(D) the Financial Stability Oversight Council;

"(E) the Department of Justice; and

"(F) any other person that the Commission determines to be appropriate, including—

"(i) foreign financial supervisors (including foreign futures authorities);

"(ii) foreign central banks; and

"(iii) foreign ministries.

"(5) CONFIDENTIALITY AND INDEMNIFICATION AGREEMENT.—Before the Commission may share information with any entity described in paragraph (4)—

"(A) the Commission shall receive a written agreement from each entity stating that the entity shall abide by the confidentiality requirements described in section 8 relating to the information on swap transactions that is provided; and

"(B) each entity shall agree to indemnify the Commission for any expenses arising from litigation relating to the information provided under section 8.

"(6) PUBLIC INFORMATION.—Each derivatives clearing organization that clears swaps shall provide to the Commission (including any designee of the Commission) information under paragraph (2) in such form and at such frequency as is required by the Commission to comply with the public reporting requirements contained in section 2(a)(13).".

(f) PUBLIC DISCLOSURE.—Section 8(e) of the Commodity Exchange Act (7 U.S.C. 12(e)) is amended in the last sentence—

(1) by inserting ", central bank and ministries," after "department" each place it appears; and

(2) by striking ". is a party." and inserting ", is a party.".

(g) LEGAL CERTAINTY FOR IDENTIFIED BANKING PRODUCTS.—

(1) REPEALS.—The Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27 et seq.) is amended—

(A) by striking sections 404 and 407 (7 U.S.C. 27b, 27e);

(B) in section 402 (7 U.S.C. 27), by striking subsection (d); and

(C) in section 408 (7 U.S.C. 27f)—

(i) in subsection (c)—

(I) by striking "in the case" and all that follows through "a hybrid" and inserting "in the case of a hybrid";

(II) by striking "; or" and inserting a period; and

(III) by striking paragraph (2);

(ii) by striking subsection (b); and

(iii) by redesignating subsection (c) as subsection (b).

(2) LEGAL CERTAINTY FOR BANK PRODUCTS ACT OF 2000.—Section 403 of the Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27a) is amended to read as follows:

"SEC. 403. EXCLUSION OF IDENTIFIED BANKING PRODUCT.

"(a) EXCLUSION.—Except as provided in subsection (b) or (c)—

"(1) the Commodity Exchange Act (7 U.S.C. 1 et seq.) shall not apply to, and the Commodity Futures Trading Commission shall not exercise regulatory authority under the Commodity Exchange Act (7 U.S.C. 1 et seq.) with respect to, an identified banking product; and

"(2) the definitions of 'security-based swap' in section 3(a)(68) of the Securities Exchange Act of 1934 and 'security-based swap agreement' in section 1a(47)(A)(v) of the Commodity Exchange Act and section 3(a)(78) of the Securities Exchange Act of 1934 do not include any identified bank product.

"(b) EXCEPTION.—An appropriate Federal banking agency may except an identified banking product of a bank under its regulatory jurisdiction from the exclusion in subsection (a) if the agency determines, in consultation with the Commodity Futures Trading Commission and the Securities and Exchange Commission, that the product—

"(1) would meet the definition of a 'swap' under section 1a(47) of the Commodity Exchange Act (7 U.S.C. 1a) or a 'security-based swap' under that section 3(a)(68) of the Securities Exchange Act of 1934; and

"(2) has become known to the trade as a swap or security-based swap, or otherwise has been structured as an identified

banking product for the purpose of evading the provisions of the Commodity Exchange Act (7 U.S.C. 1 et seq.), the Securities Act of 1933 (15 U.S.C. 77a et seq.), or the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

"(c) EXCEPTION.—The exclusions in subsection (a) shall not apply to an identified bank product that—

"(1) is a product of a bank that is not under the regulatory jurisdiction of an appropriate Federal banking agency;

"(2) meets the definition of swap in section 1a(47) of the Commodity Exchange Act or security-based swap in section 3(a)(68) of the Securities Exchange Act of 1934; and

"(3) has become known to the trade as a swap or security-based swap, or otherwise has been structured as an identified banking product for the purpose of evading the provisions of the Commodity Exchange Act (7 U.S.C. 1 et seq.), the Securities Act of 1933 (15 U.S.C. 77a et seq.), or the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).".

(h) REDUCING CLEARING SYSTEMIC RISK.—Section 5b(f)(1) of the Commodity Exchange Act (7 U.S.C. 7a-1(F)(i)) is amended by adding at the end the following: "In order to minimize systemic risk, under no circumstances shall a derivatives clearing organization be compelled to accept the counterparty credit risk of another clearing organization.".

SEC. 726. RULEMAKING ON CONFLICT OF INTEREST.

(a) IN GENERAL.—In order to mitigate conflicts of interest, not later than 180 days after the date of enactment of the Wall Street Transparency and Accountability Act of 2010, the Commodity Futures Trading Commission shall adopt rules which may include numerical limits on the control of, or the voting rights with respect to, any derivatives clearing organization that clears swaps, or swap execution facility or board of trade designated as a contract market that posts swaps or makes swaps available for trading, by a bank holding company (as defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841)) with total consolidated assets of $50,000,000,000 or more, a nonbank financial company (as defined in section 102) supervised by the Board, an affiliate of such a bank holding company or nonbank financial company, a swap dealer, major swap participant, or associated person of a swap dealer or major swap participant.

(b) PURPOSES.—The Commission shall adopt rules if it determines, after the review described in subsection (a), that such rules are necessary or appropriate to improve the governance of, or to mitigate systemic risk, promote competition, or mitigate conflicts of interest in connection with a swap dealer or major swap participant's conduct of business with, a derivatives clearing organization, contract market, or swap execution facility that clears or posts swaps or makes swaps available for trading and in which such swap dealer or major swap participant has a material debt or equity investment.

(c) CONSIDERATIONS.—In adopting rules pursuant to this section, the Commodity Futures Trading Commission shall consider any conflicts of interest arising from the amount of equity owned by a single investor, the ability to vote, cause the vote of, or withhold votes entitled to be cast on any matters by the holders of the ownership interest, and the governance arrangements of any derivatives clearing organization that clears swaps, or swap

execution facility or board of trade designated as a contract market that posts swaps or makes swaps available for trading.

SEC. 727. PUBLIC REPORTING OF SWAP TRANSACTION DATA.

Section 2(a) of the Commodity Exchange Act (7 U.S.C. 2(a)) is amended by adding at the end the following:

"(13) PUBLIC AVAILABILITY OF SWAP TRANSACTION DATA.—

"(A) DEFINITION OF REAL-TIME PUBLIC REPORTING.—In this paragraph, the term 'real-time public reporting' means to report data relating to a swap transaction, including price and volume, as soon as technologically practicable after the time at which the swap transaction has been executed.

"(B) PURPOSE.—The purpose of this section is to authorize the Commission to make swap transaction and pricing data available to the public in such form and at such times as the Commission determines appropriate to enhance price discovery.

"(C) GENERAL RULE.—The Commission is authorized and required to provide by rule for the public availability of swap transaction and pricing data as follows:

"(i) With respect to those swaps that are subject to the mandatory clearing requirement described in subsection (h)(1) (including those swaps that are excepted from the requirement pursuant to subsection (h)(7)), the Commission shall require real-time public reporting for such transactions.

"(ii) With respect to those swaps that are not subject to the mandatory clearing requirement described in subsection (h)(1), but are cleared at a registered derivatives clearing organization, the Commission shall require real-time public reporting for such transactions.

"(iii) With respect to swaps that are not cleared at a registered derivatives clearing organization and which are reported to a swap data repository or the Commission under subsection (h)(6), the Commission shall require real-time public reporting for such transactions, in a manner that does not disclose the business transactions and market positions of any person.

"(iv) With respect to swaps that are determined to be required to be cleared under subsection (h)(2) but are not cleared, the Commission shall require real-time public reporting for such transactions.

"(D) REGISTERED ENTITIES AND PUBLIC REPORTING.—The Commission may require registered entities to publicly disseminate the swap transaction and pricing data required to be reported under this paragraph.

"(E) RULEMAKING REQUIRED.—With respect to the rule providing for the public availability of transaction and pricing data for swaps described in clauses (i) and (ii) of subparagraph (C), the rule promulgated by the Commission shall contain provisions—

"(i) to ensure such information does not identify the participants;

"(ii) to specify the criteria for determining what constitutes a large notional swap transaction (block trade) for particular markets and contracts;

"(iii) to specify the appropriate time delay for reporting large notional swap transactions (block trades) to the public; and

"(iv) that take into account whether the public disclosure will materially reduce market liquidity.

"(F) TIMELINESS OF REPORTING.—Parties to a swap (including agents of the parties to a swap) shall be responsible for reporting swap transaction information to the appropriate registered entity in a timely manner as may be prescribed by the Commission.

"(G) REPORTING OF SWAPS TO REGISTERED SWAP DATA REPOSITORIES.—Each swap (whether cleared or uncleared) shall be reported to a registered swap data repository.

"(14) SEMIANNUAL AND ANNUAL PUBLIC REPORTING OF AGGREGATE SWAP DATA.—

"(A) IN GENERAL.—In accordance with subparagraph (B), the Commission shall issue a written report on a semiannual and annual basis to make available to the public information relating to—

"(i) the trading and clearing in the major swap categories; and

"(ii) the market participants and developments in new products.

"(B) USE; CONSULTATION.—In preparing a report under subparagraph (A), the Commission shall—

"(i) use information from swap data repositories and derivatives clearing organizations; and

"(ii) consult with the Office of the Comptroller of the Currency, the Bank for International Settlements, and such other regulatory bodies as may be necessary.

"(C) AUTHORITY OF THE COMMISSION.—The Commission may, by rule, regulation, or order, delegate the public reporting responsibilities of the Commission under this paragraph in accordance with such terms and conditions as the Commission determines to be appropriate and in the public interest.".

SEC. 728. SWAP DATA REPOSITORIES.

The Commodity Exchange Act is amended by inserting after section 20 (7 U.S.C. 24) the following:

"SEC. 21. SWAP DATA REPOSITORIES.

"(a) REGISTRATION REQUIREMENT.—

"(1) REQUIREMENT; AUTHORITY OF DERIVATIVES CLEARING ORGANIZATION.—

"(A) IN GENERAL.—It shall be unlawful for any person, unless registered with the Commission, directly or indirectly to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a swap data repository.

"(B) REGISTRATION OF DERIVATIVES CLEARING ORGANIZATIONS.—A derivatives clearing organization may register as a swap data repository.

"(2) INSPECTION AND EXAMINATION.—Each registered swap data repository shall be subject to inspection and examination by any representative of the Commission.

"(3) COMPLIANCE WITH CORE PRINCIPLES.—

"(A) IN GENERAL.—To be registered, and maintain registration, as a swap data repository, the swap data repository shall comply with—

"(i) the requirements and core principles described in this section; and

"(ii) any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5).

"(B) REASONABLE DISCRETION OF SWAP DATA REPOSITORY.—Unless otherwise determined by the Commission by rule or regulation, a swap data repository described in subparagraph (A) shall have reasonable discretion in establishing the manner in which the swap data repository complies with the core principles described in this section.

"(b) STANDARD SETTING.—

"(1) DATA IDENTIFICATION.—

"(A) IN GENERAL.—In accordance with subparagraph (B), the Commission shall prescribe standards that specify the data elements for each swap that shall be collected and maintained by each registered swap data repository.

"(B) REQUIREMENT.—In carrying out subparagraph (A), the Commission shall prescribe consistent data element standards applicable to registered entities and reporting counterparties.

"(2) DATA COLLECTION AND MAINTENANCE.—The Commission shall prescribe data collection and data maintenance standards for swap data repositories.

"(3) COMPARABILITY.—The standards prescribed by the Commission under this subsection shall be comparable to the data standards imposed by the Commission on derivatives clearing organizations in connection with their clearing of swaps.

"(c) DUTIES.—A swap data repository shall—

"(1) accept data prescribed by the Commission for each swap under subsection (b);

"(2) confirm with both counterparties to the swap the accuracy of the data that was submitted;

"(3) maintain the data described in paragraph (1) in such form, in such manner, and for such period as may be required by the Commission;

"(4)(A) provide direct electronic access to the Commission (or any designee of the Commission, including another registered entity); and

"(B) provide the information described in paragraph (1) in such form and at such frequency as the Commission may require to comply with the public reporting requirements contained in section 2(a)(13);

"(5) at the direction of the Commission, establish automated systems for monitoring, screening, and analyzing swap data, including compliance and frequency of end user clearing exemption claims by individual and affiliated entities;

"(6) maintain the privacy of any and all swap transaction information that the swap data repository receives from a swap dealer, counterparty, or any other registered entity; and

"(7) on a confidential basis pursuant to section 8, upon request, and after notifying the Commission of the request, make available all data obtained by the swap data repository, including individual counterparty trade and position data, to—

"(A) each appropriate prudential regulator;

"(B) the Financial Stability Oversight Council;

"(C) the Securities and Exchange Commission;

"(D) the Department of Justice; and

"(E) any other person that the Commission determines to be appropriate, including—

"(i) foreign financial supervisors (including foreign futures authorities);

"(ii) foreign central banks; and

"(iii) foreign ministries; and

"(8) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allows for the timely recovery and resumption of operations and the fulfillment of the responsibilities and obligations of the organization.

"(d) CONFIDENTIALITY AND INDEMNIFICATION AGREEMENT.—Before the swap data repository may share information with any entity described in subsection (c)(7)—

"(1) the swap data repository shall receive a written agreement from each entity stating that the entity shall abide by the confidentiality requirements described in section 8 relating to the information on swap transactions that is provided; and

"(2) each entity shall agree to indemnify the swap data repository and the Commission for any expenses arising from litigation relating to the information provided under section 8.

"(e) DESIGNATION OF CHIEF COMPLIANCE OFFICER.—

"(1) IN GENERAL.—Each swap data repository shall designate an individual to serve as a chief compliance officer.

"(2) DUTIES.—The chief compliance officer shall—

"(A) report directly to the board or to the senior officer of the swap data repository;

"(B) review the compliance of the swap data repository with respect to the requirements and core principles described in this section;

"(C) in consultation with the board of the swap data repository, a body performing a function similar to the board of the swap data repository, or the senior officer of the swap data repository, resolve any conflicts of interest that may arise;

"(D) be responsible for administering each policy and procedure that is required to be established pursuant to this section;

"(E) ensure compliance with this Act (including regulations) relating to agreements, contracts, or transactions, including each rule prescribed by the Commission under this section;

"(F) establish procedures for the remediation of noncompliance issues identified by the chief compliance officer through any—

"(i) compliance office review;

"(ii) look-back;

"(iii) internal or external audit finding;

"(iv) self-reported error; or

"(v) validated complaint; and

"(G) establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.

"(3) ANNUAL REPORTS.—

"(A) IN GENERAL.—In accordance with rules prescribed by the Commission, the chief compliance officer shall annually prepare and sign a report that contains a description of—

"(i) the compliance of the swap data repository of the chief compliance officer with respect to this Act (including regulations); and

"(ii) each policy and procedure of the swap data repository of the chief compliance officer (including the code of ethics and conflict of interest policies of the swap data repository).

"(B) REQUIREMENTS.—A compliance report under subparagraph (A) shall—

"(i) accompany each appropriate financial report of the swap data repository that is required to be furnished to the Commission pursuant to this section; and

"(ii) include a certification that, under penalty of law, the compliance report is accurate and complete.

"(f) CORE PRINCIPLES APPLICABLE TO SWAP DATA REPOSITORIES.—

"(1) ANTITRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve the purposes of this Act, a swap data repository shall not—

"(A) adopt any rule or take any action that results in any unreasonable restraint of trade; or

"(B) impose any material anticompetitive burden on the trading, clearing, or reporting of transactions.

"(2) GOVERNANCE ARRANGEMENTS.—Each swap data repository shall establish governance arrangements that are transparent—

"(A) to fulfill public interest requirements; and

"(B) to support the objectives of the Federal Government, owners, and participants.

"(3) CONFLICTS OF INTEREST.—Each swap data repository shall—

"(A) establish and enforce rules to minimize conflicts of interest in the decision-making process of the swap data repository; and

"(B) establish a process for resolving conflicts of interest described in subparagraph (A).

"(4) ADDITIONAL DUTIES DEVELOPED BY COMMISSION.—

"(A) IN GENERAL.—The Commission may develop 1 or more additional duties applicable to swap data repositories.

"(B) CONSIDERATION OF EVOLVING STANDARDS.—In developing additional duties under subparagraph (A), the Commission may take into consideration any evolving standard of the United States or the international community.

"(C) ADDITIONAL DUTIES FOR COMMISSION DESIGNEES.—The Commission shall establish additional duties for any registrant described in section 1a(48) in order to minimize

conflicts of interest, protect data, ensure compliance, and guarantee the safety and security of the swap data repository.

"(g) REQUIRED REGISTRATION FOR SWAP DATA REPOSITORIES.—Any person that is required to be registered as a swap data repository under this section shall register with the Commission regardless of whether that person is also licensed as a bank or registered with the Securities and Exchange Commission as a swap data repository.

"(h) RULES.—The Commission shall adopt rules governing persons that are registered under this section.".

SEC. 729. REPORTING AND RECORDKEEPING.

The Commodity Exchange Act is amended by inserting after section 4q (7 U.S.C. 6o–1) the following:

"SEC. 4r. REPORTING AND RECORDKEEPING FOR UNCLEARED SWAPS.

"(a) REQUIRED REPORTING OF SWAPS NOT ACCEPTED BY ANY DERIVATIVES CLEARING ORGANIZATION.—

"(1) IN GENERAL.—Each swap that is not accepted for clearing by any derivatives clearing organization shall be reported to—

"(A) a swap data repository described in section 21; or

"(B) in the case in which there is no swap data repository that would accept the swap, to the Commission pursuant to this section within such time period as the Commission may by rule or regulation prescribe.

"(2) TRANSITION RULE FOR PREENACTMENT SWAPS.—

"(A) SWAPS ENTERED INTO BEFORE THE DATE OF ENACTMENT OF THE WALL STREET TRANSPARENCY AND ACCOUNTABILITY ACT OF 2010.—Each swap entered into before the date of enactment of the Wall Street Transparency and Accountability Act of 2010, the terms of which have not expired as of the date of enactment of that Act, shall be reported to a registered swap data repository or the Commission by a date that is not later than—

"(i) 30 days after issuance of the interim final rule; or

"(ii) such other period as the Commission determines to be appropriate.

"(B) COMMISSION RULEMAKING.—The Commission shall promulgate an interim final rule within 90 days of the date of enactment of this section providing for the reporting of each swap entered into before the date of enactment as referenced in subparagraph (A).

"(C) EFFECTIVE DATE.—The reporting provisions described in this section shall be effective upon the enactment of this section.

"(3) REPORTING OBLIGATIONS.—

"(A) SWAPS IN WHICH ONLY 1 COUNTERPARTY IS A SWAP DEALER OR MAJOR SWAP PARTICIPANT.—With respect to a swap in which only 1 counterparty is a swap dealer or major swap participant, the swap dealer or major swap participant shall report the swap as required under paragraphs (1) and (2).

"(B) SWAPS IN WHICH 1 COUNTERPARTY IS A SWAP DEALER AND THE OTHER A MAJOR SWAP PARTICIPANT.—With

respect to a swap in which 1 counterparty is a swap dealer and the other a major swap participant, the swap dealer shall report the swap as required under paragraphs (1) and (2).

"(C) OTHER SWAPS.—With respect to any other swap not described in subparagraph (A) or (B), the counterparties to the swap shall select a counterparty to report the swap as required under paragraphs (1) and (2).

"(b) DUTIES OF CERTAIN INDIVIDUALS.—Any individual or entity that enters into a swap shall meet each requirement described in subsection (c) if the individual or entity did not—

"(1) clear the swap in accordance with section 2(h)(1); or

"(2) have the data regarding the swap accepted by a swap data repository in accordance with rules (including timeframes) adopted by the Commission under section 21.

"(c) REQUIREMENTS.—An individual or entity described in subsection (b) shall—

"(1) upon written request from the Commission, provide reports regarding the swaps held by the individual or entity to the Commission in such form and in such manner as the Commission may request; and

"(2) maintain books and records pertaining to the swaps held by the individual or entity in such form, in such manner, and for such period as the Commission may require, which shall be open to inspection by—

"(A) any representative of the Commission;

"(B) an appropriate prudential regulator;

"(C) the Securities and Exchange Commission;

"(D) the Financial Stability Oversight Council; and

"(E) the Department of Justice.

"(d) IDENTICAL DATA.—In prescribing rules under this section, the Commission shall require individuals and entities described in subsection (b) to submit to the Commission a report that contains data that is not less comprehensive than the data required to be collected by swap data repositories under section 21.".

SEC. 730. LARGE SWAP TRADER REPORTING.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by adding after section 4s (as added by section 731) the following:

"SEC. 4t. LARGE SWAP TRADER REPORTING.

"(a) PROHIBITION.—

"(1) IN GENERAL.—Except as provided in paragraph (2), it shall be unlawful for any person to enter into any swap that the Commission determines to perform a significant price discovery function with respect to registered entities if—

"(A) the person directly or indirectly enters into the swap during any 1 day in an amount equal to or in excess of such amount as shall be established periodically by the Commission; and

"(B) the person directly or indirectly has or obtains a position in the swap equal to or in excess of such amount as shall be established periodically by the Commission.

"(2) EXCEPTION.—Paragraph (1) shall not apply if—

"(A) the person files or causes to be filed with the properly designated officer of the Commission such reports

regarding any transactions or positions described in subparagraphs (A) and (B) of paragraph (1) as the Commission may require by rule or regulation; and

"(B) in accordance with the rules and regulations of the Commission, the person keeps books and records of all such swaps and any transactions and positions in any related commodity traded on or subject to the rules of any designated contract market or swap execution facility, and of cash or spot transactions in, inventories of, and purchase and sale commitments of, such a commodity.

"(b) REQUIREMENTS.—

"(1) IN GENERAL.—Books and records described in subsection (a)(2)(B) shall—

"(A) show such complete details concerning all transactions and positions as the Commission may prescribe by rule or regulation;

"(B) be open at all times to inspection and examination by any representative of the Commission; and

"(C) be open at all times to inspection and examination by the Securities and Exchange Commission, to the extent such books and records relate to transactions in swaps (as that term is defined in section 1a(47)(A)(v)), and consistent with the confidentiality and disclosure requirements of section 8.

"(2) JURISDICTION.—Nothing in paragraph (1) shall affect the exclusive jurisdiction of the Commission to prescribe recordkeeping and reporting requirements for large swap traders under this section.

"(c) APPLICABILITY.—For purposes of this section, the swaps, futures, and cash or spot transactions and positions of any person shall include the swaps, futures, and cash or spot transactions and positions of any persons directly or indirectly controlled by the person.

"(d) SIGNIFICANT PRICE DISCOVERY FUNCTION.—In making a determination as to whether a swap performs or affects a significant price discovery function with respect to registered entities, the Commission shall consider the factors described in section 4a(a)(3).".

SEC. 731. REGISTRATION AND REGULATION OF SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 4r (as added by section 729) the following:

"SEC. 4s. REGISTRATION AND REGULATION OF SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.

"(a) REGISTRATION.—

"(1) SWAP DEALERS.—It shall be unlawful for any person to act as a swap dealer unless the person is registered as a swap dealer with the Commission.

"(2) MAJOR SWAP PARTICIPANTS.—It shall be unlawful for any person to act as a major swap participant unless the person is registered as a major swap participant with the Commission.

"(b) REQUIREMENTS.—

"(1) IN GENERAL.—A person shall register as a swap dealer or major swap participant by filing a registration application with the Commission.

"(2) CONTENTS.—

"(A) IN GENERAL.—The application shall be made in such form and manner as prescribed by the Commission, and shall contain such information, as the Commission considers necessary concerning the business in which the applicant is or will be engaged.

"(B) CONTINUAL REPORTING.—A person that is registered as a swap dealer or major swap participant shall continue to submit to the Commission reports that contain such information pertaining to the business of the person as the Commission may require.

"(3) EXPIRATION.—Each registration under this section shall expire at such time as the Commission may prescribe by rule or regulation.

"(4) RULES.—Except as provided in subsections (d) and (e), the Commission may prescribe rules applicable to swap dealers and major swap participants, including rules that limit the activities of swap dealers and major swap participants.

"(5) TRANSITION.—Rules under this section shall provide for the registration of swap dealers and major swap participants not later than 1 year after the date of enactment of the Wall Street Transparency and Accountability Act of 2010.

"(6) STATUTORY DISQUALIFICATION.—Except to the extent otherwise specifically provided by rule, regulation, or order, it shall be unlawful for a swap dealer or a major swap participant to permit any person associated with a swap dealer or a major swap participant who is subject to a statutory disqualification to effect or be involved in effecting swaps on behalf of the swap dealer or major swap participant, if the swap dealer or major swap participant knew, or in the exercise of reasonable care should have known, of the statutory disqualification.

"(c) DUAL REGISTRATION.—

"(1) SWAP DEALER.—Any person that is required to be registered as a swap dealer under this section shall register with the Commission regardless of whether the person also is a depository institution or is registered with the Securities and Exchange Commission as a security-based swap dealer.

"(2) MAJOR SWAP PARTICIPANT.—Any person that is required to be registered as a major swap participant under this section shall register with the Commission regardless of whether the person also is a depository institution or is registered with the Securities and Exchange Commission as a major security-based swap participant.

"(d) RULEMAKINGS.—

"(1) IN GENERAL.—The Commission shall adopt rules for persons that are registered as swap dealers or major swap participants under this section.

"(2) EXCEPTION FOR PRUDENTIAL REQUIREMENTS.—

"(A) IN GENERAL.—The Commission may not prescribe rules imposing prudential requirements on swap dealers or major swap participants for which there is a prudential regulator.

"(B) APPLICABILITY.—Subparagraph (A) does not limit the authority of the Commission to prescribe rules as directed under this section.

"(e) CAPITAL AND MARGIN REQUIREMENTS.—

"(1) IN GENERAL.—

"(A) SWAP DEALERS AND MAJOR SWAP PARTICIPANTS THAT ARE BANKS.—Each registered swap dealer and major swap participant for which there is a prudential regulator shall meet such minimum capital requirements and minimum initial and variation margin requirements as the prudential regulator shall by rule or regulation prescribe under paragraph (2)(A).

"(B) SWAP DEALERS AND MAJOR SWAP PARTICIPANTS THAT ARE NOT BANKS.—Each registered swap dealer and major swap participant for which there is not a prudential regulator shall meet such minimum capital requirements and minimum initial and variation margin requirements as the Commission shall by rule or regulation prescribe under paragraph (2)(B).

"(2) RULES.—

"(A) SWAP DEALERS AND MAJOR SWAP PARTICIPANTS THAT ARE BANKS.—The prudential regulators, in consultation with the Commission and the Securities and Exchange Commission, shall jointly adopt rules for swap dealers and major swap participants, with respect to their activities as a swap dealer or major swap participant, for which there is a prudential regulator imposing—

"(i) capital requirements; and

"(ii) both initial and variation margin requirements on all swaps that are not cleared by a registered derivatives clearing organization.

"(B) SWAP DEALERS AND MAJOR SWAP PARTICIPANTS THAT ARE NOT BANKS.—The Commission shall adopt rules for swap dealers and major swap participants, with respect to their activities as a swap dealer or major swap participant, for which there is not a prudential regulator imposing—

"(i) capital requirements; and

"(ii) both initial and variation margin requirements on all swaps that are not cleared by a registered derivatives clearing organization.

"(C) CAPITAL.—In setting capital requirements for a person that is designated as a swap dealer or a major swap participant for a single type or single class or category of swap or activities, the prudential regulator and the Commission shall take into account the risks associated with other types of swaps or classes of swaps or categories of swaps engaged in and the other activities conducted by that person that are not otherwise subject to regulation applicable to that person by virtue of the status of the person as a swap dealer or a major swap participant.

"(3) STANDARDS FOR CAPITAL AND MARGIN.—

"(A) IN GENERAL.—To offset the greater risk to the swap dealer or major swap participant and the financial system arising from the use of swaps that are not cleared, the requirements imposed under paragraph (2) shall—

"(i) help ensure the safety and soundness of the swap dealer or major swap participant; and

"(ii) be appropriate for the risk associated with the non-cleared swaps held as a swap dealer or major swap participant.

"(B) RULE OF CONSTRUCTION.—

"(i) IN GENERAL.—Nothing in this section shall limit, or be construed to limit, the authority—

"(I) of the Commission to set financial responsibility rules for a futures commission merchant or introducing broker registered pursuant to section 4f(a) (except for section 4f(a)(3)) in accordance with section 4f(b); or

"(II) of the Securities and Exchange Commission to set financial responsibility rules for a broker or dealer registered pursuant to section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)) (except for section 15(b)(11) of that Act (15 U.S.C. 78o(b)(11)) in accordance with section 15(c)(3) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(c)(3)).

"(ii) FUTURES COMMISSION MERCHANTS AND OTHER DEALERS.—A futures commission merchant, introducing broker, broker, or dealer shall maintain sufficient capital to comply with the stricter of any applicable capital requirements to which such futures commission merchant, introducing broker, broker, or dealer is subject to under this Act or the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

"(C) MARGIN REQUIREMENTS.—In prescribing margin requirements under this subsection, the prudential regulator with respect to swap dealers and major swap participants for which it is the prudential regulator and the Commission with respect to swap dealers and major swap participants for which there is no prudential regulator shall permit the use of noncash collateral, as the regulator or the Commission determines to be consistent with—

"(i) preserving the financial integrity of markets trading swaps; and

"(ii) preserving the stability of the United States financial system.

"(D) COMPARABILITY OF CAPITAL AND MARGIN REQUIREMENTS.—

"(i) IN GENERAL.—The prudential regulators, the Commission, and the Securities and Exchange Commission shall periodically (but not less frequently than annually) consult on minimum capital requirements and minimum initial and variation margin requirements.

"(ii) COMPARABILITY.—The entities described in clause (i) shall, to the maximum extent practicable, establish and maintain comparable minimum capital requirements and minimum initial and variation margin requirements, including the use of non cash collateral, for—

"(I) swap dealers; and

"(II) major swap participants.

"(f) REPORTING AND RECORDKEEPING.—

"(1) IN GENERAL.—Each registered swap dealer and major swap participant—

"(A) shall make such reports as are required by the Commission by rule or regulation regarding the transactions and positions and financial condition of the registered swap dealer or major swap participant;

"(B)(i) for which there is a prudential regulator, shall keep books and records of all activities related to the business as a swap dealer or major swap participant in such form and manner and for such period as may be prescribed by the Commission by rule or regulation; and

"(ii) for which there is no prudential regulator, shall keep books and records in such form and manner and for such period as may be prescribed by the Commission by rule or regulation;

"(C) shall keep books and records described in subparagraph (B) open to inspection and examination by any representative of the Commission; and

"(D) shall keep any such books and records relating to swaps defined in section 1a(47)(A)(v) open to inspection and examination by the Securities and Exchange Commission.

"(2) RULES.—The Commission shall adopt rules governing reporting and recordkeeping for swap dealers and major swap participants.

"(g) DAILY TRADING RECORDS.—

"(1) IN GENERAL.—Each registered swap dealer and major swap participant shall maintain daily trading records of the swaps of the registered swap dealer and major swap participant and all related records (including related cash or forward transactions) and recorded communications, including electronic mail, instant messages, and recordings of telephone calls, for such period as may be required by the Commission by rule or regulation.

"(2) INFORMATION REQUIREMENTS.—The daily trading records shall include such information as the Commission shall require by rule or regulation.

"(3) COUNTERPARTY RECORDS.—Each registered swap dealer and major swap participant shall maintain daily trading records for each counterparty in a manner and form that is identifiable with each swap transaction.

"(4) AUDIT TRAIL.—Each registered swap dealer and major swap participant shall maintain a complete audit trail for conducting comprehensive and accurate trade reconstructions.

"(5) RULES.—The Commission shall adopt rules governing daily trading records for swap dealers and major swap participants.

"(h) BUSINESS CONDUCT STANDARDS.—

"(1) IN GENERAL.—Each registered swap dealer and major swap participant shall conform with such business conduct standards as prescribed in paragraph (3) and as may be prescribed by the Commission by rule or regulation that relate to—

"(A) fraud, manipulation, and other abusive practices involving swaps (including swaps that are offered but not entered into);

"(B) diligent supervision of the business of the registered swap dealer and major swap participant;

"(C) adherence to all applicable position limits; and

"(D) such other matters as the Commission determines to be appropriate.

"(2) RESPONSIBILITIES WITH RESPECT TO SPECIAL ENTITIES.—

"(A) ADVISING SPECIAL ENTITIES.—A swap dealer or major swap participant that acts as an advisor to a special entity regarding a swap shall comply with the requirements of subparagraph (4) with respect to such Special Entity.

"(B) ENTERING OF SWAPS WITH RESPECT TO SPECIAL ENTITIES.—A swap dealer that enters into or offers to enter into swap with a Special Entity shall comply with the requirements of subparagraph (5) with respect to such Special Entity.

"(C) SPECIAL ENTITY DEFINED.—For purposes of this subsection, the term 'special entity' means—

"(i) a Federal agency;

"(ii) a State, State agency, city, county, municipality, or other political subdivision of a State;

"(iii) any employee benefit plan, as defined in section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002);

"(iv) any governmental plan, as defined in section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002); or

"(v) any endowment, including an endowment that is an organization described in section 501(c)(3) of the Internal Revenue Code of 1986.

"(3) BUSINESS CONDUCT REQUIREMENTS.—Business conduct requirements adopted by the Commission shall—

"(A) establish a duty for a swap dealer or major swap participant to verify that any counterparty meets the eligibility standards for an eligible contract participant;

"(B) require disclosure by the swap dealer or major swap participant to any counterparty to the transaction (other than a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant) of—

"(i) information about the material risks and characteristics of the swap;

"(ii) any material incentives or conflicts of interest that the swap dealer or major swap participant may have in connection with the swap; and

"(iii)(I) for cleared swaps, upon the request of the counterparty, receipt of the daily mark of the transaction from the appropriate derivatives clearing organization; and

"(II) for uncleared swaps, receipt of the daily mark of the transaction from the swap dealer or the major swap participant;

"(C) establish a duty for a swap dealer or major swap participant to communicate in a fair and balanced manner based on principles of fair dealing and good faith; and

"(D) establish such other standards and requirements as the Commission may determine are appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this Act.

"(4) SPECIAL REQUIREMENTS FOR SWAP DEALERS ACTING AS ADVISORS.—

"(A) IN GENERAL.—It shall be unlawful for a swap dealer or major swap participant—

"(i) to employ any device, scheme, or artifice to defraud any Special Entity or prospective customer who is a Special Entity;

"(ii) to engage in any transaction, practice, or course of business that operates as a fraud or deceit on any Special Entity or prospective customer who is a Special Entity; or

"(iii) to engage in any act, practice, or course of business that is fraudulent, deceptive or manipulative.

"(B) DUTY.—Any swap dealer that acts as an advisor to a Special Entity shall have a duty to act in the best interests of the Special Entity.

"(C) REASONABLE EFFORTS.—Any swap dealer that acts as an advisor to a Special Entity shall make reasonable efforts to obtain such information as is necessary to make a reasonable determination that any swap recommended by the swap dealer is in the best interests of the Special Entity, including information relating to—

"(i) the financial status of the Special Entity;

"(ii) the tax status of the Special Entity;

"(iii) the investment or financing objectives of the Special Entity; and

"(iv) any other information that the Commission may prescribe by rule or regulation.

"(5) SPECIAL REQUIREMENTS FOR SWAP DEALERS AS COUNTERPARTIES TO SPECIAL ENTITIES.—

"(A) Any swap dealer or major swap participant that offers to enter or enters into a swap with a Special Entity shall—

"(i) comply with any duty established by the Commission for a swap dealer or major swap participant, with respect to a counterparty that is an eligible contract participant within the meaning of subclause (I) or (II) of clause (vii) of section 1a(18) of this Act, that requires the swap dealer or major swap participant to have a reasonable basis to believe that the counterparty that is a Special Entity has an independent representative that—

"(I) has sufficient knowledge to evaluate the transaction and risks;

"(II) is not subject to a statutory disqualification;

"(III) is independent of the swap dealer or major swap participant;

"(IV) undertakes a duty to act in the best interests of the counterparty it represents;

"(V) makes appropriate disclosures;

"(VI) will provide written representations to the Special Entity regarding fair pricing and the appropriateness of the transaction; and

"(VII) in the case of employee benefit plans subject to the Employee Retirement Income Security act of 1974, is a fiduciary as defined in section 3 of that Act (29 U.S.C. 1002); and

"(ii) before the initiation of the transaction, disclose to the Special Entity in writing the capacity in which the swap dealer is acting; and

"(B) the Commission may establish such other standards and requirements as the Commission may determine are appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this Act.

"(6) RULES.—The Commission shall prescribe rules under this subsection governing business conduct standards for swap dealers and major swap participants.

"(7) APPLICABILITY.—This section shall not apply with respect to a transaction that is—

"(A) initiated by a Special Entity on an exchange or swap execution facility; and

"(B) one in which the swap dealer or major swap participant does not know the identity of the counterparty to the transaction.

"(i) DOCUMENTATION STANDARDS.—

"(1) IN GENERAL.—Each registered swap dealer and major swap participant shall conform with such standards as may be prescribed by the Commission by rule or regulation that relate to timely and accurate confirmation, processing, netting, documentation, and valuation of all swaps.

"(2) RULES.—The Commission shall adopt rules governing documentation standards for swap dealers and major swap participants.

"(j) DUTIES.—Each registered swap dealer and major swap participant at all times shall comply with the following requirements:

"(1) MONITORING OF TRADING.—The swap dealer or major swap participant shall monitor its trading in swaps to prevent violations of applicable position limits.

"(2) RISK MANAGEMENT PROCEDURES.—The swap dealer or major swap participant shall establish robust and professional risk management systems adequate for managing the day-to-day business of the swap dealer or major swap participant.

"(3) DISCLOSURE OF GENERAL INFORMATION.—The swap dealer or major swap participant shall disclose to the Commission and to the prudential regulator for the swap dealer or major swap participant, as applicable, information concerning—

"(A) terms and conditions of its swaps;

"(B) swap trading operations, mechanisms, and practices;

"(C) financial integrity protections relating to swaps; and

"(D) other information relevant to its trading in swaps.

"(4) ABILITY TO OBTAIN INFORMATION.—The swap dealer or major swap participant shall—

"(A) establish and enforce internal systems and procedures to obtain any necessary information to perform any of the functions described in this section; and

"(B) provide the information to the Commission and to the prudential regulator for the swap dealer or major swap participant, as applicable, on request.

"(5) CONFLICTS OF INTEREST.—The swap dealer and major swap participant shall implement conflict-of-interest systems and procedures that—

"(A) establish structural and institutional safeguards to ensure that the activities of any person within the firm relating to research or analysis of the price or market for any commodity or swap or acting in a role of providing clearing activities or making determinations as to accepting clearing customers are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of persons whose involvement in pricing, trading, or clearing activities might potentially bias their judgment or supervision and contravene the core principles of open access and the business conduct standards described in this Act; and

"(B) address such other issues as the Commission determines to be appropriate.

"(6) ANTITRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve the purposes of this Act, a swap dealer or major swap participant shall not—

"(A) adopt any process or take any action that results in any unreasonable restraint of trade; or

"(B) impose any material anticompetitive burden on trading or clearing.

"(7) RULES.—The Commission shall prescribe rules under this subsection governing duties of swap dealers and major swap participants.

"(k) DESIGNATION OF CHIEF COMPLIANCE OFFICER.—

"(1) IN GENERAL.—Each swap dealer and major swap participant shall designate an individual to serve as a chief compliance officer.

"(2) DUTIES.—The chief compliance officer shall—

"(A) report directly to the board or to the senior officer of the swap dealer or major swap participant;

"(B) review the compliance of the swap dealer or major swap participant with respect to the swap dealer and major swap participant requirements described in this section;

"(C) in consultation with the board of directors, a body performing a function similar to the board, or the senior officer of the organization, resolve any conflicts of interest that may arise;

"(D) be responsible for administering each policy and procedure that is required to be established pursuant to this section;

"(E) ensure compliance with this Act (including regulations) relating to swaps, including each rule prescribed by the Commission under this section;

"(F) establish procedures for the remediation of noncompliance issues identified by the chief compliance officer through any—

"(i) compliance office review;

"(ii) look-back;

"(iii) internal or external audit finding;

"(iv) self-reported error; or

"(v) validated complaint; and

"(G) establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.

"(3) ANNUAL REPORTS.—

"(A) IN GENERAL.—In accordance with rules prescribed by the Commission, the chief compliance officer shall annually prepare and sign a report that contains a description of—

"(i) the compliance of the swap dealer or major swap participant with respect to this Act (including regulations); and

"(ii) each policy and procedure of the swap dealer or major swap participant of the chief compliance officer (including the code of ethics and conflict of interest policies).

"(B) REQUIREMENTS.—A compliance report under subparagraph (A) shall—

"(i) accompany each appropriate financial report of the swap dealer or major swap participant that is required to be furnished to the Commission pursuant to this section; and

"(ii) include a certification that, under penalty of law, the compliance report is accurate and complete.".

SEC. 732. CONFLICTS OF INTEREST.

Section 4d of the Commodity Exchange Act (7 U.S.C. 6d) is amended—

(1) by redesignating subsection (c) as subsection (e); and

(2) by inserting after subsection (b) the following:

"(c) CONFLICTS OF INTEREST.—The Commission shall require that futures commission merchants and introducing brokers implement conflict-of-interest systems and procedures that—

"(1) establish structural and institutional safeguards to ensure that the activities of any person within the firm relating to research or analysis of the price or market for any commodity are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of persons whose involvement in trading or clearing activities might potentially bias the judgment or supervision of the persons; and

"(2) address such other issues as the Commission determines to be appropriate.

"(d) DESIGNATION OF CHIEF COMPLIANCE OFFICER.—Each futures commission merchant shall designate an individual to serve as its Chief Compliance Officer and perform such duties and responsibilities as shall be set forth in regulations to be adopted by the Commission or rules to be adopted by a futures association registered under section 17.".

SEC. 733. SWAP EXECUTION FACILITIES.

The Commodity Exchange Act is amended by inserting after section 5g (7 U.S.C. 7b–2) the following:

"SEC. 5h. SWAP EXECUTION FACILITIES.

"(a) REGISTRATION.—

"(1) IN GENERAL.—No person may operate a facility for the trading or processing of swaps unless the facility is registered as a swap execution facility or as a designated contract market under this section.

"(2) DUAL REGISTRATION.—Any person that is registered as a swap execution facility under this section shall register with the Commission regardless of whether the person also is registered with the Securities and Exchange Commission as a swap execution facility.

"(b) TRADING AND TRADE PROCESSING.—

"(1) IN GENERAL.—Except as specified in paragraph (2), a swap execution facility that is registered under subsection (a) may—

"(A) make available for trading any swap; and

"(B) facilitate trade processing of any swap.

"(2) AGRICULTURAL SWAPS.—A swap execution facility may not list for trading or confirm the execution of any swap in an agricultural commodity (as defined by the Commission) except pursuant to a rule or regulation of the Commission allowing the swap under such terms and conditions as the Commission shall prescribe.

"(c) IDENTIFICATION OF FACILITY USED TO TRADE SWAPS BY CONTRACT MARKETS.—A board of trade that operates a contract market shall, to the extent that the board of trade also operates a swap execution facility and uses the same electronic trade execution system for listing and executing trades of swaps on or through the contract market and the swap execution facility, identify whether the electronic trading of such swaps is taking place on or through the contract market or the swap execution facility.

"(d) RULE-WRITING.—

"(1) The Securities and Exchange Commission and Commodity Futures Trading Commission may promulgate rules defining the universe of swaps that can be executed on a swap execution facility. These rules shall take into account the price and nonprice requirements of the counterparties to a swap and the goal of this section as set forth in subsection (e).

"(2) For all swaps that are not required to be executed through a swap execution facility as defined in paragraph (1), such trades may be executed through any other available means of interstate commerce.

"(3) The Securities and Exchange Commission and Commodity Futures Trading Commission shall update these rules as necessary to account for technological and other innovation.

"(e) RULE OF CONSTRUCTION.—The goal of this section is to promote the trading of swaps on swap execution facilities and to promote pre-trade price transparency in the swaps market.

"(f) CORE PRINCIPLES FOR SWAP EXECUTION FACILITIES.—

"(1) COMPLIANCE WITH CORE PRINCIPLES.—

"(A) IN GENERAL.—To be registered, and maintain registration, as a swap execution facility, the swap execution facility shall comply with—

"(i) the core principles described in this subsection; and

"(ii) any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5).

"(B) REASONABLE DISCRETION OF SWAP EXECUTION FACILITY.—Unless otherwise determined by the Commission by rule or regulation, a swap execution facility

described in subparagraph (A) shall have reasonable discretion in establishing the manner in which the swap execution facility complies with the core principles described in this subsection.

"(2) COMPLIANCE WITH RULES.—A swap execution facility shall—

"(A) establish and enforce compliance with any rule of the swap execution facility, including—

"(i) the terms and conditions of the swaps traded or processed on or through the swap execution facility; and

"(ii) any limitation on access to the swap execution facility;

"(B) establish and enforce trading, trade processing, and participation rules that will deter abuses and have the capacity to detect, investigate, and enforce those rules, including means—

"(i) to provide market participants with impartial access to the market; and

"(ii) to capture information that may be used in establishing whether rule violations have occurred;

"(C) establish rules governing the operation of the facility, including rules specifying trading procedures to be used in entering and executing orders traded or posted on the facility, including block trades; and

"(D) provide by its rules that when a swap dealer or major swap participant enters into or facilitates a swap that is subject to the mandatory clearing requirement of section 2(h), the swap dealer or major swap participant shall be responsible for compliance with the mandatory trading requirement under section 2(h)(8).

"(3) SWAPS NOT READILY SUSCEPTIBLE TO MANIPULATION.—The swap execution facility shall permit trading only in swaps that are not readily susceptible to manipulation.

"(4) MONITORING OF TRADING AND TRADE PROCESSING.—The swap execution facility shall—

"(A) establish and enforce rules or terms and conditions defining, or specifications detailing—

"(i) trading procedures to be used in entering and executing orders traded on or through the facilities of the swap execution facility; and

"(ii) procedures for trade processing of swaps on or through the facilities of the swap execution facility; and

"(B) monitor trading in swaps to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process through surveillance, compliance, and disciplinary practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions.

"(5) ABILITY TO OBTAIN INFORMATION.—The swap execution facility shall—

"(A) establish and enforce rules that will allow the facility to obtain any necessary information to perform any of the functions described in this section;

"(B) provide the information to the Commission on request; and

"(C) have the capacity to carry out such international information-sharing agreements as the Commission may require.

"(6) POSITION LIMITS OR ACCOUNTABILITY.—

"(A) IN GENERAL.—To reduce the potential threat of market manipulation or congestion, especially during trading in the delivery month, a swap execution facility that is a trading facility shall adopt for each of the contracts of the facility, as is necessary and appropriate, position limitations or position accountability for speculators.

"(B) POSITION LIMITS.—For any contract that is subject to a position limitation established by the Commission pursuant to section 4a(a), the swap execution facility shall—

"(i) set its position limitation at a level no higher than the Commission limitation; and

"(ii) monitor positions established on or through the swap execution facility for compliance with the limit set by the Commission and the limit, if any, set by the swap execution facility.

"(7) FINANCIAL INTEGRITY OF TRANSACTIONS.—The swap execution facility shall establish and enforce rules and procedures for ensuring the financial integrity of swaps entered on or through the facilities of the swap execution facility, including the clearance and settlement of the swaps pursuant to section 2(h)(1).

"(8) EMERGENCY AUTHORITY.—The swap execution facility shall adopt rules to provide for the exercise of emergency authority, in consultation or cooperation with the Commission, as is necessary and appropriate, including the authority to liquidate or transfer open positions in any swap or to suspend or curtail trading in a swap.

"(9) TIMELY PUBLICATION OF TRADING INFORMATION.—

"(A) IN GENERAL.—The swap execution facility shall make public timely information on price, trading volume, and other trading data on swaps to the extent prescribed by the Commission.

"(B) CAPACITY OF SWAP EXECUTION FACILITY.—The swap execution facility shall be required to have the capacity to electronically capture and transmit trade information with respect to transactions executed on the facility.

"(10) RECORDKEEPING AND REPORTING.—

"(A) IN GENERAL.—A swap execution facility shall—

"(i) maintain records of all activities relating to the business of the facility, including a complete audit trail, in a form and manner acceptable to the Commission for a period of 5 years;

"(ii) report to the Commission, in a form and manner acceptable to the Commission, such information as the Commission determines to be necessary or appropriate for the Commission to perform the duties of the Commission under this Act; and

"(iii) shall keep any such records relating to swaps defined in section 1a(47)(A)(v) open to inspection and examination by the Securities and Exchange Commission."

"(B) REQUIREMENTS.—The Commission shall adopt data collection and reporting requirements for swap execution facilities that are comparable to corresponding requirements for derivatives clearing organizations and swap data repositories.

"(11) ANTITRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve the purposes of this Act, the swap execution facility shall not—

"(A) adopt any rules or taking any actions that result in any unreasonable restraint of trade; or

"(B) impose any material anticompetitive burden on trading or clearing.

"(12) CONFLICTS OF INTEREST.—The swap execution facility shall—

"(A) establish and enforce rules to minimize conflicts of interest in its decision-making process; and

"(B) establish a process for resolving the conflicts of interest.

"(13) FINANCIAL RESOURCES.—

"(A) IN GENERAL.—The swap execution facility shall have adequate financial, operational, and managerial resources to discharge each responsibility of the swap execution facility.

"(B) DETERMINATION OF RESOURCE ADEQUACY.—The financial resources of a swap execution facility shall be considered to be adequate if the value of the financial resources exceeds the total amount that would enable the swap execution facility to cover the operating costs of the swap execution facility for a 1-year period, as calculated on a rolling basis.

"(14) SYSTEM SAFEGUARDS.—The swap execution facility shall—

"(A) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk, through the development of appropriate controls and procedures, and automated systems, that—

"(i) are reliable and secure; and

"(ii) have adequate scalable capacity;

"(B) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allow for—

"(i) the timely recovery and resumption of operations; and

"(ii) the fulfillment of the responsibilities and obligations of the swap execution facility; and

"(C) periodically conduct tests to verify that the backup resources of the swap execution facility are sufficient to ensure continued—

"(i) order processing and trade matching;

"(ii) price reporting;

"(iii) market surveillance and

"(iv) maintenance of a comprehensive and accurate audit trail.

"(15) DESIGNATION OF CHIEF COMPLIANCE OFFICER.—

"(A) IN GENERAL.—Each swap execution facility shall designate an individual to serve as a chief compliance officer.

"(B) DUTIES.—The chief compliance officer shall—

"(i) report directly to the board or to the senior officer of the facility;

"(ii) review compliance with the core principles in this subsection;

"(iii) in consultation with the board of the facility, a body performing a function similar to that of a board, or the senior officer of the facility, resolve any conflicts of interest that may arise;

"(iv) be responsible for establishing and administering the policies and procedures required to be established pursuant to this section;

"(v) ensure compliance with this Act and the rules and regulations issued under this Act, including rules prescribed by the Commission pursuant to this section; and

"(vi) establish procedures for the remediation of noncompliance issues found during compliance office reviews, look backs, internal or external audit findings, self-reported errors, or through validated complaints.

"(C) REQUIREMENTS FOR PROCEDURES.—In establishing procedures under subparagraph (B)(vi), the chief compliance officer shall design the procedures to establish the handling, management response, remediation, retesting, and closing of noncompliance issues.

"(D) ANNUAL REPORTS.—

"(i) IN GENERAL.—In accordance with rules prescribed by the Commission, the chief compliance officer shall annually prepare and sign a report that contains a description of—

"(I) the compliance of the swap execution facility with this Act; and

"(II) the policies and procedures, including the code of ethics and conflict of interest policies, of the swap execution facility.

"(ii) REQUIREMENTS.—The chief compliance officer shall—

"(I) submit each report described in clause (i) with the appropriate financial report of the swap execution facility that is required to be submitted to the Commission pursuant to this section; and

"(II) include in the report a certification that, under penalty of law, the report is accurate and complete.

"(g) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, a swap execution facility from registration under this section if the Commission finds that the facility is subject to comparable, comprehensive supervision and regulation on a consolidated basis by the Securities and Exchange Commission, a prudential regulator, or the appropriate governmental authorities in the home country of the facility.

"(h) RULES.—The Commission shall prescribe rules governing the regulation of alternative swap execution facilities under this section.".

SEC. 734. DERIVATIVES TRANSACTION EXECUTION FACILITIES AND EXEMPT BOARDS OF TRADE.

(a) IN GENERAL.—Sections 5a and 5d of the Commodity Exchange Act (7 U.S.C. 7a, 7a–3) are repealed.

(b) CONFORMING AMENDMENTS.—

(1) Section 2 of the Commodity Exchange Act (7 U.S.C. 2) is amended—

(A) in subsection (a)(1)(A), in the first sentence, by striking "or 5a"; and

(B) in paragraph (2) of subsection (g) (as redesignated by section 723(a)(1)(B)), by striking "section 5a of this Act" and all that follows through "5d of this Act" and inserting "section 5b of this Act".

(2) Section 6(g)(1)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(g)(1)(A)) is amended—

(A) by striking "that—" and all that follows through "(i) has been designated" and inserting "that has been designated";

(B) by striking "; or" and inserting "; and" and

(C) by striking clause (ii).

(c) ABILITY TO PETITION COMMISSION.—

(1) IN GENERAL.—Prior to the final effective dates in this title, a person may petition the Commodity Futures Trading Commission to remain subject to the provisions of section 5d of the Commodity Exchange Act, as such provisions existed prior to the effective date of this subtitle.

(2) CONSIDERATION OF PETITION.—The Commodity Futures Trading Commission shall consider any petition submitted under paragraph (1) in a prompt manner and may allow a person to continue operating subject to the provisions of section 5d of the Commodity Exchange Act for up to 1 year after the effective date of this subtitle.

SEC. 735. DESIGNATED CONTRACT MARKETS.

(a) CRITERIA FOR DESIGNATION.—Section 5 of the Commodity Exchange Act (7 U.S.C. 7) is amended by striking subsection (b).

(b) CORE PRINCIPLES FOR CONTRACT MARKETS.—Section 5 of the Commodity Exchange Act (7 U.S.C. 7) is amended by striking subsection (d) and inserting the following:

"(d) CORE PRINCIPLES FOR CONTRACT MARKETS.—

"(1) DESIGNATION AS CONTRACT MARKET.—

"(A) IN GENERAL.—To be designated, and maintain a designation, as a contract market, a board of trade shall comply with—

"(i) any core principle described in this subsection; and

"(ii) any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5).

"(B) REASONABLE DISCRETION OF CONTRACT MARKET.—Unless otherwise determined by the Commission by rule or regulation, a board of trade described in subparagraph (A) shall have reasonable discretion in establishing the manner in which the board of trade complies with the core principles described in this subsection.

"(2) COMPLIANCE WITH RULES.—

"(A) IN GENERAL.—The board of trade shall establish, monitor, and enforce compliance with the rules of the contract market, including—

"(i) access requirements;

"(ii) the terms and conditions of any contracts to be traded on the contract market; and

"(iii) rules prohibiting abusive trade practices on the contract market.

"(B) CAPACITY OF CONTRACT MARKET.—The board of trade shall have the capacity to detect, investigate, and apply appropriate sanctions to any person that violates any rule of the contract market.

"(C) REQUIREMENT OF RULES.—The rules of the contract market shall provide the board of trade with the ability and authority to obtain any necessary information to perform any function described in this subsection, including the capacity to carry out such international information-sharing agreements as the Commission may require.

"(3) CONTRACTS NOT READILY SUBJECT TO MANIPULATION.—The board of trade shall list on the contract market only contracts that are not readily susceptible to manipulation.

"(4) PREVENTION OF MARKET DISRUPTION.—The board of trade shall have the capacity and responsibility to prevent manipulation, price distortion, and disruptions of the delivery or cash-settlement process through market surveillance, compliance, and enforcement practices and procedures, including—

"(A) methods for conducting real-time monitoring of trading; and

"(B) comprehensive and accurate trade reconstructions.

"(5) POSITION LIMITATIONS OR ACCOUNTABILITY.—

"(A) IN GENERAL.—To reduce the potential threat of market manipulation or congestion (especially during trading in the delivery month), the board of trade shall adopt for each contract of the board of trade, as is necessary and appropriate, position limitations or position accountability for speculators.

"(B) MAXIMUM ALLOWABLE POSITION LIMITATION.—For any contract that is subject to a position limitation established by the Commission pursuant to section 4a(a), the board of trade shall set the position limitation of the board of trade at a level not higher than the position limitation established by the Commission.

"(6) EMERGENCY AUTHORITY.—The board of trade, in consultation or cooperation with the Commission, shall adopt rules to provide for the exercise of emergency authority, as is necessary and appropriate, including the authority—

"(A) to liquidate or transfer open positions in any contract;

"(B) to suspend or curtail trading in any contract; and

"(C) to require market participants in any contract to meet special margin requirements.

"(7) AVAILABILITY OF GENERAL INFORMATION.—The board of trade shall make available to market authorities, market participants, and the public accurate information concerning—

"(A) the terms and conditions of the contracts of the contract market; and

"(B)(i) the rules, regulations, and mechanisms for executing transactions on or through the facilities of the contract market; and

"(ii) the rules and specifications describing the operation of the contract market's—

"(I) electronic matching platform; or

"(II) trade execution facility.

"(8) DAILY PUBLICATION OF TRADING INFORMATION.—The board of trade shall make public daily information on settlement prices, volume, open interest, and opening and closing ranges for actively traded contracts on the contract market.

"(9) EXECUTION OF TRANSACTIONS.—

"(A) IN GENERAL.—The board of trade shall provide a competitive, open, and efficient market and mechanism for executing transactions that protects the price discovery process of trading in the centralized market of the board of trade.

"(B) RULES.—The rules of the board of trade may authorize, for bona fide business purposes—

"(i) transfer trades or office trades;

"(ii) an exchange of—

"(I) futures in connection with a cash commodity transaction;

"(II) futures for cash commodities; or

"(III) futures for swaps; or

"(iii) a futures commission merchant, acting as principal or agent, to enter into or confirm the execution of a contract for the purchase or sale of a commodity for future delivery if the contract is reported, recorded, or cleared in accordance with the rules of the contract market or a derivatives clearing organization.

"(10) TRADE INFORMATION.—The board of trade shall maintain rules and procedures to provide for the recording and safe storage of all identifying trade information in a manner that enables the contract market to use the information—

"(A) to assist in the prevention of customer and market abuses; and

"(B) to provide evidence of any violations of the rules of the contract market.

"(11) FINANCIAL INTEGRITY OF TRANSACTIONS.—The board of trade shall establish and enforce—

"(A) rules and procedures for ensuring the financial integrity of transactions entered into on or through the facilities of the contract market (including the clearance and settlement of the transactions with a derivatives clearing organization); and

"(B) rules to ensure—

"(i) the financial integrity of any—

"(I) futures commission merchant; and

"(II) introducing broker; and

"(ii) the protection of customer funds.

"(12) PROTECTION OF MARKETS AND MARKET PARTICIPANTS.—The board of trade shall establish and enforce rules—

"(A) to protect markets and market participants from abusive practices committed by any party, including abusive practices committed by a party acting as an agent for a participant; and

"(B) to promote fair and equitable trading on the contract market.

"(13) DISCIPLINARY PROCEDURES.—The board of trade shall establish and enforce disciplinary procedures that authorize the board of trade to discipline, suspend, or expel members or market participants that violate the rules of the board of trade, or similar methods for performing the same functions, including delegation of the functions to third parties.

"(14) DISPUTE RESOLUTION.—The board of trade shall establish and enforce rules regarding, and provide facilities for alternative dispute resolution as appropriate for, market participants and any market intermediaries.

"(15) GOVERNANCE FITNESS STANDARDS.—The board of trade shall establish and enforce appropriate fitness standards for directors, members of any disciplinary committee, members of the contract market, and any other person with direct access to the facility (including any party affiliated with any person described in this paragraph).

"(16) CONFLICTS OF INTEREST.—The board of trade shall establish and enforce rules—

"(A) to minimize conflicts of interest in the decision-making process of the contract market; and

"(B) to establish a process for resolving conflicts of interest described in subparagraph (A).

"(17) COMPOSITION OF GOVERNING BOARDS OF CONTRACT MARKETS.—The governance arrangements of the board of trade shall be designed to permit consideration of the views of market participants.

"(18) RECORDKEEPING.—The board of trade shall maintain records of all activities relating to the business of the contract market—

"(A) in a form and manner that is acceptable to the Commission; and

"(B) for a period of at least 5 years.

"(19) ANTITRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve the purposes of this Act, the board of trade shall not—

"(A) adopt any rule or taking any action that results in any unreasonable restraint of trade; or

"(B) impose any material anticompetitive burden on trading on the contract market.

"(20) SYSTEM SAFEGUARDS.—The board of trade shall—

"(A) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk, through the development of appropriate controls and procedures, and the development of automated systems, that are reliable, secure, and have adequate scalable capacity;

"(B) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allow for the timely recovery and resumption of operations and the fulfillment of the responsibilities and obligations of the board of trade; and

"(C) periodically conduct tests to verify that backup resources are sufficient to ensure continued order processing and trade matching, price reporting, market surveillance, and maintenance of a comprehensive and accurate audit trail.

"(21) FINANCIAL RESOURCES.—

"(A) IN GENERAL.—The board of trade shall have adequate financial, operational, and managerial resources to discharge each responsibility of the board of trade.

"(B) DETERMINATION OF ADEQUACY.—The financial resources of the board of trade shall be considered to be adequate if the value of the financial resources exceeds the total amount that would enable the contract market to cover the operating costs of the contract market for a 1-year period, as calculated on a rolling basis.

"(22) DIVERSITY OF BOARD OF DIRECTORS.—The board of trade, if a publicly traded company, shall endeavor to recruit individuals to serve on the board of directors and the other decision-making bodies (as determined by the Commission) of the board of trade from among, and to have the composition of the bodies reflect, a broad and culturally diverse pool of qualified candidates.

"(23) SECURITIES AND EXCHANGE COMMISSION.—The board of trade shall keep any such records relating to swaps defined in section 1a(47)(A)(v) open to inspection and examination by the Securities and Exchange Commission.".

SEC. 736. MARGIN.

Section 8a(7) of the Commodity Exchange Act (7 U.S.C. 12a(7)) is amended—

(1) in subparagraph (C), by striking ", excepting the setting of levels of margin";

(2) by redesignating subparagraphs (D) through (F) as subparagraphs (E) through (G), respectively; and

(3) by inserting after subparagraph (C) the following:

"(D) margin requirements, provided that the rules, regulations, or orders shall—

"(i) be limited to protecting the financial integrity of the derivatives clearing organization;

"(ii) be designed for risk management purposes to protect the financial integrity of transactions; and

"(iii) not set specific margin amounts;".

SEC. 737. POSITION LIMITS.

(a) AGGREGATE POSITION LIMITS.—Section 4a(a) of the Commodity Exchange Act (7 U.S.C. 6a(a)) is amended—

(1) by inserting after "(a)" the following:

"(1) IN GENERAL.—";

(2) in the first sentence, by striking "on electronic trading facilities with respect to a significant price discovery contract" and inserting "swaps that perform or affect a significant price discovery function with respect to registered entities";

(3) in the second sentence—

(A) by inserting ", including any group or class of traders," after "held by any person"; and

(B) by striking "on an electronic trading facility with respect to a significant price discovery contract," and inserting "swaps traded on or subject to the rules of a

designated contract market or a swap execution facility, or swaps not traded on or subject to the rules of a designated contract market or a swap execution facility that performs a significant price discovery function with respect to a registered entity,"; and

(4) by adding at the end the following:

"(2) ESTABLISHMENT OF LIMITATIONS.—

"(A) IN GENERAL.—In accordance with the standards set forth in paragraph (1) of this subsection and consistent with the good faith exception cited in subsection (b)(2), with respect to physical commodities other than excluded commodities as defined by the Commission, the Commission shall by rule, regulation, or order establish limits on the amount of positions, as appropriate, other than bona fide hedge positions, that may be held by any person with respect to contracts of sale for future delivery or with respect to options on the contracts or commodities traded on or subject to the rules of a designated contract market.

"(B) TIMING.—

"(i) EXEMPT COMMODITIES.—For exempt commodities, the limits required under subparagraph (A) shall be established within 180 days after the date of the enactment of this paragraph.

"(ii) AGRICULTURAL COMMODITIES.—For agricultural commodities, the limits required under subparagraph (A) shall be established within 270 days after the date of the enactment of this paragraph.

"(C) GOAL.—In establishing the limits required under subparagraph (A), the Commission shall strive to ensure that trading on foreign boards of trade in the same commodity will be subject to comparable limits and that any limits to be imposed by the Commission will not cause price discovery in the commodity to shift to trading on the foreign boards of trade.

"(3) SPECIFIC LIMITATIONS.—In establishing the limits required in paragraph (2), the Commission, as appropriate, shall set limits—

"(A) on the number of positions that may be held by any person for the spot month, each other month, and the aggregate number of positions that may be held by any person for all months; and

"(B) to the maximum extent practicable, in its discretion—

"(i) to diminish, eliminate, or prevent excessive speculation as described under this section;

"(ii) to deter and prevent market manipulation, squeezes, and corners;

"(iii) to ensure sufficient market liquidity for bona fide hedgers; and

"(iv) to ensure that the price discovery function of the underlying market is not disrupted.

"(4) SIGNIFICANT PRICE DISCOVERY FUNCTION.—In making a determination whether a swap performs or affects a significant price discovery function with respect to regulated markets, the Commission shall consider, as appropriate:

"(A) PRICE LINKAGE.—The extent to which the swap uses or otherwise relies on a daily or final settlement price, or other major price parameter, of another contract traded on a regulated market based upon the same underlying commodity, to value a position, transfer or convert a position, financially settle a position, or close out a position.

"(B) ARBITRAGE.—The extent to which the price for the swap is sufficiently related to the price of another contract traded on a regulated market based upon the same underlying commodity so as to permit market participants to effectively arbitrage between the markets by simultaneously maintaining positions or executing trades in the swaps on a frequent and recurring basis.

"(C) MATERIAL PRICE REFERENCE.—The extent to which, on a frequent and recurring basis, bids, offers, or transactions in a contract traded on a regulated market are directly based on, or are determined by referencing, the price generated by the swap.

"(D) MATERIAL LIQUIDITY.—The extent to which the volume of swaps being traded in the commodity is sufficient to have a material effect on another contract traded on a regulated market.

"(E) OTHER MATERIAL FACTORS.—Such other material factors as the Commission specifies by rule or regulation as relevant to determine whether a swap serves a significant price discovery function with respect to a regulated market.

"(5) ECONOMICALLY EQUIVALENT CONTRACTS.—

"(A) Notwithstanding any other provision of this section, the Commission shall establish limits on the amount of positions, including aggregate position limits, as appropriate, other than bona fide hedge positions, that may be held by any person with respect to swaps that are economically equivalent to contracts of sale for future delivery or to options on the contracts or commodities traded on or subject to the rules of a designated contract market subject to paragraph (2).

"(B) In establishing limits pursuant to subparagraph (A), the Commission shall—

"(i) develop the limits concurrently with limits established under paragraph (2), and the limits shall have similar requirements as under paragraph (3)(B); and

"(ii) establish the limits simultaneously with limits established under paragraph (2).

"(6) AGGREGATE POSITION LIMITS.—The Commission shall, by rule or regulation, establish limits (including related hedge exemption provisions) on the aggregate number or amount of positions in contracts based upon the same underlying commodity (as defined by the Commission) that may be held by any person, including any group or class of traders, for each month across—

"(A) contracts listed by designated contract markets;

"(B) with respect to an agreement contract, or transaction that settles against any price (including the daily or final settlement price) of 1 or more contracts listed

for trading on a registered entity, contracts traded on a foreign board of trade that provides members or other participants located in the United States with direct access to its electronic trading and order matching system; and

"(C) swap contracts that perform or affect a significant price discovery function with respect to regulated entities.

"(7) EXEMPTIONS.—The Commission, by rule, regulation, or order, may exempt, conditionally or unconditionally, any person or class of persons, any swap or class of swaps, any contract of sale of a commodity for future delivery or class of such contracts, any option or class of options, or any transaction or class of transactions from any requirement it may establish under this section with respect to position limits.".

(b) CONFORMING AMENDMENTS.—Section 4a(b) of the Commodity Exchange Act (7 U.S.C. 6a(b)) is amended—

(1) in paragraph (1), by striking "or derivatives transaction execution facility or facilities or electronic trading facility" and inserting "or swap execution facility or facilities"; and

(2) in paragraph (2), by striking "or derivatives transaction execution facility or facilities or electronic trading facility" and inserting "or swap execution facility".

(c) BONA FIDE HEDGING TRANSACTION.—Section 4a(c) of the Commodity Exchange Act is amended—

(1) by inserting "(1)" after "(c)"; and

(2) by adding at the end the following:

"(2) For the purposes of implementation of subsection (a)(2) for contracts of sale for future delivery or options on the contracts or commodities, the Commission shall define what constitutes a bona fide hedging transaction or position as a transaction or position that—

"(A)(i) represents a substitute for transactions made or to be made or positions taken or to be taken at a later time in a physical marketing channel;

"(ii) is economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise; and

"(iii) arises from the potential change in the value of—

"(I) assets that a person owns, produces, manufactures, processes, or merchandises or anticipates owning, producing, manufacturing, processing, or merchandising;

"(II) liabilities that a person owns or anticipates incurring; or

"(III) services that a person provides, purchases, or anticipates providing or purchasing; or

"(B) reduces risks attendant to a position resulting from a swap that—

"(i) was executed opposite a counterparty for which the transaction would qualify as a bona fide hedging transaction pursuant to subparagraph (A); or

"(ii) meets the requirements of subparagraph (A).".

(d) EFFECTIVE DATE.—This section and the amendments made by this section shall become effective on the date of the enactment of this section.

SEC. 738. FOREIGN BOARDS OF TRADE.

(a) IN GENERAL.—Section 4(b) of the Commodity Exchange Act (7 U.S.C. 6(b)) is amended—

(1) in the first sentence, by striking "The Commission" and inserting the following:

"(2) PERSONS LOCATED IN THE UNITED STATES.—

"(A) IN GENERAL.—The Commission";

(2) in the second sentence, by striking "Such rules and regulations" and inserting the following:

"(B) DIFFERENT REQUIREMENTS.—Rules and regulations described in subparagraph (A)";

(3) in the third sentence—

(A) by striking "No rule or regulation" and inserting the following:

"(C) PROHIBITION.—Except as provided in paragraphs (1) and (2), no rule or regulation";

(B) by striking "that (1) requires" and inserting the following: "that—

"(i) requires"; and

(C) by striking "market, or (2) governs" and inserting the following: "market; or

"(ii) governs"; and

(4) by inserting before paragraph (2) (as designated by paragraph (1)) the following:

"(1) FOREIGN BOARDS OF TRADE.—

"(A) REGISTRATION.—The Commission may adopt rules and regulations requiring registration with the Commission for a foreign board of trade that provides the members of the foreign board of trade or other participants located in the United States with direct access to the electronic trading and order matching system of the foreign board of trade, including rules and regulations prescribing procedures and requirements applicable to the registration of such foreign boards of trade. For purposes of this paragraph, 'direct access' refers to an explicit grant of authority by a foreign board of trade to an identified member or other participant located in the United States to enter trades directly into the trade matching system of the foreign board of trade. In adopting such rules and regulations, the commission shall consider—

"(i) whether any such foreign board of trade is subject to comparable, comprehensive supervision and regulation by the appropriate governmental authorities in the foreign board of trade's home country; and

"(ii) any previous commission findings that the foreign board of trade is subject to comparable comprehensive supervision and regulation by the appropriate government authorities in the foreign board of trade's home country.

"(B) LINKED CONTRACTS.—The Commission may not permit a foreign board of trade to provide to the members of the foreign board of trade or other participants located in the United States direct access to the electronic trading and order-matching system of the foreign board of trade with respect to an agreement, contract, or transaction that settles against any price (including the daily or final settlement price) of 1 or more contracts listed for trading on

a registered entity, unless the Commission determines that—

"(i) the foreign board of trade makes public daily trading information regarding the agreement, contract, or transaction that is comparable to the daily trading information published by the registered entity for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles; and

"(ii) the foreign board of trade (or the foreign futures authority that oversees the foreign board of trade)—

"(I) adopts position limits (including related hedge exemption provisions) for the agreement, contract, or transaction that are comparable to the position limits (including related hedge exemption provisions) adopted by the registered entity for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles;

"(II) has the authority to require or direct market participants to limit, reduce, or liquidate any position the foreign board of trade (or the foreign futures authority that oversees the foreign board of trade) determines to be necessary to prevent or reduce the threat of price manipulation, excessive speculation as described in section 4a, price distortion, or disruption of delivery or the cash settlement process;

"(III) agrees to promptly notify the Commission, with regard to the agreement, contract, or transaction that settles against any price (including the daily or final settlement price) of 1 or more contracts listed for trading on a registered entity, of any change regarding—

"(aa) the information that the foreign board of trade will make publicly available;

"(bb) the position limits that the foreign board of trade or foreign futures authority will adopt and enforce;

"(cc) the position reductions required to prevent manipulation, excessive speculation as described in section 4a, price distortion, or disruption of delivery or the cash settlement process; and

"(dd) any other area of interest expressed by the Commission to the foreign board of trade or foreign futures authority;

"(IV) provides information to the Commission regarding large trader positions in the agreement, contract, or transaction that is comparable to the large trader position information collected by the Commission for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles; and

"(V) provides the Commission such information as is necessary to publish reports on aggregate

trader positions for the agreement, contract, or transaction traded on the foreign board of trade that are comparable to such reports on aggregate trader positions for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles.

"(C) EXISTING FOREIGN BOARDS OF TRADE.—Subparagraphs (A) and (B) shall not be effective with respect to any foreign board of trade to which, prior to the date of enactment of this paragraph, the Commission granted direct access permission until the date that is 180 days after that date of enactment.".

(b) LIABILITY OF REGISTERED PERSONS TRADING ON A FOREIGN BOARD OF TRADE.—Section 4 of the Commodity Exchange Act (7 U.S.C. 6) is amended—

(1) in subsection (a), in the matter preceding paragraph (1), by inserting "or by subsection (e)" after "Unless exempted by the Commission pursuant to subsection (c)"; and

(2) by adding at the end the following:

"(e) LIABILITY OF REGISTERED PERSONS TRADING ON A FOREIGN BOARD OF TRADE.—

"(1) IN GENERAL.—A person registered with the Commission, or exempt from registration by the Commission, under this Act may not be found to have violated subsection (a) with respect to a transaction in, or in connection with, a contract of sale of a commodity for future delivery if the person—

"(A) has reason to believe that the transaction and the contract is made on or subject to the rules of a foreign board of trade that is—

"(i) legally organized under the laws of a foreign country;

"(ii) authorized to act as a board of trade by a foreign futures authority; and

"(iii) subject to regulation by the foreign futures authority; and

"(B) has not been determined by the Commission to be operating in violation of subsection (a).

"(2) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed as implying or creating any presumption that a board of trade, exchange, or market is located outside the United States, or its territories or possessions, for purposes of subsection (a).".

(c) CONTRACT ENFORCEMENT FOR FOREIGN FUTURES CONTRACTS.—Section 22(a) of the Commodity Exchange Act (7 U.S.C. 25(a)) (as amended by section 739) is amended by adding at the end the following:

"(6) CONTRACT ENFORCEMENT FOR FOREIGN FUTURES CONTRACTS.—A contract of sale of a commodity for future delivery traded or executed on or through the facilities of a board of trade, exchange, or market located outside the United States for purposes of section 4(a) shall not be void, voidable, or unenforceable, and a party to such a contract shall not be entitled to rescind or recover any payment made with respect to the contract, based on the failure of the foreign board of trade to comply with any provision of this Act.".

SEC. 739. LEGAL CERTAINTY FOR SWAPS.

Section 22(a) of the Commodity Exchange Act (7 U.S.C. 25(a)) is amended by striking paragraph (4) and inserting the following:

"(4) CONTRACT ENFORCEMENT BETWEEN ELIGIBLE COUNTERPARTIES.—

"(A) IN GENERAL.—No hybrid instrument sold to any investor shall be void, voidable, or unenforceable, and no party to a hybrid instrument shall be entitled to rescind, or recover any payment made with respect to, the hybrid instrument under this section or any other provision of Federal or State law, based solely on the failure of the hybrid instrument to comply with the terms or conditions of section 2(f) or regulations of the Commission.

"(B) SWAPS.—No agreement, contract, or transaction between eligible contract participants or persons reasonably believed to be eligible contract participants shall be void, voidable, or unenforceable, and no party to such agreement, contract, or transaction shall be entitled to rescind, or recover any payment made with respect to, the agreement, contract, or transaction under this section or any other provision of Federal or State law, based solely on the failure of the agreement, contract, or transaction—

"(i) to meet the definition of a swap under section 1a; or

"(ii) to be cleared in accordance with section 2(h)(1).

"(5) LEGAL CERTAINTY FOR LONG-TERM SWAPS ENTERED INTO BEFORE THE DATE OF ENACTMENT OF THE WALL STREET TRANSPARENCY AND ACCOUNTABILITY ACT OF 2010.—

"(A) EFFECT ON SWAPS.—Unless specifically reserved in the applicable swap, neither the enactment of the Wall Street Transparency and Accountability Act of 2010, nor any requirement under that Act or an amendment made by that Act, shall constitute a termination event, force majeure, illegality, increased costs, regulatory change, or similar event under a swap (including any related credit support arrangement) that would permit a party to terminate, renegotiate, modify, amend, or supplement 1 or more transactions under the swap.

"(B) POSITION LIMITS.—Any position limit established under the Wall Street Transparency and Accountability Act of 2010 shall not apply to a position acquired in good faith prior to the effective date of any rule, regulation, or order under the Act that establishes the position limit; provided, however, that such positions shall be attributed to the trader if the trader's position is increased after the effective date of such position limit rule, regulation, or order.".

SEC. 740. MULTILATERAL CLEARING ORGANIZATIONS.

Sections 408 and 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4421, 4422) are repealed.

SEC. 741. ENFORCEMENT.

(a) ENFORCEMENT AUTHORITY.—The Commodity Exchange Act is amended by inserting after section 4b (7 U.S.C. 6b) the following:

"SEC. 4b–1. ENFORCEMENT AUTHORITY.

"(a) COMMODITY FUTURES TRADING COMMISSION.—Except as provided in subsections (b), (c), and (d), the Commission shall have exclusive authority to enforce the provisions of subtitle A of the

Wall Street Transparency and Accountability Act of 2010 with respect to any person.

"(b) PRUDENTIAL REGULATORS.—The prudential regulators shall have exclusive authority to enforce the provisions of section 4s(e) with respect to swap dealers or major swap participants for which they are the prudential regulator.

"(c) REFERRALS.—

"(1) PRUDENTIAL REGULATORS.—If the prudential regulator for a swap dealer or major swap participant has cause to believe that the swap dealer or major swap participant, or any affiliate or division of the swap dealer or major swap participant, may have engaged in conduct that constitutes a violation of the nonprudential requirements of this Act (including section 4s or rules adopted by the Commission under that section), the prudential regulator may promptly notify the Commission in a written report that includes—

"(A) a request that the Commission initiate an enforcement proceeding under this Act; and

"(B) an explanation of the facts and circumstances that led to the preparation of the written report.

"(2) COMMISSION.—If the Commission has cause to believe that a swap dealer or major swap participant that has a prudential regulator may have engaged in conduct that constitutes a violation of any prudential requirement of section 4s or rules adopted by the Commission under that section, the Commission may notify the prudential regulator of the conduct in a written report that includes—

"(A) a request that the prudential regulator initiate an enforcement proceeding under this Act or any other Federal law (including regulations); and

"(B) an explanation of the concerns of the Commission, and a description of the facts and circumstances, that led to the preparation of the written report.

"(d) BACKSTOP ENFORCEMENT AUTHORITY.—

"(1) INITIATION OF ENFORCEMENT PROCEEDING BY PRUDENTIAL REGULATOR.—If the Commission does not initiate an enforcement proceeding before the end of the 90-day period beginning on the date on which the Commission receives a written report under subsection (c)(1), the prudential regulator may initiate an enforcement proceeding.

"(2) INITIATION OF ENFORCEMENT PROCEEDING BY COMMISSION.—If the prudential regulator does not initiate an enforcement proceeding before the end of the 90-day period beginning on the date on which the prudential regulator receives a written report under subsection (c)(2), the Commission may initiate an enforcement proceeding.".

(b) CONFORMING AMENDMENTS.—

(1) Section 4b of the Commodity Exchange Act (7 U.S.C. 6b) is amended—

(A) in subsection (a)(2), by striking "or other agreement, contract, or transaction subject to paragraphs (1) and (2) of section 5a(g)," and inserting "or swap,";

(B) in subsection (b), by striking "or other agreement, contract or transaction subject to paragraphs (1) and (2) of section 5a(g)," and inserting "or swap,"; and

(C) by adding at the end the following:

"(e) It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any registered entity, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery (or option on such a contract), or any swap, on a group or index of securities (or any interest therein or based on the value thereof)—

"(1) to employ any device, scheme, or artifice to defraud;

"(2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

"(3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.".

(2) Section 4c(a)(1) of the Commodity Exchange Act (7 U.S.C. 6c(a)(1)) is amended by inserting "or swap" before "if the transaction is used or may be used".

(3) Section 6(c) of the Commodity Exchange Act (7 U.S.C. 9) is amended in the first sentence by inserting "or of any swap," before "or has willfully made".

(4) Section 6(d) of the Commodity Exchange Act (7 U.S.C. 13b) is amended in the first sentence, in the matter preceding the proviso, by inserting "or of any swap," before "or otherwise is violating".

(5) Section 6c(a) of the Commodity Exchange Act (7 U.S.C. 13a–1(a)) is amended in the matter preceding the proviso by inserting "or any swap" after "commodity for future delivery".

(6) Section 9 of the Commodity Exchange Act (7 U.S.C. 13) is amended—

(A) in subsection (a)—

(i) in paragraph (2), by inserting "or of any swap," before "or to corner"; and

(ii) in paragraph (4), by inserting "swap data repository," before "or futures association" and

(B) in subsection (e)(1)—

(i) by inserting "swap data repository," before "or registered futures association"; and

(ii) by inserting ", or swaps," before "on the basis".

(7) Section 9(a) of the Commodity Exchange Act (7 U.S.C. 13(a)) is amended by adding at the end the following:

"(6) Any person to abuse the end user clearing exemption under section 2(h)(4), as determined by the Commission.".

(8) Section 2(c)(2)(B) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)(B)) is amended—

(A) by striking "(dd)," each place it appears;

(B) in clause (iii), by inserting ", and accounts or pooled investment vehicles described in clause (vi)," before "shall be subject to"; and

(C) by adding at the end the following:

"(vi) This Act applies to, and the Commission shall have jurisdiction over, an account or pooled investment vehicle that is offered for the purpose of trading, or that trades, any agreement, contract, or transaction in foreign currency described in clause (i).".

(9) Section 2(c)(2)(C) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)(C)) is amended—

(A) by striking "(dd)," each place it appears;

(B) in clause (ii)(I), by inserting ", and accounts or pooled investment vehicles described in clause (vii)," before "shall be subject to"; and

(C) by adding at the end the following:

"(vii) This Act applies to, and the Commission shall have jurisdiction over, an account or pooled investment vehicle that is offered for the purpose of trading, or that trades, any agreement, contract, or transaction in foreign currency described in clause (i).".

(10) Section 1a(19)(A)(iv)(II) of the Commodity Exchange Act (7 U.S.C. 1a(19)(A)(iv)(II)) (as redesignated by section 721(a)(1)) is amended by inserting before the semicolon at the end the following: "provided, however, that for purposes of section 2(c)(2)(B)(vi) and section 2(c)(2)(C)(vii), the term 'eligible contract participant' shall not include a commodity pool in which any participant is not otherwise an eligible contract participant".

(11) Section 6(e) of the Commodity Exchange Act (7 U.S.C. 9a) is amended by adding at the end the following:

"(4) Any designated clearing organization that knowingly or recklessly evades or participates in or facilitates an evasion of the requirements of section 2(h) shall be liable for a civil money penalty in twice the amount otherwise available for a violation of section 2(h).

"(5) Any swap dealer or major swap participant that knowingly or recklessly evades or participates in or facilitates an evasion of the requirements of section 2(h) shall be liable for a civil money penalty in twice the amount otherwise available for a violation of section 2(h).".

(c) SAVINGS CLAUSE.—Notwithstanding any other provision of this title, nothing in this subtitle shall be construed as divesting any appropriate Federal banking agency of any authority it may have to establish or enforce, with respect to a person for which such agency is the appropriate Federal banking agency, prudential or other standards pursuant to authority granted by Federal law other than this title.

SEC. 742. RETAIL COMMODITY TRANSACTIONS.

(a) IN GENERAL.—Section 2(c) of the Commodity Exchange Act (7 U.S.C. 2(c)) is amended—

(1) in paragraph (1), by striking "5a (to the extent provided in section 5a(g)), 5b, 5d, or 12(e)(2)(B))" and inserting ", 5b, or 12(e)(2)(B))"; and

(2) in paragraph (2), by adding at the end the following:

"(D) RETAIL COMMODITY TRANSACTIONS.—

"(i) APPLICABILITY.—Except as provided in clause (ii), this subparagraph shall apply to any agreement, contract, or transaction in any commodity that is—

"(I) entered into with, or offered to (even if not entered into with), a person that is not an eligible contract participant or eligible commercial entity; and

"(II) entered into, or offered (even if not entered into), on a leveraged or margined basis, or financed by the offeror, the counterparty, or

a person acting in concert with the offeror or counterparty on a similar basis.

"(ii) EXCEPTIONS.—This subparagraph shall not apply to—

"(I) an agreement, contract, or transaction described in paragraph (1) or subparagraphs (A), (B), or (C), including any agreement, contract, or transaction specifically excluded from subparagraph (A), (B), or (C);

"(II) any security;

"(III) a contract of sale that—

"(aa) results in actual delivery within 28 days or such other longer period as the Commission may determine by rule or regulation based upon the typical commercial practice in cash or spot markets for the commodity involved; or

"(bb) creates an enforceable obligation to deliver between a seller and a buyer that have the ability to deliver and accept delivery, respectively, in connection with the line of business of the seller and buyer; or

"(IV) an agreement, contract, or transaction that is listed on a national securities exchange registered under section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a)); or

"(V) an identified banking product, as defined in section 402(b) of the Legal Certainty for Bank Products Act of 2000 (7 U.S.C.27(b)).

"(iii) ENFORCEMENT.—Sections 4(a), 4(b), and 4b apply to any agreement, contract, or transaction described in clause (i), as if the agreement, contract, or transaction was a contract of sale of a commodity for future delivery.

"(iv) ELIGIBLE COMMERCIAL ENTITY.—For purposes of this subparagraph, an agricultural producer, packer, or handler shall be considered to be an eligible commercial entity for any agreement, contract, or transaction for a commodity in connection with the line of business of the agricultural producer, packer, or handler.".

(b) GRAMM-LEACH-BLILEY ACT.—Section 206(a) of the Gramm-Leach-Bliley Act (Public Law 106–102; 15 U.S.C. 78c note) is amended, in the matter preceding paragraph (1), by striking "For purposes of" and inserting "Except as provided in subsection (e), for purposes of".

(c) CONFORMING AMENDMENTS RELATING TO RETAIL FOREIGN EXCHANGE TRANSACTIONS.—

(1) Section 2(c)(2)(B)(i)(II) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)(B)(i)(II)) is amended—

(A) in item (aa), by inserting "United States" before "financial institution";

(B) by striking items (dd) and (ff);

(C) by redesignating items (ee) and (gg) as items (dd) and (ff), respectively; and

(D) in item (dd) (as so redesignated), by striking the semicolon and inserting "; or".

(2) Section 2(c)(2) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)) (as amended by subsection (a)(2)) is amended by adding at the end the following:

"(E) PROHIBITION.—

"(i) DEFINITION OF FEDERAL REGULATORY AGENCY.—In this subparagraph, the term 'Federal regulatory agency' means—

"(I) the Commission;

"(II) the Securities and Exchange Commission;

"(III) an appropriate Federal banking agency;

"(IV) the National Credit Union Association; and

"(V) the Farm Credit Administration.

"(ii) PROHIBITION.—

"(I) IN GENERAL.—Except as provided in subclause (II), a person described in subparagraph (B)(i)(II) for which there is a Federal regulatory agency shall not offer to, or enter into with, a person that is not an eligible contract participant, any agreement, contract, or transaction in foreign currency described in subparagraph (B)(i)(I) except pursuant to a rule or regulation of a Federal regulatory agency allowing the agreement, contract, or transaction under such terms and conditions as the Federal regulatory agency shall prescribe.

"(II) EFFECTIVE DATE.—With regard to persons described in subparagraph (B)(i)(II) for which a Federal regulatory agency has issued a proposed rule concerning agreements, contracts, or transactions in foreign currency described in subparagraph (B)(i)(I) prior to the date of enactment of this subclause, subclause (I) shall take effect 90 days after the date of enactment of this subclause.

"(iii) REQUIREMENTS OF RULES AND REGULATIONS.—

"(I) IN GENERAL.—The rules and regulations described in clause (ii) shall prescribe appropriate requirements with respect to—

"(aa) disclosure;

"(bb) recordkeeping;

"(cc) capital and margin;

"(dd) reporting;

"(ee) business conduct;

"(ff) documentation; and

"(gg) such other standards or requirements as the Federal regulatory agency shall determine to be necessary.

"(II) TREATMENT.—The rules or regulations described in clause (ii) shall treat all agreements, contracts, and transactions in foreign currency described in subparagraph (B)(i)(I), and all agreements, contracts, and transactions in foreign currency that are functionally or economically similar to agreements, contracts, or transactions described in subparagraph (B)(i)(I), similarly.".

SEC. 743. OTHER AUTHORITY.

Unless otherwise provided by the amendments made by this subtitle, the amendments made by this subtitle do not divest any appropriate Federal banking agency, the Commodity Futures Trading Commission, the Securities and Exchange Commission, or other Federal or State agency of any authority derived from any other applicable law.

SEC. 744. RESTITUTION REMEDIES.

Section 6c(d) of the Commodity Exchange Act (7 U.S.C. 13a–1(d)) is amended by adding at the end the following:

"(3) EQUITABLE REMEDIES.—In any action brought under this section, the Commission may seek, and the court may impose, on a proper showing, on any person found in the action to have committed any violation, equitable remedies including—

"(A) restitution to persons who have sustained losses proximately caused by such violation (in the amount of such losses); and

"(B) disgorgement of gains received in connection with such violation.".

SEC. 745. ENHANCED COMPLIANCE BY REGISTERED ENTITIES.

(a) EFFECT OF INTERPRETATION.—Section 5c(a) of the Commodity Exchange Act (7 U.S.C. 7a–2(a)) is amended by striking paragraph (2) and inserting the following:

"(2) EFFECT OF INTERPRETATION.—An interpretation issued under paragraph (1) may provide the exclusive means for complying with each section described in paragraph (1).".

(b) NEW CONTRACTS, NEW RULES, AND RULE AMENDMENTS.—Section 5c of the Commodity Exchange Act (7 U.S.C. 7a–2) is amended by striking subsection (c) and inserting the following:

"(c) NEW CONTRACTS, NEW RULES, AND RULE AMENDMENTS.—

"(1) IN GENERAL.—A registered entity may elect to list for trading or accept for clearing any new contract, or other instrument, or may elect to approve and implement any new rule or rule amendment, by providing to the Commission (and the Secretary of the Treasury, in the case of a contract of sale of a government security for future delivery (or option on such a contract) or a rule or rule amendment specifically related to such a contract) a written certification that the new contract or instrument or clearing of the new contract or instrument, new rule, or rule amendment complies with this Act (including regulations under this Act).

"(2) RULE REVIEW.—The new rule or rule amendment described in paragraph (1) shall become effective, pursuant to the certification of the registered entity and notice of such certification to its members (in a manner to be determined by the Commission), on the date that is 10 business days after the date on which the Commission receives the certification (or such shorter period as determined by the Commission by rule or regulation) unless the Commission notifies the registered entity within such time that it is staying the certification because there exist novel or complex issues that require additional time to analyze, an inadequate explanation by the submitting registered entity, or a potential inconsistency with this Act (including regulations under this Act).

"(3) STAY OF CERTIFICATION FOR RULES.—

"(A) A notification by the Commission pursuant to paragraph (2) shall stay the certification of the new rule or rule amendment for up to an additional 90 days from the date of the notification.

"(B) A rule or rule amendment subject to a stay pursuant to subparagraph (A) shall become effective, pursuant to the certification of the registered entity, at the expiration of the period described in subparagraph (A) unless the Commission—

"(i) withdraws the stay prior to that time; or

"(ii) notifies the registered entity during such period that it objects to the proposed certification on the grounds that it is inconsistent with this Act (including regulations under this Act).

"(C) The Commission shall provide a not less than 30-day public comment period, within the 90-day period in which the stay is in effect as described in subparagraph (A), whenever the Commission reviews a rule or rule amendment pursuant to a notification by the Commission under this paragraph.

"(4) PRIOR APPROVAL.—

"(A) IN GENERAL.—A registered entity may request that the Commission grant prior approval to any new contract or other instrument, new rule, or rule amendment.

"(B) PRIOR APPROVAL REQUIRED.—Notwithstanding any other provision of this section, a designated contract market shall submit to the Commission for prior approval each rule amendment that materially changes the terms and conditions, as determined by the Commission, in any contract of sale for future delivery of a commodity specifically enumerated in section 1a(10) (or any option thereon) traded through its facilities if the rule amendment applies to contracts and delivery months which have already been listed for trading and have open interest.

"(C) DEADLINE.—If prior approval is requested under subparagraph (A), the Commission shall take final action on the request not later than 90 days after submission of the request, unless the person submitting the request agrees to an extension of the time limitation established under this subparagraph.

"(5) APPROVAL.—

"(A) RULES.—The Commission shall approve a new rule, or rule amendment, of a registered entity unless the Commission finds that the new rule, or rule amendment, is inconsistent with this subtitle (including regulations).

"(B) CONTRACTS AND INSTRUMENTS.—The Commission shall approve a new contract or other instrument unless the Commission finds that the new contract or other instrument would violate this Act (including regulations).

"(C) SPECIAL RULE FOR REVIEW AND APPROVAL OF EVENT CONTRACTS AND SWAPS CONTRACTS.—

"(i) EVENT CONTRACTS.—In connection with the listing of agreements, contracts, transactions, or swaps in excluded commodities that are based upon the occurrence, extent of an occurrence, or contingency (other than a change in the price, rate, value, or levels of

a commodity described in section 1a(2)(i)), by a designated contract market or swap execution facility, the Commission may determine that such agreements, contracts, or transactions are contrary to the public interest if the agreements, contracts, or transactions involve—

"(I) activity that is unlawful under any Federal or State law;

"(II) terrorism;

"(III) assassination;

"(IV) war;

"(V) gaming; or

"(VI) other similar activity determined by the Commission, by rule or regulation, to be contrary to the public interest.

"(ii) PROHIBITION.—No agreement, contract, or transaction determined by the Commission to be contrary to the public interest under clause (i) may be listed or made available for clearing or trading on or through a registered entity.

"(iii) SWAPS CONTRACTS.—

"(I) IN GENERAL.—In connection with the listing of a swap for clearing by a derivatives clearing organization, the Commission shall determine, upon request or on its own motion, the initial eligibility, or the continuing qualification, of a derivatives clearing organization to clear such a swap under those criteria, conditions, or rules that the Commission, in its discretion, determines.

"(II) REQUIREMENTS.—Any such criteria, conditions, or rules shall consider—

"(aa) the financial integrity of the derivatives clearing organization; and

"(bb) any other factors which the Commission determines may be appropriate.

"(iv) DEADLINE.—The Commission shall take final action under clauses (i) and (ii) in not later than 90 days from the commencement of its review unless the party seeking to offer the contract or swap agrees to an extension of this time limitation.".

(c) VIOLATION OF CORE PRINCIPLES.—Section 5c of the Commodity Exchange Act (7 U.S.C. 7a–2) is amended by striking subsection (d).

SEC. 746. INSIDER TRADING.

Section 4c(a) of the Commodity Exchange Act (7 U.S.C. 6c(a)) is amended by adding at the end the following:

"(3) CONTRACT OF SALE.—It shall be unlawful for any employee or agent of any department or agency of the Federal Government who, by virtue of the employment or position of the employee or agent, acquires information that may affect or tend to affect the price of any commodity in interstate commerce, or for future delivery, or any swap, and which information has not been disseminated by the department or agency of the Federal Government holding or creating the information in a manner which makes it generally available to the trading public, or disclosed in a criminal, civil, or

administrative hearing, or in a congressional, administrative, or Government Accountability Office report, hearing, audit, or investigation, to use the information in his personal capacity and for personal gain to enter into, or offer to enter into—

"(A) a contract of sale of a commodity for future delivery (or option on such a contract);

"(B) an option (other than an option executed or traded on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a)); or

"(C) a swap.

"(4) NONPUBLIC INFORMATION.—

"(A) IMPARTING OF NONPUBLIC INFORMATION.—It shall be unlawful for any employee or agent of any department or agency of the Federal Government who, by virtue of the employment or position of the employee or agent, acquires information that may affect or tend to affect the price of any commodity in interstate commerce, or for future delivery, or any swap, and which information has not been disseminated by the department or agency of the Federal Government holding or creating the information in a manner which makes it generally available to the trading public, or disclosed in a criminal, civil, or administrative hearing, or in a congressional, administrative, or Government Accountability Office report, hearing, audit, or investigation, to impart the information in his personal capacity and for personal gain with intent to assist another person, directly or indirectly, to use the information to enter into, or offer to enter into—

"(i) a contract of sale of a commodity for future delivery (or option on such a contract);

"(ii) an option (other than an option executed or traded on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a)); or

"(iii) a swap.

"(B) KNOWING USE.—It shall be unlawful for any person who receives information imparted by any employee or agent of any department or agency of the Federal Government as described in subparagraph (A) to knowingly use such information to enter into, or offer to enter into—

"(i) a contract of sale of a commodity for future delivery (or option on such a contract);

"(ii) an option (other than an option executed or traded on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a)); or

"(iii) a swap.

"(C) THEFT OF NONPUBLIC INFORMATION.—It shall be unlawful for any person to steal, convert, or misappropriate, by any means whatsoever, information held or created by any department or agency of the Federal Government that may affect or tend to affect the price of any commodity in interstate commerce, or for future delivery, or any swap, where such person knows, or acts in reckless disregard of the fact, that such information has not been disseminated by the department or agency of the Federal Government

holding or creating the information in a manner which makes it generally available to the trading public, or disclosed in a criminal, civil, or administrative hearing, or in a congressional, administrative, or Government Accountability Office report, hearing, audit, or investigation, and to use such information, or to impart such information with the intent to assist another person, directly or indirectly, to use such information to enter into, or offer to enter into—

"(i) a contract of sale of a commodity for future delivery (or option on such a contract);

"(ii) an option (other than an option executed or traded on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a)); or

"(iii) a swap, provided, however, that nothing in this subparagraph shall preclude a person that has provided information concerning, or generated by, the person, its operations or activities, to any employee or agent of any department or agency of the Federal Government, voluntarily or as required by law, from using such information to enter into, or offer to enter into, a contract of sale, option, or swap described in clauses (i), (ii), or (iii).".

SEC. 747. ANTIDISRUPTIVE PRACTICES AUTHORITY.

Section 4c(a) of the Commodity Exchange Act (7 U.S.C. 6c(a)) (as amended by section 746) is amended by adding at the end the following:

"(5) DISRUPTIVE PRACTICES.—It shall be unlawful for any person to engage in any trading, practice, or conduct on or subject to the rules of a registered entity that—

"(A) violates bids or offers;

"(B) demonstrates intentional or reckless disregard for the orderly execution of transactions during the closing period; or

"(C) is, is of the character of, or is commonly known to the trade as, 'spoofing' (bidding or offering with the intent to cancel the bid or offer before execution).

"(6) RULEMAKING AUTHORITY.—The Commission may make and promulgate such rules and regulations as, in the judgment of the Commission, are reasonably necessary to prohibit the trading practices described in paragraph (5) and any other trading practice that is disruptive of fair and equitable trading.

"(7) USE OF SWAPS TO DEFRAUD.—It shall be unlawful for any person to enter into a swap knowing, or acting in reckless disregard of the fact, that its counterparty will use the swap as part of a device, scheme, or artifice to defraud any third party.".

SEC. 748. COMMODITY WHISTLEBLOWER INCENTIVES AND PROTECTION.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by adding at the end the following:

"SEC. 23. COMMODITY WHISTLEBLOWER INCENTIVES AND PROTECTION.

"(a) DEFINITIONS.—In this section:

"(1) COVERED JUDICIAL OR ADMINISTRATIVE ACTION.—The term 'covered judicial or administrative action' means any judicial or administrative action brought by the Commission under this Act that results in monetary sanctions exceeding $1,000,000.

"(2) FUND.—The term 'Fund' means the Commodity Futures Trading Commission Customer Protection Fund established under subsection (g).

"(3) MONETARY SANCTIONS.—The term 'monetary sanctions', when used with respect to any judicial or administrative action means—

"(A) any monies, including penalties, disgorgement, restitution, and interest ordered to be paid; and

"(B) any monies deposited into a disgorgement fund or other fund pursuant to section 308(b) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246(b)), as a result of such action or any settlement of such action.

"(4) ORIGINAL INFORMATION.—The term 'original information' means information that—

"(A) is derived from the independent knowledge or analysis of a whistleblower;

"(B) is not known to the Commission from any other source, unless the whistleblower is the original source of the information; and

"(C) is not exclusively derived from an allegation made in a judicial or administrative hearing, in a governmental report, hearing, audit, or investigation, or from the news media, unless the whistleblower is a source of the information.

"(5) RELATED ACTION.—The term 'related action', when used with respect to any judicial or administrative action brought by the Commission under this Act, means any judicial or administrative action brought by an entity described in subclauses (I) through (VI) of subsection (h)(2)(C) that is based upon the original information provided by a whistleblower pursuant to subsection (a) that led to the successful enforcement of the Commission action.

"(6) SUCCESSFUL RESOLUTION.—The term 'successful resolution', when used with respect to any judicial or administrative action brought by the Commission under this Act, includes any settlement of such action.

"(7) WHISTLEBLOWER.—The term 'whistleblower' means any individual, or 2 or more individuals acting jointly, who provides information relating to a violation of this Act to the Commission, in a manner established by rule or regulation by the Commission.

"(b) AWARDS.—

"(1) IN GENERAL.—In any covered judicial or administrative action, or related action, the Commission, under regulations prescribed by the Commission and subject to subsection (c), shall pay an award or awards to 1 or more whistleblowers who voluntarily provided original information to the Commission that led to the successful enforcement of the covered judicial or administrative action, or related action, in an aggregate amount equal to—

"(A) not less than 10 percent, in total, of what has been collected of the monetary sanctions imposed in the action or related actions; and

"(B) not more than 30 percent, in total, of what has been collected of the monetary sanctions imposed in the action or related actions.

"(2) PAYMENT OF AWARDS.—Any amount paid under paragraph (1) shall be paid from the Fund.

"(c) DETERMINATION OF AMOUNT OF AWARD; DENIAL OF AWARD.—

"(1) DETERMINATION OF AMOUNT OF AWARD.—

"(A) DISCRETION.—The determination of the amount of an award made under subsection (b) shall be in the discretion of the Commission.

"(B) CRITERIA.—In determining the amount of an award made under subsection (b), the Commission—

"(i) shall take into consideration—

"(I) the significance of the information provided by the whistleblower to the success of the covered judicial or administrative action;

"(II) the degree of assistance provided by the whistleblower and any legal representative of the whistleblower in a covered judicial or administrative action;

"(III) the programmatic interest of the Commission in deterring violations of the Act (including regulations under the Act) by making awards to whistleblowers who provide information that leads to the successful enforcement of such laws; and

"(IV) such additional relevant factors as the Commission may establish by rule or regulation; and

"(ii) shall not take into consideration the balance of the Fund.

"(2) DENIAL OF AWARD.—No award under subsection (b) shall be made—

"(A) to any whistleblower who is, or was at the time the whistleblower acquired the original information submitted to the Commission, a member, officer, or employee of—

"(i) a appropriate regulatory agency;

"(ii) the Department of Justice;

"(iii) a registered entity;

"(iv) a registered futures association;

"(v) a self-regulatory organization as defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)); or

"(vi) a law enforcement organization;

"(B) to any whistleblower who is convicted of a criminal violation related to the judicial or administrative action for which the whistleblower otherwise could receive an award under this section;

"(C) to any whistleblower who submits information to the Commission that is based on the facts underlying the covered action submitted previously by another whistleblower;

"(D) to any whistleblower who fails to submit information to the Commission in such form as the Commission may, by rule or regulation, require.

"(d) REPRESENTATION.—

"(1) PERMITTED REPRESENTATION.—Any whistleblower who makes a claim for an award under subsection (b) may be represented by counsel.

"(2) REQUIRED REPRESENTATION.—

"(A) IN GENERAL.—Any whistleblower who anonymously makes a claim for an award under subsection (b) shall be represented by counsel if the whistleblower submits the information upon which the claim is based.

"(B) DISCLOSURE OF IDENTITY.—Prior to the payment of an award, a whistleblower shall disclose the identity of the whistleblower and provide such other information as the Commission may require, directly or through counsel for the whistleblower.

"(e) NO CONTRACT NECESSARY.—No contract with the Commission is necessary for any whistleblower to receive an award under subsection (b), unless otherwise required by the Commission, by rule or regulation.

"(f) APPEALS.—

"(1) IN GENERAL.—Any determination made under this section, including whether, to whom, or in what amount to make awards, shall be in the discretion of the Commission.

"(2) APPEALS.—Any determination described in paragraph (1) may be appealed to the appropriate court of appeals of the United States not more than 30 days after the determination is issued by the Commission.

"(3) REVIEW.—The court shall review the determination made by the Commission in accordance with section 7064 of title 5, United States Code.

"(g) COMMODITY FUTURES TRADING COMMISSION CUSTOMER PROTECTION FUND.—

"(1) ESTABLISHMENT.—There is established in the Treasury of the United States a revolving fund to be known as the 'Commodity Futures Trading Commission Customer Protection Fund'.

"(2) USE OF FUND.—The Fund shall be available to the Commission, without further appropriation or fiscal year limitation, for—

"(A) the payment of awards to whistleblowers as provided in subsection (a); and

"(B) the funding of customer education initiatives designed to help customers protect themselves against fraud or other violations of this Act, or the rules and regulations thereunder.

"(3) DEPOSITS AND CREDITS.—There shall be deposited into or credited to the Fund:

"(A) MONETARY SANCTIONS.—Any monetary sanctions collected by the Commission in any covered judicial or administrative action that is not otherwise distributed to victims of a violation of this Act or the rules and regulations thereunder underlying such action, unless the balance of the Fund at the time the monetary judgment is collected exceeds $100,000,000.

"(B) ADDITIONAL AMOUNTS.—If the amounts deposited into or credited to the Fund under subparagraph (A) are not sufficient to satisfy an award made under subsection (b), there shall be deposited into or credited to the Fund an amount equal to the unsatisfied portion of the award from any monetary sanction collected by the Commission in any judicial or administrative action brought by the Commission under this Act that is based on information provided by a whistleblower.

"(C) INVESTMENT INCOME.—All income from investments made under paragraph (4).

"(4) INVESTMENTS.—

"(A) AMOUNTS IN FUND MAY BE INVESTED.—The Commission may request the Secretary of the Treasury to invest the portion of the Fund that is not, in the Commission's judgment, required to meet the current needs of the Fund.

"(B) ELIGIBLE INVESTMENTS.—Investments shall be made by the Secretary of the Treasury in obligations of the United States or obligations that are guaranteed as to principal and interest by the United States, with maturities suitable to the needs of the Fund as determined by the Commission.

"(C) INTEREST AND PROCEEDS CREDITED.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to, and form a part of, the Fund.

"(5) REPORTS TO CONGRESS.—Not later than October 30 of each year, the Commission shall transmit to the Committee on Agriculture, Nutrition, and Forestry of the Senate, and the Committee on Agriculture of the House of Representatives a report on—

"(A) the Commission's whistleblower award program under this section, including a description of the number of awards granted and the types of cases in which awards were granted during the preceding fiscal year;

"(B) customer education initiatives described in paragraph (2)(B) that were funded by the Fund during the preceding fiscal year;

"(C) the balance of the Fund at the beginning of the preceding fiscal year;

"(D) the amounts deposited into or credited to the Fund during the preceding fiscal year;

"(E) the amount of earnings on investments of amounts in the Fund during the preceding fiscal year;

"(F) the amount paid from the Fund during the preceding fiscal year to whistleblowers pursuant to subsection (b);

"(G) the amount paid from the Fund during the preceding fiscal year for customer education initiatives described in paragraph (2)(B);

"(H) the balance of the Fund at the end of the preceding fiscal year; and

"(I) a complete set of audited financial statements, including a balance sheet, income statement, and cash flow analysis.

"(h) PROTECTION OF WHISTLEBLOWERS.—

"(1) PROHIBITION AGAINST RETALIATION.—

"(A) IN GENERAL.—No employer may discharge, demote, suspend, threaten, harass, directly or indirectly, or in any other manner discriminate against, a whistleblower in the terms and conditions of employment because of any lawful act done by the whistleblower—

"(i) in providing information to the Commission in accordance with subsection (b); or

"(ii) in assisting in any investigation or judicial or administrative action of the Commission based upon or related to such information.

"(B) ENFORCEMENT.—

"(i) CAUSE OF ACTION.—An individual who alleges discharge or other discrimination in violation of subparagraph (A) may bring an action under this subsection in the appropriate district court of the United States for the relief provided in subparagraph (C), unless the individual who is alleging discharge or other discrimination in violation of subparagraph (A) is an employee of the Federal Government, in which case the individual shall only bring an action under section 1221 of title 5, United States Code.

"(ii) SUBPOENAS.—A subpoena requiring the attendance of a witness at a trial or hearing conducted under this subsection may be served at any place in the United States.

"(iii) STATUTE OF LIMITATIONS.—An action under this subsection may not be brought more than 2 years after the date on which the violation reported in subparagraph (A) is committed.

"(C) RELIEF.—Relief for an individual prevailing in an action brought under subparagraph (B) shall include—

"(i) reinstatement with the same seniority status that the individual would have had, but for the discrimination;

"(ii) the amount of back pay otherwise owed to the individual, with interest; and

"(iii) compensation for any special damages sustained as a result of the discharge or discrimination, including litigation costs, expert witness fees, and reasonable attorney's fees.

"(2) CONFIDENTIALITY.—

"(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), the Commission, and any officer or employee of the Commission, shall not disclose any information, including information provided by a whistleblower to the Commission, which could reasonably be expected to reveal the identity of a whistleblower, except in accordance with the provisions of section 552a of title 5, United States Code, unless and until required to be disclosed to a defendant or respondent in connection with a public proceeding instituted by the Commission or any entity described in subparagraph (C). For purposes of section 552 of title 5, United States Code, this paragraph shall be considered a statute described in subsection (b)(3)(B) of such section 552.

"(B) EFFECT.—Nothing in this paragraph is intended to limit the ability of the Attorney General to present such evidence to a grand jury or to share such evidence with potential witnesses or defendants in the course of an ongoing criminal investigation.

"(C) AVAILABILITY TO GOVERNMENT AGENCIES.—

"(i) IN GENERAL.—Without the loss of its status as confidential in the hands of the Commission, all information referred to in subparagraph (A) may, in the discretion of the Commission, when determined by the Commission to be necessary or appropriate to accomplish the purposes of this Act and protect customers and in accordance with clause (ii), be made available to—

"(I) the Department of Justice;

"(II) an appropriate department or agency of the Federal Government, acting within the scope of its jurisdiction;

"(III) a registered entity, registered futures association, or self-regulatory organization as defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a));

"(IV) a State attorney general in connection with any criminal investigation;

"(V) an appropriate department or agency of any State, acting within the scope of its jurisdiction; and

"(VI) a foreign futures authority.

"(ii) MAINTENANCE OF INFORMATION.—Each of the entities, agencies, or persons described in clause (i) shall maintain information described in that clause as confidential, in accordance with the requirements in subparagraph (A).

"(iii) STUDY ON IMPACT OF FOIA EXEMPTION ON COMMODITY FUTURES TRADING COMMISSION.—

"(I) STUDY.—The Inspector General of the Commission shall conduct a study—

"(aa) on whether the exemption under section 552(b)(3) of title 5, United States Code (known as the Freedom of Information Act) established in paragraph (2)(A) aids whistleblowers in disclosing information to the Commission;

"(bb) on what impact the exemption has had on the public's ability to access information about the Commission's regulation of commodity futures and option markets; and

"(cc) to make any recommendations on whether the Commission should continue to use the exemption.

"(II) REPORT.—Not later than 30 months after the date of enactment of this clause, the Inspector General shall—

"(aa) submit a report on the findings of the study required under this clause to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on

Financial Services of the House of Representatives; and

"(bb) make the report available to the public through publication of a report on the website of the Commission.

"(3) RIGHTS RETAINED.—Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any whistleblower under any Federal or State law, or under any collective bargaining agreement.

"(i) RULEMAKING AUTHORITY.—The Commission shall have the authority to issue such rules and regulations as may be necessary or appropriate to implement the provisions of this section consistent with the purposes of this section.

"(j) IMPLEMENTING RULES.—The Commission shall issue final rules or regulations implementing the provisions of this section not later than 270 days after the date of enactment of the Wall Street Transparency and Accountability Act of 2010.

"(k) ORIGINAL INFORMATION.—Information submitted to the Commission by a whistleblower in accordance with rules or regulations implementing this section shall not lose its status as original information solely because the whistleblower submitted such information prior to the effective date of such rules or regulations, provided such information was submitted after the date of enactment of the Wall Street Transparency and Accountability Act of 2010.

"(l) AWARDS.—A whistleblower may receive an award pursuant to this section regardless of whether any violation of a provision of this Act, or a rule or regulation thereunder, underlying the judicial or administrative action upon which the award is based occurred prior to the date of enactment of the Wall Street Transparency and Accountability Act of 2010.

"(m) PROVISION OF FALSE INFORMATION.—A whistleblower who knowingly and willfully makes any false, fictitious, or fraudulent statement or representation, or who makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall not be entitled to an award under this section and shall be subject to prosecution under section 1001 of title 18, United States Code.

"(n) NONENFORCEABILITY OF CERTAIN PROVISIONS WAIVING RIGHTS AND REMEDIES OR REQUIRING ARBITRATION OF DISPUTES.—

"(1) WAIVER OF RIGHTS AND REMEDIES.—The rights and remedies provided for in this section may not be waived by any agreement, policy form, or condition of employment including by a predispute arbitration agreement.

"(2) PREDISPUTE ARBITRATION AGREEMENTS.—No predispute arbitration agreement shall be valid or enforceable, if the agreement requires arbitration of a dispute arising under this section.".

SEC. 749. CONFORMING AMENDMENTS.

(a) Section 4d of the Commodity Exchange Act (7 U.S.C. 6d) (as amended by section 724) is amended—

(1) in subsection (a)—

(A) in the matter preceding paragraph (1)—

(i) by striking "engage as" and inserting "be a"; and

(ii) by striking "or introducing broker" and all that follows through "or derivatives transaction execution facility";

(B) in paragraph (1), by striking "or introducing broker"; and

(C) in paragraph (2), by striking "if a futures commission merchant,"; and

(2) by adding at the end the following:

"(g) It shall be unlawful for any person to be an introducing broker unless such person shall have registered under this Act with the Commission as an introducing broker and such registration shall not have expired nor been suspended nor revoked.".

(b) Section 4m(3) of the Commodity Exchange Act (7 U.S.C. 6m(3)) is amended—

(1) by striking "(3) Subsection (1) of this section" and inserting the following:

"(3) EXCEPTION.—

"(A) IN GENERAL.—Paragraph (1)"; and

(2) by striking "to any investment trust" and all that follows through the period at the end and inserting the following: "to any commodity pool that is engaged primarily in trading commodity interests.

"(B) ENGAGED PRIMARILY.—For purposes of subparagraph (A), a commodity trading advisor or a commodity pool shall be considered to be 'engaged primarily' in the business of being a commodity trading advisor or commodity pool if it is or holds itself out to the public as being engaged primarily, or proposes to engage primarily, in the business of advising on commodity interests or investing, reinvesting, owning, holding, or trading in commodity interests, respectively.

"(C) COMMODITY INTERESTS.—For purposes of this paragraph, commodity interests shall include contracts of sale of a commodity for future delivery, options on such contracts, security futures, swaps, leverage contracts, foreign exchange, spot and forward contracts on physical commodities, and any monies held in an account used for trading commodity interests.".

(c) Section 5c of the Commodity Exchange Act (7 U.S.C. 7a–2) is amended—

(1) in subsection (a)(1)—

(A) by striking ", 5a(d),"; and

(B) by striking "and section (2)(h)(7) with respect to significant price discovery contracts,"; and

(2) in subsection (f)(1), by striking "section 4d(c) of this Act" and inserting "section 4d(e)".

(d) Section 5e of the Commodity Exchange Act (7 U.S.C. 7b) is amended by striking "or revocation of the right of an electronic trading facility to rely on the exemption set forth in section 2(h)(3) with respect to a significant price discovery contract,".

(e) Section 6(b) of the Commodity Exchange Act (7 U.S.C. 8(b)) is amended in the first sentence by striking ", or to revoke the right of an electronic trading facility to rely on the exemption set forth in section 2(h)(3) with respect to a significant price discovery contract,".

(f) Section 12(e)(2)(B) of the Commodity Exchange Act (7 U.S.C. 16(e)(2)(B)) is amended—

(1) by striking "section 2(c), 2(d), 2(f), or 2(g) of this Act" and inserting "section 2(c) or 2(f) of this Act"; and

(2) by striking "2(h) or".

(g) Section 17(r)(1) of the Commodity Exchange Act (7 U.S.C. 21(r)(1)) is amended by striking "section 4d(c) of this Act" and inserting "section 4d(e)".

(h) Section 22 of the Commodity Exchange Act is amended—

(1) in subsection (a)(1)(B), by—

(A) inserting "or any swap" after "commodity)"; and

(B) inserting "or any swap" after "such contract";

(2) in subsection (a)(1)(C), by adding at the end the following:

"(iv) a swap; or"; and

(3) in subsection (b)(1)(A), by striking "section 2(h)(7) or sections 5 through 5c" and inserting "section 5, 5b, 5c, 5h, or 21".

(i) Section 408(2)(C) of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4421(2)(C)) is amended—

(1) by striking "section 2(c), 2(d), 2(f), or (2)(g) of such Act" and inserting "section 2(c), 2(f), or 2(i) of that Act"; and

(2) by striking "2(h) or".

SEC. 750. STUDY ON OVERSIGHT OF CARBON MARKETS.

(a) INTERAGENCY WORKING GROUP.—There is established to carry out this section an interagency working group (referred to in this section as the "interagency group") composed of the following members or designees:

(1) The Chairman of the Commodity Futures Trading Commission (referred to in this section as the "Commission"), who shall serve as Chairman of the interagency group.

(2) The Secretary of Agriculture.

(3) The Secretary of the Treasury.

(4) The Chairman of the Securities and Exchange Commission.

(5) The Administrator of the Environmental Protection Agency.

(6) The Chairman of the Federal Energy Regulatory Commission.

(7) The Commissioner of the Federal Trade Commission.

(8) The Administrator of the Energy Information Administration.

(b) ADMINISTRATIVE SUPPORT.—The Commission shall provide the interagency group such administrative support services as are necessary to enable the interagency group to carry out the functions of the interagency group under this section.

(c) CONSULTATION.—In carrying out this section, the interagency group shall consult with representatives of exchanges, clearinghouses, self-regulatory bodies, major carbon market participants, consumers, and the general public, as the interagency group determines to be appropriate.

(d) STUDY.—The interagency group shall conduct a study on the oversight of existing and prospective carbon markets to ensure an efficient, secure, and transparent carbon market, including oversight of spot markets and derivative markets.

(e) REPORT.—Not later than 180 days after the date of enactment of this Act, the interagency group shall submit to Congress a report on the results of the study conducted under subsection

(b), including recommendations for the oversight of existing and prospective carbon markets to ensure an efficient, secure, and transparent carbon market, including oversight of spot markets and derivative markets.

SEC. 751. ENERGY AND ENVIRONMENTAL MARKETS ADVISORY COMMITTEE.

Section 2(a) of the Commodity Exchange Act (7 U.S.C. 2(a)) (as amended by section 727) is amended by adding at the end the following:

"(15) ENERGY AND ENVIRONMENTAL MARKETS ADVISORY COMMITTEE.—

"(A) ESTABLISHMENT.—

"(i) IN GENERAL.—An Energy and Environmental Markets Advisory Committee is hereby established.

"(ii) MEMBERSHIP.—The Committee shall have 9 members.

"(iii) ACTIVITIES.—The Committee's objectives and scope of activities shall be—

"(I) to conduct public meetings;

"(II) to submit reports and recommendations to the Commission (including dissenting or minority views, if any); and

"(III) otherwise to serve as a vehicle for discussion and communication on matters of concern to exchanges, firms, end users, and regulators regarding energy and environmental markets and their regulation by the Commission.

"(B) REQUIREMENTS.—

"(i) IN GENERAL.—The Committee shall hold public meetings at such intervals as are necessary to carry out the functions of the Committee, but not less frequently than 2 times per year.

"(ii) MEMBERS.—Members shall be appointed to 3-year terms, but may be removed for cause by vote of the Commission.

"(C) APPOINTMENT.—The Commission shall appoint members with a wide diversity of opinion and who represent a broad spectrum of interests, including hedgers and consumers.

"(D) REIMBURSEMENT.—Members shall be entitled to per diem and travel expense reimbursement by the Commission.

"(E) FACA.—The Committee shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).".

SEC. 752. INTERNATIONAL HARMONIZATION.

(a) In order to promote effective and consistent global regulation of swaps and security-based swaps, the Commodity Futures Trading Commission, the Securities and Exchange Commission, and the prudential regulators (as that term is defined in section 1a(39) of the Commodity Exchange Act), as appropriate, shall consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards with respect to the regulation (including fees) of swaps, security-based swaps, swap entities, and security-based swap entities and may agree to such information-sharing arrangements as may be deemed to be necessary or

appropriate in the public interest or for the protection of investors, swap counterparties, and security-based swap counterparties.

(b) In order to promote effective and consistent global regulation of contracts of sale of a commodity for future delivery and options on such contracts, the Commodity Futures Trading Commission shall consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards with respect to the regulation of contracts of sale of a commodity for future delivery and options on such contracts, and may agree to such information-sharing arrangements as may be deemed necessary or appropriate in the public interest for the protection of users of contracts of sale of a commodity for future delivery.

SEC. 753. ANTI-MANIPULATION AUTHORITY.

(a) PROHIBITION REGARDING MANIPULATION AND FALSE INFORMATION.—Subsection (c) of section 6 of the Commodity Exchange Act (7 U.S.C. 9, 15) is amended to read as follows:

"(c) PROHIBITION REGARDING MANIPULATION AND FALSE INFORMATION.—

"(1) PROHIBITION AGAINST MANIPULATION.—It shall be unlawful for any person, directly or indirectly, to use or employ, or attempt to use or employ, in connection with any swap, or a contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, any manipulative or deceptive device or contrivance, in contravention of such rules and regulations as the Commission shall promulgate by not later than 1 year after the date of enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act, provided no rule or regulation promulgated by the Commission shall require any person to disclose to another person nonpublic information that may be material to the market price, rate, or level of the commodity transaction, except as necessary to make any statement made to the other person in or in connection with the transaction not misleading in any material respect.

"(A) SPECIAL PROVISION FOR MANIPULATION BY FALSE REPORTING.—Unlawful manipulation for purposes of this paragraph shall include, but not be limited to, delivering, or causing to be delivered for transmission through the mails or interstate commerce, by any means of communication whatsoever, a false or misleading or inaccurate report concerning crop or market information or conditions that affect or tend to affect the price of any commodity in interstate commerce, knowing, or acting in reckless disregard of the fact that such report is false, misleading or inaccurate.

"(B) EFFECT ON OTHER LAW.—Nothing in this paragraph shall affect, or be construed to affect, the applicability of section 9(a)(2).

"(C) GOOD FAITH MISTAKES.—Mistakenly transmitting, in good faith, false or misleading or inaccurate information to a price reporting service would not be sufficient to violate subsection (c)(1)(A).

"(2) PROHIBITION REGARDING FALSE INFORMATION.—It shall be unlawful for any person to make any false or misleading statement of a material fact to the Commission, including in any registration application or any report filed with the

Commission under this Act, or any other information relating to a swap, or a contract of sale of a commodity, in interstate commerce, or for future delivery on or subject to the rules of any registered entity, or to omit to state in any such statement any material fact that is necessary to make any statement of a material fact made not misleading in any material respect, if the person knew, or reasonably should have known, the statement to be false or misleading.

"(3) OTHER MANIPULATION.—In addition to the prohibition in paragraph (1), it shall be unlawful for any person, directly or indirectly, to manipulate or attempt to manipulate the price of any swap, or of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity.

"(4) ENFORCEMENT.—

"(A) AUTHORITY OF COMMISSION.—If the Commission has reason to believe that any person (other than a registered entity) is violating or has violated this subsection, or any other provision of this Act (including any rule, regulation, or order of the Commission promulgated in accordance with this subsection or any other provision of this Act), the Commission may serve upon the person a complaint.

"(B) CONTENTS OF COMPLAINT.—A complaint under subparagraph (A) shall—

"(i) contain a description of the charges against the person that is the subject of the complaint; and

"(ii) have attached or contain a notice of hearing that specifies the date and location of the hearing regarding the complaint.

"(C) HEARING.—A hearing described in subparagraph (B)(ii)—

"(i) shall be held not later than 3 days after service of the complaint described in subparagraph (A);

"(ii) shall require the person to show cause regarding why—

"(I) an order should not be made—

"(aa) to prohibit the person from trading on, or subject to the rules of, any registered entity; and

"(bb) to direct all registered entities to refuse all privileges to the person until further notice of the Commission; and

"(II) the registration of the person, if registered with the Commission in any capacity, should not be suspended or revoked; and

"(iii) may be held before—

"(I) the Commission; or

"(II) an administrative law judge designated by the Commission, under which the administrative law judge shall ensure that all evidence is recorded in written form and submitted to the Commission.

"(5) SUBPOENA.—For the purpose of securing effective enforcement of the provisions of this Act, for the purpose of any investigation or proceeding under this Act, and for the purpose of any action taken under section 12(f), any member

of the Commission or any Administrative Law Judge or other officer designated by the Commission (except as provided in paragraph (7)) may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records that the Commission deems relevant or material to the inquiry.

"(6) WITNESSES.—The attendance of witnesses and the production of any such records may be required from any place in the United States, any State, or any foreign country or jurisdiction at any designated place of hearing.

"(7) SERVICE.—A subpoena issued under this section may be served upon any person who is not to be found within the territorial jurisdiction of any court of the United States in such manner as the Federal Rules of Civil Procedure prescribe for service of process in a foreign country, except that a subpoena to be served on a person who is not to be found within the territorial jurisdiction of any court of the United States may be issued only on the prior approval of the Commission.

"(8) REFUSAL TO OBEY.—In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Commission may invoke the aid of any court of the United States within the jurisdiction in which the investigation or proceeding is conducted, or where such person resides or transacts business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, and other records. Such court may issue an order requiring such person to appear before the Commission or member or Administrative Law Judge or other officer designated by the Commission, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question.

"(9) FAILURE TO OBEY.—Any failure to obey such order of the court may be punished by the court as a contempt thereof. All process in any such case may be served in the judicial district wherein such person is an inhabitant or transacts business or wherever such person may be found.

"(10) EVIDENCE.—On the receipt of evidence under paragraph (4)(C)(iii), the Commission may—

"(A) prohibit the person that is the subject of the hearing from trading on, or subject to the rules of, any registered entity and require all registered entities to refuse the person all privileges on the registered entities for such period as the Commission may require in the order;

"(B) if the person is registered with the Commission in any capacity, suspend, for a period not to exceed 180 days, or revoke, the registration of the person;

"(C) assess such person—

"(i) a civil penalty of not more than an amount equal to the greater of—

"(I) $140,000; or

"(II) triple the monetary gain to such person for each such violation; or

"(ii) in any case of manipulation or attempted manipulation in violation of this subsection or section

9(a)(2), a civil penalty of not more than an amount equal to the greater of—

"(I) $1,000,000; or

"(II) triple the monetary gain to the person for each such violation; and

"(D) require restitution to customers of damages proximately caused by violations of the person.

"(11) ORDERS.—

"(A) NOTICE.—The Commission shall provide to a person described in paragraph (10) and the appropriate governing board of the registered entity notice of the order described in paragraph (10) by—

"(i) registered mail;

"(ii) certified mail; or

"(iii) personal delivery.

"(B) REVIEW.—

"(i) IN GENERAL.—A person described in paragraph (10) may obtain a review of the order or such other equitable relief as determined to be appropriate by a court described in clause (ii).

"(ii) PETITION.—To obtain a review or other relief under clause (i), a person may, not later than 15 days after notice is given to the person under clause (i), file a written petition to set aside the order with the United States Court of Appeals—

"(I) for the circuit in which the petitioner carries out the business of the petitioner; or

"(II) in the case of an order denying registration, the circuit in which the principal place of business of the petitioner is located, as listed on the application for registration of the petitioner.

"(C) PROCEDURE.—

"(i) DUTY OF CLERK OF APPROPRIATE COURT.—The clerk of the appropriate court under subparagraph (B)(ii) shall transmit to the Commission a copy of a petition filed under subparagraph (B)(ii).

"(ii) DUTY OF COMMISSION.—In accordance with section 2112 of title 28, United States Code, the Commission shall file in the appropriate court described in subparagraph (B)(ii) the record theretofore made.

"(iii) JURISDICTION OF APPROPRIATE COURT.—Upon the filing of a petition under subparagraph (B)(ii), the appropriate court described in subparagraph (B)(ii) may affirm, set aside, or modify the order of the Commission.".

(b) CEASE AND DESIST ORDERS, FINES.—Section 6(d) of the Commodity Exchange Act (7 U.S.C. 13b) is amended to read as follows:

"(d) If any person (other than a registered entity), is violating or has violated subsection (c) or any other provisions of this Act or of the rules, regulations, or orders of the Commission thereunder, the Commission may, upon notice and hearing, and subject to appeal as in other cases provided for in subsection (c), make and enter an order directing that such person shall cease and desist therefrom and, if such person thereafter and after the lapse of the period allowed for appeal of such order or after the affirmance

of such order, shall knowingly fail or refuse to obey or comply with such order, such person, upon conviction thereof, shall be fined not more than the higher of $140,000 or triple the monetary gain to such person, or imprisoned for not more than 1 year, or both, except that if such knowing failure or refusal to obey or comply with such order involves any offense within subsection (a) or (b) of section 9, such person, upon conviction thereof, shall be subject to the penalties of said subsection (a) or (b): *Provided*, That any such cease and desist order under this subsection against any respondent in any case of manipulation shall be issued only in conjunction with an order issued against such respondent under subsection (c).".

(c) MANIPULATIONS; PRIVATE RIGHTS OF ACTION.—Section 22(a)(1) of the Commodity Exchange Act (7 U.S.C. 25(a)(1)) is amended by striking subparagraph (D) and inserting the following:

"(D) who purchased or sold a contract referred to in subparagraph (B) hereof or swap if the violation constitutes—

"(i) the use or employment of, or an attempt to use or employ, in connection with a swap, or a contract of sale of a commodity, in interstate commerce, or for future delivery on or subject to the rules of any registered entity, any manipulative device or contrivance in contravention of such rules and regulations as the Commission shall promulgate by not later than 1 year after the date of enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act; or

"(ii) a manipulation of the price of any such contract or swap or the price of the commodity underlying such contract or swap.".

(d) EFFECTIVE DATE.—

(1) The amendments made by this section shall take effect on the date on which the final rule promulgated by the Commodity Futures Trading Commission pursuant to this Act takes effect.

(2) Paragraph (1) shall not preclude the Commission from undertaking prior to the effective date any rulemaking necessary to implement the amendments contained in this section.

SEC. 754. EFFECTIVE DATE.

Unless otherwise provided in this title, the provisions of this subtitle shall take effect on the later of 360 days after the date of the enactment of this subtitle or, to the extent a provision of this subtitle requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of this subtitle.

Subtitle B—Regulation of Security-Based Swap Markets

SEC. 761. DEFINITIONS UNDER THE SECURITIES EXCHANGE ACT OF 1934.

(a) DEFINITIONS.—Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended—

(1) in subparagraphs (A) and (B) of paragraph (5), by inserting "(not including security-based swaps, other than security-based swaps with or for persons that are not eligible contract participants)" after "securities" each place that term appears;

(2) in paragraph (10), by inserting "security-based swap," after "security future,";

(3) in paragraph (13), by adding at the end the following: "For security-based swaps, such terms include the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.";

(4) in paragraph (14), by adding at the end the following: "For security-based swaps, such terms include the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.";

(5) in paragraph (39)—

(A) in subparagraph (B)(i)—

(i) in subclause (I), by striking "or government securities dealer" and inserting "government securities dealer, security-based swap dealer, or major security-based swap participant"; and

(ii) in subclause (II), by inserting "security-based swap dealer, major security-based swap participant," after "government securities dealer,";

(B) in subparagraph (C), by striking "or government securities dealer" and inserting "government securities dealer, security-based swap dealer, or major security-based swap participant"; and

(C) in subparagraph (D), by inserting "security-based swap dealer, major security-based swap participant," after "government securities dealer,"; and

(6) by adding at the end the following:

"(65) ELIGIBLE CONTRACT PARTICIPANT.—The term 'eligible contract participant' has the same meaning as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

"(66) MAJOR SWAP PARTICIPANT.—The term 'major swap participant' has the same meaning as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

"(67) MAJOR SECURITY-BASED SWAP PARTICIPANT.—

"(A) IN GENERAL.—The term 'major security-based swap participant' means any person—

"(i) who is not a security-based swap dealer; and

"(ii)(I) who maintains a substantial position in security-based swaps for any of the major security-based swap categories, as such categories are determined by the Commission, excluding both positions held for hedging or mitigating commercial risk and positions maintained by any employee benefit plan (or any contract held by such a plan) as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002) for the primary purpose of hedging or mitigating any risk directly associated with the operation of the plan;

"(II) whose outstanding security-based swaps create substantial counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets; or

"(III) that is a financial entity that—

"(aa) is highly leveraged relative to the amount of capital such entity holds and that is not subject to capital requirements established by an appropriate Federal banking agency; and

"(bb) maintains a substantial position in outstanding security-based swaps in any major security-based swap category, as such categories are determined by the Commission.

"(B) DEFINITION OF SUBSTANTIAL POSITION.—For purposes of subparagraph (A), the Commission shall define, by rule or regulation, the term 'substantial position' at the threshold that the Commission determines to be prudent for the effective monitoring, management, and oversight of entities that are systemically important or can significantly impact the financial system of the United States. In setting the definition under this subparagraph, the Commission shall consider the person's relative position in uncleared as opposed to cleared security-based swaps and may take into consideration the value and quality of collateral held against counterparty exposures.

"(C) SCOPE OF DESIGNATION.—For purposes of subparagraph (A), a person may be designated as a major security-based swap participant for 1 or more categories of security-based swaps without being classified as a major security-based swap participant for all classes of security-based swaps.

"(68) SECURITY-BASED SWAP.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'security-based swap' means any agreement, contract, or transaction that—

"(i) is a swap, as that term is defined under section 1a of the Commodity Exchange Act (without regard to paragraph (47)(B)(x) of such section); and

"(ii) is based on—

"(I) an index that is a narrow-based security index, including any interest therein or on the value thereof;

"(II) a single security or loan, including any interest therein or on the value thereof; or

"(III) the occurrence, nonoccurrence, or extent of the occurrence of an event relating to a single issuer of a security or the issuers of securities in a narrow-based security index, provided that such event directly affects the financial statements, financial condition, or financial obligations of the issuer.

"(B) RULE OF CONSTRUCTION REGARDING MASTER AGREEMENTS.—The term 'security-based swap' shall be construed to include a master agreement that provides for an agreement, contract, or transaction that is a security-based swap pursuant to subparagraph (A), together with

all supplements to any such master agreement, without regard to whether the master agreement contains an agreement, contract, or transaction that is not a security-based swap pursuant to subparagraph (A), except that the master agreement shall be considered to be a security-based swap only with respect to each agreement, contract, or transaction under the master agreement that is a security-based swap pursuant to subparagraph (A).

"(C) EXCLUSIONS.—The term 'security-based swap' does not include any agreement, contract, or transaction that meets the definition of a security-based swap only because such agreement, contract, or transaction references, is based upon, or settles through the transfer, delivery, or receipt of an exempted security under paragraph (12), as in effect on the date of enactment of the Futures Trading Act of 1982 (other than any municipal security as defined in paragraph (29) as in effect on the date of enactment of the Futures Trading Act of 1982), unless such agreement, contract, or transaction is of the character of, or is commonly known in the trade as, a put, call, or other option.

"(D) MIXED SWAP.—The term 'security-based swap' includes any agreement, contract, or transaction that is as described in subparagraph (A) and also is based on the value of 1 or more interest or other rates, currencies, commodities, instruments of indebtedness, indices, quantitative measures, other financial or economic interest or property of any kind (other than a single security or a narrow-based security index), or the occurrence, non-occurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence (other than an event described in subparagraph (A)(ii)(III)).

"(E) RULE OF CONSTRUCTION REGARDING USE OF THE TERM INDEX.—The term 'index' means an index or group of securities, including any interest therein or based on the value thereof.

"(69) SWAP.—The term 'swap' has the same meaning as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

"(70) PERSON ASSOCIATED WITH A SECURITY-BASED SWAP DEALER OR MAJOR SECURITY-BASED SWAP PARTICIPANT.—

"(A) IN GENERAL.—The term 'person associated with a security-based swap dealer or major security-based swap participant' or 'associated person of a security-based swap dealer or major security-based swap participant' means—

"(i) any partner, officer, director, or branch manager of such security-based swap dealer or major security-based swap participant (or any person occupying a similar status or performing similar functions);

"(ii) any person directly or indirectly controlling, controlled by, or under common control with such security-based swap dealer or major security-based swap participant; or

"(iii) any employee of such security-based swap dealer or major security-based swap participant.

"(B) EXCLUSION.—Other than for purposes of section 15F(l)(2), the term 'person associated with a security-based swap dealer or major security-based swap participant' or

'associated person of a security-based swap dealer or major security-based swap participant' does not include any person associated with a security-based swap dealer or major security-based swap participant whose functions are solely clerical or ministerial.

"(71) SECURITY-BASED SWAP DEALER.—

"(A) IN GENERAL.—The term 'security-based swap dealer' means any person who—

"(i) holds themself out as a dealer in security-based swaps;

"(ii) makes a market in security-based swaps;

"(iii) regularly enters into security-based swaps with counterparties as an ordinary course of business for its own account; or

"(iv) engages in any activity causing it to be commonly known in the trade as a dealer or market maker in security-based swaps.

"(B) DESIGNATION BY TYPE OR CLASS.—A person may be designated as a security-based swap dealer for a single type or single class or category of security-based swap or activities and considered not to be a security-based swap dealer for other types, classes, or categories of security-based swaps or activities.

"(C) EXCEPTION.—The term 'security-based swap dealer' does not include a person that enters into security-based swaps for such person's own account, either individually or in a fiduciary capacity, but not as a part of regular business.

"(D) DE MINIMIS EXCEPTION.—The Commission shall exempt from designation as a security-based swap dealer an entity that engages in a de minimis quantity of security-based swap dealing in connection with transactions with or on behalf of its customers. The Commission shall promulgate regulations to establish factors with respect to the making of any determination to exempt.

"(72) APPROPRIATE FEDERAL BANKING AGENCY.—The term 'appropriate Federal banking agency' has the same meaning as in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

"(73) BOARD.—The term 'Board' means the Board of Governors of the Federal Reserve System.

"(74) PRUDENTIAL REGULATOR.—The term 'prudential regulator' has the same meaning as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

"(75) SECURITY-BASED SWAP DATA REPOSITORY.—The term 'security-based swap data repository' means any person that collects and maintains information or records with respect to transactions or positions in, or the terms and conditions of, security-based swaps entered into by third parties for the purpose of providing a centralized recordkeeping facility for security-based swaps.

"(76) SWAP DEALER.—The term 'swap dealer' has the same meaning as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

"(77) SECURITY-BASED SWAP EXECUTION FACILITY.—The term 'security-based swap execution facility' means a trading system or platform in which multiple participants have the

ability to execute or trade security-based swaps by accepting bids and offers made by multiple participants in the facility or system, through any means of interstate commerce, including any trading facility, that—

"(A) facilitates the execution of security-based swaps between persons; and

"(B) is not a national securities exchange.

"(78) SECURITY-BASED SWAP AGREEMENT.—

"(A) IN GENERAL.—For purposes of sections 9, 10, 16, 20, and 21A of this Act, and section 17 of the Securities Act of 1933 (15 U.S.C. 77q), the term 'security-based swap agreement' means a swap agreement as defined in section 206A of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note) of which a material term is based on the price, yield, value, or volatility of any security or any group or index of securities, or any interest therein.

"(B) EXCLUSIONS.—The term 'security-based swap agreement' does not include any security-based swap.".

(b) AUTHORITY TO FURTHER DEFINE TERMS.—The Securities and Exchange Commission may, by rule, further define—

(1) the term "commercial risk";

(2) any other term included in an amendment to the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) made by this subtitle; and

(3) the terms "security-based swap", "security-based swap dealer", "major security-based swap participant", and "eligible contract participant", with regard to security-based swaps (as such terms are defined in the amendments made by subsection (a)) for the purpose of including transactions and entities that have been structured to evade this subtitle or the amendments made by this subtitle.

SEC. 762. REPEAL OF PROHIBITION ON REGULATION OF SECURITY-BASED SWAP AGREEMENTS.

(a) REPEAL.—Sections 206B and 206C of the Gramm-Leach-Bliley Act (Public Law 106–102; 15 U.S.C. 78c note) are repealed.

(b) CONFORMING AMENDMENTS TO GRAMM-LEACH-BLILEY.—Section 206A(a) of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note) is amended in the material preceding paragraph (1), by striking "Except as" and all that follows through "that—" and inserting the following: "Except as provided in subsection (b), as used in this section, the term 'swap agreement' means any agreement, contract, or transaction that—".

(c) CONFORMING AMENDMENTS TO THE SECURITIES ACT OF 1933.—

(1) Section 2A of the Securities Act of 1933 (15 U.S.C. 77b–1) is amended—

(A) by striking subsection (a) and reserving that subsection; and

(B) by striking "(as defined in section 206B of the Gramm-Leach-Bliley Act)" each place that such term appears and inserting "(as defined in section 3(a)(78) of the Securities Exchange Act of 1934)".

(2) Section 17 of the Securities Act of 1933 (15 U.S.C. 77q) is amended—

(A) in subsection (a)—

(i) by inserting "(including security-based swaps)" after "securities"; and

(ii) by striking "(as defined in section 206B of the Gramm-Leach-Bliley Act)" and inserting "(as defined in section 3(a)(78) of the Securities Exchange Act)"; and

(B) in subsection (d), by striking "206B of the Gramm-Leach-Bliley Act" and inserting "3(a)(78) of the Securities Exchange Act of 1934".

(d) CONFORMING AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended—

(1) in section 3A (15 U.S.C. 78c–1)—

(A) by striking subsection (a) and reserving that subsection; and

(B) by striking "(as defined in section 206B of the Gramm-Leach-Bliley Act)" each place that the term appears;

(2) in section 9 (15 U.S.C. 78i)—

(A) in subsection (a), by striking paragraphs (2) through (5) and inserting the following:

"(2) To effect, alone or with 1 or more other persons, a series of transactions in any security registered on a national securities exchange, any security not so registered, or in connection with any security-based swap or security-based swap agreement with respect to such security creating actual or apparent active trading in such security, or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others.

"(3) If a dealer, broker, security-based swap dealer, major security-based swap participant, or other person selling or offering for sale or purchasing or offering to purchase the security, a security-based swap, or a security-based swap agreement with respect to such security, to induce the purchase or sale of any security registered on a national securities exchange, any security not so registered, any security-based swap, or any security-based swap agreement with respect to such security by the circulation or dissemination in the ordinary course of business of information to the effect that the price of any such security will or is likely to rise or fall because of market operations of any 1 or more persons conducted for the purpose of raising or depressing the price of such security.

"(4) If a dealer, broker, security-based swap dealer, major security-based swap participant, or other person selling or offering for sale or purchasing or offering to purchase the security, a security-based swap, or security-based swap agreement with respect to such security, to make, regarding any security registered on a national securities exchange, any security not so registered, any security-based swap, or any security-based swap agreement with respect to such security, for the purpose of inducing the purchase or sale of such security, such security-based swap, or such security-based swap agreement any statement which was at the time and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, and which that person knew or had reasonable ground to believe was so false or misleading.

"(5) For a consideration, received directly or indirectly from a broker, dealer, security-based swap dealer, major security-based swap participant, or other person selling or offering for sale or purchasing or offering to purchase the security, a security-based swap, or security-based swap agreement with respect to such security, to induce the purchase of any security registered on a national securities exchange, any security not so registered, any security-based swap, or any security-based swap agreement with respect to such security by the circulation or dissemination of information to the effect that the price of any such security will or is likely to rise or fall because of the market operations of any 1 or more persons conducted for the purpose of raising or depressing the price of such security."; and

(B) in subsection (i), by striking "(as defined in section 206B of the Gramm-Leach-Bliley Act)";

(3) in section 10 (15 U.S.C. 78j)—

(A) in subsection (b), by striking "(as defined in section 206B of the Gramm-Leach-Bliley Act)," each place that term appears; and

(B) in the matter following subsection (b), by striking "(as defined in section 206B of the Gramm-Leach-Bliley Act), in each place that such terms appear";

(4) in section 15 (15 U.S.C. 78o)—

(A) in subsection (c)(1)(A), by striking "(as defined in section 206B of the Gramm-Leach-Bliley Act),";

(B) in subparagraphs (B) and (C) of subsection (c)(1), by striking "(as defined in section 206B of the Gramm-Leach-Bliley Act)" each place that term appears;

(C) by redesignating subsection (i), as added by section 303(f) of the Commodity Futures Modernization Act of 2000 (Public Law 106–554; 114 Stat. 2763A–455)), as subsection (j); and

(D) in subsection (j), as redesignated by subparagraph (C), by striking "(as defined in section 206B of the Gramm-Leach-Bliley Act)";

(5) in section 16 (15 U.S.C. 78p)—

(A) in subsection (a)(2)(C), by striking "(as defined in section 206(b) of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note))";

(B) in subsection (a)(3)(B), by inserting "or security-based swaps" after "security-based swap agreement";

(C) in the first sentence of subsection (b), by striking "(as defined in section 206B of the Gramm-Leach-Bliley Act)";

(D) in the third sentence of subsection (b), by striking "(as defined in section 206B of the Gramm-Leach Bliley Act)" and inserting "or a security-based swap"; and

(E) in subsection (g), by striking "(as defined in section 206B of the Gramm-Leach-Bliley Act)";

(6) in section 20 (15 U.S.C. 78t),

(A) in subsection (d), by striking "(as defined in section 206B of the Gramm-Leach-Bliley Act)"; and

(B) in subsection (f), by striking "(as defined in section 206B of the Gramm-Leach-Bliley Act)"; and

(7) in section 21A (15 U.S.C. 78u–1)—

(A) in subsection (a)(1), by striking "(as defined in section 206B of the Gramm-Leach-Bliley Act)"; and

(B) in subsection (g), by striking "(as defined in section 206B of the Gramm-Leach-Bliley Act)".

SEC. 763. AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.

(a) CLEARING FOR SECURITY-BASED SWAPS.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 3B (as added by section 717 of this Act):

"SEC. 3C. CLEARING FOR SECURITY-BASED SWAPS.

"(a) IN GENERAL.—

"(1) STANDARD FOR CLEARING.—It shall be unlawful for any person to engage in a security-based swap unless that person submits such security-based swap for clearing to a clearing agency that is registered under this Act or a clearing agency that is exempt from registration under this Act if the security-based swap is required to be cleared.

"(2) OPEN ACCESS.—The rules of a clearing agency described in paragraph (1) shall—

"(A) prescribe that all security-based swaps submitted to the clearing agency with the same terms and conditions are economically equivalent within the clearing agency and may be offset with each other within the clearing agency; and

"(B) provide for non-discriminatory clearing of a security-based swap executed bilaterally or on or through the rules of an unaffiliated national securities exchange or security-based swap execution facility.

"(b) COMMISSION REVIEW.—

"(1) COMMISSION-INITIATED REVIEW.—

"(A) The Commission on an ongoing basis shall review each security-based swap, or any group, category, type, or class of security-based swaps to make a determination that such security-based swap, or group, category, type, or class of security-based swaps should be required to be cleared.

"(B) The Commission shall provide at least a 30-day public comment period regarding any determination under subparagraph (A).

"(2) SWAP SUBMISSIONS.—

"(A) A clearing agency shall submit to the Commission each security-based swap, or any group, category, type, or class of security-based swaps that it plans to accept for clearing and provide notice to its members (in a manner to be determined by the Commission) of such submission.

"(B) Any security-based swap or group, category, type, or class of security-based swaps listed for clearing by a clearing agency as of the date of enactment of this subsection shall be considered submitted to the Commission.

"(C) The Commission shall—

"(i) make available to the public any submission received under subparagraphs (A) and (B);

"(ii) review each submission made under subparagraphs (A) and (B), and determine whether the security-based swap, or group, category, type, or class of security-based swaps, described in the submission is required to be cleared; and

"(iii) provide at least a 30-day public comment period regarding its determination whether the

clearing requirement under subsection (a)(1) shall apply to the submission.

"(3) DEADLINE.—The Commission shall make its determination under paragraph (2)(C) not later than 90 days after receiving a submission made under paragraphs (2)(A) and (2)(B), unless the submitting clearing agency agrees to an extension for the time limitation established under this paragraph.

"(4) DETERMINATION.—

"(A) In reviewing a submission made under paragraph (2), the Commission shall review whether the submission is consistent with section 17A.

"(B) In reviewing a security-based swap, group of security-based swaps or class of security-based swaps pursuant to paragraph (1) or a submission made under paragraph (2), the Commission shall take into account the following factors:

"(i) The existence of significant outstanding notional exposures, trading liquidity and adequate pricing data.

"(ii) The availability of rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear the contract on terms that are consistent with the material terms and trading conventions on which the contract is then traded.

"(iii) The effect on the mitigation of systemic risk, taking into account the size of the market for such contract and the resources of the clearing agency available to clear the contract.

"(iv) The effect on competition, including appropriate fees and charges applied to clearing.

"(v) The existence of reasonable legal certainty in the event of the insolvency of the relevant clearing agency or 1 or more of its clearing members with regard to the treatment of customer and security-based swap counterparty positions, funds, and property.

"(C) In making a determination under subsection (b)(1) or paragraph (2)(C) that the clearing requirement shall apply, the Commission may require such terms and conditions to the requirement as the Commission determines to be appropriate.

"(5) RULES.—Not later than 1 year after the date of the enactment of this section, the Commission shall adopt rules for a clearing agency's submission for review, pursuant to this subsection, of a security-based swap, or a group, category, type, or class of security-based swaps, that it seeks to accept for clearing. Nothing in this paragraph limits the Commission from making a determination under paragraph (2)(C) for security-based swaps described in paragraph (2)(B).

"(c) STAY OF CLEARING REQUIREMENT.—

"(1) IN GENERAL.—After making a determination pursuant to subsection (b)(2), the Commission, on application of a counterparty to a security-based swap or on its own initiative, may stay the clearing requirement of subsection (a)(1) until the Commission completes a review of the terms of the security-based swap (or the group, category, type, or class of security-based swaps) and the clearing arrangement.

"(2) DEADLINE.—The Commission shall complete a review undertaken pursuant to paragraph (1) not later than 90 days after issuance of the stay, unless the clearing agency that clears the security-based swap, or group, category, type, or class of security-based swaps, agrees to an extension of the time limitation established under this paragraph.

"(3) DETERMINATION.—Upon completion of the review undertaken pursuant to paragraph (1), the Commission may—

"(A) determine, unconditionally or subject to such terms and conditions as the Commission determines to be appropriate, that the security-based swap, or group, category, type, or class of security-based swaps, must be cleared pursuant to this subsection if it finds that such clearing is consistent with subsection (b)(4); or

"(B) determine that the clearing requirement of subsection (a)(1) shall not apply to the security-based swap, or group, category, type, or class of security-based swaps.

"(4) RULES.—Not later than 1 year after the date of the enactment of this section, the Commission shall adopt rules for reviewing, pursuant to this subsection, a clearing agency's clearing of a security-based swap, or a group, category, type, or class of security-based swaps, that it has accepted for clearing.

"(d) PREVENTION OF EVASION.—

"(1) IN GENERAL.—The Commission shall prescribe rules under this section (and issue interpretations of rules prescribed under this section), as determined by the Commission to be necessary to prevent evasions of the mandatory clearing requirements under this Act.

"(2) DUTY OF COMMISSION TO INVESTIGATE AND TAKE CERTAIN ACTIONS.—To the extent the Commission finds that a particular security-based swap or any group, category, type, or class of security-based swaps that would otherwise be subject to mandatory clearing but no clearing agency has listed the security-based swap or the group, category, type, or class of security-based swaps for clearing, the Commission shall—

"(A) investigate the relevant facts and circumstances;

"(B) within 30 days issue a public report containing the results of the investigation; and

"(C) take such actions as the Commission determines to be necessary and in the public interest, which may include requiring the retaining of adequate margin or capital by parties to the security-based swap or the group, category, type, or class of security-based swaps.

"(3) EFFECT ON AUTHORITY.—Nothing in this subsection—

"(A) authorizes the Commission to adopt rules requiring a clearing agency to list for clearing a security-based swap or any group, category, type, or class of security-based swaps if the clearing of the security-based swap or the group, category, type, or class of security-based swaps would threaten the financial integrity of the clearing agency; and

"(B) affects the authority of the Commission to enforce the open access provisions of subsection (a)(2) with respect to a security-based swap or the group, category, type, or class of security-based swaps that is listed for clearing by a clearing agency.

"(e) REPORTING TRANSITION RULES.—Rules adopted by the Commission under this section shall provide for the reporting of data, as follows:

"(1) Security-based swaps entered into before the date of the enactment of this section shall be reported to a registered security-based swap data repository or the Commission no later than 180 days after the effective date of this section.

"(2) Security-based swaps entered into on or after such date of enactment shall be reported to a registered security-based swap data repository or the Commission no later than the later of—

"(A) 90 days after such effective date; or

"(B) such other time after entering into the security-based swap as the Commission may prescribe by rule or regulation.

"(f) CLEARING TRANSITION RULES.—

"(1) Security-based swaps entered into before the date of the enactment of this section are exempt from the clearing requirements of this subsection if reported pursuant to subsection (e)(1).

"(2) Security-based swaps entered into before application of the clearing requirement pursuant to this section are exempt from the clearing requirements of this section if reported pursuant to subsection (e)(2).

"(g) EXCEPTIONS.—

"(1) IN GENERAL.—The requirements of subsection (a)(1) shall not apply to a security-based swap if 1 of the counterparties to the security-based swap—

"(A) is not a financial entity;

"(B) is using security-based swaps to hedge or mitigate commercial risk; and

"(C) notifies the Commission, in a manner set forth by the Commission, how it generally meets its financial obligations associated with entering into non-cleared security-based swaps.

"(2) OPTION TO CLEAR.—The application of the clearing exception in paragraph (1) is solely at the discretion of the counterparty to the security-based swap that meets the conditions of subparagraphs (A) through (C) of paragraph (1).

"(3) FINANCIAL ENTITY DEFINITION.—

"(A) IN GENERAL.—For the purposes of this subsection, the term 'financial entity' means—

"(i) a swap dealer;

"(ii) a security-based swap dealer;

"(iii) a major swap participant;

"(iv) a major security-based swap participant;

"(v) a commodity pool as defined in section 1a(10) of the Commodity Exchange Act;

"(vi) a private fund as defined in section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80–b–2(a));

"(vii) an employee benefit plan as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002);

"(viii) a person predominantly engaged in activities that are in the business of banking or financial in

nature, as defined in section 4(k) of the Bank Holding Company Act of 1956.

"(B) EXCLUSION.—The Commission shall consider whether to exempt small banks, savings associations, farm credit system institutions, and credit unions, including—

"(i) depository institutions with total assets of $10,000,000,000 or less;

"(ii) farm credit system institutions with total assets of $10,000,000,000 or less; or

"(iii) credit unions with total assets of $10,000,000,000 or less.

"(4) TREATMENT OF AFFILIATES.—

"(A) IN GENERAL.—An affiliate of a person that qualifies for an exception under this subsection (including affiliate entities predominantly engaged in providing financing for the purchase of the merchandise or manufactured goods of the person) may qualify for the exception only if the affiliate, acting on behalf of the person and as an agent, uses the security-based swap to hedge or mitigate the commercial risk of the person or other affiliate of the person that is not a financial entity.

"(B) PROHIBITION RELATING TO CERTAIN AFFILIATES.—The exception in subparagraph (A) shall not apply if the affiliate is—

"(i) a swap dealer;

"(ii) a security-based swap dealer;

"(iii) a major swap participant;

"(iv) a major security-based swap participant;

"(v) an issuer that would be an investment company, as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3), but for paragraph (1) or (7) of subsection (c) of that Act (15 U.S.C. 80a–3(c));

"(vi) a commodity pool; or

"(vii) a bank holding company with over $50,000,000,000 in consolidated assets.

"(C) TRANSITION RULE FOR AFFILIATES.—An affiliate, subsidiary, or a wholly owned entity of a person that qualifies for an exception under subparagraph (A) and is predominantly engaged in providing financing for the purchase or lease of merchandise or manufactured goods of the person shall be exempt from the margin requirement described in section 15F(e) and the clearing requirement described in subsection (a) with regard to security-based swaps entered into to mitigate the risk of the financing activities for not less than a 2-year period beginning on the date of enactment of this subparagraph.

"(5) ELECTION OF COUNTERPARTY.—

"(A) SECURITY-BASED SWAPS REQUIRED TO BE CLEARED.—With respect to any security-based swap that is subject to the mandatory clearing requirement under subsection (a) and entered into by a security-based swap dealer or a major security-based swap participant with a counterparty that is not a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant, the counterparty shall have the

sole right to select the clearing agency at which the security-based swap will be cleared.

"(B) SECURITY-BASED SWAPS NOT REQUIRED TO BE CLEARED.—With respect to any security-based swap that is not subject to the mandatory clearing requirement under subsection (a) and entered into by a security-based swap dealer or a major security-based swap participant with a counterparty that is not a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant, the counterparty—

"(i) may elect to require clearing of the security-based swap; and

"(ii) shall have the sole right to select the clearing agency at which the security-based swap will be cleared.

"(6) ABUSE OF EXCEPTION.—The Commission may prescribe such rules or issue interpretations of the rules as the Commission determines to be necessary to prevent abuse of the exceptions described in this subsection. The Commission may also request information from those persons claiming the clearing exception as necessary to prevent abuse of the exceptions described in this subsection.

"(h) TRADE EXECUTION.—

"(1) IN GENERAL.—With respect to transactions involving security-based swaps subject to the clearing requirement of subsection (a)(1), counterparties shall—

"(A) execute the transaction on an exchange; or

"(B) execute the transaction on a security-based swap execution facility registered under section 3D or a security-based swap execution facility that is exempt from registration under section 3D(e).

"(2) EXCEPTION.—The requirements of subparagraphs (A) and (B) of paragraph (1) shall not apply if no exchange or security-based swap execution facility makes the security-based swap available to trade or for security-based swap transactions subject to the clearing exception under subsection (g).

"(i) BOARD APPROVAL.—Exemptions from the requirements of this section to clear a security-based swap or execute a security-based swap through a national securities exchange or security-based swap execution facility shall be available to a counterparty that is an issuer of securities that are registered under section 12 or that is required to file reports pursuant to section 15(d), only if an appropriate committee of the issuer's board or governing body has reviewed and approved the issuer's decision to enter into security-based swaps that are subject to such exemptions.

"(j) DESIGNATION OF CHIEF COMPLIANCE OFFICER.—

"(1) IN GENERAL.—Each registered clearing agency shall designate an individual to serve as a chief compliance officer.

"(2) DUTIES.—The chief compliance officer shall—

"(A) report directly to the board or to the senior officer of the clearing agency;

"(B) in consultation with its board, a body performing a function similar thereto, or the senior officer of the registered clearing agency, resolve any conflicts of interest that may arise;

"(C) be responsible for administering each policy and procedure that is required to be established pursuant to this section;

"(D) ensure compliance with this title (including regulations issued under this title) relating to agreements, contracts, or transactions, including each rule prescribed by the Commission under this section;

"(E) establish procedures for the remediation of noncompliance issues identified by the compliance officer through any—

"(i) compliance office review;

"(ii) look-back;

"(iii) internal or external audit finding;

"(iv) self-reported error; or

"(v) validated complaint; and

"(F) establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.

"(3) ANNUAL REPORTS.—

"(A) IN GENERAL.—In accordance with rules prescribed by the Commission, the chief compliance officer shall annually prepare and sign a report that contains a description of—

"(i) the compliance of the registered clearing agency or security-based swap execution facility of the compliance officer with respect to this title (including regulations under this title); and

"(ii) each policy and procedure of the registered clearing agency of the compliance officer (including the code of ethics and conflict of interest policies of the registered clearing agency).

"(B) REQUIREMENTS.—A compliance report under subparagraph (A) shall—

"(i) accompany each appropriate financial report of the registered clearing agency that is required to be furnished to the Commission pursuant to this section; and

"(ii) include a certification that, under penalty of law, the compliance report is accurate and complete.".

(b) CLEARING AGENCY REQUIREMENTS.—Section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q–1) is amended by adding at the end the following:

"(g) REGISTRATION REQUIREMENT.—It shall be unlawful for a clearing agency, unless registered with the Commission, directly or indirectly to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a clearing agency with respect to a security-based swap.

"(h) VOLUNTARY REGISTRATION.—A person that clears agreements, contracts, or transactions that are not required to be cleared under this title may register with the Commission as a clearing agency.

"(i) STANDARDS FOR CLEARING AGENCIES CLEARING SECURITY-BASED SWAP TRANSACTIONS.—To be registered and to maintain registration as a clearing agency that clears security-based swap transactions, a clearing agency shall comply with such standards as the Commission may establish by rule. In establishing any such standards, and in the exercise of its oversight of such a

clearing agency pursuant to this title, the Commission may conform such standards or oversight to reflect evolving United States and international standards. Except where the Commission determines otherwise by rule or regulation, a clearing agency shall have reasonable discretion in establishing the manner in which it complies with any such standards.

"(j) RULES.—The Commission shall adopt rules governing persons that are registered as clearing agencies for security-based swaps under this title.

"(k) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, a clearing agency from registration under this section for the clearing of security-based swaps if the Commission determines that the clearing agency is subject to comparable, comprehensive supervision and regulation by the Commodity Futures Trading Commission or the appropriate government authorities in the home country of the agency. Such conditions may include, but are not limited to, requiring that the clearing agency be available for inspection by the Commission and make available all information requested by the Commission.

"(l) EXISTING DEPOSITORY INSTITUTIONS AND DERIVATIVE CLEARING ORGANIZATIONS.—

"(1) IN GENERAL.—A depository institution or derivative clearing organization registered with the Commodity Futures Trading Commission under the Commodity Exchange Act that is required to be registered as a clearing agency under this section is deemed to be registered under this section solely for the purpose of clearing security-based swaps to the extent that, before the date of enactment of this subsection—

"(A) the depository institution cleared swaps as a multilateral clearing organization; or

"(B) the derivative clearing organization cleared swaps pursuant to an exemption from registration as a clearing agency.

"(2) CONVERSION OF DEPOSITORY INSTITUTIONS.—A depository institution to which this subsection applies may, by the vote of the shareholders owning not less than 51 percent of the voting interests of the depository institution, be converted into a State corporation, partnership, limited liability company, or similar legal form pursuant to a plan of conversion, if the conversion is not in contravention of applicable State law.

"(3) SHARING OF INFORMATION.—The Commodity Futures Trading Commission shall make available to the Commission, upon request, all information determined to be relevant by the Commodity Futures Trading Commission regarding a derivatives clearing organization deemed to be registered with the Commission under paragraph (1).

"(m) MODIFICATION OF CORE PRINCIPLES.—The Commission may conform the core principles established in this section to reflect evolving United States and international standards.".

(c) SECURITY-BASED SWAP EXECUTION FACILITIES.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 3C (as added by subsection (a) of this section) the following:

"SEC. 3D. SECURITY-BASED SWAP EXECUTION FACILITIES.

"(a) REGISTRATION.—

"(1) IN GENERAL.—No person may operate a facility for the trading or processing of security-based swaps, unless the facility is registered as a security-based swap execution facility or as a national securities exchange under this section.

"(2) DUAL REGISTRATION.—Any person that is registered as a security-based swap execution facility under this section shall register with the Commission regardless of whether the person also is registered with the Commodity Futures Trading Commission as a swap execution facility.

"(b) TRADING AND TRADE PROCESSING.—A security-based swap execution facility that is registered under subsection (a) may—

"(1) make available for trading any security-based swap; and

"(2) facilitate trade processing of any security-based swap.

"(c) IDENTIFICATION OF FACILITY USED TO TRADE SECURITY-BASED SWAPS BY NATIONAL SECURITIES EXCHANGES.—A national securities exchange shall, to the extent that the exchange also operates a security-based swap execution facility and uses the same electronic trade execution system for listing and executing trades of security-based swaps on or through the exchange and the facility, identify whether electronic trading of such security-based swaps is taking place on or through the national securities exchange or the security-based swap execution facility.

"(d) CORE PRINCIPLES FOR SECURITY-BASED SWAP EXECUTION FACILITIES.—

"(1) COMPLIANCE WITH CORE PRINCIPLES.—

"(A) IN GENERAL.—To be registered, and maintain registration, as a security-based swap execution facility, the security-based swap execution facility shall comply with—

"(i) the core principles described in this subsection; and

"(ii) any requirement that the Commission may impose by rule or regulation.

"(B) REASONABLE DISCRETION OF SECURITY-BASED SWAP EXECUTION FACILITY.—Unless otherwise determined by the Commission, by rule or regulation, a security-based swap execution facility described in subparagraph (A) shall have reasonable discretion in establishing the manner in which it complies with the core principles described in this subsection.

"(2) COMPLIANCE WITH RULES.—A security-based swap execution facility shall—

"(A) establish and enforce compliance with any rule established by such security-based swap execution facility, including—

"(i) the terms and conditions of the security-based swaps traded or processed on or through the facility; and

"(ii) any limitation on access to the facility;

"(B) establish and enforce trading, trade processing, and participation rules that will deter abuses and have the capacity to detect, investigate, and enforce those rules, including means—

"(i) to provide market participants with impartial access to the market; and

"(ii) to capture information that may be used in establishing whether rule violations have occurred; and

"(C) establish rules governing the operation of the facility, including rules specifying trading procedures to be used in entering and executing orders traded or posted on the facility, including block trades.

"(3) SECURITY-BASED SWAPS NOT READILY SUSCEPTIBLE TO MANIPULATION.—The security-based swap execution facility shall permit trading only in security-based swaps that are not readily susceptible to manipulation.

"(4) MONITORING OF TRADING AND TRADE PROCESSING.—The security-based swap execution facility shall—

"(A) establish and enforce rules or terms and conditions defining, or specifications detailing—

"(i) trading procedures to be used in entering and executing orders traded on or through the facilities of the security-based swap execution facility; and

"(ii) procedures for trade processing of security-based swaps on or through the facilities of the security-based swap execution facility; and

"(B) monitor trading in security-based swaps to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process through surveillance, compliance, and disciplinary practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions.

"(5) ABILITY TO OBTAIN INFORMATION.—The security-based swap execution facility shall—

"(A) establish and enforce rules that will allow the facility to obtain any necessary information to perform any of the functions described in this subsection;

"(B) provide the information to the Commission on request; and

"(C) have the capacity to carry out such international information-sharing agreements as the Commission may require.

"(6) FINANCIAL INTEGRITY OF TRANSACTIONS.—The security-based swap execution facility shall establish and enforce rules and procedures for ensuring the financial integrity of security-based swaps entered on or through the facilities of the security-based swap execution facility, including the clearance and settlement of security-based swaps pursuant to section 3C(a)(1).

"(7) EMERGENCY AUTHORITY.—The security-based swap execution facility shall adopt rules to provide for the exercise of emergency authority, in consultation or cooperation with the Commission, as is necessary and appropriate, including the authority to liquidate or transfer open positions in any security-based swap or to suspend or curtail trading in a security-based swap.

"(8) TIMELY PUBLICATION OF TRADING INFORMATION.—

"(A) IN GENERAL.—The security-based swap execution facility shall make public timely information on price, trading volume, and other trading data on security-based swaps to the extent prescribed by the Commission.

"(B) CAPACITY OF SECURITY-BASED SWAP EXECUTION FACILITY.—The security-based swap execution facility shall be required to have the capacity to electronically capture

and transmit and disseminate trade information with respect to transactions executed on or through the facility.

"(9) RECORDKEEPING AND REPORTING.—

"(A) IN GENERAL.—A security-based swap execution facility shall—

"(i) maintain records of all activities relating to the business of the facility, including a complete audit trail, in a form and manner acceptable to the Commission for a period of 5 years; and

"(ii) report to the Commission, in a form and manner acceptable to the Commission, such information as the Commission determines to be necessary or appropriate for the Commission to perform the duties of the Commission under this title.

"(B) REQUIREMENTS.—The Commission shall adopt data collection and reporting requirements for security-based swap execution facilities that are comparable to corresponding requirements for clearing agencies and security-based swap data repositories.

"(10) ANTITRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve the purposes of this title, the security-based swap execution facility shall not—

"(A) adopt any rules or taking any actions that result in any unreasonable restraint of trade; or

"(B) impose any material anticompetitive burden on trading or clearing.

"(11) CONFLICTS OF INTEREST.—The security-based swap execution facility shall—

"(A) establish and enforce rules to minimize conflicts of interest in its decision-making process; and

"(B) establish a process for resolving the conflicts of interest.

"(12) FINANCIAL RESOURCES.—

"(A) IN GENERAL.—The security-based swap execution facility shall have adequate financial, operational, and managerial resources to discharge each responsibility of the security-based swap execution facility, as determined by the Commission.

"(B) DETERMINATION OF RESOURCE ADEQUACY.—The financial resources of a security-based swap execution facility shall be considered to be adequate if the value of the financial resources—

"(i) enables the organization to meet its financial obligations to its members and participants notwithstanding a default by the member or participant creating the largest financial exposure for that organization in extreme but plausible market conditions; and

"(ii) exceeds the total amount that would enable the security-based swap execution facility to cover the operating costs of the security-based swap execution facility for a 1-year period, as calculated on a rolling basis.

"(13) SYSTEM SAFEGUARDS.—The security-based swap execution facility shall—

"(A) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk, through the development of appropriate controls and procedures, and automated systems, that—

"(i) are reliable and secure; and

"(ii) have adequate scalable capacity;

"(B) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allow for—

"(i) the timely recovery and resumption of operations; and

"(ii) the fulfillment of the responsibilities and obligations of the security-based swap execution facility; and

"(C) periodically conduct tests to verify that the backup resources of the security-based swap execution facility are sufficient to ensure continued—

"(i) order processing and trade matching;

"(ii) price reporting;

"(iii) market surveillance; and

"(iv) maintenance of a comprehensive and accurate audit trail.

"(14) DESIGNATION OF CHIEF COMPLIANCE OFFICER.—

"(A) IN GENERAL.—Each security-based swap execution facility shall designate an individual to serve as a chief compliance officer.

"(B) DUTIES.—The chief compliance officer shall—

"(i) report directly to the board or to the senior officer of the facility;

"(ii) review compliance with the core principles in this subsection;

"(iii) in consultation with the board of the facility, a body performing a function similar to that of a board, or the senior officer of the facility, resolve any conflicts of interest that may arise;

"(iv) be responsible for establishing and administering the policies and procedures required to be established pursuant to this section;

"(v) ensure compliance with this title and the rules and regulations issued under this title, including rules prescribed by the Commission pursuant to this section;

"(vi) establish procedures for the remediation of noncompliance issues found during—

"(I) compliance office reviews;

"(II) look backs;

"(III) internal or external audit findings;

"(IV) self-reported errors; or

"(V) through validated complaints; and

"(vii) establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.

"(C) ANNUAL REPORTS.—

"(i) IN GENERAL.—In accordance with rules prescribed by the Commission, the chief compliance officer shall annually prepare and sign a report that contains a description of—

"(I) the compliance of the security-based swap execution facility with this title; and

"(II) the policies and procedures, including the code of ethics and conflict of interest policies, of the security-based security-based swap execution facility.

"(ii) REQUIREMENTS.—The chief compliance officer shall—

"(I) submit each report described in clause (i) with the appropriate financial report of the security-based swap execution facility that is required to be submitted to the Commission pursuant to this section; and

"(II) include in the report a certification that, under penalty of law, the report is accurate and complete.

"(e) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, a security-based swap execution facility from registration under this section if the Commission finds that the facility is subject to comparable, comprehensive supervision and regulation on a consolidated basis by the Commodity Futures Trading Commission.

"(f) RULES.—The Commission shall prescribe rules governing the regulation of security-based swap execution facilities under this section.".

(d) SEGREGATION OF ASSETS HELD AS COLLATERAL IN SECURITY-BASED SWAP TRANSACTIONS.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 3D (as added by subsection (b)) the following:

"SEC. 3E. SEGREGATION OF ASSETS HELD AS COLLATERAL IN SECURITY-BASED SWAP TRANSACTIONS.

"(a) REGISTRATION REQUIREMENT.—It shall be unlawful for any person to accept any money, securities, or property (or to extend any credit in lieu of money, securities, or property) from, for, or on behalf of a security-based swaps customer to margin, guarantee, or secure a security-based swap cleared by or through a clearing agency (including money, securities, or property accruing to the customer as the result of such a security-based swap), unless the person shall have registered under this title with the Commission as a broker, dealer, or security-based swap dealer, and the registration shall not have expired nor been suspended nor revoked.

"(b) CLEARED SECURITY-BASED SWAPS.—

"(1) SEGREGATION REQUIRED.—A broker, dealer, or security-based swap dealer shall treat and deal with all money, securities, and property of any security-based swaps customer received to margin, guarantee, or secure a security-based swap cleared by or though a clearing agency (including money, securities, or property accruing to the security-based swaps customer as the result of such a security-based swap) as belonging to the security-based swaps customer.

"(2) COMMINGLING PROHIBITED.—Money, securities, and property of a security-based swaps customer described in paragraph (1) shall be separately accounted for and shall not be commingled with the funds of the broker, dealer, or security-based swap dealer or be used to margin, secure, or guarantee

any trades or contracts of any security-based swaps customer or person other than the person for whom the same are held.

"(c) EXCEPTIONS.—

"(1) USE OF FUNDS.—

"(A) IN GENERAL.—Notwithstanding subsection (b), money, securities, and property of a security-based swaps customer of a broker, dealer, or security-based swap dealer described in subsection (b) may, for convenience, be commingled and deposited in the same 1 or more accounts with any bank or trust company or with a clearing agency.

"(B) WITHDRAWAL.—Notwithstanding subsection (b), such share of the money, securities, and property described in subparagraph (A) as in the normal course of business shall be necessary to margin, guarantee, secure, transfer, adjust, or settle a cleared security-based swap with a clearing agency, or with any member of the clearing agency, may be withdrawn and applied to such purposes, including the payment of commissions, brokerage, interest, taxes, storage, and other charges, lawfully accruing in connection with the cleared security-based swap.

"(2) COMMISSION ACTION.—Notwithstanding subsection (b), in accordance with such terms and conditions as the Commission may prescribe by rule, regulation, or order, any money, securities, or property of the security-based swaps customer of a broker, dealer, or security-based swap dealer described in subsection (b) may be commingled and deposited as provided in this section with any other money, securities, or property received by the broker, dealer, or security-based swap dealer and required by the Commission to be separately accounted for and treated and dealt with as belonging to the security-based swaps customer of the broker, dealer, or security-based swap dealer.

"(d) PERMITTED INVESTMENTS.—Money described in subsection (b) may be invested in obligations of the United States, in general obligations of any State or of any political subdivision of a State, and in obligations fully guaranteed as to principal and interest by the United States, or in any other investment that the Commission may by rule or regulation prescribe, and such investments shall be made in accordance with such rules and regulations and subject to such conditions as the Commission may prescribe.

"(e) PROHIBITION.—It shall be unlawful for any person, including any clearing agency and any depository institution, that has received any money, securities, or property for deposit in a separate account or accounts as provided in subsection (b) to hold, dispose of, or use any such money, securities, or property as belonging to the depositing broker, dealer, or security-based swap dealer or any person other than the swaps customer of the broker, dealer, or security-based swap dealer.

"(f) SEGREGATION REQUIREMENTS FOR UNCLEARED SECURITY-BASED SWAPS.—

"(1) SEGREGATION OF ASSETS HELD AS COLLATERAL IN UNCLEARED SECURITY-BASED SWAP TRANSACTIONS.—

"(A) NOTIFICATION.—A security-based swap dealer or major security-based swap participant shall be required to notify the counterparty of the security-based swap dealer or major security-based swap participant at the beginning of a security-based swap transaction that the counterparty

has the right to require segregation of the funds of other property supplied to margin, guarantee, or secure the obligations of the counterparty.

"(B) SEGREGATION AND MAINTENANCE OF FUNDS.—At the request of a counterparty to a security-based swap that provides funds or other property to a security-based swap dealer or major security-based swap participant to margin, guarantee, or secure the obligations of the counterparty, the security-based swap dealer or major security-based swap participant shall—

"(i) segregate the funds or other property for the benefit of the counterparty; and

"(ii) in accordance with such rules and regulations as the Commission may promulgate, maintain the funds or other property in a segregated account separate from the assets and other interests of the security-based swap dealer or major security-based swap participant.

"(2) APPLICABILITY.—The requirements described in paragraph (1) shall—

"(A) apply only to a security-based swap between a counterparty and a security-based swap dealer or major security-based swap participant that is not submitted for clearing to a clearing agency; and

"(B)(i) not apply to variation margin payments; or

"(ii) not preclude any commercial arrangement regarding—

"(I) the investment of segregated funds or other property that may only be invested in such investments as the Commission may permit by rule or regulation; and

"(II) the related allocation of gains and losses resulting from any investment of the segregated funds or other property.

"(3) USE OF INDEPENDENT THIRD-PARTY CUSTODIANS.—The segregated account described in paragraph (1) shall be—

"(A) carried by an independent third-party custodian; and

"(B) designated as a segregated account for and on behalf of the counterparty.

"(4) REPORTING REQUIREMENT.—If the counterparty does not choose to require segregation of the funds or other property supplied to margin, guarantee, or secure the obligations of the counterparty, the security-based swap dealer or major security-based swap participant shall report to the counterparty of the security-based swap dealer or major security-based swap participant on a quarterly basis that the back office procedures of the security-based swap dealer or major security-based swap participant relating to margin and collateral requirements are in compliance with the agreement of the counterparties.

"(g) BANKRUPTCY.—A security-based swap, as defined in section 3(a)(68) shall be considered to be a security as such term is used in section 101(53A)(B) and subchapter III of title 11, United States Code. An account that holds a security-based swap, other than a portfolio margining account referred to in section 15(c)(3)(C) shall be considered to be a securities account, as that term is defined in section 741 of title 11, United States Code. The definitions

of the terms 'purchase' and 'sale' in section 3(a)(13) and (14) shall be applied to the terms 'purchase' and 'sale', as used in section 741 of title 11, United States Code. The term 'customer', as defined in section 741 of title 11, United States Code, excludes any person, to the extent that such person has a claim based on any open repurchase agreement, open reverse repurchase agreement, stock borrowed agreement, non-cleared option, or non-cleared security-based swap except to the extent of any margin delivered to or by the customer with respect to which there is a customer protection requirement under section 15(c)(3) or a segregation requirement.".

(e) TRADING IN SECURITY-BASED SWAPS.—Section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f) is amended by adding at the end the following:

"(l) SECURITY-BASED SWAPS.—It shall be unlawful for any person to effect a transaction in a security-based swap with or for a person that is not an eligible contract participant, unless such transaction is effected on a national securities exchange registered pursuant to subsection (b).".

(f) ADDITIONS OF SECURITY-BASED SWAPS TO CERTAIN ENFORCEMENT PROVISIONS.—Section 9(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78i(b)) is amended by striking paragraphs (1) through (3) and inserting the following:

"(1) any transaction in connection with any security whereby any party to such transaction acquires—

"(A) any put, call, straddle, or other option or privilege of buying the security from or selling the security to another without being bound to do so;

"(B) any security futures product on the security; or

"(C) any security-based swap involving the security or the issuer of the security;

"(2) any transaction in connection with any security with relation to which such person has, directly or indirectly, any interest in any—

"(A) such put, call, straddle, option, or privilege;

"(B) such security futures product; or

"(C) such security-based swap; or

"(3) any transaction in any security for the account of any person who such person has reason to believe has, and who actually has, directly or indirectly, any interest in any—

"(A) such put, call, straddle, option, or privilege;

"(B) such security futures product with relation to such security; or

"(C) any security-based swap involving such security or the issuer of such security.".

(g) RULEMAKING AUTHORITY TO PREVENT FRAUD, MANIPULATION AND DECEPTIVE CONDUCT IN SECURITY-BASED SWAPS.—Section 9 of the Securities Exchange Act of 1934 (15 U.S.C. 78i) is amended by adding at the end the following:

"(j) It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange, to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security-based swap, in connection with which such person engages in any fraudulent, deceptive, or manipulative act or practice, makes any fictitious quotation, or engages in any transaction, practice, or course of business which operates as a fraud or deceit upon any person. The Commission

shall, for the purposes of this subsection, by rules and regulations define, and prescribe means reasonably designed to prevent, such transactions, acts, practices, and courses of business as are fraudulent, deceptive, or manipulative, and such quotations as are fictitious.".

(h) POSITION LIMITS AND POSITION ACCOUNTABILITY FOR SECURITY-BASED SWAPS.—The Securities Exchange Act of 1934 is amended by inserting after section 10A (15 U.S.C. 78j–1) the following:

"SEC. 10B. POSITION LIMITS AND POSITION ACCOUNTABILITY FOR SECURITY-BASED SWAPS AND LARGE TRADER REPORTING.

"(a) POSITION LIMITS.—As a means reasonably designed to prevent fraud and manipulation, the Commission shall, by rule or regulation, as necessary or appropriate in the public interest or for the protection of investors, establish limits (including related hedge exemption provisions) on the size of positions in any security-based swap that may be held by any person. In establishing such limits, the Commission may require any person to aggregate positions in—

"(1) any security-based swap and any security or loan or group of securities or loans on which such security-based swap is based, which such security-based swap references, or to which such security-based swap is related as described in paragraph (68) of section 3(a), and any other instrument relating to such security or loan or group or index of securities or loans; or

"(2) any security-based swap and—

"(A) any security or group or index of securities, the price, yield, value, or volatility of which, or of which any interest therein, is the basis for a material term of such security-based swap as described in paragraph (68) of section 3(a); and

"(B) any other instrument relating to the same security or group or index of securities described under subparagraph (A).

"(b) EXEMPTIONS.—The Commission, by rule, regulation, or order, may conditionally or unconditionally exempt any person or class of persons, any security-based swap or class of security-based swaps, or any transaction or class of transactions from any requirement the Commission may establish under this section with respect to position limits.

"(c) SRO RULES.—

"(1) IN GENERAL.—As a means reasonably designed to prevent fraud or manipulation, the Commission, by rule, regulation, or order, as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title, may direct a self-regulatory organization—

"(A) to adopt rules regarding the size of positions in any security-based swap that may be held by—

"(i) any member of such self-regulatory organization; or

"(ii) any person for whom a member of such self-regulatory organization effects transactions in such security-based swap; and

"(B) to adopt rules reasonably designed to ensure compliance with requirements prescribed by the Commission under this subsection.

"(2) REQUIREMENT TO AGGREGATE POSITIONS.—In establishing the limits under paragraph (1), the self-regulatory organization may require such member or person to aggregate positions in—

"(A) any security-based swap and any security or loan or group or narrow-based security index of securities or loans on which such security-based swap is based, which such security-based swap references, or to which such security-based swap is related as described in section 3(a)(68), and any other instrument relating to such security or loan or group or narrow-based security index of securities or loans; or

"(B)(i) any security-based swap; and

"(ii) any security-based swap and any other instrument relating to the same security or group or narrow-based security index of securities.

"(d) LARGE TRADER REPORTING.—The Commission, by rule or regulation, may require any person that effects transactions for such person's own account or the account of others in any securities-based swap or uncleared security-based swap and any security or loan or group or narrow-based security index of securities or loans as set forth in paragraphs (1) and (2) of subsection (a) under this section to report such information as the Commission may prescribe regarding any position or positions in any security-based swap or uncleared security-based swap and any security or loan or group or narrow-based security index of securities or loans and any other instrument relating to such security or loan or group or narrow-based security index of securities or loans as set forth in paragraphs (1) and (2) of subsection (a) under this section.".

(i) PUBLIC REPORTING AND REPOSITORIES FOR SECURITY-BASED SWAPS.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended by adding at the end the following:

"(m) PUBLIC AVAILABILITY OF SECURITY-BASED SWAP TRANSACTION DATA.—

"(1) IN GENERAL.—

"(A) DEFINITION OF REAL-TIME PUBLIC REPORTING.—In this paragraph, the term 'real-time public reporting' means to report data relating to a security-based swap transaction, including price and volume, as soon as technologically practicable after the time at which the security-based swap transaction has been executed.

"(B) PURPOSE.—The purpose of this subsection is to authorize the Commission to make security-based swap transaction and pricing data available to the public in such form and at such times as the Commission determines appropriate to enhance price discovery.

"(C) GENERAL RULE.—The Commission is authorized to provide by rule for the public availability of security-based swap transaction, volume, and pricing data as follows:

"(i) With respect to those security-based swaps that are subject to the mandatory clearing requirement described in section 3C(a)(1) (including those security-based swaps that are excepted from the requirement

pursuant to section 3C(g)), the Commission shall require real-time public reporting for such transactions.

"(ii) With respect to those security-based swaps that are not subject to the mandatory clearing requirement described in section 3C(a)(1), but are cleared at a registered clearing agency, the Commission shall require real-time public reporting for such transactions.

"(iii) With respect to security-based swaps that are not cleared at a registered clearing agency and which are reported to a security-based swap data repository or the Commission under section 3C(a)(6), the Commission shall require real-time public reporting for such transactions, in a manner that does not disclose the business transactions and market positions of any person.

"(iv) With respect to security-based swaps that are determined to be required to be cleared under section 3C(b) but are not cleared, the Commission shall require real-time public reporting for such transactions.

"(D) REGISTERED ENTITIES AND PUBLIC REPORTING.—The Commission may require registered entities to publicly disseminate the security-based swap transaction and pricing data required to be reported under this paragraph.

"(E) RULEMAKING REQUIRED.—With respect to the rule providing for the public availability of transaction and pricing data for security-based swaps described in clauses (i) and (ii) of subparagraph (C), the rule promulgated by the Commission shall contain provisions—

"(i) to ensure such information does not identify the participants;

"(ii) to specify the criteria for determining what constitutes a large notional security-based swap transaction (block trade) for particular markets and contracts;

"(iii) to specify the appropriate time delay for reporting large notional security-based swap transactions (block trades) to the public; and

"(iv) that take into account whether the public disclosure will materially reduce market liquidity.

"(F) TIMELINESS OF REPORTING.—Parties to a security-based swap (including agents of the parties to a security-based swap) shall be responsible for reporting security-based swap transaction information to the appropriate registered entity in a timely manner as may be prescribed by the Commission.

"(G) REPORTING OF SWAPS TO REGISTERED SECURITY-BASED SWAP DATA REPOSITORIES.—Each security-based swap (whether cleared or uncleared) shall be reported to a registered security-based swap data repository.

"(H) REGISTRATION OF CLEARING AGENCIES.—A clearing agency may register as a security-based swap data repository.

"(2) SEMIANNUAL AND ANNUAL PUBLIC REPORTING OF AGGREGATE SECURITY-BASED SWAP DATA.—

"(A) IN GENERAL.—In accordance with subparagraph (B), the Commission shall issue a written report on a semiannual and annual basis to make available to the public information relating to—

"(i) the trading and clearing in the major security-based swap categories; and

"(ii) the market participants and developments in new products.

"(B) USE; CONSULTATION.—In preparing a report under subparagraph (A), the Commission shall—

"(i) use information from security-based swap data repositories and clearing agencies; and

"(ii) consult with the Office of the Comptroller of the Currency, the Bank for International Settlements, and such other regulatory bodies as may be necessary.

"(C) AUTHORITY OF COMMISSION.—The Commission may, by rule, regulation, or order, delegate the public reporting responsibilities of the Commission under this paragraph in accordance with such terms and conditions as the Commission determines to be appropriate and in the public interest.

"(n) SECURITY-BASED SWAP DATA REPOSITORIES.—

"(1) REGISTRATION REQUIREMENT.—It shall be unlawful for any person, unless registered with the Commission, directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a security-based swap data repository.

"(2) INSPECTION AND EXAMINATION.—Each registered security-based swap data repository shall be subject to inspection and examination by any representative of the Commission.

"(3) COMPLIANCE WITH CORE PRINCIPLES.—

"(A) IN GENERAL.—To be registered, and maintain registration, as a security-based swap data repository, the security-based swap data repository shall comply with—

"(i) the requirements and core principles described in this subsection; and

"(ii) any requirement that the Commission may impose by rule or regulation.

"(B) REASONABLE DISCRETION OF SECURITY-BASED SWAP DATA REPOSITORY.—Unless otherwise determined by the Commission, by rule or regulation, a security-based swap data repository described in subparagraph (A) shall have reasonable discretion in establishing the manner in which the security-based swap data repository complies with the core principles described in this subsection.

"(4) STANDARD SETTING.—

"(A) DATA IDENTIFICATION.—

"(i) IN GENERAL.—In accordance with clause (ii), the Commission shall prescribe standards that specify the data elements for each security-based swap that shall be collected and maintained by each registered security-based swap data repository.

"(ii) REQUIREMENT.—In carrying out clause (i), the Commission shall prescribe consistent data element standards applicable to registered entities and reporting counterparties.

"(B) DATA COLLECTION AND MAINTENANCE.—The Commission shall prescribe data collection and data maintenance standards for security-based swap data repositories.

"(C) COMPARABILITY.—The standards prescribed by the Commission under this subsection shall be comparable to the data standards imposed by the Commission on clearing agencies in connection with their clearing of security-based swaps.

"(5) DUTIES.—A security-based swap data repository shall—

"(A) accept data prescribed by the Commission for each security-based swap under subsection (b);

"(B) confirm with both counterparties to the security-based swap the accuracy of the data that was submitted;

"(C) maintain the data described in subparagraph (A) in such form, in such manner, and for such period as may be required by the Commission;

"(D)(i) provide direct electronic access to the Commission (or any designee of the Commission, including another registered entity); and

"(ii) provide the information described in subparagraph (A) in such form and at such frequency as the Commission may require to comply with the public reporting requirements set forth in subsection (m);

"(E) at the direction of the Commission, establish automated systems for monitoring, screening, and analyzing security-based swap data;

"(F) maintain the privacy of any and all security-based swap transaction information that the security-based swap data repository receives from a security-based swap dealer, counterparty, or any other registered entity; and

"(G) on a confidential basis pursuant to section 24, upon request, and after notifying the Commission of the request, make available all data obtained by the security-based swap data repository, including individual counterparty trade and position data, to—

"(i) each appropriate prudential regulator;

"(ii) the Financial Stability Oversight Council;

"(iii) the Commodity Futures Trading Commission;

"(iv) the Department of Justice; and

"(v) any other person that the Commission determines to be appropriate, including—

"(I) foreign financial supervisors (including foreign futures authorities);

"(II) foreign central banks; and

"(III) foreign ministries.

"(H) CONFIDENTIALITY AND INDEMNIFICATION AGREEMENT.—Before the security-based swap data repository may share information with any entity described in subparagraph (G)—

"(i) the security-based swap data repository shall receive a written agreement from each entity stating that the entity shall abide by the confidentiality requirements described in section 24 relating to the information on security-based swap transactions that is provided; and

"(ii) each entity shall agree to indemnify the security-based swap data repository and the Commission for any expenses arising from litigation relating to the information provided under section 24.

"(6) DESIGNATION OF CHIEF COMPLIANCE OFFICER.—

"(A) IN GENERAL.—Each security-based swap data repository shall designate an individual to serve as a chief compliance officer.

"(B) DUTIES.—The chief compliance officer shall—

"(i) report directly to the board or to the senior officer of the security-based swap data repository;

"(ii) review the compliance of the security-based swap data repository with respect to the requirements and core principles described in this subsection;

"(iii) in consultation with the board of the security-based swap data repository, a body performing a function similar to the board of the security-based swap data repository, or the senior officer of the security-based swap data repository, resolve any conflicts of interest that may arise;

"(iv) be responsible for administering each policy and procedure that is required to be established pursuant to this section;

"(v) ensure compliance with this title (including regulations) relating to agreements, contracts, or transactions, including each rule prescribed by the Commission under this section;

"(vi) establish procedures for the remediation of noncompliance issues identified by the chief compliance officer through any—

"(I) compliance office review;

"(II) look-back;

"(III) internal or external audit finding;

"(IV) self-reported error; or

"(V) validated complaint; and

"(vii) establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.

"(C) ANNUAL REPORTS.—

"(i) IN GENERAL.—In accordance with rules prescribed by the Commission, the chief compliance officer shall annually prepare and sign a report that contains a description of—

"(I) the compliance of the security-based swap data repository of the chief compliance officer with respect to this title (including regulations); and

"(II) each policy and procedure of the security-based swap data repository of the chief compliance officer (including the code of ethics and conflict of interest policies of the security-based swap data repository).

"(ii) REQUIREMENTS.—A compliance report under clause (i) shall—

"(I) accompany each appropriate financial report of the security-based swap data repository that is required to be furnished to the Commission pursuant to this section; and

"(II) include a certification that, under penalty of law, the compliance report is accurate and complete.

"(7) CORE PRINCIPLES APPLICABLE TO SECURITY-BASED SWAP DATA REPOSITORIES.—

"(A) ANTITRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve the purposes of this title, the swap data repository shall not—

"(i) adopt any rule or take any action that results in any unreasonable restraint of trade; or

"(ii) impose any material anticompetitive burden on the trading, clearing, or reporting of transactions.

"(B) GOVERNANCE ARRANGEMENTS.—Each security-based swap data repository shall establish governance arrangements that are transparent—

"(i) to fulfill public interest requirements; and

"(ii) to support the objectives of the Federal Government, owners, and participants.

"(C) CONFLICTS OF INTEREST.—Each security-based swap data repository shall—

"(i) establish and enforce rules to minimize conflicts of interest in the decision-making process of the security-based swap data repository; and

"(ii) establish a process for resolving any conflicts of interest described in clause (i).

"(D) ADDITIONAL DUTIES DEVELOPED BY COMMISSION.—

"(i) IN GENERAL.—The Commission may develop 1 or more additional duties applicable to security-based swap data repositories.

"(ii) CONSIDERATION OF EVOLVING STANDARDS.—In developing additional duties under subparagraph (A), the Commission may take into consideration any evolving standard of the United States or the international community.

"(iii) ADDITIONAL DUTIES FOR COMMISSION DESIGNEES.—The Commission shall establish additional duties for any registrant described in section 13(m)(2)(C) in order to minimize conflicts of interest, protect data, ensure compliance, and guarantee the safety and security of the security-based swap data repository.

"(8) REQUIRED REGISTRATION FOR SECURITY-BASED SWAP DATA REPOSITORIES.—Any person that is required to be registered as a security-based swap data repository under this subsection shall register with the Commission, regardless of whether that person is also licensed under the Commodity Exchange Act as a swap data repository.

"(9) RULES.—The Commission shall adopt rules governing persons that are registered under this subsection.".

SEC. 764. REGISTRATION AND REGULATION OF SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.

(a) IN GENERAL.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 15E (15 U.S.C. 78o–7) the following:

"SEC. 15F. REGISTRATION AND REGULATION OF SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.

"(a) REGISTRATION.—

"(1) SECURITY-BASED SWAP DEALERS.—It shall be unlawful for any person to act as a security-based swap dealer unless the person is registered as a security-based swap dealer with the Commission.

"(2) MAJOR SECURITY-BASED SWAP PARTICIPANTS.—It shall be unlawful for any person to act as a major security-based swap participant unless the person is registered as a major security-based swap participant with the Commission.

"(b) REQUIREMENTS.—

"(1) IN GENERAL.—A person shall register as a security-based swap dealer or major security-based swap participant by filing a registration application with the Commission.

"(2) CONTENTS.—

"(A) IN GENERAL.—The application shall be made in such form and manner as prescribed by the Commission, and shall contain such information, as the Commission considers necessary concerning the business in which the applicant is or will be engaged.

"(B) CONTINUAL REPORTING.—A person that is registered as a security-based swap dealer or major security-based swap participant shall continue to submit to the Commission reports that contain such information pertaining to the business of the person as the Commission may require.

"(3) EXPIRATION.—Each registration under this section shall expire at such time as the Commission may prescribe by rule or regulation.

"(4) RULES.—Except as provided in subsections (d) and (e), the Commission may prescribe rules applicable to security-based swap dealers and major security-based swap participants, including rules that limit the activities of non-bank security-based swap dealers and major security-based swap participants.

"(5) TRANSITION.—Not later than 1 year after the date of enactment of the Wall Street Transparency and Accountability Act of 2010, the Commission shall issue rules under this section to provide for the registration of security-based swap dealers and major security-based swap participants.

"(6) STATUTORY DISQUALIFICATION.—Except to the extent otherwise specifically provided by rule, regulation, or order of the Commission, it shall be unlawful for a security-based swap dealer or a major security-based swap participant to permit any person associated with a security-based swap dealer or a major security-based swap participant who is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on behalf of the security-based swap dealer or major security-based swap participant, if the security-based swap dealer or major security-based swap participant knew, or in the exercise of reasonable care should have known, of the statutory disqualification.

"(c) DUAL REGISTRATION.—

"(1) SECURITY-BASED SWAP DEALER.—Any person that is required to be registered as a security-based swap dealer under this section shall register with the Commission, regardless

of whether the person also is registered with the Commodity Futures Trading Commission as a swap dealer.

"(2) MAJOR SECURITY-BASED SWAP PARTICIPANT.—Any person that is required to be registered as a major security-based swap participant under this section shall register with the Commission, regardless of whether the person also is registered with the Commodity Futures Trading Commission as a major swap participant.

"(d) RULEMAKING.—

"(1) IN GENERAL.—The Commission shall adopt rules for persons that are registered as security-based swap dealers or major security-based swap participants under this section.

"(2) EXCEPTION FOR PRUDENTIAL REQUIREMENTS.—

"(A) IN GENERAL.—The Commission may not prescribe rules imposing prudential requirements on security-based swap dealers or major security-based swap participants for which there is a prudential regulator.

"(B) APPLICABILITY.—Subparagraph (A) does not limit the authority of the Commission to prescribe rules as directed under this section.

"(e) CAPITAL AND MARGIN REQUIREMENTS.—

"(1) IN GENERAL.—

"(A) SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS THAT ARE BANKS.—Each registered security-based swap dealer and major security-based swap participant for which there is not a prudential regulator shall meet such minimum capital requirements and minimum initial and variation margin requirements as the prudential regulator shall by rule or regulation prescribe under paragraph (2)(A).

"(B) SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS THAT ARE NOT BANKS.—Each registered security-based swap dealer and major security-based swap participant for which there is not a prudential regulator shall meet such minimum capital requirements and minimum initial and variation margin requirements as the Commission shall by rule or regulation prescribe under paragraph (2)(B).

"(2) RULES.—

"(A) SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS THAT ARE BANKS.—The prudential regulators, in consultation with the Commission and the Commodity Futures Trading Commission, shall adopt rules for security-based swap dealers and major security-based swap participants, with respect to their activities as a swap dealer or major swap participant, for which there is a prudential regulator imposing—

"(i) capital requirements; and

"(ii) both initial and variation margin requirements on all security-based swaps that are not cleared by a registered clearing agency.

"(B) SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS THAT ARE NOT BANKS.—The Commission shall adopt rules for security-based swap dealers and major security-based swap participants, with respect to their activities as a swap dealer or major swap

participant, for which there is not a prudential regulator imposing—

"(i) capital requirements; and

"(ii) both initial and variation margin requirements on all swaps that are not cleared by a registered clearing agency.

"(C) CAPITAL.—In setting capital requirements for a person that is designated as a security-based swap dealer or a major security-based swap participant for a single type or single class or category of security-based swap or activities, the prudential regulator and the Commission shall take into account the risks associated with other types of security-based swaps or classes of security-based swaps or categories of security-based swaps engaged in and the other activities conducted by that person that are not otherwise subject to regulation applicable to that person by virtue of the status of the person.

"(3) STANDARDS FOR CAPITAL AND MARGIN.—

"(A) IN GENERAL.—To offset the greater risk to the security-based swap dealer or major security-based swap participant and the financial system arising from the use of security-based swaps that are not cleared, the requirements imposed under paragraph (2) shall —

"(i) help ensure the safety and soundness of the security-based swap dealer or major security-based swap participant; and

"(ii) be appropriate for the risk associated with the non-cleared security-based swaps held as a security-based swap dealer or major security-based swap participant.

"(B) RULE OF CONSTRUCTION.—

"(i) IN GENERAL.—Nothing in this section shall limit, or be construed to limit, the authority—

"(I) of the Commission to set financial responsibility rules for a broker or dealer registered pursuant to section 15(b) (except for section 15(b)(11) thereof) in accordance with section 15(c)(3); or

"(II) of the Commodity Futures Trading Commission to set financial responsibility rules for a futures commission merchant or introducing broker registered pursuant to section 4f(a) of the Commodity Exchange Act (except for section 4f(a)(3) thereof) in accordance with section 4f(b) of the Commodity Exchange Act.

"(ii) FUTURES COMMISSION MERCHANTS AND OTHER DEALERS.—A futures commission merchant, introducing broker, broker, or dealer shall maintain sufficient capital to comply with the stricter of any applicable capital requirements to which such futures commission merchant, introducing broker, broker, or dealer is subject to under this title or the Commodity Exchange Act.

"(C) MARGIN REQUIREMENTS.—In prescribing margin requirements under this subsection, the prudential regulator with respect to security-based swap dealers and major security-based swap participants that are depository

institutions, and the Commission with respect to security-based swap dealers and major security-based swap participants that are not depository institutions shall permit the use of noncash collateral, as the regulator or the Commission determines to be consistent with—

"(i) preserving the financial integrity of markets trading security-based swaps; and

"(ii) preserving the stability of the United States financial system.

"(D) COMPARABILITY OF CAPITAL AND MARGIN REQUIREMENTS.—

"(i) IN GENERAL.—The prudential regulators, the Commission, and the Securities and Exchange Commission shall periodically (but not less frequently than annually) consult on minimum capital requirements and minimum initial and variation margin requirements.

"(ii) COMPARABILITY.—The entities described in clause (i) shall, to the maximum extent practicable, establish and maintain comparable minimum capital requirements and minimum initial and variation margin requirements, including the use of noncash collateral, for—

"(I) security-based swap dealers; and

"(II) major security-based swap participants.

"(f) REPORTING AND RECORDKEEPING.—

"(1) IN GENERAL.—Each registered security-based swap dealer and major security-based swap participant—

"(A) shall make such reports as are required by the Commission, by rule or regulation, regarding the transactions and positions and financial condition of the registered security-based swap dealer or major security-based swap participant;

"(B)(i) for which there is a prudential regulator, shall keep books and records of all activities related to the business as a security-based swap dealer or major security-based swap participant in such form and manner and for such period as may be prescribed by the Commission by rule or regulation; and

"(ii) for which there is no prudential regulator, shall keep books and records in such form and manner and for such period as may be prescribed by the Commission by rule or regulation; and

"(C) shall keep books and records described in subparagraph (B) open to inspection and examination by any representative of the Commission.

"(2) RULES.—The Commission shall adopt rules governing reporting and recordkeeping for security-based swap dealers and major security-based swap participants.

"(g) DAILY TRADING RECORDS.—

"(1) IN GENERAL.—Each registered security-based swap dealer and major security-based swap participant shall maintain daily trading records of the security-based swaps of the registered security-based swap dealer and major security-based swap participant and all related records (including related cash or forward transactions) and recorded communications, including electronic mail, instant messages, and recordings of

telephone calls, for such period as may be required by the Commission by rule or regulation.

"(2) INFORMATION REQUIREMENTS.—The daily trading records shall include such information as the Commission shall require by rule or regulation.

"(3) COUNTERPARTY RECORDS.—Each registered security-based swap dealer and major security-based swap participant shall maintain daily trading records for each counterparty in a manner and form that is identifiable with each security-based swap transaction.

"(4) AUDIT TRAIL.—Each registered security-based swap dealer and major security-based swap participant shall maintain a complete audit trail for conducting comprehensive and accurate trade reconstructions.

"(5) RULES.—The Commission shall adopt rules governing daily trading records for security-based swap dealers and major security-based swap participants.

"(h) BUSINESS CONDUCT STANDARDS.—

"(1) IN GENERAL.—Each registered security-based swap dealer and major security-based swap participant shall conform with such business conduct standards as prescribed in paragraph (3) and as may be prescribed by the Commission by rule or regulation that relate to—

"(A) fraud, manipulation, and other abusive practices involving security-based swaps (including security-based swaps that are offered but not entered into);

"(B) diligent supervision of the business of the registered security-based swap dealer and major security-based swap participant;

"(C) adherence to all applicable position limits; and

"(D) such other matters as the Commission determines to be appropriate.

"(2) RESPONSIBILITIES WITH RESPECT TO SPECIAL ENTITIES.—

"(A) ADVISING SPECIAL ENTITIES.—A security-based swap dealer or major security-based swap participant that acts as an advisor to special entity regarding a security-based swap shall comply with the requirements of paragraph (4) with respect to such special entity.

"(B) ENTERING OF SECURITY-BASED SWAPS WITH RESPECT TO SPECIAL ENTITIES.—A security-based swap dealer that enters into or offers to enter into security-based swap with a special entity shall comply with the requirements of paragraph (5) with respect to such special entity.

"(C) SPECIAL ENTITY DEFINED.—For purposes of this subsection, the term 'special entity' means—

"(i) a Federal agency;

"(ii) a State, State agency, city, county, municipality, or other political subdivision of a State or;

"(iii) any employee benefit plan, as defined in section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002);

"(iv) any governmental plan, as defined in section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002); or

"(v) any endowment, including an endowment that is an organization described in section 501(c)(3) of the Internal Revenue Code of 1986.

"(3) BUSINESS CONDUCT REQUIREMENTS.—Business conduct requirements adopted by the Commission shall—

"(A) establish a duty for a security-based swap dealer or major security-based swap participant to verify that any counterparty meets the eligibility standards for an eligible contract participant;

"(B) require disclosure by the security-based swap dealer or major security-based swap participant to any counterparty to the transaction (other than a security-based swap dealer, major security-based swap participant, security-based swap dealer, or major security-based swap participant) of—

"(i) information about the material risks and characteristics of the security-based swap;

"(ii) any material incentives or conflicts of interest that the security-based swap dealer or major security-based swap participant may have in connection with the security-based swap; and

"(iii)(I) for cleared security-based swaps, upon the request of the counterparty, receipt of the daily mark of the transaction from the appropriate derivatives clearing organization; and

"(II) for uncleared security-based swaps, receipt of the daily mark of the transaction from the security-based swap dealer or the major security-based swap participant;

"(C) establish a duty for a security-based swap dealer or major security-based swap participant to communicate in a fair and balanced manner based on principles of fair dealing and good faith; and

"(D) establish such other standards and requirements as the Commission may determine are appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this Act.

"(4) SPECIAL REQUIREMENTS FOR SECURITY-BASED SWAP DEALERS ACTING AS ADVISORS.—

"(A) IN GENERAL.—It shall be unlawful for a security-based swap dealer or major security-based swap participant—

"(i) to employ any device, scheme, or artifice to defraud any special entity or prospective customer who is a special entity;

"(ii) to engage in any transaction, practice, or course of business that operates as a fraud or deceit on any special entity or prospective customer who is a special entity; or

"(iii) to engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative.

"(B) DUTY.—Any security-based swap dealer that acts as an advisor to a special entity shall have a duty to act in the best interests of the special entity.

"(C) REASONABLE EFFORTS.—Any security-based swap dealer that acts as an advisor to a special entity shall make reasonable efforts to obtain such information as is

necessary to make a reasonable determination that any security-based swap recommended by the security-based swap dealer is in the best interests of the special entity, including information relating to—

"(i) the financial status of the special entity;

"(ii) the tax status of the special entity;

"(iii) the investment or financing objectives of the special entity; and

"(iv) any other information that the Commission may prescribe by rule or regulation.

"(5) SPECIAL REQUIREMENTS FOR SECURITY-BASED SWAP DEALERS AS COUNTERPARTIES TO SPECIAL ENTITIES.—

"(A) IN GENERAL.—Any security-based swap dealer or major security-based swap participant that offers to or enters into a security-based swap with a special entity shall—

"(i) comply with any duty established by the Commission for a security-based swap dealer or major security-based swap participant, with respect to a counterparty that is an eligible contract participant within the meaning of subclause (I) or (II) of clause (vii) of section 1a(18) of the Commodity Exchange Act, that requires the security-based swap dealer or major security-based swap participant to have a reasonable basis to believe that the counterparty that is a special entity has an independent representative that—

"(I) has sufficient knowledge to evaluate the transaction and risks;

"(II) is not subject to a statutory disqualification;

"(III) is independent of the security-based swap dealer or major security-based swap participant;

"(IV) undertakes a duty to act in the best interests of the counterparty it represents;

"(V) makes appropriate disclosures;

"(VI) will provide written representations to the special entity regarding fair pricing and the appropriateness of the transaction; and

"(VII) in the case of employee benefit plans subject to the Employee Retirement Income Security act of 1974, is a fiduciary as defined in section 3 of that Act (29 U.S.C. 1002); and

"(ii) before the initiation of the transaction, disclose to the special entity in writing the capacity in which the security-based swap dealer is acting.

"(B) COMMISSION AUTHORITY.—The Commission may establish such other standards and requirements under this paragraph as the Commission may determine are appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this Act.

"(6) RULES.—The Commission shall prescribe rules under this subsection governing business conduct standards for security-based swap dealers and major security-based swap participants.

"(7) APPLICABILITY.—This subsection shall not apply with respect to a transaction that is—

"(A) initiated by a special entity on an exchange or security-based swaps execution facility; and

"(B) the security-based swap dealer or major security-based swap participant does not know the identity of the counterparty to the transaction."

"(i) DOCUMENTATION STANDARDS.—

"(1) IN GENERAL.—Each registered security-based swap dealer and major security-based swap participant shall conform with such standards as may be prescribed by the Commission, by rule or regulation, that relate to timely and accurate confirmation, processing, netting, documentation, and valuation of all security-based swaps.

"(2) RULES.—The Commission shall adopt rules governing documentation standards for security-based swap dealers and major security-based swap participants.

"(j) DUTIES.—Each registered security-based swap dealer and major security-based swap participant shall, at all times, comply with the following requirements:

"(1) MONITORING OF TRADING.—The security-based swap dealer or major security-based swap participant shall monitor its trading in security-based swaps to prevent violations of applicable position limits.

"(2) RISK MANAGEMENT PROCEDURES.—The security-based swap dealer or major security-based swap participant shall establish robust and professional risk management systems adequate for managing the day-to-day business of the security-based swap dealer or major security-based swap participant.

"(3) DISCLOSURE OF GENERAL INFORMATION.—The security-based swap dealer or major security-based swap participant shall disclose to the Commission and to the prudential regulator for the security-based swap dealer or major security-based swap participant, as applicable, information concerning—

"(A) terms and conditions of its security-based swaps;

"(B) security-based swap trading operations, mechanisms, and practices;

"(C) financial integrity protections relating to security-based swaps; and

"(D) other information relevant to its trading in security-based swaps.

"(4) ABILITY TO OBTAIN INFORMATION.—The security-based swap dealer or major security-based swap participant shall—

"(A) establish and enforce internal systems and procedures to obtain any necessary information to perform any of the functions described in this section; and

"(B) provide the information to the Commission and to the prudential regulator for the security-based swap dealer or major security-based swap participant, as applicable, on request.

"(5) CONFLICTS OF INTEREST.—The security-based swap dealer and major security-based swap participant shall implement conflict-of-interest systems and procedures that—

"(A) establish structural and institutional safeguards to ensure that the activities of any person within the firm relating to research or analysis of the price or market for any security-based swap or acting in a role of providing

clearing activities or making determinations as to accepting clearing customers are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of persons whose involvement in pricing, trading, or clearing activities might potentially bias their judgment or supervision and contravene the core principles of open access and the business conduct standards described in this title; and

"(B) address such other issues as the Commission determines to be appropriate.

"(6) ANTITRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve the purposes of this title, the security-based swap dealer or major security-based swap participant shall not—

"(A) adopt any process or take any action that results in any unreasonable restraint of trade; or

"(B) impose any material anticompetitive burden on trading or clearing.

"(7) RULES.—The Commission shall prescribe rules under this subsection governing duties of security-based swap dealers and major security-based swap participants.

"(k) DESIGNATION OF CHIEF COMPLIANCE OFFICER.—

"(1) IN GENERAL.—Each security-based swap dealer and major security-based swap participant shall designate an individual to serve as a chief compliance officer.

"(2) DUTIES.—The chief compliance officer shall—

"(A) report directly to the board or to the senior officer of the security-based swap dealer or major security-based swap participant;

"(B) review the compliance of the security-based swap dealer or major security-based swap participant with respect to the security-based swap dealer and major security-based swap participant requirements described in this section;

"(C) in consultation with the board of directors, a body performing a function similar to the board, or the senior officer of the organization, resolve any conflicts of interest that may arise;

"(D) be responsible for administering each policy and procedure that is required to be established pursuant to this section;

"(E) ensure compliance with this title (including regulations) relating to security-based swaps, including each rule prescribed by the Commission under this section;

"(F) establish procedures for the remediation of noncompliance issues identified by the chief compliance officer through any—

"(i) compliance office review;

"(ii) look-back;

"(iii) internal or external audit finding;

"(iv) self-reported error; or

"(v) validated complaint; and

"(G) establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.

"(3) ANNUAL REPORTS.—

"(A) IN GENERAL.—In accordance with rules prescribed by the Commission, the chief compliance officer shall annually prepare and sign a report that contains a description of—

"(i) the compliance of the security-based swap dealer or major swap participant with respect to this title (including regulations); and

"(ii) each policy and procedure of the security-based swap dealer or major security-based swap participant of the chief compliance officer (including the code of ethics and conflict of interest policies).

"(B) REQUIREMENTS.—A compliance report under subparagraph (A) shall—

"(i) accompany each appropriate financial report of the security-based swap dealer or major security-based swap participant that is required to be furnished to the Commission pursuant to this section; and

"(ii) include a certification that, under penalty of law, the compliance report is accurate and complete.

"(l) ENFORCEMENT AND ADMINISTRATIVE PROCEEDING AUTHORITY.—

"(1) PRIMARY ENFORCEMENT AUTHORITY.—

"(A) SECURITIES AND EXCHANGE COMMISSION.—Except as provided in subparagraph (B), (C), or (D), the Commission shall have primary authority to enforce subtitle B, and the amendments made by subtitle B of the Wall Street Transparency and Accountability Act of 2010, with respect to any person.

"(B) PRUDENTIAL REGULATORS.—The prudential regulators shall have exclusive authority to enforce the provisions of subsection (e) and other prudential requirements of this title (including risk management standards), with respect to security-based swap dealers or major security-based swap participants for which they are the prudential regulator.

"(C) REFERRAL.—

"(i) VIOLATIONS OF NONPRUDENTIAL REQUIREMENTS.—If the appropriate Federal banking agency for security-based swap dealers or major security-based swap participants that are depository institutions has cause to believe that such security-based swap dealer or major security-based swap participant may have engaged in conduct that constitutes a violation of the nonprudential requirements of this section or rules adopted by the Commission thereunder, the agency may recommend in writing to the Commission that the Commission initiate an enforcement proceeding as authorized under this title. The recommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

"(ii) VIOLATIONS OF PRUDENTIAL REQUIREMENTS.—If the Commission has cause to believe that a securities-based swap dealer or major securities-based swap participant that has a prudential regulator may have engaged in conduct that constitute a violation of the prudential requirements of subsection (e) or rules adopted thereunder, the Commission may recommend

in writing to the prudential regulator that the prudential regulator initiate an enforcement proceeding as authorized under this title. The recommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

"(D) BACKSTOP ENFORCEMENT AUTHORITY.—

"(i) INITIATION OF ENFORCEMENT PROCEEDING BY PRUDENTIAL REGULATOR.—If the Commission does not initiate an enforcement proceeding before the end of the 90-day period beginning on the date on which the Commission receives a written report under subsection (C)(i), the prudential regulator may initiate an enforcement proceeding.

"(ii) INITIATION OF ENFORCEMENT PROCEEDING BY COMMISSION.—If the prudential regulator does not initiate an enforcement proceeding before the end of the 90-day period beginning on the date on which the prudential regulator receives a written report under subsection (C)(ii), the Commission may initiate an enforcement proceeding.

"(2) CENSURE, DENIAL, SUSPENSION; NOTICE AND HEARING.—The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, or revoke the registration of any security-based swap dealer or major security-based swap participant that has registered with the Commission pursuant to subsection (b) if the Commission finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, or revocation is in the public interest and that such security-based swap dealer or major security-based swap participant, or any person associated with such security-based swap dealer or major security-based swap participant effecting or involved in effecting transactions in security-based swaps on behalf of such security-based swap dealer or major security-based swap participant, whether prior or subsequent to becoming so associated—

"(A) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), or (E) of paragraph (4) of section 15(b);

"(B) has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under this subsection;

"(C) is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4);

"(D) is subject to an order or a final order specified in subparagraph (F) or (H), respectively, of such paragraph (4); or

"(E) has been found by a foreign financial regulatory authority to have committed or omitted any act, or violated any foreign statute or regulation, enumerated in subparagraph (G) of such paragraph (4).

"(3) ASSOCIATED PERSONS.—With respect to any person who is associated, who is seeking to become associated, or, at the time of the alleged misconduct, who was associated or was seeking to become associated with a security-based swap dealer or major security-based swap participant for the purpose of effecting or being involved in effecting security-based swaps

on behalf of such security-based swap dealer or major security-based swap participant, the Commission, by order, shall censure, place limitations on the activities or functions of such person, or suspend for a period not exceeding 12 months, or bar such person from being associated with a security-based swap dealer or major security-based swap participant, if the Commission finds, on the record after notice and opportunity for a hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person—

"(A) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), or (E) of paragraph (4) of section 15(b);

"(B) has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under this subsection;

"(C) is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4);

"(D) is subject to an order or a final order specified in subparagraph (F) or (H), respectively, of such paragraph (4); or

"(E) has been found by a foreign financial regulatory authority to have committed or omitted any act, or violated any foreign statute or regulation, enumerated in subparagraph (G) of such paragraph (4).

"(4) UNLAWFUL CONDUCT.—It shall be unlawful—

"(A) for any person as to whom an order under paragraph (3) is in effect, without the consent of the Commission, willfully to become, or to be, associated with a security-based swap dealer or major security-based swap participant in contravention of such order; or

"(B) for any security-based swap dealer or major security-based swap participant to permit such a person, without the consent of the Commission, to become or remain a person associated with the security-based swap dealer or major security-based swap participant in contravention of such order, if such security-based swap dealer or major security-based swap participant knew, or in the exercise of reasonable care should have known, of such order.".

(b) SAVINGS CLAUSE.—Notwithstanding any other provision of this title, nothing in this subtitle shall be construed as divesting any appropriate Federal banking agency of any authority it may have to establish or enforce, with respect to a person for which such agency is the appropriate Federal banking agency, prudential or other standards pursuant to authority by Federal law other than this title.

SEC. 765. RULEMAKING ON CONFLICT OF INTEREST.

(a) IN GENERAL.—In order to mitigate conflicts of interest, not later than 180 days after the date of enactment of the Wall Street Transparency and Accountability Act of 2010, the Securities and Exchange Commission shall adopt rules which may include numerical limits on the control of, or the voting rights with respect to, any clearing agency that clears security-based swaps, or on the control of any security-based swap execution facility or national securities exchange that posts or makes available for trading security-based swaps, by a bank holding company (as defined in section

2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841)) with total consolidated assets of $50,000,000,000 or more, a nonbank financial company (as defined in section 102) supervised by the Board of Governors of the Federal Reserve System, affiliate of such a bank holding company or nonbank financial company, a security-based swap dealer, major security-based swap participant, or person associated with a security-based swap dealer or major security-based swap participant.

(b) PURPOSES.—The Securities and Exchange Commission shall adopt rules if the Commission determines, after the review described in subsection (a), that such rules are necessary or appropriate to improve the governance of, or to mitigate systemic risk, promote competition, or mitigate conflicts of interest in connection with a security-based swap dealer or major security-based swap participant's conduct of business with, a clearing agency, national securities exchange, or security-based swap execution facility that clears, posts, or makes available for trading security-based swaps and in which such security-based swap dealer or major security-based swap participant has a material debt or equity investment.

(c) CONSIDERATIONS.—In adopting rules pursuant to this section, the Securities and Exchange Commission shall consider any conflicts of interest arising from the amount of equity owned by a single investor, the ability to vote, cause the vote of, or withhold votes entitled to be cast on any matters by the holders of the ownership interest, and the governance arrangements of any derivatives clearing organization that clears swaps, or swap execution facility or board of trade designated as a contract market that posts swaps or makes swaps available for trading.

SEC. 766. REPORTING AND RECORDKEEPING.

(a) IN GENERAL.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 13 the following:

"SEC. 13A. REPORTING AND RECORDKEEPING FOR CERTAIN SECURITY-BASED SWAPS.

"(a) REQUIRED REPORTING OF SECURITY-BASED SWAPS NOT ACCEPTED BY ANY CLEARING AGENCY OR DERIVATIVES CLEARING ORGANIZATION.—

"(1) IN GENERAL.—Each security-based swap that is not accepted for clearing by any clearing agency or derivatives clearing organization shall be reported to—

"(A) a security-based swap data repository described in section 13(n); or

"(B) in the case in which there is no security-based swap data repository that would accept the security-based swap, to the Commission pursuant to this section within such time period as the Commission may by rule or regulation prescribe.

"(2) TRANSITION RULE FOR PREENACTMENT SECURITY-BASED SWAPS.—

"(A) SECURITY-BASED SWAPS ENTERED INTO BEFORE THE DATE OF ENACTMENT OF THE WALL STREET TRANSPARENCY AND ACCOUNTABILITY ACT OF 2010.—Each security-based swap entered into before the date of enactment of the Wall Street Transparency and Accountability Act of 2010, the terms of which have not expired as of the date of enactment of that Act, shall be reported to a registered

security-based swap data repository or the Commission by a date that is not later than—

"(i) 30 days after issuance of the interim final rule; or

"(ii) such other period as the Commission determines to be appropriate.

"(B) COMMISSION RULEMAKING.—The Commission shall promulgate an interim final rule within 90 days of the date of enactment of this section providing for the reporting of each security-based swap entered into before the date of enactment as referenced in subparagraph (A).

"(C) EFFECTIVE DATE.—The reporting provisions described in this section shall be effective upon the date of the enactment of this section.

"(3) REPORTING OBLIGATIONS.—

"(A) SECURITY-BASED SWAPS IN WHICH ONLY 1 COUNTERPARTY IS A SECURITY-BASED SWAP DEALER OR MAJOR SECURITY-BASED SWAP PARTICIPANT.—With respect to a security-based swap in which only 1 counterparty is a security-based swap dealer or major security-based swap participant, the security-based swap dealer or major security-based swap participant shall report the security-based swap as required under paragraphs (1) and (2).

"(B) SECURITY-BASED SWAPS IN WHICH 1 COUNTERPARTY IS A SECURITY-BASED SWAP DEALER AND THE OTHER A MAJOR SECURITY-BASED SWAP PARTICIPANT.—With respect to a security-based swap in which 1 counterparty is a security-based swap dealer and the other a major security-based swap participant, the security-based swap dealer shall report the security-based swap as required under paragraphs (1) and (2).

"(C) OTHER SECURITY-BASED SWAPS.—With respect to any other security-based swap not described in subparagraph (A) or (B), the counterparties to the security-based swap shall select a counterparty to report the security-based swap as required under paragraphs (1) and (2).

"(b) DUTIES OF CERTAIN INDIVIDUALS.—Any individual or entity that enters into a security-based swap shall meet each requirement described in subsection (c) if the individual or entity did not—

"(1) clear the security-based swap in accordance with section 3C(a)(1); or

"(2) have the data regarding the security-based swap accepted by a security-based swap data repository in accordance with rules (including timeframes) adopted by the Commission under this title.

"(c) REQUIREMENTS.—An individual or entity described in subsection (b) shall—

"(1) upon written request from the Commission, provide reports regarding the security-based swaps held by the individual or entity to the Commission in such form and in such manner as the Commission may request; and

"(2) maintain books and records pertaining to the security-based swaps held by the individual or entity in such form, in such manner, and for such period as the Commission may require, which shall be open to inspection by—

"(A) any representative of the Commission;

"(B) an appropriate prudential regulator;

"(C) the Commodity Futures Trading Commission;
"(D) the Financial Stability Oversight Council; and
"(E) the Department of Justice.

"(d) IDENTICAL DATA.—In prescribing rules under this section, the Commission shall require individuals and entities described in subsection (b) to submit to the Commission a report that contains data that is not less comprehensive than the data required to be collected by security-based swap data repositories under this title.".

(b) BENEFICIAL OWNERSHIP REPORTING.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended—

(1) in subsection (d)(1), by inserting "or otherwise becomes or is deemed to become a beneficial owner of any of the foregoing upon the purchase or sale of a security-based swap that the Commission may define by rule, and" after "Alaska Native Claims Settlement Act,"; and

(2) in subsection (g)(1), by inserting "or otherwise becomes or is deemed to become a beneficial owner of any security of a class described in subsection (d)(1) upon the purchase or sale of a security-based swap that the Commission may define by rule" after "subsection (d)(1) of this section".

(c) REPORTS BY INSTITUTIONAL INVESTMENT MANAGERS.—Section 13(f)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(f)(1)) is amended by inserting "or otherwise becomes or is deemed to become a beneficial owner of any security of a class described in subsection (d)(1) upon the purchase or sale of a security-based swap that the Commission may define by rule," after "subsection (d)(1) of this section".

(d) ADMINISTRATIVE PROCEEDING AUTHORITY.—Section 15(b)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(4)) is amended—

(1) in subparagraph (C), by inserting "security-based swap dealer, major security-based swap participant," after "government securities dealer,"; and

(2) in subparagraph (F), by striking "broker or dealer" and inserting "broker, dealer, security-based swap dealer, or a major security-based swap participant".

(e) SECURITY-BASED SWAP BENEFICIAL OWNERSHIP.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended by adding at the end the following:

"(o) BENEFICIAL OWNERSHIP.—For purposes of this section and section 16, a person shall be deemed to acquire beneficial ownership of an equity security based on the purchase or sale of a security-based swap, only to the extent that the Commission, by rule, determines after consultation with the prudential regulators and the Secretary of the Treasury, that the purchase or sale of the security-based swap, or class of security-based swap, provides incidents of ownership comparable to direct ownership of the equity security, and that it is necessary to achieve the purposes of this section that the purchase or sale of the security-based swaps, or class of security-based swap, be deemed the acquisition of beneficial ownership of the equity security.".

SEC. 767. STATE GAMING AND BUCKET SHOP LAWS.

Section 28(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(a)) is amended to read as follows:

"(a) LIMITATION ON JUDGMENTS.—

"(1) IN GENERAL.—No person permitted to maintain a suit for damages under the provisions of this title shall recover, through satisfaction of judgment in 1 or more actions, a total amount in excess of the actual damages to that person on account of the act complained of. Except as otherwise specifically provided in this title, nothing in this title shall affect the jurisdiction of the securities commission (or any agency or officer performing like functions) of any State over any security or any person insofar as it does not conflict with the provisions of this title or the rules and regulations under this title.

"(2) RULE OF CONSTRUCTION.—Except as provided in subsection (f), the rights and remedies provided by this title shall be in addition to any and all other rights and remedies that may exist at law or in equity.

"(3) STATE BUCKET SHOP LAWS.—No State law which prohibits or regulates the making or promoting of wagering or gaming contracts, or the operation of 'bucket shops' or other similar or related activities, shall invalidate—

"(A) any put, call, straddle, option, privilege, or other security subject to this title (except any security that has a pari-mutuel payout or otherwise is determined by the Commission, acting by rule, regulation, or order, to be appropriately subject to such laws), or apply to any activity which is incidental or related to the offer, purchase, sale, exercise, settlement, or closeout of any such security;

"(B) any security-based swap between eligible contract participants; or

"(C) any security-based swap effected on a national securities exchange registered pursuant to section 6(b).

"(4) OTHER STATE PROVISIONS.—No provision of State law regarding the offer, sale, or distribution of securities shall apply to any transaction in a security-based swap or a security futures product, except that this paragraph may not be construed as limiting any State antifraud law of general applicability. A security-based swap may not be regulated as an insurance contract under any provision of State law.".

SEC. 768. AMENDMENTS TO THE SECURITIES ACT OF 1933; TREATMENT OF SECURITY-BASED SWAPS.

(a) DEFINITIONS.—Section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a)) is amended—

(1) in paragraph (1), by inserting "security-based swap," after "security future,";

(2) in paragraph (3), by adding at the end the following: "Any offer or sale of a security-based swap by or on behalf of the issuer of the securities upon which such security-based swap is based or is referenced, an affiliate of the issuer, or an underwriter, shall constitute a contract for sale of, sale of, offer for sale, or offer to sell such securities."; and

(3) by adding at the end the following:

"(17) The terms 'swap' and 'security-based swap' have the same meanings as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

"(18) The terms 'purchase' or 'sale' of a security-based swap shall be deemed to mean the execution, termination (prior to its scheduled maturity date), assignment, exchange, or

similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.".

(b) REGISTRATION OF SECURITY-BASED SWAPS.—Section 5 of the Securities Act of 1933 (15 U.S.C. 77e) is amended by adding at the end the following:

"(d) Notwithstanding the provisions of section 3 or 4, unless a registration statement meeting the requirements of section 10(a) is in effect as to a security-based swap, it shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell, offer to buy or purchase or sell a security-based swap to any person who is not an eligible contract participant as defined in section 1a(18) of the Commodity Exchange Act (7 U.S.C. 1a(18)).".

SEC. 769. DEFINITIONS UNDER THE INVESTMENT COMPANY ACT OF 1940.

Section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–2) is amended by adding at the end the following:

"(54) The terms 'commodity pool', 'commodity pool operator', 'commodity trading advisor', 'major swap participant', 'swap', 'swap dealer', and 'swap execution facility' have the same meanings as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).".

SEC. 770. DEFINITIONS UNDER THE INVESTMENT ADVISERS ACT OF 1940.

Section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2) is amended by adding at the end the following:

"(29) The terms 'commodity pool', 'commodity pool operator', 'commodity trading advisor', 'major swap participant', 'swap', 'swap dealer', and 'swap execution facility' have the same meanings as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).".

SEC. 771. OTHER AUTHORITY.

Unless otherwise provided by its terms, this subtitle does not divest any appropriate Federal banking agency, the Securities and Exchange Commission, the Commodity Futures Trading Commission, or any other Federal or State agency, of any authority derived from any other provision of applicable law.

SEC. 772. JURISDICTION.

(a) IN GENERAL.—Section 36 of the Securities Exchange Act of 1934 (15 U.S.C. 78mm) is amended by adding at the end the following:

"(c) DERIVATIVES.—Unless the Commission is expressly authorized by any provision described in this subsection to grant exemptions, the Commission shall not grant exemptions, with respect to amendments made by subtitle B of the Wall Street Transparency and Accountability Act of 2010, with respect to paragraphs (65), (66), (68), (69), (70), (71), (72), (73), (74), (75), (76), and (79) of section 3(a), and sections 10B(a), 10B(b), 10B(c), 13A, 15F, 17A(g), 17A(h), 17A(i), 17A(j), 17A(k), and 17A(l); provided that the Commission shall have exemptive authority under this title with respect to security-based swaps as to the same matters that the Commodity

Futures Trading Commission has under the Wall Street Transparency and Accountability Act of 2010 with respect to swaps, including under section 4(c) of the Commodity Exchange Act.".

(b) RULE OF CONSTRUCTION.—Section 30 of the Securities Exchange Act of 1934 (15 U.S.C. 78dd) is amended by adding at the end the following:

"(c) RULE OF CONSTRUCTION.—No provision of this title that was added by the Wall Street Transparency and Accountability Act of 2010, or any rule or regulation thereunder, shall apply to any person insofar as such person transacts a business in security-based swaps without the jurisdiction of the United States, unless such person transacts such business in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate to prevent the evasion of any provision of this title that was added by the Wall Street Transparency and Accountability Act of 2010. This subsection shall not be construed to limit the jurisdiction of the Commission under any provision of this title, as in effect prior to the date of enactment of the Wall Street Transparency and Accountability Act of 2010.".

SEC. 773. CIVIL PENALTIES.

Section 21B of the Securities Exchange Act of 1934 (15 U.S.C. 78p-2) is amended by adding at the end the following:

"(f) SECURITY-BASED SWAPS.—

"(1) CLEARING AGENCY.—Any clearing agency that knowingly or recklessly evades or participates in or facilitates an evasion of the requirements of section 3C shall be liable for a civil money penalty in twice the amount otherwise available for a violation of section 3C.

"(2) SECURITY-BASED SWAP DEALER OR MAJOR SECURITY-BASED SWAP PARTICIPANT.—Any security-based swap dealer or major security-based swap participant that knowingly or recklessly evades or participates in or facilitates an evasion of the requirements of section 3C shall be liable for a civil money penalty in twice the amount otherwise available for a violation of section 3C.".

SEC. 774. EFFECTIVE DATE.

Unless otherwise provided, the provisions of this subtitle shall take effect on the later of 360 days after the date of the enactment of this subtitle or, to the extent a provision of this subtitle requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of this subtitle.

TITLE VIII—PAYMENT, CLEARING, AND SETTLEMENT SUPERVISION

SEC. 801. SHORT TITLE.

This title may be cited as the "Payment, Clearing, and Settlement Supervision Act of 2010".

SEC. 802. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1) The proper functioning of the financial markets is dependent upon safe and efficient arrangements for the clearing

and settlement of payment, securities, and other financial transactions.

(2) Financial market utilities that conduct or support multilateral payment, clearing, or settlement activities may reduce risks for their participants and the broader financial system, but such utilities may also concentrate and create new risks and thus must be well designed and operated in a safe and sound manner.

(3) Payment, clearing, and settlement activities conducted by financial institutions also present important risks to the participating financial institutions and to the financial system.

(4) Enhancements to the regulation and supervision of systemically important financial market utilities and the conduct of systemically important payment, clearing, and settlement activities by financial institutions are necessary—

(A) to provide consistency;

(B) to promote robust risk management and safety and soundness;

(C) to reduce systemic risks; and

(D) to support the stability of the broader financial system.

(b) PURPOSE.—The purpose of this title is to mitigate systemic risk in the financial system and promote financial stability by—

(1) authorizing the Board of Governors to promote uniform standards for the—

(A) management of risks by systemically important financial market utilities; and

(B) conduct of systemically important payment, clearing, and settlement activities by financial institutions;

(2) providing the Board of Governors an enhanced role in the supervision of risk management standards for systemically important financial market utilities;

(3) strengthening the liquidity of systemically important financial market utilities; and

(4) providing the Board of Governors an enhanced role in the supervision of risk management standards for systemically important payment, clearing, and settlement activities by financial institutions.

SEC. 803. DEFINITIONS.

In this title, the following definitions shall apply:

(1) APPROPRIATE FINANCIAL REGULATOR.—The term "appropriate financial regulator" means—

(A) the primary financial regulatory agency, as defined in section 2 of this Act;

(B) the National Credit Union Administration, with respect to any insured credit union under the Federal Credit Union Act (12 U.S.C. 1751 et seq.); and

(C) the Board of Governors, with respect to organizations operating under section 25A of the Federal Reserve Act (12 U.S.C. 611), and any other financial institution engaged in a designated activity.

(2) DESIGNATED ACTIVITY.—The term "designated activity" means a payment, clearing, or settlement activity that the Council has designated as systemically important under section 804.

(3) DESIGNATED CLEARING ENTITY.—The term "designated clearing entity" means a designated financial market utility that is a derivatives clearing organization registered under section 5b of the Commodity Exchange Act (7 U.S.C. 7a-1) or a clearing agency registered with the Securities and Exchange Commission under section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q-1).

(4) DESIGNATED FINANCIAL MARKET UTILITY.—The term "designated financial market utility" means a financial market utility that the Council has designated as systemically important under section 804.

(5) FINANCIAL INSTITUTION.—

(A) IN GENERAL.—The term "financial institution" means—

(i) a depository institution, as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(ii) a branch or agency of a foreign bank, as defined in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101);

(iii) an organization operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601–604a and 611 through 631);

(iv) a credit union, as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752);

(v) a broker or dealer, as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c);

(vi) an investment company, as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3);

(vii) an insurance company, as defined in section 2 of the Investment Company Act of 1940 (15 U.S.C. 80a–2);

(viii) an investment adviser, as defined in section 202 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2);

(ix) a futures commission merchant, commodity trading advisor, or commodity pool operator, as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a); and

(x) any company engaged in activities that are financial in nature or incidental to a financial activity, as described in section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

(B) EXCLUSIONS.—The term "financial institution" does not include designated contract markets, registered futures associations, swap data repositories, and swap execution facilities registered under the Commodity Exchange Act (7 U.S.C. 1 et seq.), or national securities exchanges, national securities associations, alternative trading systems, securities information processors solely with respect to the activities of the entity as a securities information processor, security-based swap data repositories, and swap execution facilities registered under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), or designated clearing entities, provided that the exclusions in this

subparagraph apply only with respect to the activities that require the entity to be so registered.

(6) FINANCIAL MARKET UTILITY.—

(A) INCLUSION.—The term "financial market utility" means any person that manages or operates a multilateral system for the purpose of transferring, clearing, or settling payments, securities, or other financial transactions among financial institutions or between financial institutions and the person.

(B) EXCLUSIONS.—The term "financial market utility" does not include—

(i) designated contract markets, registered futures associations, swap data repositories, and swap execution facilities registered under the Commodity Exchange Act (7 U.S.C. 1 et seq.), or national securities exchanges, national securities associations, alternative trading systems, security-based swap data repositories, and swap execution facilities registered under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), solely by reason of their providing facilities for comparison of data respecting the terms of settlement of securities or futures transactions effected on such exchange or by means of any electronic system operated or controlled by such entities, provided that the exclusions in this clause apply only with respect to the activities that require the entity to be so registered; and

(ii) any broker, dealer, transfer agent, or investment company, or any futures commission merchant, introducing broker, commodity trading advisor, or commodity pool operator, solely by reason of functions performed by such institution as part of brokerage, dealing, transfer agency, or investment company activities, or solely by reason of acting on behalf of a financial market utility or a participant therein in connection with the furnishing by the financial market utility of services to its participants or the use of services of the financial market utility by its participants, provided that services performed by such institution do not constitute critical risk management or processing functions of the financial market utility.

(7) PAYMENT, CLEARING, OR SETTLEMENT ACTIVITY.—

(A) IN GENERAL.—The term "payment, clearing, or settlement activity" means an activity carried out by 1 or more financial institutions to facilitate the completion of financial transactions, but shall not include any offer or sale of a security under the Securities Act of 1933 (15 U.S.C. 77a et seq.), or any quotation, order entry, negotiation, or other pre-trade activity or execution activity.

(B) FINANCIAL TRANSACTION.—For the purposes of subparagraph (A), the term "financial transaction" includes—

(i) funds transfers;

(ii) securities contracts;

(iii) contracts of sale of a commodity for future delivery;

(iv) forward contracts;

(v) repurchase agreements;

(vi) swaps;
(vii) security-based swaps;
(viii) swap agreements;
(ix) security-based swap agreements;
(x) foreign exchange contracts;
(xi) financial derivatives contracts; and
(xii) any similar transaction that the Council determines to be a financial transaction for purposes of this title.

(C) INCLUDED ACTIVITIES.—When conducted with respect to a financial transaction, payment, clearing, and settlement activities may include—

(i) the calculation and communication of unsettled financial transactions between counterparties;
(ii) the netting of transactions;
(iii) provision and maintenance of trade, contract, or instrument information;
(iv) the management of risks and activities associated with continuing financial transactions;
(v) transmittal and storage of payment instructions;
(vi) the movement of funds;
(vii) the final settlement of financial transactions; and
(viii) other similar functions that the Council may determine.

(D) EXCLUSION.—Payment, clearing, and settlement activities shall not include public reporting of swap transaction data under section 727 or 763(i) of the Wall Street Transparency and Accountability Act of 2010.

(8) SUPERVISORY AGENCY.—

(A) IN GENERAL.—The term "Supervisory Agency" means the Federal agency that has primary jurisdiction over a designated financial market utility under Federal banking, securities, or commodity futures laws, as follows:

(i) The Securities and Exchange Commission, with respect to a designated financial market utility that is a clearing agency registered with the Securities and Exchange Commission.
(ii) The Commodity Futures Trading Commission, with respect to a designated financial market utility that is a derivatives clearing organization registered with the Commodity Futures Trading Commission.
(iii) The appropriate Federal banking agency, with respect to a designated financial market utility that is an institution described in section 3(q) of the Federal Deposit Insurance Act.
(iv) The Board of Governors, with respect to a designated financial market utility that is otherwise not subject to the jurisdiction of any agency listed in clauses (i), (ii), and (iii).

(B) MULTIPLE AGENCY JURISDICTION.—If a designated financial market utility is subject to the jurisdictional supervision of more than 1 agency listed in subparagraph (A), then such agencies should agree on 1 agency to act as the Supervisory Agency, and if such agencies cannot agree on which agency has primary jurisdiction, the Council

shall decide which agency is the Supervisory Agency for purposes of this title.

(9) SYSTEMICALLY IMPORTANT AND SYSTEMIC IMPORTANCE.—The terms "systemically important" and "systemic importance" mean a situation where the failure of or a disruption to the functioning of a financial market utility or the conduct of a payment, clearing, or settlement activity could create, or increase, the risk of significant liquidity or credit problems spreading among financial institutions or markets and thereby threaten the stability of the financial system of the United States.

SEC. 804. DESIGNATION OF SYSTEMIC IMPORTANCE.

(a) DESIGNATION.—

(1) FINANCIAL STABILITY OVERSIGHT COUNCIL.—The Council, on a nondelegable basis and by a vote of not fewer than ⅔ of members then serving, including an affirmative vote by the Chairperson of the Council, shall designate those financial market utilities or payment, clearing, or settlement activities that the Council determines are, or are likely to become, systemically important.

(2) CONSIDERATIONS.—In determining whether a financial market utility or payment, clearing, or settlement activity is, or is likely to become, systemically important, the Council shall take into consideration the following:

(A) The aggregate monetary value of transactions processed by the financial market utility or carried out through the payment, clearing, or settlement activity.

(B) The aggregate exposure of the financial market utility or a financial institution engaged in payment, clearing, or settlement activities to its counterparties.

(C) The relationship, interdependencies, or other interactions of the financial market utility or payment, clearing, or settlement activity with other financial market utilities or payment, clearing, or settlement activities.

(D) The effect that the failure of or a disruption to the financial market utility or payment, clearing, or settlement activity would have on critical markets, financial institutions, or the broader financial system.

(E) Any other factors that the Council deems appropriate.

(b) RESCISSION OF DESIGNATION.—

(1) IN GENERAL.—The Council, on a nondelegable basis and by a vote of not fewer than ⅔ of members then serving, including an affirmative vote by the Chairperson of the Council, shall rescind a designation of systemic importance for a designated financial market utility or designated activity if the Council determines that the utility or activity no longer meets the standards for systemic importance.

(2) EFFECT OF RESCISSION.—Upon rescission, the financial market utility or financial institutions conducting the activity will no longer be subject to the provisions of this title or any rules or orders prescribed under this title.

(c) CONSULTATION AND NOTICE AND OPPORTUNITY FOR HEARING.—

(1) CONSULTATION.—Before making any determination under subsection (a) or (b), the Council shall consult with the relevant Supervisory Agency and the Board of Governors.

(2) ADVANCE NOTICE AND OPPORTUNITY FOR HEARING.—

(A) IN GENERAL.—Before making any determination under subsection (a) or (b), the Council shall provide the financial market utility or, in the case of a payment, clearing, or settlement activity, financial institutions with advance notice of the proposed determination of the Council.

(B) NOTICE IN FEDERAL REGISTER.—The Council shall provide such advance notice to financial institutions by publishing a notice in the Federal Register.

(C) REQUESTS FOR HEARING.—Within 30 days from the date of any notice of the proposed determination of the Council, the financial market utility or, in the case of a payment, clearing, or settlement activity, a financial institution engaged in the designated activity may request, in writing, an opportunity for a written or oral hearing before the Council to demonstrate that the proposed designation or rescission of designation is not supported by substantial evidence.

(D) WRITTEN SUBMISSIONS.—Upon receipt of a timely request, the Council shall fix a time, not more than 30 days after receipt of the request, unless extended at the request of the financial market utility or financial institution, and place at which the financial market utility or financial institution may appear, personally or through counsel, to submit written materials, or, at the sole discretion of the Council, oral testimony or oral argument.

(3) EMERGENCY EXCEPTION.—

(A) WAIVER OR MODIFICATION BY VOTE OF THE COUNCIL.—The Council may waive or modify the requirements of paragraph (2) if the Council determines, by an affirmative vote of not fewer than ⅔ of members then serving, including an affirmative vote by the Chairperson of the Council, that the waiver or modification is necessary to prevent or mitigate an immediate threat to the financial system posed by the financial market utility or the payment, clearing, or settlement activity.

(B) NOTICE OF WAIVER OR MODIFICATION.—The Council shall provide notice of the waiver or modification to the financial market utility concerned or, in the case of a payment, clearing, or settlement activity, to financial institutions, as soon as practicable, which shall be no later than 24 hours after the waiver or modification in the case of a financial market utility and 3 business days in the case of financial institutions. The Council shall provide the notice to financial institutions by posting a notice on the website of the Council and by publishing a notice in the Federal Register.

(d) NOTIFICATION OF FINAL DETERMINATION.—

(1) AFTER HEARING.—Within 60 days of any hearing under subsection (c)(2), the Council shall notify the financial market utility or financial institutions of the final determination of the Council in writing, which shall include findings of fact upon which the determination of the Council is based.

(2) WHEN NO HEARING REQUESTED.—If the Council does not receive a timely request for a hearing under subsection (c)(2), the Council shall notify the financial market utility or financial institutions of the final determination of the Council in writing not later than 30 days after the expiration of the date by which a financial market utility or a financial institution could have requested a hearing. All notices to financial institutions under this subsection shall be published in the Federal Register.

(e) EXTENSION OF TIME PERIODS.—The Council may extend the time periods established in subsections (c) and (d) as the Council determines to be necessary or appropriate.

SEC. 805. STANDARDS FOR SYSTEMICALLY IMPORTANT FINANCIAL MARKET UTILITIES AND PAYMENT, CLEARING, OR SETTLEMENT ACTIVITIES.

(a) AUTHORITY TO PRESCRIBE STANDARDS.—

(1) BOARD OF GOVERNORS.—Except as provided in paragraph (2), the Board of Governors, by rule or order, and in consultation with the Council and the Supervisory Agencies, shall prescribe risk management standards, taking into consideration relevant international standards and existing prudential requirements, governing—

(A) the operations related to the payment, clearing, and settlement activities of designated financial market utilities; and

(B) the conduct of designated activities by financial institutions.

(2) SPECIAL PROCEDURES FOR DESIGNATED CLEARING ENTITIES AND DESIGNATED ACTIVITIES OF CERTAIN FINANCIAL INSTITUTIONS.—

(A) CFTC AND COMMISSION.—The Commodity Futures Trading Commission and the Commission may each prescribe regulations, in consultation with the Council and the Board of Governors, containing risk management standards, taking into consideration relevant international standards and existing prudential requirements, for those designated clearing entities and financial institutions engaged in designated activities for which each is the Supervisory Agency or the appropriate financial regulator, governing—

(i) the operations related to payment, clearing, and settlement activities of such designated clearing entities; and

(ii) the conduct of designated activities by such financial institutions.

(B) REVIEW AND DETERMINATION.—The Board of Governors may determine that existing prudential requirements of the Commodity Futures Trading Commission, the Commission, or both (including requirements prescribed pursuant to subparagraph (A)) with respect to designated clearing entities and financial institutions engaged in designated activities for which the Commission or the Commodity Futures Trading Commission is the Supervisory Agency or the appropriate financial regulator are insufficient to prevent or mitigate significant liquidity, credit,

operational, or other risks to the financial markets or to the financial stability of the United States.

(C) WRITTEN DETERMINATION.—Any determination by the Board of Governors under subparagraph (B) shall be provided in writing to the Commodity Futures Trading Commission or the Commission, as applicable, and the Council, and shall explain why existing prudential requirements, considered as a whole, are insufficient to ensure that the operations and activities of the designated clearing entities or the activities of financial institutions described in subparagraph (B) will not pose significant liquidity, credit, operational, or other risks to the financial markets or to the financial stability of the United States. The Board of Governors' determination shall contain a detailed analysis supporting its findings and identify the specific prudential requirements that are insufficient.

(D) CFTC AND COMMISSION RESPONSE.—The Commodity Futures Trading Commission or the Commission, as applicable, shall within 60 days either object to the Board of Governors' determination with a detailed analysis as to why existing prudential requirements are sufficient, or submit an explanation to the Council and the Board of Governors describing the actions to be taken in response to the Board of Governors' determination.

(E) AUTHORIZATION.—Upon an affirmative vote by not fewer than 2/3 of members then serving on the Council, the Council shall either find that the response submitted under subparagraph (D) is sufficient, or require the Commodity Futures Trading Commission, or the Commission, as applicable, to prescribe such risk management standards as the Council determines is necessary to address the specific prudential requirements that are determined to be insufficient."

(b) OBJECTIVES AND PRINCIPLES.—The objectives and principles for the risk management standards prescribed under subsection (a) shall be to—

(1) promote robust risk management;

(2) promote safety and soundness;

(3) reduce systemic risks; and

(4) support the stability of the broader financial system.

(c) SCOPE.—The standards prescribed under subsection (a) may address areas such as—

(1) risk management policies and procedures;

(2) margin and collateral requirements;

(3) participant or counterparty default policies and procedures;

(4) the ability to complete timely clearing and settlement of financial transactions;

(5) capital and financial resource requirements for designated financial market utilities; and

(6) other areas that are necessary to achieve the objectives and principles in subsection (b).

(d) LIMITATION ON SCOPE.—Except as provided in subsections (e) and (f) of section 807, nothing in this title shall be construed to permit the Council or the Board of Governors to take any action or exercise any authority granted to the Commodity Futures Trading Commission under section 2(h) of the Commodity Exchange

Act or the Securities and Exchange Commission under section 3C(a) of the Securities Exchange Act of 1934, including—

(1) the approval of, disapproval of, or stay of the clearing requirement for any group, category, type, or class of swaps that a designated clearing entity may accept for clearing;

(2) the determination that any group, category, type, or class of swaps shall be subject to the mandatory clearing requirement of section 2(h)(1) of the Commodity Exchange Act or section 3C(a)(1) of the Securities Exchange Act of 1934;

(3) the determination that any person is exempt from the mandatory clearing requirement of section 2(h)(1) of the Commodity Exchange Act or section 3C(a)(1) of the Securities Exchange Act of 1934; or

(4) any authority granted to the Commodity Futures Trading Commission or the Securities and Exchange Commission with respect to transaction reporting or trade execution.

(e) THRESHOLD LEVEL.—The standards prescribed under subsection (a) governing the conduct of designated activities by financial institutions shall, where appropriate, establish a threshold as to the level or significance of engagement in the activity at which a financial institution will become subject to the standards with respect to that activity.

(f) COMPLIANCE REQUIRED.—Designated financial market utilities and financial institutions subject to the standards prescribed under subsection (a) for a designated activity shall conduct their operations in compliance with the applicable risk management standards.

SEC. 806. OPERATIONS OF DESIGNATED FINANCIAL MARKET UTILITIES.

(a) FEDERAL RESERVE ACCOUNT AND SERVICES.—The Board of Governors may authorize a Federal Reserve Bank to establish and maintain an account for a designated financial market utility and provide the services listed in section 11A(b) of the Federal Reserve Act (12 U.S.C. 248a(b)) and deposit accounts under the first undesignated paragraph of section 13 of the Federal Reserve Act (12 U.S.C. 342) to the designated financial market utility that the Federal Reserve Bank is authorized under the Federal Reserve Act to provide to a depository institution, subject to any applicable rules, orders, standards, or guidelines prescribed by the Board of Governors.

(b) ADVANCES.—The Board of Governors may authorize a Federal Reserve bank under section 10B of the Federal Reserve Act (12 U.S.C. 347b) to provide to a designated financial market utility discount and borrowing privileges only in unusual or exigent circumstances, upon the affirmative vote of a majority of the Board of Governors then serving (or such other number in accordance with the provisions of section 11(r)(2) of the Federal Reserve Act (12 U.S.C. 248(r)(2)) after consultation with the Secretary, and upon a showing by the designated financial market utility that it is unable to secure adequate credit accommodations from other banking institutions. All such discounts and borrowing privileges shall be subject to such other limitations, restrictions, and regulations as the Board of Governors may prescribe. Access to discount and borrowing privileges under section 10B of the Federal Reserve Act as authorized in this section does not require a designated

financial market utility to be or become a bank or bank holding company.

(c) EARNINGS ON FEDERAL RESERVE BALANCES.—A Federal Reserve Bank may pay earnings on balances maintained by or on behalf of a designated financial market utility in the same manner and to the same extent as the Federal Reserve Bank may pay earnings to a depository institution under the Federal Reserve Act, subject to any applicable rules, orders, standards, or guidelines prescribed by the Board of Governors.

(d) RESERVE REQUIREMENTS.—The Board of Governors may exempt a designated financial market utility from, or modify any, reserve requirements under section 19 of the Federal Reserve Act (12 U.S.C. 461) applicable to a designated financial market utility.

(e) CHANGES TO RULES, PROCEDURES, OR OPERATIONS.—

(1) ADVANCE NOTICE.—

(A) ADVANCE NOTICE OF PROPOSED CHANGES REQUIRED.—A designated financial market utility shall provide notice 60 days in advance notice to its Supervisory Agency of any proposed change to its rules, procedures, or operations that could, as defined in rules of each Supervisory Agency, materially affect, the nature or level of risks presented by the designated financial market utility.

(B) TERMS AND STANDARDS PRESCRIBED BY THE SUPERVISORY AGENCIES.—Each Supervisory Agency, in consultation with the Board of Governors, shall prescribe regulations that define and describe the standards for determining when notice is required to be provided under subparagraph (A).

(C) CONTENTS OF NOTICE.—The notice of a proposed change shall describe—

(i) the nature of the change and expected effects on risks to the designated financial market utility, its participants, or the market; and

(ii) how the designated financial market utility plans to manage any identified risks.

(D) ADDITIONAL INFORMATION.—The Supervisory Agency may require a designated financial market utility to provide any information necessary to assess the effect the proposed change would have on the nature or level of risks associated with the designated financial market utility's payment, clearing, or settlement activities and the sufficiency of any proposed risk management techniques.

(E) NOTICE OF OBJECTION.—The Supervisory Agency shall notify the designated financial market utility of any objection regarding the proposed change within 60 days from the later of—

(i) the date that the notice of the proposed change is received; or

(ii) the date any further information requested for consideration of the notice is received.

(F) CHANGE NOT ALLOWED IF OBJECTION.—A designated financial market utility shall not implement a change to which the Supervisory Agency has an objection.

(G) CHANGE ALLOWED IF NO OBJECTION WITHIN 60 DAYS.—A designated financial market utility may implement a change if it has not received an objection to the proposed change within 60 days of the later of—

(i) the date that the Supervisory Agency receives the notice of proposed change; or

(ii) the date the Supervisory Agency receives any further information it requests for consideration of the notice.

(H) REVIEW EXTENSION FOR NOVEL OR COMPLEX ISSUES.—The Supervisory Agency may, during the 60-day review period, extend the review period for an additional 60 days for proposed changes that raise novel or complex issues, subject to the Supervisory Agency providing the designated financial market utility with prompt written notice of the extension. Any extension under this subparagraph will extend the time periods under subparagraphs (E) and (G).

(I) CHANGE ALLOWED EARLIER IF NOTIFIED OF NO OBJECTION.—A designated financial market utility may implement a change in less than 60 days from the date of receipt of the notice of proposed change by the Supervisory Agency, or the date the Supervisory Agency receives any further information it requested, if the Supervisory Agency notifies the designated financial market utility in writing that it does not object to the proposed change and authorizes the designated financial market utility to implement the change on an earlier date, subject to any conditions imposed by the Supervisory Agency.

(2) EMERGENCY CHANGES.—

(A) IN GENERAL.—A designated financial market utility may implement a change that would otherwise require advance notice under this subsection if it determines that—

(i) an emergency exists; and

(ii) immediate implementation of the change is necessary for the designated financial market utility to continue to provide its services in a safe and sound manner.

(B) NOTICE REQUIRED WITHIN 24 HOURS.—The designated financial market utility shall provide notice of any such emergency change to its Supervisory Agency, as soon as practicable, which shall be no later than 24 hours after implementation of the change.

(C) CONTENTS OF EMERGENCY NOTICE.—In addition to the information required for changes requiring advance notice, the notice of an emergency change shall describe—

(i) the nature of the emergency; and

(ii) the reason the change was necessary for the designated financial market utility to continue to provide its services in a safe and sound manner.

(D) MODIFICATION OR RESCISSION OF CHANGE MAY BE REQUIRED.—The Supervisory Agency may require modification or rescission of the change if it finds that the change is not consistent with the purposes of this Act or any applicable rules, orders, or standards prescribed under section 805(a).

(3) COPYING THE BOARD OF GOVERNORS.—The Supervisory Agency shall provide the Board of Governors concurrently with a complete copy of any notice, request, or other information it issues, submits, or receives under this subsection.

(4) CONSULTATION WITH BOARD OF GOVERNORS.—Before taking any action on, or completing its review of, a change proposed by a designated financial market utility, the Supervisory Agency shall consult with the Board of Governors.

SEC. 807. EXAMINATION OF AND ENFORCEMENT ACTIONS AGAINST DESIGNATED FINANCIAL MARKET UTILITIES.

(a) EXAMINATION.—Notwithstanding any other provision of law and subject to subsection (d), the Supervisory Agency shall conduct examinations of a designated financial market utility at least once annually in order to determine the following:

(1) The nature of the operations of, and the risks borne by, the designated financial market utility.

(2) The financial and operational risks presented by the designated financial market utility to financial institutions, critical markets, or the broader financial system.

(3) The resources and capabilities of the designated financial market utility to monitor and control such risks.

(4) The safety and soundness of the designated financial market utility.

(5) The designated financial market utility's compliance with—

(A) this title; and

(B) the rules and orders prescribed under this title.

(b) SERVICE PROVIDERS.—Whenever a service integral to the operation of a designated financial market utility is performed for the designated financial market utility by another entity, whether an affiliate or non-affiliate and whether on or off the premises of the designated financial market utility, the Supervisory Agency may examine whether the provision of that service is in compliance with applicable law, rules, orders, and standards to the same extent as if the designated financial market utility were performing the service on its own premises.

(c) ENFORCEMENT.—For purposes of enforcing the provisions of this title, a designated financial market utility shall be subject to, and the appropriate Supervisory Agency shall have authority under the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) in the same manner and to the same extent as if the designated financial market utility was an insured depository institution and the Supervisory Agency was the appropriate Federal banking agency for such insured depository institution.

(d) BOARD OF GOVERNORS INVOLVEMENT IN EXAMINATIONS.—

(1) BOARD OF GOVERNORS CONSULTATION ON EXAMINATION PLANNING.—The Supervisory Agency shall consult annually with the Board of Governors regarding the scope and methodology of any examination conducted under subsections (a) and (b). The Supervisory Agency shall lead all examinations conducted under subsections (a) and (b)

(2) BOARD OF GOVERNORS PARTICIPATION IN EXAMINATION.—The Board of Governors may, in its discretion, participate in any examination led by a Supervisory Agency and conducted under subsections (a) and (b).

(e) BOARD OF GOVERNORS ENFORCEMENT RECOMMENDATIONS.—

(1) RECOMMENDATION.—The Board of Governors may, after consulting with the Council and the Supervisory Agency, at any time recommend to the Supervisory Agency that such

agency take enforcement action against a designated financial market utility in order to prevent or mitigate significant liquidity, credit, operational, or other risks to the financial markets or to the financial stability of the United States. Any such recommendation for enforcement action shall provide a detailed analysis supporting the recommendation of the Board of Governors.

(2) CONSIDERATION.—The Supervisory Agency shall consider the recommendation of the Board of Governors and submit a response to the Board of Governors within 60 days.

(3) BINDING ARBITRATION.—If the Supervisory Agency rejects, in whole or in part, the recommendation of the Board of Governors, the Board of Governors may refer the recommendation to the Council for a binding decision on whether an enforcement action is warranted.

(4) ENFORCEMENT ACTION.—Upon an affirmative vote by a majority of the Council in favor of the Board of Governors' recommendation under paragraph (3), the Council may require the Supervisory Agency to—

(A) exercise the enforcement authority referenced in subsection (c); and

(B) take enforcement action against the designated financial market utility.

(f) EMERGENCY ENFORCEMENT ACTIONS BY THE BOARD OF GOVERNORS.—

(1) IMMINENT RISK OF SUBSTANTIAL HARM.—The Board of Governors may, after consulting with the Supervisory Agency and upon an affirmative vote by a majority the Council, take enforcement action against a designated financial market utility if the Board of Governors has reasonable cause to conclude that—

(A) either—

(i) an action engaged in, or contemplated by, a designated financial market utility (including any change proposed by the designated financial market utility to its rules, procedures, or operations that would otherwise be subject to section 806(e)) poses an imminent risk of substantial harm to financial institutions, critical markets, or the broader financial system of the United States; or

(ii) the condition of a designated financial market utility poses an imminent risk of substantial harm to financial institutions, critical markets, or the broader financial system; and

(B) the imminent risk of substantial harm precludes the Board of Governors' use of the procedures in subsection (e).

(2) ENFORCEMENT AUTHORITY.—For purposes of taking enforcement action under paragraph (1), a designated financial market utility shall be subject to, and the Board of Governors shall have authority under the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) in the same manner and to the same extent as if the designated financial market utility was an insured depository institution and the Board of Governors was the appropriate Federal banking agency for such insured depository institution.

SEC. 808. EXAMINATION OF AND ENFORCEMENT ACTIONS AGAINST FINANCIAL INSTITUTIONS SUBJECT TO STANDARDS FOR DESIGNATED ACTIVITIES.

(a) EXAMINATION.—The appropriate financial regulator is authorized to examine a financial institution subject to the standards prescribed under section 805(a) for a designated activity in order to determine the following:

(1) The nature and scope of the designated activities engaged in by the financial institution.

(2) The financial and operational risks the designated activities engaged in by the financial institution may pose to the safety and soundness of the financial institution.

(3) The financial and operational risks the designated activities engaged in by the financial institution may pose to other financial institutions, critical markets, or the broader financial system.

(4) The resources available to and the capabilities of the financial institution to monitor and control the risks described in paragraphs (2) and (3).

(5) The financial institution's compliance with this title and the rules and orders prescribed under section 805(a).

(b) ENFORCEMENT.—For purposes of enforcing the provisions of this title, and the rules and orders prescribed under this section, a financial institution subject to the standards prescribed under section 805(a) for a designated activity shall be subject to, and the appropriate financial regulator shall have authority under the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) in the same manner and to the same extent as if the financial institution was an insured depository institution and the appropriate financial regulator was the appropriate Federal banking agency for such insured depository institution.

(c) TECHNICAL ASSISTANCE.—The Board of Governors shall consult with and provide such technical assistance as may be required by the appropriate financial regulators to ensure that the rules and orders prescribed under this title are interpreted and applied in as consistent and uniform a manner as practicable.

(d) DELEGATION.—

(1) EXAMINATION.—

(A) REQUEST TO BOARD OF GOVERNORS.—The appropriate financial regulator may request the Board of Governors to conduct or participate in an examination of a financial institution subject to the standards prescribed under section 805(a) for a designated activity in order to assess the compliance of such financial institution with—

(i) this title; or

(ii) the rules or orders prescribed under this title.

(B) EXAMINATION BY BOARD OF GOVERNORS.—Upon receipt of an appropriate written request, the Board of Governors will conduct the examination under such terms and conditions to which the Board of Governors and the appropriate financial regulator mutually agree.

(2) ENFORCEMENT.—

(A) REQUEST TO BOARD OF GOVERNORS.—The appropriate financial regulator may request the Board of Governors to enforce this title or the rules or orders prescribed

under this title against a financial institution that is subject to the standards prescribed under section 805(a) for a designated activity.

(B) ENFORCEMENT BY BOARD OF GOVERNORS.—Upon receipt of an appropriate written request, the Board of Governors shall determine whether an enforcement action is warranted, and, if so, it shall enforce compliance with this title or the rules or orders prescribed under this title and, if so, the financial institution shall be subject to, and the Board of Governors shall have authority under the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) in the same manner and to the same extent as if the financial institution was an insured depository institution and the Board of Governors was the appropriate Federal banking agency for such insured depository institution.

(e) BACK-UP AUTHORITY OF THE BOARD OF GOVERNORS.—

(1) EXAMINATION AND ENFORCEMENT.—Notwithstanding any other provision of law, the Board of Governors may—

(A) conduct an examination of the type described in subsection (a) of any financial institution that is subject to the standards prescribed under section 805(a) for a designated activity; and

(B) enforce the provisions of this title or any rules or orders prescribed under this title against any financial institution that is subject to the standards prescribed under section 805(a) for a designated activity.

(2) LIMITATIONS.—

(A) EXAMINATION.—The Board of Governors may exercise the authority described in paragraph (1)(A) only if the Board of Governors has—

(i) reasonable cause to believe that a financial institution is not in compliance with this title or the rules or orders prescribed under this title with respect to a designated activity;

(ii) notified, in writing, the appropriate financial regulator and the Council of its belief under clause (i) with supporting documentation included;

(iii) requested the appropriate financial regulator to conduct a prompt examination of the financial institution;

(iv) either—

(I) not been afforded a reasonable opportunity to participate in an examination of the financial institution by the appropriate financial regulator within 30 days after the date of the Board's notification under clause (ii); or

(II) reasonable cause to believe that the financial institution's noncompliance with this title or the rules or orders prescribed under this title poses a substantial risk to other financial institutions, critical markets, or the broader financial system, subject to the Board of Governors affording the appropriate financial regulator a reasonable opportunity to participate in the examination; and

(v) obtained the approval of the Council upon an affirmative vote by a majority of the Council.

(B) ENFORCEMENT.—The Board of Governors may exercise the authority described in paragraph (1)(B) only if the Board of Governors has—

(i) reasonable cause to believe that a financial institution is not in compliance with this title or the rules or orders prescribed under this title with respect to a designated activity;

(ii) notified, in writing, the appropriate financial regulator and the Council of its belief under clause (i) with supporting documentation included and with a recommendation that the appropriate financial regulator take 1 or more specific enforcement actions against the financial institution;

(iii) either—

(I) not been notified, in writing, by the appropriate financial regulator of the commencement of an enforcement action recommended by the Board of Governors against the financial institution within 60 days from the date of the notification under clause (ii); or

(II) reasonable cause to believe that the financial institution's noncompliance with this title or the rules or orders prescribed under this title poses significant liquidity, credit, operational, or other risks to the financial markets or to the financial stability of the United States, subject to the Board of Governors notifying the appropriate financial regulator of the Board's enforcement action; and

(iv) obtained the approval of the Council upon an affirmative vote by a majority of the Council.

(3) ENFORCEMENT PROVISIONS.—For purposes of taking enforcement action under paragraph (1), the financial institution shall be subject to, and the Board of Governors shall have authority under the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) in the same manner and to the same extent as if the financial institution was an insured depository institution and the Board of Governors was the appropriate Federal banking agency for such insured depository institution.

SEC. 809. REQUESTS FOR INFORMATION, REPORTS, OR RECORDS.

(a) INFORMATION TO ASSESS SYSTEMIC IMPORTANCE.—

(1) FINANCIAL MARKET UTILITIES.—The Council is authorized to require any financial market utility to submit such information as the Council may require for the sole purpose of assessing whether that financial market utility is systemically important, but only if the Council has reasonable cause to believe that the financial market utility meets the standards for systemic importance set forth in section 804.

(2) FINANCIAL INSTITUTIONS ENGAGED IN PAYMENT, CLEARING, OR SETTLEMENT ACTIVITIES.—The Council is authorized to require any financial institution to submit such information as the Council may require for the sole purpose of assessing whether any payment, clearing, or settlement activity engaged in or supported by a financial institution is systemically important, but only if the Council has reasonable cause to believe

that the activity meets the standards for systemic importance set forth in section 804.

(b) REPORTING AFTER DESIGNATION.—

(1) DESIGNATED FINANCIAL MARKET UTILITIES.—The Board of Governors and the Council may each require a designated financial market utility to submit reports or data to the Board of Governors and the Council in such frequency and form as deemed necessary by the Board of Governors or the Council in order to assess the safety and soundness of the utility and the systemic risk that the utility's operations pose to the financial system.

(2) FINANCIAL INSTITUTIONS SUBJECT TO STANDARDS FOR DESIGNATED ACTIVITIES.—The Board of Governors and the Council may each require 1 or more financial institutions subject to the standards prescribed under section 805(a) for a designated activity to submit, in such frequency and form as deemed necessary by the Board of Governors or the Council, reports and data to the Board of Governors and the Council solely with respect to the conduct of the designated activity and solely to assess whether—

(A) the rules, orders, or standards prescribed under section 805(a) with respect to the designated activity appropriately address the risks to the financial system presented by such activity; and

(B) the financial institutions are in compliance with this title and the rules and orders prescribed under section 805(a) with respect to the designated activity.

(3) LIMITATION.—The Board of Governors may, upon an affirmative vote by a majority of the Council, prescribe regulations under this section that impose a recordkeeping or reporting requirement on designated clearing entities or financial institutions engaged in designated activities that are subject to standards that have been prescribed under section 805(a)(2).

(c) COORDINATION WITH APPROPRIATE FEDERAL SUPERVISORY AGENCY.—

(1) ADVANCE COORDINATION.—Before requesting any material information from, or imposing reporting or recordkeeping requirements on, any financial market utility or any financial institution engaged in a payment, clearing, or settlement activity, the Board of Governors or the Council shall coordinate with the Supervisory Agency for a financial market utility or the appropriate financial regulator for a financial institution to determine if the information is available from or may be obtained by the agency in the form, format, or detail required by the Board of Governors or the Council.

(2) SUPERVISORY REPORTS.—Notwithstanding any other provision of law, the Supervisory Agency, the appropriate financial regulator, and the Board of Governors are authorized to disclose to each other and the Council copies of its examination reports or similar reports regarding any financial market utility or any financial institution engaged in payment, clearing, or settlement activities.

(d) TIMING OF RESPONSE FROM APPROPRIATE FEDERAL SUPERVISORY AGENCY.—If the information, report, records, or data requested by the Board of Governors or the Council under subsection (c)(1) are not provided in full by the Supervisory Agency

or the appropriate financial regulator in less than 15 days after the date on which the material is requested, the Board of Governors or the Council may request the information or impose recordkeeping or reporting requirements directly on such persons as provided in subsections (a) and (b) with notice to the agency.

(e) SHARING OF INFORMATION.—

(1) MATERIAL CONCERNS.—Notwithstanding any other provision of law, the Board of Governors, the Council, the appropriate financial regulator, and any Supervisory Agency are authorized to—

(A) promptly notify each other of material concerns about a designated financial market utility or any financial institution engaged in designated activities; and

(B) share appropriate reports, information, or data relating to such concerns.

(2) OTHER INFORMATION.—Notwithstanding any other provision of law, the Board of Governors, the Council, the appropriate financial regulator, or any Supervisory Agency may, under such terms and conditions as it deems appropriate, provide confidential supervisory information and other information obtained under this title to each other, and to the Secretary, Federal Reserve Banks, State financial institution supervisory agencies, foreign financial supervisors, foreign central banks, and foreign finance ministries, subject to reasonable assurances of confidentiality, provided, however, that no person or entity receiving information pursuant to this section may disseminate such information to entities or persons other than those listed in this paragraph without complying with applicable law, including section 8 of the Commodity Exchange Act (7 U.S.C. 12).

(f) PRIVILEGE MAINTAINED.—The Board of Governors, the Council, the appropriate financial regulator, and any Supervisory Agency providing reports or data under this section shall not be deemed to have waived any privilege applicable to those reports or data, or any portion thereof, by providing the reports or data to the other party or by permitting the reports or data, or any copies thereof, to be used by the other party.

(g) DISCLOSURE EXEMPTION.—Information obtained by the Board of Governors, the Supervisory Agencies, or the Council under this section and any materials prepared by the Board of Governors, the Supervisory Agencies, or the Council regarding their assessment of the systemic importance of financial market utilities or any payment, clearing, or settlement activities engaged in by financial institutions, and in connection with their supervision of designated financial market utilities and designated activities, shall be confidential supervisory information exempt from disclosure under section 552 of title 5, United States Code. For purposes of such section 552, this subsection shall be considered a statute described in subsection (b)(3) of such section 552.

SEC. 810. RULEMAKING.

The Board of Governors, the Supervisory Agencies, and the Council are authorized to prescribe such rules and issue such orders as may be necessary to administer and carry out their respective authorities and duties granted under this title and prevent evasions thereof.

SEC. 811. OTHER AUTHORITY.

Unless otherwise provided by its terms, this title does not divest any appropriate financial regulator, any Supervisory Agency, or any other Federal or State agency, of any authority derived from any other applicable law, except that any standards prescribed by the Board of Governors under section 805 shall supersede any less stringent requirements established under other authority to the extent of any conflict.

SEC. 812. CONSULTATION.

(a) CFTC.—The Commodity Futures Trading Commission shall consult with the Board of Governors—

(1) prior to exercising its authorities under sections 2(h)(2)(C), 2(h)(3)(A), 2(h)(3)(C), 2(h)(4)(A), and 2(h)(4)(B) of the Commodity Exchange Act, as amended by the Wall Street Transparency and Accountability Act of 2010;

(2) with respect to any rule or rule amendment of a derivatives clearing organization for which a stay of certification has been issued under section 745(b)(3) of the Wall Street Transparency and Accountability Act of 2010; and

(3) prior to exercising its rulemaking authorities under section 728 of the Wall Street Transparency and Accountability Act of 2010.

(b) SEC.—The Commission shall consult with the Board of Governors—

(1) prior to exercising its authorities under sections 3C(a)(2)(C), 3C(a)(3)(A), 3C(a)(3)(C), 3C(a)(4)(A), and 3C(a)(4)(B) of the Securities Exchange Act of 1934, as amended by the Wall Street Transparency and Accountability Act of 2010;

(2) with respect to any proposed rule change of a clearing agency for which an extension of the time for review has been designated under section 19(b)(2) of the Securities Exchange Act of 1934; and

(3) prior to exercising its rulemaking authorities under section 13(n) of the Securities Exchange Act of 1934, as added by section 763(i) of the Wall Street Transparency and Accountability Act of 2010.

SEC. 813. COMMON FRAMEWORK FOR DESIGNATED CLEARING ENTITY RISK MANAGEMENT.

The Commodity Futures Trading Commission and the Commission shall coordinate with the Board of Governors to jointly develop risk management supervision programs for designated clearing entities. Not later than 1 year after the date of enactment of this Act, the Commodity Futures Trading Commission, the Commission, and the Board of Governors shall submit a joint report to the Committee on Banking, Housing, and Urban Affairs and the Committee on Agriculture, Nutrition, and Forestry of the Senate, and the Committee on Financial Services and the Committee on Agriculture of the House of Representatives recommendations for—

(1) improving consistency in the designated clearing entity oversight programs of the Commission and the Commodity Futures Trading Commission;

(2) promoting robust risk management by designated clearing entities;

(3) promoting robust risk management oversight by regulators of designated clearing entities; and

(4) improving regulators' ability to monitor the potential effects of designated clearing entity risk management on the stability of the financial system of the United States.

SEC. 814. EFFECTIVE DATE.

This title is effective as of the date of enactment of this Act.

TITLE IX—INVESTOR PROTECTIONS AND IMPROVEMENTS TO THE REGULATION OF SECURITIES

SEC. 901. SHORT TITLE.

This title may be cited as the "Investor Protection and Securities Reform Act of 2010".

Subtitle A—Increasing Investor Protection

SEC. 911. INVESTOR ADVISORY COMMITTEE ESTABLISHED.

Title I of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding at the end the following:

"SEC. 39. INVESTOR ADVISORY COMMITTEE.

"(a) ESTABLISHMENT AND PURPOSE.—

"(1) ESTABLISHMENT.—There is established within the Commission the Investor Advisory Committee (referred to in this section as the 'Committee').

"(2) PURPOSE.—The Committee shall—

"(A) advise and consult with the Commission on—

"(i) regulatory priorities of the Commission;

"(ii) issues relating to the regulation of securities products, trading strategies, and fee structures, and the effectiveness of disclosure;

"(iii) initiatives to protect investor interest; and

"(iv) initiatives to promote investor confidence and the integrity of the securities marketplace; and

"(B) submit to the Commission such findings and recommendations as the Committee determines are appropriate, including recommendations for proposed legislative changes.

"(b) MEMBERSHIP.—

"(1) IN GENERAL.—The members of the Committee shall be—

"(A) the Investor Advocate;

"(B) a representative of State securities commissions;

"(C) a representative of the interests of senior citizens; and

"(D) not fewer than 10, and not more than 20, members appointed by the Commission, from among individuals who—

"(i) represent the interests of individual equity and debt investors, including investors in mutual funds;

"(ii) represent the interests of institutional investors, including the interests of pension funds and registered investment companies;

"(iii) are knowledgeable about investment issues and decisions; and

"(iv) have reputations of integrity.

"(2) TERM.—Each member of the Committee appointed under paragraph (1)(B) shall serve for a term of 4 years.

"(3) MEMBERS NOT COMMISSION EMPLOYEES.—Members appointed under paragraph (1)(B) shall not be deemed to be employees or agents of the Commission solely because of membership on the Committee.

"(c) CHAIRMAN; VICE CHAIRMAN; SECRETARY; ASSISTANT SECRETARY.—

"(1) IN GENERAL.—The members of the Committee shall elect, from among the members of the Committee—

"(A) a chairman, who may not be employed by an issuer;

"(B) a vice chairman, who may not be employed by an issuer;

"(C) a secretary; and

"(D) an assistant secretary.

"(2) TERM.—Each member elected under paragraph (1) shall serve for a term of 3 years in the capacity for which the member was elected under paragraph (1).

"(d) MEETINGS.—

"(1) FREQUENCY OF MEETINGS.—The Committee shall meet—

"(A) not less frequently than twice annually, at the call of the chairman of the Committee; and

"(B) from time to time, at the call of the Commission.

"(2) NOTICE.—The chairman of the Committee shall give the members of the Committee written notice of each meeting, not later than 2 weeks before the date of the meeting.

"(e) COMPENSATION AND TRAVEL EXPENSES.—Each member of the Committee who is not a full-time employee of the United States shall—

"(1) be entitled to receive compensation at a rate not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level V of the Executive Schedule under section 5316 of title 5, United States Code, for each day during which the member is engaged in the actual performance of the duties of the Committee; and

"(2) while away from the home or regular place of business of the member in the performance of services for the Committee, be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5, United States Code.

"(f) STAFF.—The Commission shall make available to the Committee such staff as the chairman of the Committee determines are necessary to carry out this section.

"(g) REVIEW BY COMMISSION.—The Commission shall—

"(1) review the findings and recommendations of the Committee; and

"(2) each time the Committee submits a finding or recommendation to the Commission, promptly issue a public statement—

"(A) assessing the finding or recommendation of the Committee; and

"(B) disclosing the action, if any, the Commission intends to take with respect to the finding or recommendation.

"(h) COMMITTEE FINDINGS.—Nothing in this section shall require the Commission to agree to or act upon any finding or recommendation of the Committee.

"(i) FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply with respect to the Committee and its activities.

"(j) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Commission such sums as are necessary to carry out this section.".

SEC. 912. CLARIFICATION OF AUTHORITY OF THE COMMISSION TO ENGAGE IN INVESTOR TESTING.

Section 19 of the Securities Act of 1933 (15 U.S.C. 77s) is amended by adding at the end the following:

"(e) EVALUATION OF RULES OR PROGRAMS.—For the purpose of evaluating any rule or program of the Commission issued or carried out under any provision of the securities laws, as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c), and the purposes of considering, proposing, adopting, or engaging in any such rule or program or developing new rules or programs, the Commission may—

"(1) gather information from and communicate with investors or other members of the public;

"(2) engage in such temporary investor testing programs as the Commission determines are in the public interest or would protect investors; and

"(3) consult with academics and consultants, as necessary to carry out this subsection.

"(f) RULE OF CONSTRUCTION.—For purposes of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), any action taken under subsection (e) shall not be construed to be a collection of information.".

SEC. 913. STUDY AND RULEMAKING REGARDING OBLIGATIONS OF BROKERS, DEALERS, AND INVESTMENT ADVISERS.

(a) DEFINITION.—For purposes of this section, the term "retail customer" means a natural person, or the legal representative of such natural person, who—

(1) receives personalized investment advice about securities from a broker or dealer or investment adviser; and

(2) uses such advice primarily for personal, family, or household purposes.

(b) STUDY.—The Commission shall conduct a study to evaluate—

(1) the effectiveness of existing legal or regulatory standards of care for brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers for providing personalized investment advice and recommendations about securities to retail customers imposed by the Commission and a national securities association, and other Federal and State legal or regulatory standards; and

(2) whether there are legal or regulatory gaps, shortcomings, or overlaps in legal or regulatory standards in the protection of retail customers relating to the standards of care

for brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers for providing personalized investment advice about securities to retail customers that should be addressed by rule or statute.

(c) CONSIDERATIONS.—In conducting the study required under subsection (b), the Commission shall consider—

(1) the effectiveness of existing legal or regulatory standards of care for brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers for providing personalized investment advice and recommendations about securities to retail customers imposed by the Commission and a national securities association, and other Federal and State legal or regulatory standards;

(2) whether there are legal or regulatory gaps, shortcomings, or overlaps in legal or regulatory standards in the protection of retail customers relating to the standards of care for brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers for providing personalized investment advice about securities to retail customers that should be addressed by rule or statute;

(3) whether retail customers understand that there are different standards of care applicable to brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers in the provision of personalized investment advice about securities to retail customers;

(4) whether the existence of different standards of care applicable to brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers is a source of confusion for retail customers regarding the quality of personalized investment advice that retail customers receive;

(5) the regulatory, examination, and enforcement resources devoted to, and activities of, the Commission, the States, and a national securities association to enforce the standards of care for brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers when providing personalized investment advice and recommendations about securities to retail customers, including—

(A) the effectiveness of the examinations of brokers, dealers, and investment advisers in determining compliance with regulations;

(B) the frequency of the examinations; and

(C) the length of time of the examinations;

(6) the substantive differences in the regulation of brokers, dealers, and investment advisers, when providing personalized investment advice and recommendations about securities to retail customers;

(7) the specific instances related to the provision of personalized investment advice about securities in which—

(A) the regulation and oversight of investment advisers provide greater protection to retail customers than the regulation and oversight of brokers and dealers; and

(B) the regulation and oversight of brokers and dealers provide greater protection to retail customers than the regulation and oversight of investment advisers;

(8) the existing legal or regulatory standards of State securities regulators and other regulators intended to protect retail customers;

(9) the potential impact on retail customers, including the potential impact on access of retail customers to the range of products and services offered by brokers and dealers, of imposing upon brokers, dealers, and persons associated with brokers or dealers—

(A) the standard of care applied under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) for providing personalized investment advice about securities to retail customers of investment advisers, as interpreted by the Commission and the courts; and

(B) other requirements of the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.);

(10) the potential impact of eliminating the broker and dealer exclusion from the definition of "investment adviser" under section 202(a)(11)(C) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11)(C)), in terms of—

(A) the impact and potential benefits and harm to retail customers that could result from such a change, including any potential impact on access to personalized investment advice and recommendations about securities to retail customers or the availability of such advice and recommendations;

(B) the number of additional entities and individuals that would be required to register under, or become subject to, the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.), and the additional requirements to which brokers, dealers, and persons associated with brokers and dealers would become subject, including—

(i) any potential additional associated person licensing, registration, and examination requirements; and

(ii) the additional costs, if any, to the additional entities and individuals; and

(C) the impact on Commission and State resources to—

(i) conduct examinations of registered investment advisers and the representatives of registered investment advisers, including the impact on the examination cycle; and

(ii) enforce the standard of care and other applicable requirements imposed under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.);

(11) the varying level of services provided by brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers to retail customers and the varying scope and terms of retail customer relationships of brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers with such retail customers;

(12) the potential impact upon retail customers that could result from potential changes in the regulatory requirements

or legal standards of care affecting brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers relating to their obligations to retail customers regarding the provision of investment advice, including any potential impact on—

(A) protection from fraud;

(B) access to personalized investment advice, and recommendations about securities to retail customers; or

(C) the availability of such advice and recommendations;

(13) the potential additional costs and expenses to—

(A) retail customers regarding and the potential impact on the profitability of their investment decisions; and

(B) brokers, dealers, and investment advisers resulting from potential changes in the regulatory requirements or legal standards affecting brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers relating to their obligations, including duty of care, to retail customers; and

(14) any other consideration that the Commission considers necessary and appropriate in determining whether to conduct a rulemaking under subsection (f).

(d) REPORT.—

(1) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Commission shall submit a report on the study required under subsection (b) to—

(A) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

(B) the Committee on Financial Services of the House of Representatives.

(2) CONTENT REQUIREMENTS.—The report required under paragraph (1) shall describe the findings, conclusions, and recommendations of the Commission from the study required under subsection (b), including—

(A) a description of the considerations, analysis, and public and industry input that the Commission considered, as required under subsection (b), to make such findings, conclusions, and policy recommendations; and

(B) an analysis of whether any identified legal or regulatory gaps, shortcomings, or overlap in legal or regulatory standards in the protection of retail customers relating to the standards of care for brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers for providing personalized investment advice about securities to retail customers.

(e) PUBLIC COMMENT.—The Commission shall seek and consider public input, comments, and data in order to prepare the report required under subsection (d).

(f) RULEMAKING.—The Commission may commence a rulemaking, as necessary or appropriate in the public interest and for the protection of retail customers (and such other customers as the Commission may by rule provide), to address the legal or regulatory standards of care for brokers, dealers, investment advisers, persons associated with brokers or dealers, and persons associated with investment advisers for providing personalized

investment advice about securities to such retail customers. The Commission shall consider the findings conclusions, and recommendations of the study required under subsection (b).

(g) AUTHORITY TO ESTABLISH A FIDUCIARY DUTY FOR BROKERS AND DEALERS.—

(1) SECURITIES EXCHANGE ACT OF 1934.—Section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o) is amended by adding at the end the following:

"(k) STANDARD OF CONDUCT.—

"(1) IN GENERAL.—Notwithstanding any other provision of this Act or the Investment Advisers Act of 1940, the Commission may promulgate rules to provide that, with respect to a broker or dealer, when providing personalized investment advice about securities to a retail customer (and such other customers as the Commission may by rule provide), the standard of conduct for such broker or dealer with respect to such customer shall be the same as the standard of conduct applicable to an investment adviser under section 211 of the Investment Advisers Act of 1940. The receipt of compensation based on commission or other standard compensation for the sale of securities shall not, in and of itself, be considered a violation of such standard applied to a broker or dealer. Nothing in this section shall require a broker or dealer or registered representative to have a continuing duty of care or loyalty to the customer after providing personalized investment advice about securities.

"(2) DISCLOSURE OF RANGE OF PRODUCTS OFFERED.—Where a broker or dealer sells only proprietary or other limited range of products, as determined by the Commission, the Commission may by rule require that such broker or dealer provide notice to each retail customer and obtain the consent or acknowledgment of the customer. The sale of only proprietary or other limited range of products by a broker or dealer shall not, in and of itself, be considered a violation of the standard set forth in paragraph (1).

"(l) OTHER MATTERS.—The Commission shall—

"(1) facilitate the provision of simple and clear disclosures to investors regarding the terms of their relationships with brokers, dealers, and investment advisers, including any material conflicts of interest; and

"(2) examine and, where appropriate, promulgate rules prohibiting or restricting certain sales practices, conflicts of interest, and compensation schemes for brokers, dealers, and investment advisers that the Commission deems contrary to the public interest and the protection of investors.".

(2) INVESTMENT ADVISERS ACT OF 1940.—Section 211 of the Investment Advisers Act of 1940, is further amended by adding at the end the following new subsections:

"(g) STANDARD OF CONDUCT.—

"(1) IN GENERAL.—The Commission may promulgate rules to provide that the standard of conduct for all brokers, dealers, and investment advisers, when providing personalized investment advice about securities to retail customers (and such other customers as the Commission may by rule provide), shall be to act in the best interest of the customer without regard to the financial or other interest of the broker, dealer, or investment adviser providing the advice. In accordance with such

rules, any material conflicts of interest shall be disclosed and may be consented to by the customer. Such rules shall provide that such standard of conduct shall be no less stringent than the standard applicable to investment advisers under section 206(1) and (2) of this Act when providing personalized investment advice about securities, except the Commission shall not ascribe a meaning to the term 'customer' that would include an investor in a private fund managed by an investment adviser, where such private fund has entered into an advisory contract with such adviser. The receipt of compensation based on commission or fees shall not, in and of itself, be considered a violation of such standard applied to a broker, dealer, or investment adviser.

"(2) RETAIL CUSTOMER DEFINED.—For purposes of this subsection, the term 'retail customer' means a natural person, or the legal representative of such natural person, who—

"(A) receives personalized investment advice about securities from a broker, dealer, or investment adviser; and

"(B) uses such advice primarily for personal, family, or household purposes.

"(h) OTHER MATTERS.—The Commission shall—

"(1) facilitate the provision of simple and clear disclosures to investors regarding the terms of their relationships with brokers, dealers, and investment advisers, including any material conflicts of interest; and

"(2) examine and, where appropriate, promulgate rules prohibiting or restricting certain sales practices, conflicts of interest, and compensation schemes for brokers, dealers, and investment advisers that the Commission deems contrary to the public interest and the protection of investors.".

(h) HARMONIZATION OF ENFORCEMENT.—

(1) SECURITIES EXCHANGE ACT OF 1934.—Section 15 of the Securities Exchange Act of 1934, as amended by subsection (g)(1), is further amended by adding at the end the following new subsection:

"(m) HARMONIZATION OF ENFORCEMENT.—The enforcement authority of the Commission with respect to violations of the standard of conduct applicable to a broker or dealer providing personalized investment advice about securities to a retail customer shall include—

"(1) the enforcement authority of the Commission with respect to such violations provided under this Act; and

"(2) the enforcement authority of the Commission with respect to violations of the standard of conduct applicable to an investment adviser under the Investment Advisers Act of 1940, including the authority to impose sanctions for such violations, and

the Commission shall seek to prosecute and sanction violators of the standard of conduct applicable to a broker or dealer providing personalized investment advice about securities to a retail customer under this Act to same extent as the Commission prosecutes and sanctions violators of the standard of conduct applicable to an investment advisor under the Investment Advisers Act of 1940.".

(2) INVESTMENT ADVISERS ACT OF 1940.—Section 211 of the Investment Advisers Act of 1940, as amended by subsection

(g)(2), is further amended by adding at the end the following new subsection:

"(i) HARMONIZATION OF ENFORCEMENT.—The enforcement authority of the Commission with respect to violations of the standard of conduct applicable to an investment adviser shall include—

"(1) the enforcement authority of the Commission with respect to such violations provided under this Act; and

"(2) the enforcement authority of the Commission with respect to violations of the standard of conduct applicable to a broker or dealer providing personalized investment advice about securities to a retail customer under the Securities Exchange Act of 1934, including the authority to impose sanctions for such violations, and

the Commission shall seek to prosecute and sanction violators of the standard of conduct applicable to an investment adviser under this Act to same extent as the Commission prosecutes and sanctions violators of the standard of conduct applicable to a broker or dealer providing personalized investment advice about securities to a retail customer under the Securities Exchange Act of 1934.".

SEC. 914. STUDY ON ENHANCING INVESTMENT ADVISER EXAMINATIONS.

(a) STUDY REQUIRED.—

(1) IN GENERAL.—The Commission shall review and analyze the need for enhanced examination and enforcement resources for investment advisers.

(2) AREAS OF CONSIDERATION.—The study required by this subsection shall examine—

(A) the number and frequency of examinations of investment advisers by the Commission over the 5 years preceding the date of the enactment of this subtitle;

(B) the extent to which having Congress authorize the Commission to designate one or more self-regulatory organizations to augment the Commission's efforts in overseeing investment advisers would improve the frequency of examinations of investment advisers; and

(C) current and potential approaches to examining the investment advisory activities of dually registered broker-dealers and investment advisers or affiliated broker-dealers and investment advisers.

(b) REPORT REQUIRED.—The Commission shall report its findings to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, not later than 180 days after the date of enactment of this subtitle, and shall use such findings to revise its rules and regulations, as necessary. The report shall include a discussion of regulatory or legislative steps that are recommended or that may be necessary to address concerns identified in the study.

SEC. 915. OFFICE OF THE INVESTOR ADVOCATE.

Section 4 of the Securities Exchange Act of 1934 (15 U.S.C. 78d) is amended by adding at the end the following:

"(g) OFFICE OF THE INVESTOR ADVOCATE.—

"(1) OFFICE ESTABLISHED.—There is established within the Commission the Office of the Investor Advocate (in this subsection referred to as the 'Office').

"(2) INVESTOR ADVOCATE.—

"(A) IN GENERAL.—The head of the Office shall be the Investor Advocate, who shall—

"(i) report directly to the Chairman; and

"(ii) be appointed by the Chairman, in consultation with the Commission, from among individuals having experience in advocating for the interests of investors in securities and investor protection issues, from the perspective of investors.

"(B) COMPENSATION.—The annual rate of pay for the Investor Advocate shall be equal to the highest rate of annual pay for other senior executives who report to the Chairman of the Commission.

"(C) LIMITATION ON SERVICE.—An individual who serves as the Investor Advocate may not be employed by the Commission—

"(i) during the 2-year period ending on the date of appointment as Investor Advocate; or

"(ii) during the 5-year period beginning on the date on which the person ceases to serve as the Investor Advocate.

"(3) STAFF OF OFFICE.—The Investor Advocate, after consultation with the Chairman of the Commission, may retain or employ independent counsel, research staff, and service staff, as the Investor Advocate deems necessary to carry out the functions, powers, and duties of the Office.

"(4) FUNCTIONS OF THE INVESTOR ADVOCATE.—The Investor Advocate shall—

"(A) assist retail investors in resolving significant problems such investors may have with the Commission or with self-regulatory organizations;

"(B) identify areas in which investors would benefit from changes in the regulations of the Commission or the rules of self-regulatory organizations;

"(C) identify problems that investors have with financial service providers and investment products;

"(D) analyze the potential impact on investors of—

"(i) proposed regulations of the Commission; and

"(ii) proposed rules of self-regulatory organizations registered under this title; and

"(E) to the extent practicable, propose to the Commission changes in the regulations or orders of the Commission and to Congress any legislative, administrative, or personnel changes that may be appropriate to mitigate problems identified under this paragraph and to promote the interests of investors.

"(5) ACCESS TO DOCUMENTS.—The Commission shall ensure that the Investor Advocate has full access to the documents of the Commission and any self-regulatory organization, as necessary to carry out the functions of the Office.

"(6) ANNUAL REPORTS.—

"(A) REPORT ON OBJECTIVES.—

"(i) IN GENERAL.—Not later than June 30 of each year after 2010, the Investor Advocate shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on

the objectives of the Investor Advocate for the following fiscal year.

"(ii) CONTENTS.—Each report required under clause (i) shall contain full and substantive analysis and explanation.

"(B) REPORT ON ACTIVITIES.—

"(i) IN GENERAL.—Not later than December 31 of each year after 2010, the Investor Advocate shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the activities of the Investor Advocate during the immediately preceding fiscal year.

"(ii) CONTENTS.—Each report required under clause (i) shall include—

"(I) appropriate statistical information and full and substantive analysis;

"(II) information on steps that the Investor Advocate has taken during the reporting period to improve investor services and the responsiveness of the Commission and self-regulatory organizations to investor concerns;

"(III) a summary of the most serious problems encountered by investors during the reporting period;

"(IV) an inventory of the items described in subclause (III) that includes—

"(aa) identification of any action taken by the Commission or the self-regulatory organization and the result of such action;

"(bb) the length of time that each item has remained on such inventory; and

"(cc) for items on which no action has been taken, the reasons for inaction, and an identification of any official who is responsible for such action;

"(V) recommendations for such administrative and legislative actions as may be appropriate to resolve problems encountered by investors; and

"(VI) any other information, as determined appropriate by the Investor Advocate.

"(iii) INDEPENDENCE.—Each report required under this paragraph shall be provided directly to the Committees listed in clause (i) without any prior review or comment from the Commission, any commissioner, any other officer or employee of the Commission, or the Office of Management and Budget.

"(iv) CONFIDENTIALITY.—No report required under clause (i) may contain confidential information.

"(7) REGULATIONS.—The Commission shall, by regulation, establish procedures requiring a formal response to all recommendations submitted to the Commission by the Investor Advocate, not later than 3 months after the date of such submission.".

SEC. 916. STREAMLINING OF FILING PROCEDURES FOR SELF-REGULATORY ORGANIZATIONS.

(a) FILING PROCEDURES.—Section 19(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(b)) is amended by striking paragraph (2) (including the undesignated matter immediately following subparagraph (B)) and inserting the following:

"(2) APPROVAL PROCESS.—

"(A) APPROVAL PROCESS ESTABLISHED.—

"(i) IN GENERAL.—Except as provided in clause (ii), not later than 45 days after the date of publication of a proposed rule change under paragraph (1), the Commission shall—

"(I) by order, approve or disapprove the proposed rule change; or

"(II) institute proceedings under subparagraph (B) to determine whether the proposed rule change should be disapproved.

"(ii) EXTENSION OF TIME PERIOD.—The Commission may extend the period established under clause (i) by not more than an additional 45 days, if—

"(I) the Commission determines that a longer period is appropriate and publishes the reasons for such determination; or

"(II) the self-regulatory organization that filed the proposed rule change consents to the longer period.

"(B) PROCEEDINGS.—

"(i) NOTICE AND HEARING.—If the Commission does not approve or disapprove a proposed rule change under subparagraph (A), the Commission shall provide to the self-regulatory organization that filed the proposed rule change—

"(I) notice of the grounds for disapproval under consideration; and

"(II) opportunity for hearing, to be concluded not later than 180 days after the date of publication of notice of the filing of the proposed rule change.

"(ii) ORDER OF APPROVAL OR DISAPPROVAL.—

"(I) IN GENERAL.—Except as provided in subclause (II), not later than 180 days after the date of publication under paragraph (1), the Commission shall issue an order approving or disapproving the proposed rule change.

"(II) EXTENSION OF TIME PERIOD.—The Commission may extend the period for issuance under clause (I) by not more than 60 days, if—

"(aa) the Commission determines that a longer period is appropriate and publishes the reasons for such determination; or

"(bb) the self-regulatory organization that filed the proposed rule change consents to the longer period.

"(C) STANDARDS FOR APPROVAL AND DISAPPROVAL.—

"(i) APPROVAL.—The Commission shall approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent

with the requirements of this title and the rules and regulations issued under this title that are applicable to such organization.

"(ii) DISAPPROVAL.—The Commission shall disapprove a proposed rule change of a self-regulatory organization if it does not make a finding described in clause (i).

"(iii) TIME FOR APPROVAL.—The Commission may not approve a proposed rule change earlier than 30 days after the date of publication under paragraph (1), unless the Commission finds good cause for so doing and publishes the reason for the finding.

"(D) RESULT OF FAILURE TO INSTITUTE OR CONCLUDE PROCEEDINGS.—A proposed rule change shall be deemed to have been approved by the Commission, if—

"(i) the Commission does not approve or disapprove the proposed rule change or begin proceedings under subparagraph (B) within the period described in subparagraph (A); or

"(ii) the Commission does not issue an order approving or disapproving the proposed rule change under subparagraph (B) within the period described in subparagraph (B)(ii).

"(E) PUBLICATION DATE BASED ON FEDERAL REGISTER PUBLISHING.—For purposes of this paragraph, if, after filing a proposed rule change with the Commission pursuant to paragraph (1), a self-regulatory organization publishes a notice of the filing of such proposed rule change, together with the substantive terms of such proposed rule change, on a publicly accessible website, the Commission shall thereafter send the notice to the Federal Register for publication thereof under paragraph (1) within 15 days of the date on which such website publication is made. If the Commission fails to send the notice for publication thereof within such 15 day period, then the date of publication shall be deemed to be the date on which such website publication was made.

"(F) RULEMAKING.—

"(i) IN GENERAL.—Not later than 180 days after the date of enactment of the Investor Protection and Securities Reform Act of 2010, after consultation with other regulatory agencies, the Commission shall promulgate rules setting forth the procedural requirements of the proceedings required under this paragraph.

"(ii) NOTICE AND COMMENT NOT REQUIRED.—The rules promulgated by the Commission under clause (i) are not required to include republication of proposed rule changes or solicitation of public comment.".

(b) CLARIFICATION OF FILING DATE.—

(1) RULE OF CONSTRUCTION.—Section 19(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(b)) is amended by adding at the end the following:

"(10) RULE OF CONSTRUCTION RELATING TO FILING DATE OF PROPOSED RULE CHANGES.—

"(A) IN GENERAL.—For purposes of this subsection, the date of filing of a proposed rule change shall be deemed

to be the date on which the Commission receives the proposed rule change.

"(B) EXCEPTION.—A proposed rule change has not been received by the Commission for purposes of subparagraph (A) if, not later than 7 business days after the date of receipt by the Commission, the Commission notifies the self-regulatory organization that such proposed rule change does not comply with the rules of the Commission relating to the required form of a proposed rule change, except that if the Commission determines that the proposed rule change is unusually lengthy and is complex or raises novel regulatory issues, the Commission shall inform the self-regulatory organization of such determination not later than 7 business days after the date of receipt by the Commission and, for the purposes of subparagraph (A), a proposed rule change has not been received by the Commission, if, not later than 21 days after the date of receipt by the Commission, the Commission notifies the self-regulatory organization that such proposed rule change does not comply with the rules of the Commission relating to the required form of a proposed rule change.".

(2) PUBLICATION.—Section 19(b)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(b)(1)) is amended by striking "upon" and inserting "as soon as practicable after the date of".

(c) EFFECTIVE DATE OF PROPOSED RULES.—Section 19(b)(3) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(b)(3)) is amended—

(1) in subparagraph (A)—

(A) by striking "may take effect" and inserting "shall take effect"; and

(B) by inserting "on any person, whether or not the person is a member of the self-regulatory organization" after "charge imposed by the self-regulatory organization"; and

(2) in subparagraph (C)—

(A) by amending the second sentence to read as follows: "At any time within the 60-day period beginning on the date of filing of such a proposed rule change in accordance with the provisions of paragraph (1), the Commission summarily may temporarily suspend the change in the rules of the self-regulatory organization made thereby, if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title.";

(B) by inserting after the second sentence the following: "If the Commission takes such action, the Commission shall institute proceedings under paragraph (2)(B) to determine whether the proposed rule should be approved or disapproved."; and

(C) in the third sentence, by striking "the preceding sentence" and inserting "this subparagraph".

(d) CONFORMING CHANGE.—Section 19(b)(4)(D) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(b)(4)(D)) is amended to read as follows:

"(D)(i) The Commission shall order the temporary suspension of any change in the rules of a clearing agency made by a proposed rule change that has taken effect under paragraph (3), if the appropriate regulatory agency for the clearing agency notifies the Commission not later than 30 days after the date on which the proposed rule change was filed of—

"(I) the determination by the appropriate regulatory agency that the rules of such clearing agency, as so changed, may be inconsistent with the safeguarding of securities or funds in the custody or control of such clearing agency or for which it is responsible; and

"(II) the reasons for the determination described in subclause (I).

"(ii) If the Commission takes action under clause (i), the Commission shall institute proceedings under paragraph (2)(B) to determine if the proposed rule change should be approved or disapproved.".

SEC. 917. STUDY REGARDING FINANCIAL LITERACY AMONG INVESTORS.

(a) IN GENERAL.—The Commission shall conduct a study to identify—

(1) the existing level of financial literacy among retail investors, including subgroups of investors identified by the Commission;

(2) methods to improve the timing, content, and format of disclosures to investors with respect to financial intermediaries, investment products, and investment services;

(3) the most useful and understandable relevant information that retail investors need to make informed financial decisions before engaging a financial intermediary or purchasing an investment product or service that is typically sold to retail investors, including shares of open-end companies, as that term is defined in section 5 of the Investment Company Act of 1940 (15 U.S.C. 80a–5) that are registered under section 8 of that Act;

(4) methods to increase the transparency of expenses and conflicts of interests in transactions involving investment services and products, including shares of open-end companies described in paragraph (3);

(5) the most effective existing private and public efforts to educate investors; and

(6) in consultation with the Financial Literacy and Education Commission, a strategy (including, to the extent practicable, measurable goals and objectives) to increase the financial literacy of investors in order to bring about a positive change in investor behavior.

(b) REPORT.—Not later than 2 years after the date of enactment of this Act, the Commission shall submit a report on the study required under subsection (a) to—

(1) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

(2) the Committee on Financial Services of the House of Representatives.

SEC. 918. STUDY REGARDING MUTUAL FUND ADVERTISING.

(a) IN GENERAL.—The Comptroller General of the United States shall conduct a study on mutual fund advertising to identify—

(1) existing and proposed regulatory requirements for open-end investment company advertisements;

(2) current marketing practices for the sale of open-end investment company shares, including the use of past performance data, funds that have merged, and incubator funds;

(3) the impact of such advertising on consumers; and

(4) recommendations to improve investor protections in mutual fund advertising and additional information necessary to ensure that investors can make informed financial decisions when purchasing shares.

(b) REPORT.—Not later than 18 months after the date of enactment of this Act, the Comptroller General of the United States shall submit a report on the results of the study conducted under subsection (a) to—

(1) the Committee on Banking, Housing, and Urban Affairs of the United States Senate; and

(2) the Committee on Financial Services of the House of Representatives.

SEC. 919. CLARIFICATION OF COMMISSION AUTHORITY TO REQUIRE INVESTOR DISCLOSURES BEFORE PURCHASE OF INVESTMENT PRODUCTS AND SERVICES.

Section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o) is amended by adding at the end the following:

"(n) DISCLOSURES TO RETAIL INVESTORS.—

"(1) IN GENERAL.—Notwithstanding any other provision of the securities laws, the Commission may issue rules designating documents or information that shall be provided by a broker or dealer to a retail investor before the purchase of an investment product or service by the retail investor.

"(2) CONSIDERATIONS.—In developing any rules under paragraph (1), the Commission shall consider whether the rules will promote investor protection, efficiency, competition, and capital formation.

"(3) FORM AND CONTENTS OF DOCUMENTS AND INFORMATION.—Any documents or information designated under a rule promulgated under paragraph (1) shall—

"(A) be in a summary format; and

"(B) contain clear and concise information about—

"(i) investment objectives, strategies, costs, and risks; and

"(ii) any compensation or other financial incentive received by a broker, dealer, or other intermediary in connection with the purchase of retail investment products.".

SEC. 919A. STUDY ON CONFLICTS OF INTEREST.

(a) IN GENERAL.—The Comptroller General of the United States shall conduct a study—

(1) to identify and examine potential conflicts of interest that exist between the staffs of the investment banking and equity and fixed income securities analyst functions within the same firm; and

(2) to make recommendations to Congress designed to protect investors in light of such conflicts.

(b) CONSIDERATIONS.—In conducting the study under subsection (a), the Comptroller General shall—

(1) consider—

(A) the potential for investor harm resulting from conflicts, including consideration of the forms of misconduct engaged in by the several securities firms and individuals that entered into the Global Analyst Research Settlements in 2003 (also known as the "Global Settlement");

(B) the nature and benefits of the undertakings to which those firms agreed in enforcement proceedings, including firewalls between research and investment banking, separate reporting lines, dedicated legal and compliance staffs, allocation of budget, physical separation, compensation, employee performance evaluations, coverage decisions, limitations on soliciting investment banking business, disclosures, transparency, and other measures;

(C) whether any such undertakings should be codified and applied permanently to securities firms, or whether the Commission should adopt rules applying any such undertakings to securities firms; and

(D) whether to recommend regulatory or legislative measures designed to mitigate possible adverse consequences to investors arising from the conflicts of interest or to enhance investor protection or confidence in the integrity of the securities markets; and

(2) consult with State attorneys general, State securities officials, the Commission, the Financial Industry Regulatory Authority ("FINRA"), NYSE Regulation, investor advocates, brokers, dealers, retail investors, institutional investors, and academics.

(c) REPORT.—The Comptroller General shall submit a report on the results of the study required by this section to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, not later than 18 months after the date of enactment of this Act.

SEC. 919B. STUDY ON IMPROVED INVESTOR ACCESS TO INFORMATION ON INVESTMENT ADVISERS AND BROKER-DEALERS.

(a) STUDY.—

(1) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Commission shall complete a study, including recommendations, of ways to improve the access of investors to registration information (including disciplinary actions, regulatory, judicial, and arbitration proceedings, and other information) about registered and previously registered investment advisers, associated persons of investment advisers, brokers and dealers and their associated persons on the existing Central Registration Depository and Investment Adviser Registration Depository systems, as well as identify additional information that should be made publicly available.

(2) CONTENTS.—The study required by subsection (a) shall include an analysis of the advantages and disadvantages of further centralizing access to the information contained in the 2 systems, including—

(A) identification of those data pertinent to investors; and

(B) the identification of the method and format for displaying and publishing such data to enhance accessibility by and utility to investors.

(b) IMPLEMENTATION.—Not later than 18 months after the date of completion of the study required by subsection (a), the Commission shall implement any recommendations of the study.

SEC. 919C. STUDY ON FINANCIAL PLANNERS AND THE USE OF FINANCIAL DESIGNATIONS.

(a) IN GENERAL.—The Comptroller General of the United States shall conduct a study to evaluate—

(1) the effectiveness of State and Federal regulations to protect investors and other consumers from individuals who hold themselves out as financial planners through the use of misleading titles, designations, or marketing materials;

(2) current State and Federal oversight structure and regulations for financial planners; and

(3) legal or regulatory gaps in the regulation of financial planners and other individuals who provide or offer to provide financial planning services to consumers.

(b) CONSIDERATIONS.—In conducting the study required under subsection (a), the Comptroller General shall consider—

(1) the role of financial planners in providing advice regarding the management of financial resources, including investment planning, income tax planning, education planning, retirement planning, estate planning, and risk management;

(2) whether current regulations at the State and Federal level provide adequate ethical and professional standards for financial planners;

(3) the possible risk posed to investors and other consumers by individuals who hold themselves out as financial planners or as otherwise providing financial planning services in connection with the sale of financial products, including insurance and securities;

(4) the possible risk posed to investors and other consumers by individuals who otherwise use titles, designations, or marketing materials in a misleading way in connection with the delivery of financial advice;

(6) the ability of investors and other consumers to understand licensing requirements and standards of care that apply to individuals who hold themselves out as financial planners or as otherwise providing financial planning services;

(7) the possible benefits to investors and other consumers of regulation and professional oversight of financial planners; and

(8) any other consideration that the Comptroller General deems necessary or appropriate to effectively execute the study required under subsection (a).

(c) RECOMMENDATIONS.—In providing recommendations for the appropriate regulation of financial planners and other individuals who provide or offer to provide financial planning services, in order to protect investors and other consumers of financial planning services, the Comptroller General shall consider—

(1) the appropriate structure for regulation of financial planners and individuals providing financial planning services; and

(2) the appropriate scope of the regulations needed to protect investors and other consumers, including but not limited to the need to establish competency standards, practice standards, ethical guidelines, disciplinary authority, and transparency to investors and other consumers.

(d) REPORT.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Comptroller General shall submit a report on the study required under subsection (a) to—

(A) the Committee on Banking, Housing, and Urban Affairs of the Senate;

(B) the Special Committee on Aging of the Senate; and

(C) the Committee on Financial Services of the House of Representatives.

(2) CONTENT REQUIREMENTS.—The report required under paragraph (1) shall describe the findings and determinations made by the Comptroller General in carrying out the study required under subsection (a), including a description of the considerations, analysis, and government, public, industry, nonprofit and consumer input that the Comptroller General considered to make such findings, conclusions, and legislative, regulatory, or other recommendations.

SEC. 919D. OMBUDSMAN.

Section 4(g) of the Securities Exchange Act of 1934, as added by section 914, is amended by adding at the end the following:

"(8) OMBUDSMAN.—

"(A) APPOINTMENT.—Not later than 180 days after the date on which the first Investor Advocate is appointed under paragraph (2)(A)(i), the Investor Advocate shall appoint an Ombudsman, who shall report directly to the Investor Advocate.

"(B) DUTIES.—The Ombudsman appointed under subparagraph (A) shall—

"(i) act as a liaison between the Commission and any retail investor in resolving problems that retail investors may have with the Commission or with self-regulatory organizations;

"(ii) review and make recommendations regarding policies and procedures to encourage persons to present questions to the Investor Advocate regarding compliance with the securities laws; and

"(iii) establish safeguards to maintain the confidentiality of communications between the persons described in clause (ii) and the Ombudsman.

"(C) LIMITATION.—In carrying out the duties of the Ombudsman under subparagraph (B), the Ombudsman shall utilize personnel of the Commission to the extent practicable. Nothing in this paragraph shall be construed as replacing, altering, or diminishing the activities of any ombudsman or similar office of any other agency.

"(D) REPORT.—The Ombudsman shall submit a semi-annual report to the Investor Advocate that describes the

activities and evaluates the effectiveness of the Ombudsman during the preceding year. The Investor Advocate shall include the reports required under this section in the reports required to be submitted by the Inspector Advocate under paragraph (6).".

Subtitle B—Increasing Regulatory Enforcement and Remedies

SEC. 921. AUTHORITY TO RESTRICT MANDATORY PRE-DISPUTE ARBITRATION.

(a) AMENDMENT TO SECURITIES EXCHANGE ACT OF 1934.—Section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o), as amended by this title, is further amended by adding at the end the following new subsection:

"(o) AUTHORITY TO RESTRICT MANDATORY PRE-DISPUTE ARBITRATION.—The Commission, by rule, may prohibit, or impose conditions or limitations on the use of, agreements that require customers or clients of any broker, dealer, or municipal securities dealer to arbitrate any future dispute between them arising under the Federal securities laws, the rules and regulations thereunder, or the rules of a self-regulatory organization if it finds that such prohibition, imposition of conditions, or limitations are in the public interest and for the protection of investors.".

(b) AMENDMENT TO INVESTMENT ADVISERS ACT OF 1940.—Section 205 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–5) is amended by adding at the end the following new subsection:

"(f) AUTHORITY TO RESTRICT MANDATORY PRE-DISPUTE ARBITRATION.—The Commission, by rule, may prohibit, or impose conditions or limitations on the use of, agreements that require customers or clients of any investment adviser to arbitrate any future dispute between them arising under the Federal securities laws, the rules and regulations thereunder, or the rules of a self-regulatory organization if it finds that such prohibition, imposition of conditions, or limitations are in the public interest and for the protection of investors.".

SEC. 922. WHISTLEBLOWER PROTECTION.

(a) IN GENERAL.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 21E the following:

"SEC. 21F. SECURITIES WHISTLEBLOWER INCENTIVES AND PROTECTION.

"(a) DEFINITIONS.—In this section the following definitions shall apply:

"(1) COVERED JUDICIAL OR ADMINISTRATIVE ACTION.—The term 'covered judicial or administrative action' means any judicial or administrative action brought by the Commission under the securities laws that results in monetary sanctions exceeding $1,000,000.

"(2) FUND.—The term 'Fund' means the Securities and Exchange Commission Investor Protection Fund.

"(3) ORIGINAL INFORMATION.—The term 'original information' means information that—

"(A) is derived from the independent knowledge or analysis of a whistleblower;

"(B) is not known to the Commission from any other source, unless the whistleblower is the original source of the information; and

"(C) is not exclusively derived from an allegation made in a judicial or administrative hearing, in a governmental report, hearing, audit, or investigation, or from the news media, unless the whistleblower is a source of the information.

"(4) MONETARY SANCTIONS.—The term 'monetary sanctions', when used with respect to any judicial or administrative action, means—

"(A) any monies, including penalties, disgorgement, and interest, ordered to be paid; and

"(B) any monies deposited into a disgorgement fund or other fund pursuant to section 308(b) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246(b)), as a result of such action or any settlement of such action.

"(5) RELATED ACTION.—The term 'related action', when used with respect to any judicial or administrative action brought by the Commission under the securities laws, means any judicial or administrative action brought by an entity described in subclauses (I) through (IV) of subsection (h)(2)(D)(i) that is based upon the original information provided by a whistleblower pursuant to subsection (a) that led to the successful enforcement of the Commission action.

"(6) WHISTLEBLOWER.—The term 'whistleblower' means any individual who provides, or 2 or more individuals acting jointly who provide, information relating to a violation of the securities laws to the Commission, in a manner established, by rule or regulation, by the Commission.

"(b) AWARDS.—

"(1) IN GENERAL.—In any covered judicial or administrative action, or related action, the Commission, under regulations prescribed by the Commission and subject to subsection (c), shall pay an award or awards to 1 or more whistleblowers who voluntarily provided original information to the Commission that led to the successful enforcement of the covered judicial or administrative action, or related action, in an aggregate amount equal to—

"(A) not less than 10 percent, in total, of what has been collected of the monetary sanctions imposed in the action or related actions; and

"(B) not more than 30 percent, in total, of what has been collected of the monetary sanctions imposed in the action or related actions.

"(2) PAYMENT OF AWARDS.—Any amount paid under paragraph (1) shall be paid from the Fund.

"(c) DETERMINATION OF AMOUNT OF AWARD; DENIAL OF AWARD.—

"(1) DETERMINATION OF AMOUNT OF AWARD.—

"(A) DISCRETION.—The determination of the amount of an award made under subsection (b) shall be in the discretion of the Commission.

"(B) CRITERIA.—In determining the amount of an award made under subsection (b), the Commission—

"(i) shall take into consideration—

"(I) the significance of the information provided by the whistleblower to the success of the covered judicial or administrative action;

"(II) the degree of assistance provided by the whistleblower and any legal representative of the whistleblower in a covered judicial or administrative action;

"(III) the programmatic interest of the Commission in deterring violations of the securities laws by making awards to whistleblowers who provide information that lead to the successful enforcement of such laws; and

"(IV) such additional relevant factors as the Commission may establish by rule or regulation; and

"(ii) shall not take into consideration the balance of the Fund.

"(2) DENIAL OF AWARD.—No award under subsection (b) shall be made—

"(A) to any whistleblower who is, or was at the time the whistleblower acquired the original information submitted to the Commission, a member, officer, or employee of—

"(i) an appropriate regulatory agency;

"(ii) the Department of Justice;

"(iii) a self-regulatory organization;

"(iv) the Public Company Accounting Oversight Board; or

"(v) a law enforcement organization;

"(B) to any whistleblower who is convicted of a criminal violation related to the judicial or administrative action for which the whistleblower otherwise could receive an award under this section;

"(C) to any whistleblower who gains the information through the performance of an audit of financial statements required under the securities laws and for whom such submission would be contrary to the requirements of section 10A of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1); or

"(D) to any whistleblower who fails to submit information to the Commission in such form as the Commission may, by rule, require.

"(d) REPRESENTATION.—

"(1) PERMITTED REPRESENTATION.—Any whistleblower who makes a claim for an award under subsection (b) may be represented by counsel.

"(2) REQUIRED REPRESENTATION.—

"(A) IN GENERAL.—Any whistleblower who anonymously makes a claim for an award under subsection (b) shall be represented by counsel if the whistleblower anonymously submits the information upon which the claim is based.

"(B) DISCLOSURE OF IDENTITY.—Prior to the payment of an award, a whistleblower shall disclose the identity of the whistleblower and provide such other information

as the Commission may require, directly or through counsel for the whistleblower.

"(e) NO CONTRACT NECESSARY.—No contract with the Commission is necessary for any whistleblower to receive an award under subsection (b), unless otherwise required by the Commission by rule or regulation.

"(f) APPEALS.—Any determination made under this section, including whether, to whom, or in what amount to make awards, shall be in the discretion of the Commission. Any such determination, except the determination of the amount of an award if the award was made in accordance with subsection (b), may be appealed to the appropriate court of appeals of the United States not more than 30 days after the determination is issued by the Commission. The court shall review the determination made by the Commission in accordance with section 706 of title 5, United States Code.

"(g) INVESTOR PROTECTION FUND.—

"(1) FUND ESTABLISHED.—There is established in the Treasury of the United States a fund to be known as the 'Securities and Exchange Commission Investor Protection Fund'.

"(2) USE OF FUND.—The Fund shall be available to the Commission, without further appropriation or fiscal year limitation, for—

"(A) paying awards to whistleblowers as provided in subsection (b); and

"(B) funding the activities of the Inspector General of the Commission under section 4(i).

"(3) DEPOSITS AND CREDITS.—

"(A) IN GENERAL.—There shall be deposited into or credited to the Fund an amount equal to—

"(i) any monetary sanction collected by the Commission in any judicial or administrative action brought by the Commission under the securities laws that is not added to a disgorgement fund or other fund under section 308 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246) or otherwise distributed to victims of a violation of the securities laws, or the rules and regulations thereunder, underlying such action, unless the balance of the Fund at the time the monetary sanction is collected exceeds $300,000,000;

"(ii) any monetary sanction added to a disgorgement fund or other fund under section 308 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246) that is not distributed to the victims for whom the Fund was established, unless the balance of the disgorgement fund at the time the determination is made not to distribute the monetary sanction to such victims exceeds $200,000,000; and

"(iii) all income from investments made under paragraph (4).

"(B) ADDITIONAL AMOUNTS.—If the amounts deposited into or credited to the Fund under subparagraph (A) are not sufficient to satisfy an award made under subsection (b), there shall be deposited into or credited to the Fund an amount equal to the unsatisfied portion of the award from any monetary sanction collected by the Commission

in the covered judicial or administrative action on which the award is based.

"(4) INVESTMENTS.—

"(A) AMOUNTS IN FUND MAY BE INVESTED.—The Commission may request the Secretary of the Treasury to invest the portion of the Fund that is not, in the discretion of the Commission, required to meet the current needs of the Fund.

"(B) ELIGIBLE INVESTMENTS.—Investments shall be made by the Secretary of the Treasury in obligations of the United States or obligations that are guaranteed as to principal and interest by the United States, with maturities suitable to the needs of the Fund as determined by the Commission on the record.

"(C) INTEREST AND PROCEEDS CREDITED.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to the Fund.

"(5) REPORTS TO CONGRESS.—Not later than October 30 of each fiscal year beginning after the date of enactment of this subsection, the Commission shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives a report on—

"(A) the whistleblower award program, established under this section, including—

"(i) a description of the number of awards granted; and

"(ii) the types of cases in which awards were granted during the preceding fiscal year;

"(B) the balance of the Fund at the beginning of the preceding fiscal year;

"(C) the amounts deposited into or credited to the Fund during the preceding fiscal year;

"(D) the amount of earnings on investments made under paragraph (4) during the preceding fiscal year;

"(E) the amount paid from the Fund during the preceding fiscal year to whistleblowers pursuant to subsection (b);

"(F) the balance of the Fund at the end of the preceding fiscal year; and

"(G) a complete set of audited financial statements, including—

"(i) a balance sheet;

"(ii) income statement; and

"(iii) cash flow analysis.

"(h) PROTECTION OF WHISTLEBLOWERS.—

"(1) PROHIBITION AGAINST RETALIATION.—

"(A) IN GENERAL.—No employer may discharge, demote, suspend, threaten, harass, directly or indirectly, or in any other manner discriminate against, a whistleblower in the terms and conditions of employment because of any lawful act done by the whistleblower—

"(i) in providing information to the Commission in accordance with this section;

"(ii) in initiating, testifying in, or assisting in any investigation or judicial or administrative action of

the Commission based upon or related to such information; or

"(iii) in making disclosures that are required or protected under the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201 et seq.), the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), including section 10A(m) of such Act (15 U.S.C. 78f(m)), section 1513(e) of title 18, United States Code, and any other law, rule, or regulation subject to the jurisdiction of the Commission.

"(B) ENFORCEMENT.—

"(i) CAUSE OF ACTION.—An individual who alleges discharge or other discrimination in violation of subparagraph (A) may bring an action under this subsection in the appropriate district court of the United States for the relief provided in subparagraph (C).

"(ii) SUBPOENAS.—A subpoena requiring the attendance of a witness at a trial or hearing conducted under this section may be served at any place in the United States.

"(iii) STATUTE OF LIMITATIONS.—

"(I) IN GENERAL.—An action under this subsection may not be brought—

"(aa) more than 6 years after the date on which the violation of subparagraph (A) occurred; or

"(bb) more than 3 years after the date when facts material to the right of action are known or reasonably should have been known by the employee alleging a violation of subparagraph (A).

"(II) REQUIRED ACTION WITHIN 10 YEARS.—Notwithstanding subclause (I), an action under this subsection may not in any circumstance be brought more than 10 years after the date on which the violation occurs.

"(C) RELIEF.—Relief for an individual prevailing in an action brought under subparagraph (B) shall include—

"(i) reinstatement with the same seniority status that the individual would have had, but for the discrimination;

"(ii) 2 times the amount of back pay otherwise owed to the individual, with interest; and

"(iii) compensation for litigation costs, expert witness fees, and reasonable attorneys' fees.

"(2) CONFIDENTIALITY.—

"(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), the Commission and any officer or employee of the Commission shall not disclose any information, including information provided by a whistleblower to the Commission, which could reasonably be expected to reveal the identity of a whistleblower, except in accordance with the provisions of section 552a of title 5, United States Code, unless and until required to be disclosed to a defendant or respondent in connection with a public proceeding instituted by the Commission or any entity described in subparagraph (C). For purposes of section

552 of title 5, United States Code, this paragraph shall be considered a statute described in subsection (b)(3)(B) of such section.

"(B) EXEMPTED STATUTE.—For purposes of section 552 of title 5, United States Code, this paragraph shall be considered a statute described in subsection (b)(3)(B) of such section 552.

"(C) RULE OF CONSTRUCTION.—Nothing in this section is intended to limit, or shall be construed to limit, the ability of the Attorney General to present such evidence to a grand jury or to share such evidence with potential witnesses or defendants in the course of an ongoing criminal investigation.

"(D) AVAILABILITY TO GOVERNMENT AGENCIES.—

"(i) IN GENERAL.—Without the loss of its status as confidential in the hands of the Commission, all information referred to in subparagraph (A) may, in the discretion of the Commission, when determined by the Commission to be necessary to accomplish the purposes of this Act and to protect investors, be made available to—

"(I) the Attorney General of the United States;

"(II) an appropriate regulatory authority;

"(III) a self-regulatory organization;

"(IV) a State attorney general in connection with any criminal investigation;

"(V) any appropriate State regulatory authority;

"(VI) the Public Company Accounting Oversight Board;

"(VII) a foreign securities authority; and

"(VIII) a foreign law enforcement authority.

"(ii) CONFIDENTIALITY.—

"(I) IN GENERAL.—Each of the entities described in subclauses (I) through (VI) of clause (i) shall maintain such information as confidential in accordance with the requirements established under subparagraph (A).

"(II) FOREIGN AUTHORITIES.—Each of the entities described in subclauses (VII) and (VIII) of clause (i) shall maintain such information in accordance with such assurances of confidentiality as the Commission determines appropriate.

"(3) RIGHTS RETAINED.—Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any whistleblower under any Federal or State law, or under any collective bargaining agreement.

"(i) PROVISION OF FALSE INFORMATION.—A whistleblower shall not be entitled to an award under this section if the whistleblower—

"(1) knowingly and willfully makes any false, fictitious, or fraudulent statement or representation; or

"(2) uses any false writing or document knowing the writing or document contains any false, fictitious, or fraudulent statement or entry.

"(j) RULEMAKING AUTHORITY.—The Commission shall have the authority to issue such rules and regulations as may be necessary

or appropriate to implement the provisions of this section consistent with the purposes of this section.".

(b) PROTECTION FOR EMPLOYEES OF NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATIONS.—Section 1514A(a) of title 18, United States Code, is amended—

(1) by inserting "or nationally recognized statistical rating organization (as defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c)," after "78o(d)),"; and

(2) by inserting "or nationally recognized statistical rating organization" after "such company".

(c) SECTION 1514A OF TITLE 18, UNITED STATES CODE.—

(1) STATUTE OF LIMITATIONS; JURY TRIAL.—Section 1514A(b)(2) of title 18, United States Code, is amended—

(A) in subparagraph (D)—

(i) by striking "90" and inserting "180"; and

(ii) by striking the period at the end and inserting ", or after the date on which the employee became aware of the violation."; and

(B) by adding at the end the following:

"(E) JURY TRIAL.—A party to an action brought under paragraph (1)(B) shall be entitled to trial by jury.".

(2) PRIVATE SECURITIES LITIGATION WITNESSES; NONENFORCEABILITY; INFORMATION.—Section 1514A of title 18, United States Code, is amended by adding at the end the following:

"(e) NONENFORCEABILITY OF CERTAIN PROVISIONS WAIVING RIGHTS AND REMEDIES OR REQUIRING ARBITRATION OF DISPUTES.—

"(1) WAIVER OF RIGHTS AND REMEDIES.—The rights and remedies provided for in this section may not be waived by any agreement, policy form, or condition of employment, including by a predispute arbitration agreement.

"(2) PREDISPUTE ARBITRATION AGREEMENTS.—No predispute arbitration agreement shall be valid or enforceable, if the agreement requires arbitration of a dispute arising under this section.".

(d) STUDY OF WHISTLEBLOWER PROTECTION PROGRAM.—

(1) STUDY.—The Inspector General of the Commission shall conduct a study of the whistleblower protections established under the amendments made by this section, including—

(A) whether the final rules and regulation issued under the amendments made by this section have made the whistleblower protection program (referred to in this subsection as the "program") clearly defined and user-friendly;

(B) whether the program is promoted on the website of the Commission and has been widely publicized;

(C) whether the Commission is prompt in—

(i) responding to—

(I) information provided by whistleblowers; and

(II) applications for awards filed by whistleblowers;

(ii) updating whistleblowers about the status of their applications; and

(iii) otherwise communicating with the interested parties;

(D) whether the minimum and maximum reward levels are adequate to entice whistleblowers to come forward with

information and whether the reward levels are so high as to encourage illegitimate whistleblower claims;

(E) whether the appeals process has been unduly burdensome for the Commission;

(F) whether the funding mechanism for the Investor Protection Fund is adequate;

(G) whether, in the interest of protecting investors and identifying and preventing fraud, it would be useful for Congress to consider empowering whistleblowers or other individuals, who have already attempted to pursue the case through the Commission, to have a private right of action to bring suit based on the facts of the same case, on behalf of the Government and themselves, against persons who have committee securities fraud;

(H)(i) whether the exemption under section 552(b)(3) of title 5 (known as the Freedom of Information Act) established in section 21F(h)(2)(A) of the Securities Exchange Act of 1934, as added by this Act, aids whistleblowers in disclosing information to the Commission;

(ii) what impact the exemption described in clause (i) has had on the ability of the public to access information about the regulation and enforcement by the Commission of securities; and

(iii) any recommendations on whether the exemption described in clause (i) should remain in effect; and

(I) such other matters as the Inspector General deems appropriate.

(2) REPORT.—Not later than 30 months after the date of enactment of this Act, the Inspector General shall—

(A) submit a report on the findings of the study required under paragraph (1) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House; and

(B) make the report described in subparagraph (A) available to the public through publication of the report on the website of the Commission.

SEC. 923. CONFORMING AMENDMENTS FOR WHISTLEBLOWER PROTECTION.

(a) IN GENERAL.—

(1) SECURITIES ACT OF 1933.—Section 20(d)(3)(A) of the Securities Act of 1933 (15 U.S.C. 77t(d)(3)(A)) is amended by inserting "and section 21F of the Securities Exchange Act of 1934" after "the Sarbanes-Oxley Act of 2002".

(2) INVESTMENT COMPANY ACT OF 1940.—Section 42(e)(3)(A) of the Investment Company Act of 1940 (15 U.S.C. 80a–41(e)(3)(A)) is amended by inserting "and section 21F of the Securities Exchange Act of 1934" after "the Sarbanes-Oxley Act of 2002".

(3) INVESTMENT ADVISERS ACT OF 1940.—Section 209(e)(3)(A) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–9(e)(3)(A)) is amended by inserting "and section 21F of the Securities Exchange Act of 1934" after "the Sarbanes-Oxley Act of 2002".

(b) SECURITIES EXCHANGE ACT.—

(1) SECTION 21.—Section 21(d)(3)(C)(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(d)(3)(C)(i)) is amended

by inserting "and section 21F of this title" after "the Sarbanes-Oxley Act of 2002".

(2) SECTION 21A.—Section 21A of the Securities Exchange Act of 1934 (15 U.S.C. 78u–1) is amended—

(A) in subsection (d)(1) by—

(i) striking "(subject to subsection (e))"; and

(ii) inserting "and section 21F of this title" after "the Sarbanes-Oxley Act of 2002";

(B) by striking subsection (e); and

(C) by redesignating subsections (f) and (g) as subsections (e) and (f), respectively.

SEC. 924. IMPLEMENTATION AND TRANSITION PROVISIONS FOR WHISTLEBLOWER PROTECTION.

(a) IMPLEMENTING RULES.—The Commission shall issue final regulations implementing the provisions of section 21F of the Securities Exchange Act of 1934, as added by this subtitle, not later than 270 days after the date of enactment of this Act.

(b) ORIGINAL INFORMATION.—Information provided to the Commission in writing by a whistleblower shall not lose the status of original information (as defined in section 21F(a)(3) of the Securities Exchange Act of 1934, as added by this subtitle) solely because the whistleblower provided the information prior to the effective date of the regulations, if the information is provided by the whistleblower after the date of enactment of this subtitle.

(c) AWARDS.—A whistleblower may receive an award pursuant to section 21F of the Securities Exchange Act of 1934, as added by this subtitle, regardless of whether any violation of a provision of the securities laws, or a rule or regulation thereunder, underlying the judicial or administrative action upon which the award is based, occurred prior to the date of enactment of this subtitle.

(d) ADMINISTRATION AND ENFORCEMENT.—The Securities and Exchange Commission shall establish a separate office within the Commission to administer and enforce the provisions of section 21F of the Securities Exchange Act of 1934 (as add by section 922(a)). Such office shall report annually to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on its activities, whistleblower complaints, and the response of the Commission to such complaints.

SEC. 925. COLLATERAL BARS.

(a) SECURITIES EXCHANGE ACT OF 1934.—

(1) SECTION 15.—Section 15(b)(6)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(6)(A)) is amended by striking "12 months, or bar such person from being associated with a broker or dealer," and inserting "12 months, or bar any such person from being associated with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization,".

(2) SECTION 15B.—Section 15B(c)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–4(c)(4)) is amended by striking "twelve months or bar any such person from being associated with a municipal securities dealer," and inserting "12 months or bar any such person from being associated with a broker, dealer, investment adviser, municipal securities

dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization,".

(3) SECTION 17A.—Section 17A(c)(4)(C) of the Securities Exchange Act of 1934 (15 U.S.C. 78q–1(c)(4)(C)) is amended by striking "twelve months or bar any such person from being associated with the transfer agent," and inserting "12 months or bar any such person from being associated with any transfer agent, broker, dealer, investment adviser, municipal securities dealer, municipal advisor, or nationally recognized statistical rating organization,".

(b) INVESTMENT ADVISERS ACT OF 1940.—Section 203(f) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(f)) is amended by striking "twelve months or bar any such person from being associated with an investment adviser," and inserting "12 months or bar any such person from being associated with an investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization,".

SEC. 926. DISQUALIFYING FELONS AND OTHER "BAD ACTORS" FROM REGULATION D OFFERINGS.

Not later than 1 year after the date of enactment of this Act, the Commission shall issue rules for the disqualification of offerings and sales of securities made under section 230.506 of title 17, Code of Federal Regulations, that—

(1) are substantially similar to the provisions of section 230.262 of title 17, Code of Federal Regulations, or any successor thereto; and

(2) disqualify any offering or sale of securities by a person that—

(A) is subject to a final order of a State securities commission (or an agency or officer of a State performing like functions), a State authority that supervises or examines banks, savings associations, or credit unions, a State insurance commission (or an agency or officer of a State performing like functions), an appropriate Federal banking agency, or the National Credit Union Administration, that—

(i) bars the person from—

(I) association with an entity regulated by such commission, authority, agency, or officer;

(II) engaging in the business of securities, insurance, or banking; or

(III) engaging in savings association or credit union activities; or

(ii) constitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct within the 10-year period ending on the date of the filing of the offer or sale; or

(B) has been convicted of any felony or misdemeanor in connection with the purchase or sale of any security or involving the making of any false filing with the Commission.

SEC. 927. EQUAL TREATMENT OF SELF-REGULATORY ORGANIZATION RULES.

Section 29(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78cc(a)) is amended by striking "an exchange required thereby" and inserting "a self-regulatory organization,".

SEC. 928. CLARIFICATION THAT SECTION 205 OF THE INVESTMENT ADVISERS ACT OF 1940 DOES NOT APPLY TO STATE-REGISTERED ADVISERS.

Section 205(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–5(a)) is amended, in the matter preceding paragraph (1)—

(1) by striking ", unless exempt from registration pursuant to section 203(b)," and inserting "registered or required to be registered with the Commission";

(2) by striking "make use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, to"; and

(3) by striking "to" after "in any way".

SEC. 929. UNLAWFUL MARGIN LENDING.

Section 7(c)(1)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78g(c)(1)(A)) is amended by striking "; and" and inserting "; or".

SEC. 929A. PROTECTION FOR EMPLOYEES OF SUBSIDIARIES AND AFFILIATES OF PUBLICLY TRADED COMPANIES.

Section 1514A of title 18, United States Code, is amended by inserting "including any subsidiary or affiliate whose financial information is included in the consolidated financial statements of such company" after "the Securities Exchange Act of 1934 (15 U.S.C. 78o(d))".

SEC. 929B. FAIR FUND AMENDMENTS.

Section 308 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246(a)) is amended—

(1) by striking subsection (a) and inserting the following:

"(a) CIVIL PENALTIES TO BE USED FOR THE RELIEF OF VICTIMS.—If, in any judicial or administrative action brought by the Commission under the securities laws, the Commission obtains a civil penalty against any person for a violation of such laws, or such person agrees, in settlement of any such action, to such civil penalty, the amount of such civil penalty shall, on the motion or at the direction of the Commission, be added to and become part of a disgorgement fund or other fund established for the benefit of the victims of such violation.";

(2) in subsection (b)—

(A) by striking "for a disgorgement fund described in subsection (a)" and inserting "for a disgorgement fund or other fund described in subsection (a)"; and

(B) by striking "in the disgorgement fund" and inserting "in such fund"; and

(3) by striking subsection (e).

SEC. 929C. INCREASING THE BORROWING LIMIT ON TREASURY LOANS.

Section 4(h) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78ddd(h)) is amended in the first sentence, by striking "$1,000,000,000" and inserting "$2,500,000,000".

SEC. 929D. LOST AND STOLEN SECURITIES.

Section 17(f)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(f)(1)) is amended—

(1) in subparagraph (A), by striking "missing, lost, counterfeit, or stolen securities" and inserting "securities that are missing, lost, counterfeit, stolen, or cancelled"; and

(2) in subparagraph (B), by striking "or stolen" and inserting "stolen, cancelled, or reported in such other manner as the Commission, by rule, may prescribe".

SEC. 929E. NATIONWIDE SERVICE OF SUBPOENAS.

(a) SECURITIES ACT OF 1933.—Section 22(a) of the Securities Act of 1933 (15 U.S.C. 77v(a)) is amended by inserting after the second sentence the following: "In any action or proceeding instituted by the Commission under this title in a United States district court for any judicial district, a subpoena issued to compel the attendance of a witness or the production of documents or tangible things (or both) at a hearing or trial may be served at any place within the United States. Rule 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure shall not apply to a subpoena issued under the preceding sentence.".

(b) SECURITIES EXCHANGE ACT OF 1934.—Section 27 of the Securities Exchange Act of 1934 (15 U.S.C. 78aa) is amended by inserting after the third sentence the following: "In any action or proceeding instituted by the Commission under this title in a United States district court for any judicial district, a subpoena issued to compel the attendance of a witness or the production of documents or tangible things (or both) at a hearing or trial may be served at any place within the United States. Rule 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure shall not apply to a subpoena issued under the preceding sentence.".

(c) INVESTMENT COMPANY ACT OF 1940.—Section 44 of the Investment Company Act of 1940 (15 U.S.C. 80a–43) is amended by inserting after the fourth sentence the following: "In any action or proceeding instituted by the Commission under this title in a United States district court for any judicial district, a subpoena issued to compel the attendance of a witness or the production of documents or tangible things (or both) at a hearing or trial may be served at any place within the United States. Rule 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure shall not apply to a subpoena issued under the preceding sentence.".

(d) INVESTMENT ADVISERS ACT OF 1940.—Section 214 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–14) is amended by inserting after the third sentence the following: "In any action or proceeding instituted by the Commission under this title in a United States district court for any judicial district, a subpoena issued to compel the attendance of a witness or the production of documents or tangible things (or both) at a hearing or trial may be served at any place within the United States. Rule 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure shall not apply to a subpoena issued under the preceding sentence.".

SEC. 929F. FORMERLY ASSOCIATED PERSONS.

(a) MEMBER OR EMPLOYEE OF THE MUNICIPAL SECURITIES RULEMAKING BOARD.—Section 15B(c)(8) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–4(c)(8)) is amended by striking "any member

or employee" and inserting "any person who is, or at the time of the alleged violation or abuse was, a member or employee".

(b) PERSON ASSOCIATED WITH A GOVERNMENT SECURITIES BROKER OR DEALER.—Section 15C(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–5(c)) is amended—

(1) in paragraph (1)(C), by striking "any person associated, or seeking to become associated," and inserting "any person who is, or at the time of the alleged misconduct was, associated or seeking to become associated"; and

(2) in paragraph (2)—

(A) in subparagraph (A), by inserting ", seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated" after "any person associated"; and

(B) in subparagraph (B), by inserting ", seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated" after "any person associated".

(c) PERSON ASSOCIATED WITH A MEMBER OF A NATIONAL SECURITIES EXCHANGE OR REGISTERED SECURITIES ASSOCIATION.—Section 21(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(a)(1)) is amended, in the first sentence, by inserting ", or, as to any act or practice, or omission to act, while associated with a member, formerly associated" after "member or a person associated".

(d) PARTICIPANT OF A REGISTERED CLEARING AGENCY.—Section 21(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(a)(1)) is amended, in the first sentence, by inserting "or, as to any act or practice, or omission to act, while a participant, was a participant," after "in which such person is a participant,".

(e) OFFICER OR DIRECTOR OF A SELF-REGULATORY ORGANIZATION.—Section 19(h)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(h)(4)) is amended—

(1) by striking "any officer or director" and inserting "any person who is, or at the time of the alleged misconduct was, an officer or director"; and

(2) by striking "such officer or director" and inserting "such person".

(f) OFFICER OR DIRECTOR OF AN INVESTMENT COMPANY.—Section 36(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–35(a)) is amended—

(1) by striking "a person serving or acting" and inserting "a person who is, or at the time of the alleged misconduct was, serving or acting"; and

(2) by striking "such person so serves or acts" and inserting "such person so serves or acts, or at the time of the alleged misconduct, so served or acted".

(g) PERSON ASSOCIATED WITH A PUBLIC ACCOUNTING FIRM.—

(1) SARBANES-OXLEY ACT OF 2002 AMENDMENT.—Section 2(a)(9) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201(9)) is amended by adding at the end the following:

"(C) INVESTIGATIVE AND ENFORCEMENT AUTHORITY.—For purposes of sections 3(c), 101(c), 105, and 107(c) and the rules of the Board and Commission issued thereunder, except to the extent specifically excepted by such rules, the terms defined in subparagraph (A) shall include any

person associated, seeking to become associated, or formerly associated with a public accounting firm, except that—

"(i) the authority to conduct an investigation of such person under section 105(b) shall apply only with respect to any act or practice, or omission to act, by the person while such person was associated or seeking to become associated with a registered public accounting firm; and

"(ii) the authority to commence a disciplinary proceeding under section 105(c)(1), or impose sanctions under section 105(c)(4), against such person shall apply only with respect to—

"(I) conduct occurring while such person was associated or seeking to become associated with a registered public accounting firm; or

"(II) non-cooperation, as described in section 105(b)(3), with respect to a demand in a Board investigation for testimony, documents, or other information relating to a period when such person was associated or seeking to become associated with a registered public accounting firm.".

(2) SECURITIES EXCHANGE ACT OF 1934 AMENDMENT.—Section 21(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(a)(1)) is amended by striking "or a person associated with such a firm" and inserting ", a person associated with such a firm, or, as to any act, practice, or omission to act, while associated with such firm, a person formerly associated with such a firm".

(h) SUPERVISORY PERSONNEL OF AN AUDIT FIRM.—Section 105(c)(6) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7215(c)(6)) is amended—

(1) in subparagraph (A), by striking "the supervisory personnel" and inserting "any person who is, or at the time of the alleged failure reasonably to supervise was, a supervisory person"; and

(2) in subparagraph (B)—

(A) by striking "No associated person" and inserting "No current or former supervisory person"; and

(B) by striking "any other person" and inserting "any associated person".

(i) MEMBER OF THE PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD.—Section 107(d)(3) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7217(d)(3)) is amended by striking "any member" and inserting "any person who is, or at the time of the alleged misconduct was, a member".

SEC. 929G. STREAMLINED HIRING AUTHORITY FOR MARKET SPECIALISTS.

(a) APPOINTMENT AUTHORITY.—Section 3114 of title 5, United States Code, is amended by striking the section heading and all that follows through the end of subsection (a) and inserting the following:

"§ 3114. Appointment of candidates to certain positions in the competitive service by the Securities and Exchange Commission

"(a) APPLICABILITY.—This section applies with respect to any position of accountant, economist, and securities compliance examiner at the Commission that is in the competitive service, and any position at the Commission in the competitive service that requires specialized knowledge of financial and capital market formation or regulation, financial market structures or surveillance, or information technology.".

(b) CLERICAL AMENDMENT.—The table of sections for chapter 31 of title 5, United States Code, is amended by striking the item relating to section 3114 and inserting the following:

"3114. Appointment of candidates to positions in the competitive service by the Securities and Exchange Commission.".

(c) PAY AUTHORITY.—The Commission may set the rate of pay for experts and consultants appointed under the authority of section 3109 of title 5, United States Code, in the same manner in which it sets the rate of pay for employees of the Commission.

SEC. 929H. SIPC REFORMS.

(a) INCREASING THE CASH LIMIT OF PROTECTION.—Section 9 of the Securities Investor Protection Act of 1970 (15 U.S.C. 78fff–3) is amended—

(1) in subsection (a)(1), by striking "$100,000 for each such customer" and inserting "the standard maximum cash advance amount for each such customer, as determined in accordance with subsection (d)"; and

(2) by adding the following new subsections:

"(d) STANDARD MAXIMUM CASH ADVANCE AMOUNT DEFINED.—For purposes of this section, the term 'standard maximum cash advance amount' means $250,000, as such amount may be adjusted after December 31, 2010, as provided under subsection (e).

"(e) INFLATION ADJUSTMENT.—

"(1) IN GENERAL.—Not later than January 1, 2011, and every 5 years thereafter, and subject to the approval of the Commission as provided under section 3(e)(2), the Board of Directors of SIPC shall determine whether an inflation adjustment to the standard maximum cash advance amount is appropriate. If the Board of Directors of SIPC determines such an adjustment is appropriate, then the standard maximum cash advance amount shall be an amount equal to—

"(A) $250,000 multiplied by—

"(B) the ratio of the annual value of the Personal Consumption Expenditures Chain-Type Price Index (or any successor index thereto), published by the Department of Commerce, for the calendar year preceding the year in which such determination is made, to the published annual value of such index for the calendar year preceding the year in which this subsection was enacted.

The index values used in calculations under this paragraph shall be, as of the date of the calculation, the values most recently published by the Department of Commerce.

"(2) ROUNDING.—If the standard maximum cash advance amount determined under paragraph (1) for any period is not

a multiple of $10,000, the amount so determined shall be rounded down to the nearest $10,000.

"(3) PUBLICATION AND REPORT TO THE CONGRESS.—Not later than April 5 of any calendar year in which a determination is required to be made under paragraph (1)—

"(A) the Commission shall publish in the Federal Register the standard maximum cash advance amount; and

"(B) the Board of Directors of SIPC shall submit a report to the Congress stating the standard maximum cash advance amount.

"(4) IMPLEMENTATION PERIOD.—Any adjustment to the standard maximum cash advance amount shall take effect on January 1 of the year immediately succeeding the calendar year in which such adjustment is made.

"(5) INFLATION ADJUSTMENT CONSIDERATIONS.—In making any determination under paragraph (1) to increase the standard maximum cash advance amount, the Board of Directors of SIPC shall consider—

"(A) the overall state of the fund and the economic conditions affecting members of SIPC;

"(B) the potential problems affecting members of SIPC; and

"(C) such other factors as the Board of Directors of SIPC may determine appropriate.".

(b) LIQUIDATION OF A CARRYING BROKER-DEALER.—Section 5(a)(3) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78eee(a)(3)) is amended—

(1) by striking the undesignated matter immediately following subparagraph (B);

(2) in subparagraph (A), by striking "any member of SIPC" and inserting "the member";

(3) in subparagraph (B), by striking the comma at the end and inserting a period;

(4) by striking "If SIPC" and inserting the following:

"(A) IN GENERAL.—SIPC may, upon notice to a member of SIPC, file an application for a protective decree with any court of competent jurisdiction specified in section 21(e) or 27 of the Securities Exchange Act of 1934, except that no such application shall be filed with respect to a member, the only customers of which are persons whose claims could not be satisfied by SIPC advances pursuant to section 9, if SIPC"; and

(5) by adding at the end the following:

"(B) CONSENT REQUIRED.—No member of SIPC that has a customer may enter into an insolvency, receivership, or bankruptcy proceeding, under Federal or State law, without the specific consent of SIPC, except as provided in title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act.".

SEC. 929I. PROTECTING CONFIDENTIALITY OF MATERIALS SUBMITTED TO THE COMMISSION.

(a) SECURITIES EXCHANGE ACT OF 1934.—Section 24 of the Securities Exchange Act of 1934 (15 U.S.C. 78x) is amended—

(1) in subsection (d), by striking "subsection (e)" and inserting "subsection (f)";

(2) by redesignating subsection (e) as subsection (f); and

(3) by inserting after subsection (d) the following:

"(e) RECORDS OBTAINED FROM REGISTERED PERSONS.—

"(1) IN GENERAL.—Except as provided in subsection (f), the Commission shall not be compelled to disclose records or information obtained pursuant to section 17(b), or records or information based upon or derived from such records or information, if such records or information have been obtained by the Commission for use in furtherance of the purposes of this title, including surveillance, risk assessments, or other regulatory and oversight activities.

"(2) TREATMENT OF INFORMATION.—For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552. Collection of information pursuant to section 17 shall be an administrative action involving an agency against specific individuals or agencies pursuant to section 3518(c)(1) of title 44, United States Code.".

(b) INVESTMENT COMPANY ACT OF 1940.—Section 31 of the Investment Company Act of 1940 (15 U.S.C. 80a-30) is amended—

(1) by striking subsection (c) and inserting the following:

"(c) LIMITATIONS ON DISCLOSURE BY COMMISSION.—Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any records or information provided to the Commission under this section, or records or information based upon or derived from such records or information, if such records or information have been obtained by the Commission for use in furtherance of the purposes of this title, including surveillance, risk assessments, or other regulatory and oversight activities. Nothing in this subsection authorizes the Commission to withhold information from the Congress or prevent the Commission from complying with a request for information from any other Federal department or agency requesting the information for purposes within the scope of jurisdiction of that department or agency, or complying with an order of a court of the United States in an action brought by the United States or the Commission. For purposes of section 552 of title 5, United States Code, this section shall be considered a statute described in subsection (b)(3)(B) of such section 552. Collection of information pursuant to section 31 shall be an administrative action involving an agency against specific individuals or agencies pursuant to section 3518(c)(1) of title 44, United States Code.";

(2) by striking subsection (d); and

(3) by redesignating subsections (e) and (f) as subsections (d) and (e), respectively.

(c) INVESTMENT ADVISERS ACT OF 1940.—Section 210 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-10) is amended by adding at the end the following:

"(d) LIMITATIONS ON DISCLOSURE BY THE COMMISSION.—Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any records or information provided to the Commission under section 204, or records or information based upon or derived from such records or information, if such records or information have been obtained by the Commission for use in furtherance of the purposes of this title, including surveillance, risk assessments, or other regulatory and oversight activities. Nothing in this subsection authorizes the Commission to withhold information from the Congress or prevent the Commission from

complying with a request for information from any other Federal department or agency requesting the information for purposes within the scope of jurisdiction of that department or agency, or complying with an order of a court of the United States in an action brought by the United States or the Commission. For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552. Collection of information pursuant to section 204 shall be an administrative action involving an agency against specific individuals or agencies pursuant to section 3518(c)(1) of title 44, United States Code.".

SEC. 929J. EXPANSION OF AUDIT INFORMATION TO BE PRODUCED AND EXCHANGED.

Section 106 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7216) is amended—

(1) by striking subsection (b) and inserting the following:

"(b) PRODUCTION OF DOCUMENTS.—

"(1) PRODUCTION BY FOREIGN FIRMS.—If a foreign public accounting firm performs material services upon which a registered public accounting firm relies in the conduct of an audit or interim review, issues an audit report, performs audit work, or conducts interim reviews, the foreign public accounting firm shall—

"(A) produce the audit work papers of the foreign public accounting firm and all other documents of the firm related to any such audit work or interim review to the Commission or the Board, upon request of the Commission or the Board; and

"(B) be subject to the jurisdiction of the courts of the United States for purposes of enforcement of any request for such documents.

"(2) OTHER PRODUCTION.—Any registered public accounting firm that relies, in whole or in part, on the work of a foreign public accounting firm in issuing an audit report, performing audit work, or conducting an interim review, shall—

"(A) produce the audit work papers of the foreign public accounting firm and all other documents related to any such work in response to a request for production by the Commission or the Board; and

"(B) secure the agreement of any foreign public accounting firm to such production, as a condition of the reliance by the registered public accounting firm on the work of that foreign public accounting firm.";

(2) by redesignating subsection (d) as subsection (g); and

(3) by inserting after subsection (c) the following:

"(d) SERVICE OF REQUESTS OR PROCESS.—

"(1) IN GENERAL.—Any foreign public accounting firm that performs work for a domestic registered public accounting firm shall furnish to the domestic registered public accounting firm a written irrevocable consent and power of attorney that designates the domestic registered public accounting firm as an agent upon whom may be served any request by the Commission or the Board under this section or upon whom may be served any process, pleadings, or other papers in any action brought to enforce this section.

"(2) SPECIFIC AUDIT WORK.—Any foreign public accounting firm that performs material services upon which a registered public accounting firm relies in the conduct of an audit or interim review, issues an audit report, performs audit work, or, performs interim reviews, shall designate to the Commission or the Board an agent in the United States upon whom may be served any request by the Commission or the Board under this section or upon whom may be served any process, pleading, or other papers in any action brought to enforce this section.

"(e) SANCTIONS.—A willful refusal to comply, in whole in or in part, with any request by the Commission or the Board under this section, shall be deemed a violation of this Act.

"(f) OTHER MEANS OF SATISFYING PRODUCTION OBLIGATIONS.—Notwithstanding any other provisions of this section, the staff of the Commission or the Board may allow a foreign public accounting firm that is subject to this section to meet production obligations under this section through alternate means, such as through foreign counterparts of the Commission or the Board.".

SEC. 929K. SHARING PRIVILEGED INFORMATION WITH OTHER AUTHORITIES.

Section 24 of the Securities Exchange Act of 1934 (15 U.S.C. 78x) is amended—

(1) in subsection (d), as amended by subsection (d)(1)(A), by striking "subsection (f)" and inserting "subsection (g)";

(2) in subsection (e), as added by subsection (d)(1)(C), by striking "subsection (f)" and inserting "subsection (g)";

(3) by redesignating subsection (f) as subsection (g); and

(4) by inserting after subsection (e) the following:

"(f) SHARING PRIVILEGED INFORMATION WITH OTHER AUTHORITIES.—

"(1) PRIVILEGED INFORMATION PROVIDED BY THE COMMISSION.—The Commission shall not be deemed to have waived any privilege applicable to any information by transferring that information to or permitting that information to be used by—

"(A) any agency (as defined in section 6 of title 18, United States Code);

"(B) the Public Company Accounting Oversight Board;

"(C) any self-regulatory organization;

"(D) any foreign securities authority;

"(E) any foreign law enforcement authority; or

"(F) any State securities or law enforcement authority.

"(2) NONDISCLOSURE OF PRIVILEGED INFORMATION PROVIDED TO THE COMMISSION.—The Commission shall not be compelled to disclose privileged information obtained from any foreign securities authority, or foreign law enforcement authority, if the authority has in good faith determined and represented to the Commission that the information is privileged.

"(3) NONWAIVER OF PRIVILEGED INFORMATION PROVIDED TO THE COMMISSION.—

"(A) IN GENERAL.—Federal agencies, State securities and law enforcement authorities, self-regulatory organizations, and the Public Company Accounting Oversight Board shall not be deemed to have waived any privilege applicable to any information by transferring that information to or permitting that information to be used by the Commission.

"(B) EXCEPTION.—The provisions of subparagraph (A) shall not apply to a self-regulatory organization or the Public Company Accounting Oversight Board with respect to information used by the Commission in an action against such organization.

"(4) DEFINITIONS.—For purposes of this subsection—

"(A) the term 'privilege' includes any work-product privilege, attorney-client privilege, governmental privilege, or other privilege recognized under Federal, State, or foreign law;

"(B) the term 'foreign law enforcement authority' means any foreign authority that is empowered under foreign law to detect, investigate or prosecute potential violations of law; and

"(C) the term 'State securities or law enforcement authority' means the authority of any State or territory that is empowered under State or territory law to detect, investigate, or prosecute potential violations of law.".

SEC. 929L. ENHANCED APPLICATION OF ANTIFRAUD PROVISIONS.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended—

(1) in section 9—

(A) by striking "registered on a national securities exchange" each place that term appears and inserting "other than a government security";

(B) in subsection (b), by striking "by use of any facility of a national securities exchange,"; and

(C) in subsection (c), by inserting after "unlawful for any" the following: "broker, dealer, or";

(2) in section 10(a)(1), by striking "registered on a national securities exchange" and inserting "other than a government security"; and

(3) in section 15(c)(1)(A), by striking "otherwise than on a national securities exchange of which it is a member".

SEC. 929M. AIDING AND ABETTING AUTHORITY UNDER THE SECURITIES ACT AND THE INVESTMENT COMPANY ACT.

(a) UNDER THE SECURITIES ACT OF 1933.—Section 15 of the Securities Act of 1933 (15 U.S.C. 77o) is amended—

(1) by striking "Every person who" and inserting "(a) CONTROLLING PERSONS.—Every person who"; and

(2) by adding at the end the following:

"(b) PROSECUTION OF PERSONS WHO AID AND ABET VIOLATIONS.—For purposes of any action brought by the Commission under subparagraph (b) or (d) of section 20, any person that knowingly or recklessly provides substantial assistance to another person in violation of a provision of this Act, or of any rule or regulation issued under this Act, shall be deemed to be in violation of such provision to the same extent as the person to whom such assistance is provided.".

(b) UNDER THE INVESTMENT COMPANY ACT OF 1940.—Section 48 of the Investment Company Act of 1940 (15 U.S.C. 80a–48) is amended by redesignating subsection (b) as subsection (c) and inserting after subsection (a) the following:

"(b) For purposes of any action brought by the Commission under subsection (d) or (e) of section 42, any person that knowingly or recklessly provides substantial assistance to another person in

violation of a provision of this Act, or of any rule or regulation issued under this Act, shall be deemed to be in violation of such provision to the same extent as the person to whom such assistance is provided.".

SEC. 929N. AUTHORITY TO IMPOSE PENALTIES FOR AIDING AND ABETTING VIOLATIONS OF THE INVESTMENT ADVISERS ACT.

Section 209 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–9) is amended by inserting at the end the following new subsection:

"(f) AIDING AND ABETTING.—For purposes of any action brought by the Commission under subsection (e), any person that knowingly or recklessly has aided, abetted, counseled, commanded, induced, or procured a violation of any provision of this Act, or of any rule, regulation, or order hereunder, shall be deemed to be in violation of such provision, rule, regulation, or order to the same extent as the person that committed such violation.".

SEC. 929O. AIDING AND ABETTING STANDARD OF KNOWLEDGE SATISFIED BY RECKLESSNESS.

Section 20(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78t(e)) is amended by inserting "or recklessly" after "knowingly".

SEC. 929P. STRENGTHENING ENFORCEMENT BY THE COMMISSION.

(a) AUTHORITY TO IMPOSE CIVIL PENALTIES IN CEASE AND DESIST PROCEEDINGS.—

(1) UNDER THE SECURITIES ACT OF 1933.—Section 8A of the Securities Act of 1933 (15 U.S.C. 77h–1) is amended by adding at the end the following new subsection:

"(g) AUTHORITY TO IMPOSE MONEY PENALTIES.—

"(1) GROUNDS.—In any cease-and-desist proceeding under subsection (a), the Commission may impose a civil penalty on a person if the Commission finds, on the record, after notice and opportunity for hearing, that—

"(A) such person—

"(i) is violating or has violated any provision of this title, or any rule or regulation issued under this title; or

"(ii) is or was a cause of the violation of any provision of this title, or any rule or regulation thereunder; and

"(B) such penalty is in the public interest.

"(2) MAXIMUM AMOUNT OF PENALTY.—

"(A) FIRST TIER.—The maximum amount of a penalty for each act or omission described in paragraph (1) shall be $7,500 for a natural person or $75,000 for any other person.

"(B) SECOND TIER.—Notwithstanding subparagraph (A), the maximum amount of penalty for each such act or omission shall be $75,000 for a natural person or $375,000 for any other person, if the act or omission described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement.

"(C) THIRD TIER.—Notwithstanding subparagraphs (A) and (B), the maximum amount of penalty for each such act or omission shall be $150,000 for a natural person or $725,000 for any other person, if—

"(i) the act or omission described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

"(ii) such act or omission directly or indirectly resulted in—

"(I) substantial losses or created a significant risk of substantial losses to other persons; or

"(II) substantial pecuniary gain to the person who committed the act or omission.

"(3) EVIDENCE CONCERNING ABILITY TO PAY.—In any proceeding in which the Commission may impose a penalty under this section, a respondent may present evidence of the ability of the respondent to pay such penalty. The Commission may, in its discretion, consider such evidence in determining whether such penalty is in the public interest. Such evidence may relate to the extent of the ability of the respondent to continue in business and the collectability of a penalty, taking into account any other claims of the United States or third parties upon the assets of the respondent and the amount of the assets of the respondent.".

(2) UNDER THE SECURITIES EXCHANGE ACT OF 1934.—Section 21B(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78u–2(a)) is amended—

(A) by striking the matter following paragraph (4);

(B) in the matter preceding paragraph (1), by inserting after "opportunity for hearing," the following: "that such penalty is in the public interest and";

(C) by redesignating paragraphs (1) through (4) as subparagraphs (A) through (D), respectively, and adjusting the margins accordingly;

(D) by striking "In any proceeding" and inserting the following:

"(1) IN GENERAL.—In any proceeding"; and

(E) by adding at the end the following:

"(2) CEASE-AND-DESIST PROCEEDINGS.—In any proceeding instituted under section 21C against any person, the Commission may impose a civil penalty, if the Commission finds, on the record after notice and opportunity for hearing, that such person—

"(A) is violating or has violated any provision of this title, or any rule or regulation issued under this title; or

"(B) is or was a cause of the violation of any provision of this title, or any rule or regulation issued under this title.".

(3) UNDER THE INVESTMENT COMPANY ACT OF 1940.—Section 9(d)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a–9(d)(1)) is amended—

(A) by striking the matter following subparagraph (C);

(B) in the matter preceding subparagraph (A), by inserting after "opportunity for hearing," the following: "that such penalty is in the public interest, and";

(C) by redesignating subparagraphs (A) through (C) as clauses (i) through (iii), respectively, and adjusting the margins accordingly;

(D) by striking "In any proceeding" and inserting the following:

"(A) IN GENERAL.—In any proceeding"; and

(E) by adding at the end the following:

"(B) CEASE-AND-DESIST PROCEEDINGS.—In any proceeding instituted pursuant to subsection (f) against any person, the Commission may impose a civil penalty if the Commission finds, on the record, after notice and opportunity for hearing, that such person—

"(i) is violating or has violated any provision of this title, or any rule or regulation issued under this title; or

"(ii) is or was a cause of the violation of any provision of this title, or any rule or regulation issued under this title.".

(4) UNDER THE INVESTMENT ADVISERS ACT OF 1940.—Section 203(i)(1) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(i)(1)) is amended—

(A) by striking the matter following subparagraph (D);

(B) in the matter preceding subparagraph (A), by inserting after "opportunity for hearing," the following: "that such penalty is in the public interest and";

(C) by redesignating subparagraphs (A) through (D) as clauses (i) through (iv), respectively, and adjusting the margins accordingly;

(D) by striking "In any proceeding" and inserting the following:

"(A) IN GENERAL.—In any proceeding"; and

(E) by adding at the end the following new subparagraph:

"(B) CEASE-AND-DESIST PROCEEDINGS.—In any proceeding instituted pursuant to subsection (k) against any person, the Commission may impose a civil penalty if the Commission finds, on the record, after notice and opportunity for hearing, that such person—

"(i) is violating or has violated any provision of this title, or any rule or regulation issued under this title; or

"(ii) is or was a cause of the violation of any provision of this title, or any rule or regulation issued under this title.".

(b) EXTRATERRITORIAL JURISDICTION OF THE ANTIFRAUD PROVISIONS OF THE FEDERAL SECURITIES LAWS.—

(1) UNDER THE SECURITIES ACT OF 1933.—Section 22 of the Securities Act of 1933 (15 U.S.C. 77v(a)) is amended by adding at the end the following new subsection:

"(c) EXTRATERRITORIAL JURISDICTION.—The district courts of the United States and the United States courts of any Territory shall have jurisdiction of an action or proceeding brought or instituted by the Commission or the United States alleging a violation of section 17(a) involving—

"(1) conduct within the United States that constitutes significant steps in furtherance of the violation, even if the securities transaction occurs outside the United States and involves only foreign investors; or

"(2) conduct occurring outside the United States that has a foreseeable substantial effect within the United States.".

(2) UNDER THE SECURITIES EXCHANGE ACT OF 1934.—Section 27 of the Securities Exchange Act of 1934 (15 U.S.C. 78aa) is amended—

(A) by striking "The district" and inserting the following:

"(a) IN GENERAL.—The district"; and

(B) by adding at the end the following new subsection:

"(b) EXTRATERRITORIAL JURISDICTION.—The district courts of the United States and the United States courts of any Territory shall have jurisdiction of an action or proceeding brought or instituted by the Commission or the United States alleging a violation of the antifraud provisions of this title involving—

"(1) conduct within the United States that constitutes significant steps in furtherance of the violation, even if the securities transaction occurs outside the United States and involves only foreign investors; or

"(2) conduct occurring outside the United States that has a foreseeable substantial effect within the United States.".

(3) UNDER THE INVESTMENT ADVISERS ACT OF 1940.—Section 214 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–14) is amended—

(A) by striking "The district" and inserting the following:

"(a) IN GENERAL.—The district"; and

(B) by adding at the end the following new subsection:

"(b) EXTRATERRITORIAL JURISDICTION.—The district courts of the United States and the United States courts of any Territory shall have jurisdiction of an action or proceeding brought or instituted by the Commission or the United States alleging a violation of section 206 involving—

"(1) conduct within the United States that constitutes significant steps in furtherance of the violation, even if the violation is committed by a foreign adviser and involves only foreign investors; or

"(2) conduct occurring outside the United States that has a foreseeable substantial effect within the United States.".

(c) CONTROL PERSON LIABILITY UNDER THE SECURITIES EXCHANGE ACT OF 1934.—Section 20(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78t(a)) is amended by inserting after "controlled person is liable" the following: "(including to the Commission in any action brought under paragraph (1) or (3) of section 21(d))".

SEC. 929Q. REVISION TO RECORDKEEPING RULE.

(a) INVESTMENT COMPANY ACT OF 1940 AMENDMENTS.—Section 31 of the Investment Company Act of 1940 (15 U.S.C. 80a–30) is amended—

(1) in subsection (a)(1), by adding at the end the following: "Each person having custody or use of the securities, deposits, or credits of a registered investment company shall maintain and preserve all records that relate to the custody or use by such person of the securities, deposits, or credits of the registered investment company for such period or periods as the Commission, by rule or regulation, may prescribe, as necessary or appropriate in the public interest or for the protection of investors."; and

(2) in subsection (b), by adding at the end the following:

"(4) RECORDS OF PERSONS WITH CUSTODY OR USE.—

"(A) IN GENERAL.—Records of persons having custody or use of the securities, deposits, or credits of a registered investment company that relate to such custody or use, are subject at any time, or from time to time, to such reasonable periodic, special, or other examinations and other information and document requests by representatives of the Commission, as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

"(B) CERTAIN PERSONS SUBJECT TO OTHER REGULATION.—Any person that is subject to regulation and examination by a Federal financial institution regulatory agency (as such term is defined under section 212(c)(2) of title 18, United States Code) may satisfy any examination request, information request, or document request described under subparagraph (A), by providing to the Commission a detailed listing, in writing, of the securities, deposits, or credits of the registered investment company within the custody or use of such person.".

(b) INVESTMENT ADVISERS ACT OF 1940 AMENDMENT.—Section 204 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–4) is amended by adding at the end the following new subsection:

"(d) RECORDS OF PERSONS WITH CUSTODY OR USE.—

"(1) IN GENERAL.—Records of persons having custody or use of the securities, deposits, or credits of a client, that relate to such custody or use, are subject at any time, or from time to time, to such reasonable periodic, special, or other examinations and other information and document requests by representatives of the Commission, as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

"(2) CERTAIN PERSONS SUBJECT TO OTHER REGULATION.—Any person that is subject to regulation and examination by a Federal financial institution regulatory agency (as such term is defined under section 212(c)(2) of title 18, United States Code) may satisfy any examination request, information request, or document request described under paragraph (1), by providing the Commission with a detailed listing, in writing, of the securities, deposits, or credits of the client within the custody or use of such person.".

SEC. 929R. BENEFICIAL OWNERSHIP AND SHORT-SWING PROFIT REPORTING.

(a) BENEFICIAL OWNERSHIP REPORTING.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended—

(1) in subsection (d)(1)—

(A) by inserting after "within ten days after such acquisition" the following: "or within such shorter time as the Commission may establish by rule"; and

(B) by striking "send to the issuer of the security at its principal executive office, by registered or certified mail, send to each exchange where the security is traded, and";

(2) in subsection (d)(2)—

(A) by striking "in the statements to the issuer and the exchange, and"; and

(B) by striking "shall be transmitted to the issuer and the exchange and";

(3) in subsection (g)(1), by striking "shall send to the issuer of the security and"; and

(4) in subsection (g)(2)—

(A) by striking "sent to the issuer and"; and

(B) by striking "shall be transmitted to the issuer and".

(b) SHORT-SWING PROFIT REPORTING.—Section 16(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78p(a)) is amended—

(1) in paragraph (1), by striking "(and, if such security is registered on a national securities exchange, also with the exchange)"; and

(2) in paragraph (2)(B), by inserting after "officer" the following: ", or within such shorter time as the Commission may establish by rule".

SEC. 929S. FINGERPRINTING.

Section 17(f)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(f)(2)) is amended—

(1) in the first sentence, by striking "and registered clearing agency," and inserting "registered clearing agency, registered securities information processor, national securities exchange, and national securities association"; and

(2) in the second sentence, by striking "or clearing agency," and inserting "clearing agency, securities information processor, national securities exchange, or national securities association,".

SEC. 929T. EQUAL TREATMENT OF SELF-REGULATORY ORGANIZATION RULES.

Section 29(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78cc(a)) is amended by striking "an exchange required thereby" and inserting "a self-regulatory organization,".

SEC. 929U. DEADLINE FOR COMPLETING EXAMINATIONS, INSPECTIONS AND ENFORCEMENT ACTIONS.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 4D the following new section:

"SEC. 4E. DEADLINE FOR COMPLETING ENFORCEMENT INVESTIGATIONS AND COMPLIANCE EXAMINATIONS AND INSPECTIONS.

"(a) ENFORCEMENT INVESTIGATIONS.—

"(1) IN GENERAL.—Not later than 180 days after the date on which Commission staff provide a written Wells notification to any person, the Commission staff shall either file an action against such person or provide notice to the Director of the Division of Enforcement of its intent to not file an action.

"(2) EXCEPTIONS FOR CERTAIN COMPLEX ACTIONS.—Notwithstanding paragraph (1), if the Director of the Division of Enforcement of the Commission or the Director's designee determines that a particular enforcement investigation is sufficiently complex such that a determination regarding the filing of an action against a person cannot be completed within the deadline specified in paragraph (1), the Director of the Division of Enforcement of the Commission or the Director's designee may, after providing notice to the Chairman of the Commission,

extend such deadline as needed for one additional 180-day period. If after the additional 180-day period the Director of the Division of Enforcement of the Commission or the Director's designee determines that a particular enforcement investigation is sufficiently complex such that a determination regarding the filing of an action against a person cannot be completed within the additional 180-day period, the Director of the Division of Enforcement of the Commission or the Director's designee may, after providing notice to and receiving approval of the Commission, extend such deadline as needed for one or more additional successive 180-day periods.

"(b) COMPLIANCE EXAMINATIONS AND INSPECTIONS.—

"(1) IN GENERAL.—Not later than 180 days after the date on which Commission staff completes the on-site portion of its compliance examination or inspection or receives all records requested from the entity being examined or inspected, whichever is later, Commission staff shall provide the entity being examined or inspected with written notification indicating either that the examination or inspection has concluded, has concluded without findings, or that the staff requests the entity undertake corrective action.

"(2) EXCEPTION FOR CERTAIN COMPLEX ACTIONS.—Notwithstanding paragraph (1), if the head of any division or office within the Commission responsible for compliance examinations and inspections or his designee determines that a particular compliance examination or inspection is sufficiently complex such that a determination regarding concluding the examination or inspection, or regarding the staff requests the entity undertake corrective action, cannot be completed within the deadline specified in paragraph (1), the head of any division or office within the Commission responsible for compliance examinations and inspections or his designee may, after providing notice to the Chairman of the Commission, extend such deadline as needed for one additional 180-day period.".

SEC. 929V. SECURITY INVESTOR PROTECTION ACT AMENDMENTS.

(a) INCREASING THE MINIMUM ASSESSMENT PAID BY SIPC MEMBERS.—Section 4(d)(1)(C) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78ddd(d)(1)(C)) is amended by striking "$150 per annum" and inserting the following: "0.02 percent of the gross revenues from the securities business of such member of SIPC".

(b) INCREASING THE FINE FOR PROHIBITED ACTS UNDER SIPA.—Section 14(c) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78jjj(c)) is amended—

(1) in paragraph (1), by striking "$50,000" and inserting "$250,000"; and

(2) in paragraph (2), by striking "$50,000" and inserting "$250,000".

(c) PENALTY FOR MISREPRESENTATION OF SIPC MEMBERSHIP OR PROTECTION.—Section 14 of the Securities Investor Protection Act of 1970 (15 U.S.C. 78jjj) is amended by adding at the end the following new subsection:

"(d) MISREPRESENTATION OF SIPC MEMBERSHIP OR PROTECTION.—

"(1) IN GENERAL.—Any person who falsely represents by any means (including, without limitation, through the Internet or any other medium of mass communication), with actual

knowledge of the falsity of the representation and with an intent to deceive or cause injury to another, that such person, or another person, is a member of SIPC or that any person or account is protected or is eligible for protection under this Act or by SIPC, shall be liable for any damages caused thereby and shall be fined not more than $250,000 or imprisoned for not more than 5 years.

"(2) INJUNCTIONS.—Any court having jurisdiction of a civil action arising under this Act may grant temporary injunctions and final injunctions on such terms as the court deems reasonable to prevent or restrain any violation of paragraph (1). Any such injunction may be served anywhere in the United States on the person enjoined, shall be operative throughout the United States, and shall be enforceable, by proceedings in contempt or otherwise, by any United States court having jurisdiction over that person. The clerk of the court granting the injunction shall, when requested by any other court in which enforcement of the injunction is sought, transmit promptly to the other court a certified copy of all papers in the case on file in such clerk's office.".

SEC. 929W. NOTICE TO MISSING SECURITY HOLDERS.

Section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q–1) is amended by adding at the end the following new subsection:

"(g) DUE DILIGENCE FOR THE DELIVERY OF DIVIDENDS, INTEREST, AND OTHER VALUABLE PROPERTY RIGHTS.—

"(1) REVISION OF RULES REQUIRED.—The Commission shall revise its regulations in section 240.17Ad–17 of title 17, Code of Federal Regulations, as in effect on December 8, 1997, to extend the application of such section to brokers and dealers and to provide for the following:

"(A) A requirement that the paying agent provide a single written notification to each missing security holder that the missing security holder has been sent a check that has not yet been negotiated. The written notification may be sent along with a check or other mailing subsequently sent to the missing security holder but must be provided no later than 7 months after the sending of the not yet negotiated check.

"(B) An exclusion for paying agents from the notification requirements when the value of the not yet negotiated check is less than $25.

"(C) A provision clarifying that the requirements described in subparagraph (A) shall have no effect on State escheatment laws.

"(D) For purposes of such revised regulations—

"(i) a security holder shall be considered a 'missing security holder' if a check is sent to the security holder and the check is not negotiated before the earlier of the paying agent sending the next regularly scheduled check or the elapsing of 6 months after the sending of the not yet negotiated check; and

"(ii) the term 'paying agent' includes any issuer, transfer agent, broker, dealer, investment adviser, indenture trustee, custodian, or any other person that

accepts payments from the issuer of a security and distributes the payments to the holders of the security.

"(2) RULEMAKING.—The Commission shall adopt such rules, regulations, and orders necessary to implement this subsection no later than 1 year after the date of enactment of this subsection. In proposing such rules, the Commission shall seek to minimize disruptions to current systems used by or on behalf of paying agents to process payment to account holders and avoid requiring multiple paying agents to send written notification to a missing security holder regarding the same not yet negotiated check.".

SEC. 929X. SHORT SALE REFORMS.

(a) SHORT SALE DISCLOSURE.—Section 13(f) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(f)) is amended by redesignating paragraphs (2), (3), (4), and (5) as paragraphs (3), (4), (5), and (6), respectively, and inserting after paragraph (1) the following:

"(2) The Commission shall prescribe rules providing for the public disclosure of the name of the issuer and the title, class, CUSIP number, aggregate amount of the number of short sales of each security, and any additional information determined by the Commission following the end of the reporting period. At a minimum, such public disclosure shall occur every month.".

(b) SHORT SELLING ENFORCEMENT.—Section 9 of the Securities Exchange Act of 1934 (15 U.S.C. 78i) is amended—

(1) by redesignating subsections (d), (e), (f), (g), (h), and (i) as subsections (e), (f), (g), (h), (i), and (j), respectively; and

(2) inserting after subsection (c), the following new subsection:

"(d) TRANSACTIONS RELATING TO SHORT SALES OF SECURITIES.—It shall be unlawful for any person, directly or indirectly, by the use of the mails or any means or instrumentality of interstate commerce, or of any facility of any national securities exchange, or for any member of a national securities exchange to effect, alone or with one or more other persons, a manipulative short sale of any security. The Commission shall issue such other rules as are necessary or appropriate to ensure that the appropriate enforcement options and remedies are available for violations of this subsection in the public interest or for the protection of investors.".

(c) INVESTOR NOTIFICATION.—Section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o) is amended—

(1) by redesignating subsections (e), (f), (g), (h), and (i) as subsections (f), (g), (h), (i), and (j), respectively; and

(2) inserting after subsection (d) the following new subsection:

"(e) NOTICES TO CUSTOMERS REGARDING SECURITIES LENDING.—Every registered broker or dealer shall provide notice to its customers that they may elect not to allow their fully paid securities to be used in connection with short sales. If a broker or dealer uses a customer's securities in connection with short sales, the broker or dealer shall provide notice to its customer that the broker or dealer may receive compensation in connection with lending the customer's securities. The Commission, by rule, as it deems necessary or appropriate in the public interest and for the protection

of investors, may prescribe the form, content, time, and manner of delivery of any notice required under this paragraph.".

SEC. 929Y. STUDY ON EXTRATERRITORIAL PRIVATE RIGHTS OF ACTION.

(a) IN GENERAL.—The Securities and Exchange Commission of the United States shall solicit public comment and thereafter conduct a study to determine the extent to which private rights of action under the antifraud provisions of the Securities and Exchange Act of 1934 (15 U.S.C. 78u-4) should be extended to cover—

(1) conduct within the United States that constitutes a significant step in the furtherance of the violation, even if the securities transaction occurs outside the United States and involves only foreign investors; and

(2) conduct occurring outside the United States that has a foreseeable substantial effect within the United States.

(b) CONTENTS.—The study shall consider and analyze, among other things—

(1) the scope of such a private right of action, including whether it should extend to all private actors or whether it should be more limited to extend just to institutional investors or otherwise;

(2) what implications such a private right of action would have on international comity;

(3) the economic costs and benefits of extending a private right of action for transnational securities frauds; and

(4) whether a narrower extraterritorial standard should be adopted.

(c) REPORT.—A report of the study shall be submitted and recommendations made to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House not later than 18 months after the date of enactment of this Act.

SEC. 929Z. GAO STUDY ON SECURITIES LITIGATION.

(a) STUDY.—The Comptroller General of the United States shall conduct a study on the impact of authorizing a private right of action against any person who aids or abets another person in violation of the securities laws. To the extent feasible, this study shall include—

(1) a review of the role of secondary actors in companies issuance of securities;

(2) the courts interpretation of the scope of liability for secondary actors under Federal securities laws after January 14, 2008; and

(3) the types of lawsuits decided under the Private Securities Litigation Act of 1995.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall submit a report to Congress on the findings of the study required under subsection (a).

Subtitle C—Improvements to the Regulation of Credit Rating Agencies

SEC. 931. FINDINGS.

Congress finds the following:

(1) Because of the systemic importance of credit ratings and the reliance placed on credit ratings by individual and institutional investors and financial regulators, the activities and performances of credit rating agencies, including nationally recognized statistical rating organizations, are matters of national public interest, as credit rating agencies are central to capital formation, investor confidence, and the efficient performance of the United States economy.

(2) Credit rating agencies, including nationally recognized statistical rating organizations, play a critical "gatekeeper" role in the debt market that is functionally similar to that of securities analysts, who evaluate the quality of securities in the equity market, and auditors, who review the financial statements of firms. Such role justifies a similar level of public oversight and accountability.

(3) Because credit rating agencies perform evaluative and analytical services on behalf of clients, much as other financial "gatekeepers" do, the activities of credit rating agencies are fundamentally commercial in character and should be subject to the same standards of liability and oversight as apply to auditors, securities analysts, and investment bankers.

(4) In certain activities, particularly in advising arrangers of structured financial products on potential ratings of such products, credit rating agencies face conflicts of interest that need to be carefully monitored and that therefore should be addressed explicitly in legislation in order to give clearer authority to the Securities and Exchange Commission.

(5) In the recent financial crisis, the ratings on structured financial products have proven to be inaccurate. This inaccuracy contributed significantly to the mismanagement of risks by financial institutions and investors, which in turn adversely impacted the health of the economy in the United States and around the world. Such inaccuracy necessitates increased accountability on the part of credit rating agencies.

SEC. 932. ENHANCED REGULATION, ACCOUNTABILITY, AND TRANSPARENCY OF NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATIONS.

(a) IN GENERAL.—Section 15E of the Securities Exchange Act of 1934 (15 U.S.C. 78o–7) is amended—

(1) in subsection (b)—

(A) in paragraph (1)(A), by striking "furnished" and inserting "filed" and by striking "furnishing" and inserting "filing";

(B) in paragraph (1)(B), by striking "furnishing" and inserting "filing"; and

(C) in the first sentence of paragraph (2), by striking "furnish to" and inserting "file with";

(2) in subsection (c)—

(A) in paragraph (2)—

(i) in the second sentence, by inserting "any other provision of this section, or" after "Notwithstanding"; and

(ii) by inserting after the period at the end the following: "Nothing in this paragraph may be construed to afford a defense against any action or proceeding brought by the Commission to enforce the antifraud provisions of the securities laws."; and

(B) by adding at the end the following:

"(3) INTERNAL CONTROLS OVER PROCESSES FOR DETERMINING CREDIT RATINGS.—

"(A) IN GENERAL.—Each nationally recognized statistical rating organization shall establish, maintain, enforce, and document an effective internal control structure governing the implementation of and adherence to policies, procedures, and methodologies for determining credit ratings, taking into consideration such factors as the Commission may prescribe, by rule.

"(B) ATTESTATION REQUIREMENT.—The Commission shall prescribe rules requiring each nationally recognized statistical rating organization to submit to the Commission an annual internal controls report, which shall contain—

"(i) a description of the responsibility of the management of the nationally recognized statistical rating organization in establishing and maintaining an effective internal control structure under subparagraph (A);

"(ii) an assessment of the effectiveness of the internal control structure of the nationally recognized statistical rating organization; and

"(iii) the attestation of the chief executive officer, or equivalent individual, of the nationally recognized statistical rating organization.";

(3) in subsection (d)—

(A) by inserting after "or revoke the registration of any nationally recognized statistical rating organization" the following: ", or with respect to any person who is associated with, who is seeking to become associated with, or, at the time of the alleged misconduct, who was associated or was seeking to become associated with a nationally recognized statistical rating organization, the Commission, by order, shall censure, place limitations on the activities or functions of such person, suspend for a period not exceeding 1 year, or bar such person from being associated with a nationally recognized statistical rating organization,";

(B) by inserting "bar" after "placing of limitations, suspension,";

(C) in paragraph (2), by striking "furnished to" and inserting "filed with";

(D) in paragraph (2), by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively, and adjusting the clause margins accordingly;

(E) by redesignating paragraphs (1) through (5) as subparagraphs (A) through (E), respectively, and adjusting the subparagraph margins accordingly;

(F) in the matter preceding subparagraph (A), as so redesignated, by striking "The Commission" and inserting the following:

"(1) IN GENERAL.—The Commission";

(G) in subparagraph (D), as so redesignated—

(i) by striking "furnish" and inserting "file"; and

(ii) by striking "or" at the end.

(H) in subparagraph (E), as so redesignated, by striking the period at the end and inserting a semicolon; and

(I) by adding at the end the following:

"(F) has failed reasonably to supervise, with a view to preventing a violation of the securities laws, an individual who commits such a violation, if the individual is subject to the supervision of that person.

"(2) SUSPENSION OR REVOCATION FOR PARTICULAR CLASS OF SECURITIES.—

"(A) IN GENERAL.—The Commission may temporarily suspend or permanently revoke the registration of a nationally recognized statistical rating organization with respect to a particular class or subclass of securities, if the Commission finds, on the record after notice and opportunity for hearing, that the nationally recognized statistical rating organization does not have adequate financial and managerial resources to consistently produce credit ratings with integrity.

"(B) CONSIDERATIONS.—In making any determination under subparagraph (A), the Commission shall consider—

"(i) whether the nationally recognized statistical rating organization has failed over a sustained period of time, as determined by the Commission, to produce ratings that are accurate for that class or subclass of securities; and

"(ii) such other factors as the Commission may determine.";

(4) in subsection (h), by adding at the end the following:

"(3) SEPARATION OF RATINGS FROM SALES AND MARKETING.—

"(A) RULES REQUIRED.—The Commission shall issue rules to prevent the sales and marketing considerations of a nationally recognized statistical rating organization from influencing the production of ratings by the nationally recognized statistical rating organization.

"(B) CONTENTS OF RULES.—The rules issued under subparagraph (A) shall provide for—

"(i) exceptions for small nationally recognized statistical rating organizations with respect to which the Commission determines that the separation of the production of ratings and sales and marketing activities is not appropriate; and

"(ii) suspension or revocation of the registration of a nationally recognized statistical rating organization, if the Commission finds, on the record, after notice and opportunity for a hearing, that—

"(I) the nationally recognized statistical rating organization has committed a violation of a rule issued under this subsection; and

"(II) the violation of a rule issued under this subsection affected a rating.

"(4) LOOK-BACK REQUIREMENT.—

"(A) REVIEW BY THE NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION.—Each nationally recognized statistical rating organization shall establish, maintain, and enforce policies and procedures reasonably designed to ensure that, in any case in which an employee of a person subject to a credit rating of the nationally recognized statistical rating organization or the issuer, underwriter, or sponsor of a security or money market instrument subject to a credit rating of the nationally recognized statistical rating organization was employed by the nationally recognized statistical rating organization and participated in any capacity in determining credit ratings for the person or the securities or money market instruments during the 1-year period preceding the date an action was taken with respect to the credit rating, the nationally recognized statistical rating organization shall—

"(i) conduct a review to determine whether any conflicts of interest of the employee influenced the credit rating; and

"(ii) take action to revise the rating if appropriate, in accordance with such rules as the Commission shall prescribe.

"(B) REVIEW BY COMMISSION.—

"(i) IN GENERAL.—The Commission shall conduct periodic reviews of the policies described in subparagraph (A) and the implementation of the policies at each nationally recognized statistical rating organization to ensure they are reasonably designed and implemented to most effectively eliminate conflicts of interest.

"(ii) TIMING OF REVIEWS.—The Commission shall review the code of ethics and conflict of interest policy of each nationally recognized statistical rating organization—

"(I) not less frequently than annually; and

"(II) whenever such policies are materially modified or amended.

"(5) REPORT TO COMMISSION ON CERTAIN EMPLOYMENT TRANSITIONS.—

"(A) REPORT REQUIRED.—Each nationally recognized statistical rating organization shall report to the Commission any case such organization knows or can reasonably be expected to know where a person associated with such organization within the previous 5 years obtains employment with any obligor, issuer, underwriter, or sponsor of a security or money market instrument for which the organization issued a credit rating during the 12-month period prior to such employment, if such employee—

"(i) was a senior officer of such organization;

"(ii) participated in any capacity in determining credit ratings for such obligor, issuer, underwriter, or sponsor; or

"(iii) supervised an employee described in clause (ii).

"(B) PUBLIC DISCLOSURE.—Upon receiving such a report, the Commission shall make such information publicly available.";

(5) in subsection (j)—

(A) by striking "Each" and inserting the following: "(1) IN GENERAL.—Each"; and

(B) by adding at the end the following:

"(2) LIMITATIONS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), an individual designated under paragraph (1) may not, while serving in the designated capacity—

"(i) perform credit ratings;

"(ii) participate in the development of ratings methodologies or models;

"(iii) perform marketing or sales functions; or

"(iv) participate in establishing compensation levels, other than for employees working for that individual.

"(B) EXCEPTION.—The Commission may exempt a small nationally recognized statistical rating organization from the limitations under this paragraph, if the Commission finds that compliance with such limitations would impose an unreasonable burden on the nationally recognized statistical rating organization.

"(3) OTHER DUTIES.—Each individual designated under paragraph (1) shall establish procedures for the receipt, retention, and treatment of—

"(A) complaints regarding credit ratings, models, methodologies, and compliance with the securities laws and the policies and procedures developed under this section; and

"(B) confidential, anonymous complaints by employees or users of credit ratings.

"(4) COMPENSATION.—The compensation of each compliance officer appointed under paragraph (1) shall not be linked to the financial performance of the nationally recognized statistical rating organization and shall be arranged so as to ensure the independence of the officer's judgment.

"(5) ANNUAL REPORTS REQUIRED.—

"(A) ANNUAL REPORTS REQUIRED.—Each individual designated under paragraph (1) shall submit to the nationally recognized statistical rating organization an annual report on the compliance of the nationally recognized statistical rating organization with the securities laws and the policies and procedures of the nationally recognized statistical rating organization that includes—

"(i) a description of any material changes to the code of ethics and conflict of interest policies of the nationally recognized statistical rating organization; and

"(ii) a certification that the report is accurate and complete.

"(B) SUBMISSION OF REPORTS TO THE COMMISSION.—Each nationally recognized statistical rating organization shall file the reports required under subparagraph (A) together with the financial report that is required to be submitted to the Commission under this section.";

(6) in subsection (k), by striking "furnish to" and inserting "file with";

(7) in subsection (l)(2)(A)(i), by striking "furnished" and inserting "filed"; and

(8) by striking subsection (p) and inserting the following:

"(p) REGULATION OF NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATIONS.—

"(1) ESTABLISHMENT OF OFFICE OF CREDIT RATINGS.—

"(A) OFFICE ESTABLISHED.—The Commission shall establish within the Commission an Office of Credit Ratings (referred to in this subsection as the 'Office') to administer the rules of the Commission—

"(i) with respect to the practices of nationally recognized statistical rating organizations in determining ratings, for the protection of users of credit ratings and in the public interest;

"(ii) to promote accuracy in credit ratings issued by nationally recognized statistical rating organizations; and

"(iii) to ensure that such ratings are not unduly influenced by conflicts of interest.

"(B) DIRECTOR OF THE OFFICE.—The head of the Office shall be the Director, who shall report to the Chairman.

"(2) STAFFING.—The Office established under this subsection shall be staffed sufficiently to carry out fully the requirements of this section. The staff shall include persons with knowledge of and expertise in corporate, municipal, and structured debt finance.

"(3) COMMISSION EXAMINATIONS.—

"(A) ANNUAL EXAMINATIONS REQUIRED.—The Office shall conduct an examination of each nationally recognized statistical rating organization at least annually.

"(B) CONDUCT OF EXAMINATIONS.—Each examination under subparagraph (A) shall include a review of—

"(i) whether the nationally recognized statistical rating organization conducts business in accordance with the policies, procedures, and rating methodologies of the nationally recognized statistical rating organization;

"(ii) the management of conflicts of interest by the nationally recognized statistical rating organization;

"(iii) implementation of ethics policies by the nationally recognized statistical rating organization;

"(iv) the internal supervisory controls of the nationally recognized statistical rating organization;

"(v) the governance of the nationally recognized statistical rating organization;

"(vi) the activities of the individual designated by the nationally recognized statistical rating organization under subsection (j)(1);

"(vii) the processing of complaints by the nationally recognized statistical rating organization; and

"(viii) the policies of the nationally recognized statistical rating organization governing the post-employment activities of former staff of the nationally recognized statistical rating organization.

"(C) INSPECTION REPORTS.—The Commission shall make available to the public, in an easily understandable format, an annual report summarizing—

"(i) the essential findings of all examinations conducted under subparagraph (A), as deemed appropriate by the Commission;

"(ii) the responses by the nationally recognized statistical rating organizations to any material regulatory deficiencies identified by the Commission under clause (i); and

"(iii) whether the nationally recognized statistical rating organizations have appropriately addressed the recommendations of the Commission contained in previous reports under this subparagraph.

"(4) RULEMAKING AUTHORITY.—The Commission shall—

"(A) establish, by rule, fines, and other penalties applicable to any nationally recognized statistical rating organization that violates the requirements of this section and the rules thereunder; and

"(B) issue such rules as may be necessary to carry out this section.

"(q) TRANSPARENCY OF RATINGS PERFORMANCE.—

"(1) RULEMAKING REQUIRED.—The Commission shall, by rule, require that each nationally recognized statistical rating organization publicly disclose information on the initial credit ratings determined by the nationally recognized statistical rating organization for each type of obligor, security, and money market instrument, and any subsequent changes to such credit ratings, for the purpose of allowing users of credit ratings to evaluate the accuracy of ratings and compare the performance of ratings by different nationally recognized statistical rating organizations.

"(2) CONTENT.—The rules of the Commission under this subsection shall require, at a minimum, disclosures that—

"(A) are comparable among nationally recognized statistical rating organizations, to allow users of credit ratings to compare the performance of credit ratings across nationally recognized statistical rating organizations;

"(B) are clear and informative for investors having a wide range of sophistication who use or might use credit ratings;

"(C) include performance information over a range of years and for a variety of types of credit ratings, including for credit ratings withdrawn by the nationally recognized statistical rating organization;

"(D) are published and made freely available by the nationally recognized statistical rating organization, on an easily accessible portion of its website, and in writing, when requested;

"(E) are appropriate to the business model of a nationally recognized statistical rating organization; and

"(F) each nationally recognized statistical rating organization include an attestation with any credit rating it issues affirming that no part of the rating was influenced by any other business activities, that the rating was based solely on the merits of the instruments being rated, and

that such rating was an independent evaluation of the risks and merits of the instrument.

"(r) CREDIT RATINGS METHODOLOGIES.—The Commission shall prescribe rules, for the protection of investors and in the public interest, with respect to the procedures and methodologies, including qualitative and quantitative data and models, used by nationally recognized statistical rating organizations that require each nationally recognized statistical rating organization—

"(1) to ensure that credit ratings are determined using procedures and methodologies, including qualitative and quantitative data and models, that are—

"(A) approved by the board of the nationally recognized statistical rating organization, a body performing a function similar to that of a board; and

"(B) in accordance with the policies and procedures of the nationally recognized statistical rating organization for the development and modification of credit rating procedures and methodologies;

"(2) to ensure that when material changes to credit rating procedures and methodologies (including changes to qualitative and quantitative data and models) are made, that—

"(A) the changes are applied consistently to all credit ratings to which the changed procedures and methodologies apply;

"(B) to the extent that changes are made to credit rating surveillance procedures and methodologies, the changes are applied to then-current credit ratings by the nationally recognized statistical rating organization within a reasonable time period determined by the Commission, by rule; and

"(C) the nationally recognized statistical rating organization publicly discloses the reason for the change; and

"(3) to notify users of credit ratings—

"(A) of the version of a procedure or methodology, including the qualitative methodology or quantitative inputs, used with respect to a particular credit rating;

"(B) when a material change is made to a procedure or methodology, including to a qualitative model or quantitative inputs;

"(C) when a significant error is identified in a procedure or methodology, including a qualitative or quantitative model, that may result in credit rating actions; and

"(D) of the likelihood of a material change described in subparagraph (B) resulting in a change in current credit ratings.

"(s) TRANSPARENCY OF CREDIT RATING METHODOLOGIES AND INFORMATION REVIEWED.—

"(1) FORM FOR DISCLOSURES.—The Commission shall require, by rule, each nationally recognized statistical rating organization to prescribe a form to accompany the publication of each credit rating that discloses—

"(A) information relating to—

"(i) the assumptions underlying the credit rating procedures and methodologies;

"(ii) the data that was relied on to determine the credit rating; and

"(iii) if applicable, how the nationally recognized statistical rating organization used servicer or remittance reports, and with what frequency, to conduct surveillance of the credit rating; and

"(B) information that can be used by investors and other users of credit ratings to better understand credit ratings in each class of credit rating issued by the nationally recognized statistical rating organization.

"(2) FORMAT.—The form developed under paragraph (1) shall—

"(A) be easy to use and helpful for users of credit ratings to understand the information contained in the report;

"(B) require the nationally recognized statistical rating organization to provide the content described in paragraph (3)(B) in a manner that is directly comparable across types of securities; and

"(C) be made readily available to users of credit ratings, in electronic or paper form, as the Commission may, by rule, determine.

"(3) CONTENT OF FORM.—

"(A) QUALITATIVE CONTENT.—Each nationally recognized statistical rating organization shall disclose on the form developed under paragraph (1)—

"(i) the credit ratings produced by the nationally recognized statistical rating organization;

"(ii) the main assumptions and principles used in constructing procedures and methodologies, including qualitative methodologies and quantitative inputs and assumptions about the correlation of defaults across underlying assets used in rating structured products;

"(iii) the potential limitations of the credit ratings, and the types of risks excluded from the credit ratings that the nationally recognized statistical rating organization does not comment on, including liquidity, market, and other risks;

"(iv) information on the uncertainty of the credit rating, including—

"(I) information on the reliability, accuracy, and quality of the data relied on in determining the credit rating; and

"(II) a statement relating to the extent to which data essential to the determination of the credit rating were reliable or limited, including—

"(aa) any limits on the scope of historical data; and

"(bb) any limits in accessibility to certain documents or other types of information that would have better informed the credit rating;

"(v) whether and to what extent third party due diligence services have been used by the nationally recognized statistical rating organization, a description of the information that such third party reviewed in conducting due diligence services, and a description of the findings or conclusions of such third party;

"(vi) a description of the data about any obligor, issuer, security, or money market instrument that were relied upon for the purpose of determining the credit rating;

"(vii) a statement containing an overall assessment of the quality of information available and considered in producing a rating for an obligor, security, or money market instrument, in relation to the quality of information available to the nationally recognized statistical rating organization in rating similar issuances;

"(viii) information relating to conflicts of interest of the nationally recognized statistical rating organization; and

"(ix) such additional information as the Commission may require.

"(B) QUANTITATIVE CONTENT.—Each nationally recognized statistical rating organization shall disclose on the form developed under this subsection—

"(i) an explanation or measure of the potential volatility of the credit rating, including—

"(I) any factors that might lead to a change in the credit ratings; and

"(II) the magnitude of the change that a user can expect under different market conditions;

"(ii) information on the content of the rating, including—

"(I) the historical performance of the rating; and

"(II) the expected probability of default and the expected loss in the event of default;

"(iii) information on the sensitivity of the rating to assumptions made by the nationally recognized statistical rating organization, including—

"(I) 5 assumptions made in the ratings process that, without accounting for any other factor, would have the greatest impact on a rating if the assumptions were proven false or inaccurate; and

"(II) an analysis, using specific examples, of how each of the 5 assumptions identified under subclause (I) impacts a rating;

"(iv) such additional information as may be required by the Commission.

"(4) DUE DILIGENCE SERVICES FOR ASSET-BACKED SECURITIES.—

"(A) FINDINGS.—The issuer or underwriter of any asset-backed security shall make publicly available the findings and conclusions of any third-party due diligence report obtained by the issuer or underwriter.

"(B) CERTIFICATION REQUIRED.—In any case in which third-party due diligence services are employed by a nationally recognized statistical rating organization, an issuer, or an underwriter, the person providing the due diligence services shall provide to any nationally recognized statistical rating organization that produces a rating to which

such services relate, written certification, as provided in subparagraph (C).

"(C) FORMAT AND CONTENT.—The Commission shall establish the appropriate format and content for the written certifications required under subparagraph (B), to ensure that providers of due diligence services have conducted a thorough review of data, documentation, and other relevant information necessary for a nationally recognized statistical rating organization to provide an accurate rating.

"(D) DISCLOSURE OF CERTIFICATION.—The Commission shall adopt rules requiring a nationally recognized statistical rating organization, at the time at which the nationally recognized statistical rating organization produces a rating, to disclose the certification described in subparagraph (B) to the public in a manner that allows the public to determine the adequacy and level of due diligence services provided by a third party.

"(t) CORPORATE GOVERNANCE, ORGANIZATION, AND MANAGEMENT OF CONFLICTS OF INTEREST.—

"(1) BOARD OF DIRECTORS.—Each nationally recognized statistical rating organization shall have a board of directors.

"(2) INDEPENDENT DIRECTORS.—

"(A) IN GENERAL.—At least ½ of the board of directors, but not fewer than 2 of the members thereof, shall be independent of the nationally recognized statistical rating agency. A portion of the independent directors shall include users of ratings from a nationally recognized statistical rating organization.

"(B) INDEPENDENCE DETERMINATION.—In order to be considered independent for purposes of this subsection, a member of the board of directors of a nationally recognized statistical rating organization—

"(i) may not, other than in his or her capacity as a member of the board of directors or any committee thereof—

"(I) accept any consulting, advisory, or other compensatory fee from the nationally recognized statistical rating organization; or

"(II) be a person associated with the nationally recognized statistical rating organization or with any affiliated company thereof; and

"(ii) shall be disqualified from any deliberation involving a specific rating in which the independent board member has a financial interest in the outcome of the rating.

"(C) COMPENSATION AND TERM.—The compensation of the independent members of the board of directors of a nationally recognized statistical rating organization shall not be linked to the business performance of the nationally recognized statistical rating organization, and shall be arranged so as to ensure the independence of their judgment. The term of office of the independent directors shall be for a pre-agreed fixed period, not to exceed 5 years, and shall not be renewable.

"(3) DUTIES OF BOARD OF DIRECTORS.—In addition to the overall responsibilities of the board of directors, the board shall oversee—

"(A) the establishment, maintenance, and enforcement of policies and procedures for determining credit ratings;

"(B) the establishment, maintenance, and enforcement of policies and procedures to address, manage, and disclose any conflicts of interest;

"(C) the effectiveness of the internal control system with respect to policies and procedures for determining credit ratings; and

"(D) the compensation and promotion policies and practices of the nationally recognized statistical rating organization.

"(4) TREATMENT OF NRSRO SUBSIDIARIES.—If a nationally recognized statistical rating organization is a subsidiary of a parent entity, the board of the directors of the parent entity may satisfy the requirements of this subsection by assigning to a committee of such board of directors the duties under paragraph (3), if—

"(A) at least ½ of the members of the committee (including the chairperson of the committee) are independent, as defined in this section; and

"(B) at least 1 member of the committee is a user of ratings from a nationally recognized statistical rating organization.

"(5) EXCEPTION AUTHORITY.—If the Commission finds that compliance with the provisions of this subsection present an unreasonable burden on a small nationally recognized statistical rating organization, the Commission may permit the nationally recognized statistical rating organization to delegate such responsibilities to a committee that includes at least one individual who is a user of ratings of a nationally recognized statistical rating organization.".

(b) CONFORMING AMENDMENT.—Section 3(a)(62) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(62)) is amended by striking subparagraph (A) and redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively.

SEC. 933. STATE OF MIND IN PRIVATE ACTIONS.

(a) ACCOUNTABILITY.—Section 15E(m) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–7(m)) is amended to read as follows:

"(m) ACCOUNTABILITY.—

"(1) IN GENERAL.—The enforcement and penalty provisions of this title shall apply to statements made by a credit rating agency in the same manner and to the same extent as such provisions apply to statements made by a registered public accounting firm or a securities analyst under the securities laws, and such statements shall not be deemed forward-looking statements for the purposes of section 21E.

"(2) RULEMAKING.—The Commission shall issue such rules as may be necessary to carry out this subsection.".

(b) STATE OF MIND.—Section 21D(b)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78u–4(b)(2)) is amended—

(1) by striking "In any" and inserting the following:

"(A) IN GENERAL.—Except as provided in subparagraph (B), in any"; and

(2) by adding at the end the following:

"(B) EXCEPTION.—In the case of an action for money damages brought against a credit rating agency or a controlling person under this title, it shall be sufficient, for purposes of pleading any required state of mind in relation to such action, that the complaint state with particularity facts giving rise to a strong inference that the credit rating agency knowingly or recklessly failed—

"(i) to conduct a reasonable investigation of the rated security with respect to the factual elements relied upon by its own methodology for evaluating credit risk; or

"(ii) to obtain reasonable verification of such factual elements (which verification may be based on a sampling technique that does not amount to an audit) from other sources that the credit rating agency considered to be competent and that were independent of the issuer and underwriter.".

SEC. 934. REFERRING TIPS TO LAW ENFORCEMENT OR REGULATORY AUTHORITIES.

Section 15E of the Securities Exchange Act of 1934 (15 U.S.C. 78o–7), as amended by this subtitle, is amended by adding at the end the following:

"(u) DUTY TO REPORT TIPS ALLEGING MATERIAL VIOLATIONS OF LAW.—

"(1) DUTY TO REPORT.—Each nationally recognized statistical rating organization shall refer to the appropriate law enforcement or regulatory authorities any information that the nationally recognized statistical rating organization receives from a third party and finds credible that alleges that an issuer of securities rated by the nationally recognized statistical rating organization has committed or is committing a material violation of law that has not been adjudicated by a Federal or State court.

"(2) RULE OF CONSTRUCTION.—Nothing in paragraph (1) may be construed to require a nationally recognized statistical rating organization to verify the accuracy of the information described in paragraph (1).".

SEC. 935. CONSIDERATION OF INFORMATION FROM SOURCES OTHER THAN THE ISSUER IN RATING DECISIONS.

Section 15E of the Securities Exchange Act of 1934 (15 U.S.C. 78o–7), as amended by this subtitle, is amended by adding at the end the following:

"(v) INFORMATION FROM SOURCES OTHER THAN THE ISSUER.—In producing a credit rating, a nationally recognized statistical rating organization shall consider information about an issuer that the nationally recognized statistical rating organization has, or receives from a source other than the issuer or underwriter, that the nationally recognized statistical rating organization finds credible and potentially significant to a rating decision.".

SEC. 936. QUALIFICATION STANDARDS FOR CREDIT RATING ANALYSTS.

Not later than 1 year after the date of enactment of this Act, the Commission shall issue rules that are reasonably designed to ensure that any person employed by a nationally recognized statistical rating organization to perform credit ratings—

(1) meets standards of training, experience, and competence necessary to produce accurate ratings for the categories of issuers whose securities the person rates; and

(2) is tested for knowledge of the credit rating process.

SEC. 937. TIMING OF REGULATIONS.

Unless otherwise specifically provided in this subtitle, the Commission shall issue final regulations, as required by this subtitle and the amendments made by this subtitle, not later than 1 year after the date of enactment of this Act.

SEC. 938. UNIVERSAL RATINGS SYMBOLS.

(a) RULEMAKING.—The Commission shall require, by rule, each nationally recognized statistical rating organization to establish, maintain, and enforce written policies and procedures that—

(1) assess the probability that an issuer of a security or money market instrument will default, fail to make timely payments, or otherwise not make payments to investors in accordance with the terms of the security or money market instrument;

(2) clearly define and disclose the meaning of any symbol used by the nationally recognized statistical rating organization to denote a credit rating; and

(3) apply any symbol described in paragraph (2) in a manner that is consistent for all types of securities and money market instruments for which the symbol is used.

(b) RULE OF CONSTRUCTION.—Nothing in this section shall prohibit a nationally recognized statistical rating organization from using distinct sets of symbols to denote credit ratings for different types of securities or money market instruments.

SEC. 939. REMOVAL OF STATUTORY REFERENCES TO CREDIT RATINGS.

(a) FEDERAL DEPOSIT INSURANCE ACT.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended—

(1) in section 7(b)(1)(E)(i), by striking "credit rating entities, and other private economic" and insert "private economic, credit,";

(2) in section 28(d)—

(A) in the subsection heading, by striking "NOT OF INVESTMENT GRADE";

(B) in paragraph (1), by striking "not of investment grade" and inserting "that does not meet standards of credit-worthiness as established by the Corporation";

(C) in paragraph (2), by striking "not of investment grade";

(D) by striking paragraph (3);

(E) by redesignating paragraph (4) as paragraph (3); and

(F) in paragraph (3), as so redesignated—

(i) by striking subparagraph (A);

(ii) by redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively; and

(iii) in subparagraph (B), as so redesignated, by striking "not of investment grade" and inserting "that does not meet standards of credit-worthiness as established by the Corporation"; and

(3) in section 28(e)—

(A) in the subsection heading, by striking "NOT OF INVESTMENT GRADE";

(B) in paragraph (1), by striking "not of investment grade" and inserting "that does not meet standards of credit-worthiness as established by the Corporation"; and

(C) in paragraphs (2) and (3), by striking "not of investment grade" each place that it appears and inserting "that does not meet standards of credit-worthiness established by the Corporation".

(b) FEDERAL HOUSING ENTERPRISES FINANCIAL SAFETY AND SOUNDNESS ACT OF 1992.—Section 1319 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4519) is amended by striking "that is a nationally recognized statistical rating organization, as such term is defined in section 3(a) of the Securities Exchange Act of 1934,".

(c) INVESTMENT COMPANY ACT OF 1940.—Section 6(a)(5)(A)(iv)(I) Investment Company Act of 1940 (15 U.S.C. 80a–6(a)(5)(A)(iv)(I)) is amended by striking "is rated investment grade by not less than 1 nationally recognized statistical rating organization" and inserting "meets such standards of credit-worthiness as the Commission shall adopt".

(d) REVISED STATUTES.—Section 5136A of title LXII of the Revised Statutes of the United States (12 U.S.C. 24a) is amended—

(1) in subsection (a)(2)(E), by striking "any applicable rating" and inserting "standards of credit-worthiness established by the Comptroller of the Currency";

(2) in the heading for subsection (a)(3) by striking "RATING OR COMPARABLE REQUIREMENT" and inserting "REQUIREMENT";

(3) subsection (a)(3), by amending subparagraph (A) to read as follows:

"(A) IN GENERAL.—A national bank meets the requirements of this paragraph if the bank is one of the 100 largest insured banks and has not fewer than 1 issue of outstanding debt that meets standards of credit-worthiness or other criteria as the Secretary of the Treasury and the Board of Governors of the Federal Reserve System may jointly establish.".

(4) in the heading for subsection (f), by striking "MAINTAIN PUBLIC RATING OR" and inserting "MEET STANDARDS OF CREDIT-WORTHINESS"; and

(5) in subsection (f)(1), by striking "any applicable rating" and inserting "standards of credit-worthiness established by the Comptroller of the Currency".

(e) SECURITIES EXCHANGE ACT OF 1934.—Section 3(a) Securities Exchange Act of 1934 (15 U.S.C. 78a(3)(a)) is amended—

(1) in paragraph (41), by striking "is rated in one of the two highest rating categories by at least one nationally recognized statistical rating organization" and inserting "meets standards of credit-worthiness as established by the Commission"; and

(2) in paragraph (53)(A), by striking "is rated in 1 of the 4 highest rating categories by at least 1 nationally recognized statistical rating organization" and inserting "meets standards of credit-worthiness as established by the Commission".

(f) WORLD BANK DISCUSSIONS.—Section 3(a)(6) of the amendment in the nature of a substitute to the text of H.R. 4645, as ordered reported from the Committee on Banking, Finance and

Urban Affairs on September 22, 1988, as enacted into law by section 555 of Public Law 100–461, (22 U.S.C. 286hh(a)(6)), is amended by striking "credit rating" and inserting "credit-worthiness".

(g) EFFECTIVE DATE.—The amendments made by this section shall take effect 2 years after the date of enactment of this Act.

(h) STUDY AND REPORT.—

(1) IN GENERAL.—Commission shall undertake a study on the feasability and desirability of—

(A) standardizing credit ratings terminology, so that all credit rating agencies issue credit ratings using identical terms;

(B) standardizing the market stress conditions under which ratings are evaluated;

(C) requiring a quantitative correspondence between credit ratings and a range of default probabilities and loss expectations under standardized conditions of economic stress; and

(D) standardizing credit rating terminology across asset classes, so that named ratings correspond to a standard range of default probabilities and expected losses independent of asset class and issuing entity.

(2) REPORT.—Not later than 1 year after the date of enactment of this Act, the Commission shall submit to Congress a report containing the findings of the study under paragraph (1) and the recommendations, if any, of the Commission with respect to the study.

SEC. 939A. REVIEW OF RELIANCE ON RATINGS.

(a) AGENCY REVIEW.—Not later than 1 year after the date of the enactment of this subtitle, each Federal agency shall, to the extent applicable, review—

(1) any regulation issued by such agency that requires the use of an assessment of the credit-worthiness of a security or money market instrument; and

(2) any references to or requirements in such regulations regarding credit ratings.

(b) MODIFICATIONS REQUIRED.—Each such agency shall modify any such regulations identified by the review conducted under subsection (a) to remove any reference to or requirement of reliance on credit ratings and to substitute in such regulations such standard of credit-worthiness as each respective agency shall determine as appropriate for such regulations. In making such determination, such agencies shall seek to establish, to the extent feasible, uniform standards of credit-worthiness for use by each such agency, taking into account the entities regulated by each such agency and the purposes for which such entities would rely on such standards of credit-worthiness.

(c) REPORT.—Upon conclusion of the review required under subsection (a), each Federal agency shall transmit a report to Congress containing a description of any modification of any regulation such agency made pursuant to subsection (b).

SEC. 939B. ELIMINATION OF EXEMPTION FROM FAIR DISCLOSURE RULE.

Not later than 90 days after the date of enactment of this subtitle, the Securities Exchange Commission shall revise Regulation FD (17 C.F.R. 243.100) to remove from such regulation the

exemption for entities whose primary business is the issuance of credit ratings (17 C.F.R. 243.100(b)(2)(iii)).

SEC. 939C. SECURITIES AND EXCHANGE COMMISSION STUDY ON STRENGTHENING CREDIT RATING AGENCY INDEPENDENCE.

(a) STUDY.—The Commission shall conduct a study of—

(1) the independence of nationally recognized statistical rating organizations; and

(2) how the independence of nationally recognized statistical rating organizations affects the ratings issued by the nationally recognized statistical rating organizations.

(b) SUBJECTS FOR EVALUATION.—In conducting the study under subsection (a), the Commission shall evaluate—

(1) the management of conflicts of interest raised by a nationally recognized statistical rating organization providing other services, including risk management advisory services, ancillary assistance, or consulting services;

(2) the potential impact of rules prohibiting a nationally recognized statistical rating organization that provides a rating to an issuer from providing other services to the issuer; and

(3) any other issue relating to nationally recognized statistical rating organizations, as the Chairman of the Commission determines is appropriate.

(c) REPORT.—Not later than 3 years after the date of enactment of this Act, the Chairman of the Commission shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the results of the study conducted under subsection (a), including recommendations, if any, for improving the integrity of ratings issued by nationally recognized statistical rating organizations.

SEC. 939D. GOVERNMENT ACCOUNTABILITY OFFICE STUDY ON ALTERNATIVE BUSINESS MODELS.

(a) STUDY.—The Comptroller General of the United States shall conduct a study on alternative means for compensating nationally recognized statistical rating organizations in order to create incentives for nationally recognized statistical rating organizations to provide more accurate credit ratings, including any statutory changes that would be required to facilitate the use of an alternative means of compensation.

(b) REPORT.—Not later than 18 months after the date of enactment of this Act, the Comptroller General shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the results of the study conducted under subsection (a), including recommendations, if any, for providing incentives to credit rating agencies to improve the credit rating process.

SEC. 939E. GOVERNMENT ACCOUNTABILITY OFFICE STUDY ON THE CREATION OF AN INDEPENDENT PROFESSIONAL ANALYST ORGANIZATION.

(a) STUDY.—The Comptroller General of the United States shall conduct a study on the feasibility and merits of creating an independent professional organization for rating analysts employed by nationally recognized statistical rating organizations that would be responsible for—

(1) establishing independent standards for governing the profession of rating analysts;

(2) establishing a code of ethical conduct; and

(3) overseeing the profession of rating analysts.

(b) REPORT.—Not later than 1 year after the date of publication of the rules issued by the Commission pursuant to section 936, the Comptroller General shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the results of the study conducted under subsection (a).

SEC. 939F. STUDY AND RULEMAKING ON ASSIGNED CREDIT RATINGS.

(a) DEFINITION.—In this section, the term "structured finance product" means an asset-backed security, as defined in section 3(a)(77) of the Securities Exchange Act of 1934, as added by section 941, and any structured product based on an asset-backed security, as determined by the Commission, by rule.

(b) STUDY.—The Commission shall carry out a study of—

(1) the credit rating process for structured finance products and the conflicts of interest associated with the issuer-pay and the subscriber-pay models;

(2) the feasibility of establishing a system in which a public or private utility or a self-regulatory organization assigns nationally recognized statistical rating organizations to determine the credit ratings of structured finance products, including—

(A) an assessment of potential mechanisms for determining fees for the nationally recognized statistical rating organizations;

(B) appropriate methods for paying fees to the nationally recognized statistical rating organizations;

(C) the extent to which the creation of such a system would be viewed as the creation of moral hazard by the Federal Government; and

(D) any constitutional or other issues concerning the establishment of such a system;

(3) the range of metrics that could be used to determine the accuracy of credit ratings; and

(4) alternative means for compensating nationally recognized statistical rating organizations that would create incentives for accurate credit ratings.

(c) REPORT AND RECOMMENDATION.—Not later than 24 months after the date of enactment of this Act, the Commission shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report that contains—

(1) the findings of the study required under subsection (b); and

(2) any recommendations for regulatory or statutory changes that the Commission determines should be made to implement the findings of the study required under subsection (b).

(d) RULEMAKING.—

(1) RULEMAKING.—After submission of the report under subsection (c), the Commission shall, by rule, as the Commission determines is necessary or appropriate in the public interest or for the protection of investors, establish a system

for the assignment of nationally recognized statistical rating organizations to determine the initial credit ratings of structured finance products, in a manner that prevents the issuer, sponsor, or underwriter of the structured finance product from selecting the nationally recognized statistical rating organization that will determine the initial credit ratings and monitor such credit ratings. In issuing any rule under this paragraph, the Commission shall give thorough consideration to the provisions of section 15E(w) of the Securities Exchange Act of 1934, as that provision would have been added by section 939D of H.R. 4173 (111th Congress), as passed by the Senate on May 20, 2010, and shall implement the system described in such section 939D unless the Commission determines that an alternative system would better serve the public interest and the protection of investors.

(2) RULE OF CONSTRUCTION.—Nothing in this subsection may be construed to limit or suspend any other rulemaking authority of the Commission.

SEC. 939G. EFFECT OF RULE 436(G).

Rule 436(g), promulgated by the Securities and Exchange Commission under the Securities Act of 1933, shall have no force or effect.

SEC. 939H. SENSE OF CONGRESS.

It is the sense of Congress that the Securities and Exchange Commission should exercise the rulemaking authority of the Commission under section 15E(h)(2)(B) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–7(h)(2)(B)) to prevent improper conflicts of interest arising from employees of nationally recognized statistical rating organizations providing services to issuers of securities that are unrelated to the issuance of credit ratings, including consulting, advisory, and other services.

Subtitle D—Improvements to the Asset-Backed Securitization Process

SEC. 941. REGULATION OF CREDIT RISK RETENTION.

(a) DEFINITION OF ASSET-BACKED SECURITY.—Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended by adding at the end the following:

"(77) ASSET-BACKED SECURITY.—The term 'asset-backed security'—

"(A) means a fixed-income or other security collateralized by any type of self-liquidating financial asset (including a loan, a lease, a mortgage, or a secured or unsecured receivable) that allows the holder of the security to receive payments that depend primarily on cash flow from the asset, including—

"(i) a collateralized mortgage obligation;

"(ii) a collateralized debt obligation;

"(iii) a collateralized bond obligation;

"(iv) a collateralized debt obligation of asset-backed securities;

"(v) a collateralized debt obligation of collateralized debt obligations; and

"(vi) a security that the Commission, by rule, determines to be an asset-backed security for purposes of this section; and

"(B) does not include a security issued by a finance subsidiary held by the parent company or a company controlled by the parent company, if none of the securities issued by the finance subsidiary are held by an entity that is not controlled by the parent company.".

(b) CREDIT RISK RETENTION.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 15F, as added by this Act, the following:

"SEC. 15G. CREDIT RISK RETENTION.

"(a) DEFINITIONS.—In this section—

"(1) the term 'Federal banking agencies' means the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation;

"(2) the term 'insured depository institution' has the same meaning as in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c));

"(3) the term 'securitizer' means—

"(A) an issuer of an asset-backed security; or

"(B) a person who organizes and initiates an asset-backed securities transaction by selling or transferring assets, either directly or indirectly, including through an affiliate, to the issuer; and

"(4) the term 'originator' means a person who—

"(A) through the extension of credit or otherwise, creates a financial asset that collateralizes an asset-backed security; and

"(B) sells an asset directly or indirectly to a securitizer.

"(b) REGULATIONS REQUIRED.—

"(1) IN GENERAL.—Not later than 270 days after the date of enactment of this section, the Federal banking agencies and the Commission shall jointly prescribe regulations to require any securitizer to retain an economic interest in a portion of the credit risk for any asset that the securitizer, through the issuance of an asset-backed security, transfers, sells, or conveys to a third party.

"(2) RESIDENTIAL MORTGAGES.—Not later than 270 days after the date of the enactment of this section, the Federal banking agencies, the Commission, the Secretary of Housing and Urban Development, and the Federal Housing Finance Agency, shall jointly prescribe regulations to require any securitizer to retain an economic interest in a portion of the credit risk for any residential mortgage asset that the securitizer, through the issuance of an asset-backed security, transfers, sells, or conveys to a third party.

"(c) STANDARDS FOR REGULATIONS.—

"(1) STANDARDS.—The regulations prescribed under subsection (b) shall—

"(A) prohibit a securitizer from directly or indirectly hedging or otherwise transferring the credit risk that the securitizer is required to retain with respect to an asset;

"(B) require a securitizer to retain—

"(i) not less than 5 percent of the credit risk for any asset—

"(I) that is not a qualified residential mortgage that is transferred, sold, or conveyed through the issuance of an asset-backed security by the securitizer; or

"(II) that is a qualified residential mortgage that is transferred, sold, or conveyed through the issuance of an asset-backed security by the securitizer, if 1 or more of the assets that collateralize the asset-backed security are not qualified residential mortgages; or

"(ii) less than 5 percent of the credit risk for an asset that is not a qualified residential mortgage that is transferred, sold, or conveyed through the issuance of an asset-backed security by the securitizer, if the originator of the asset meets the underwriting standards prescribed under paragraph (2)(B);

"(C) specify—

"(i) the permissible forms of risk retention for purposes of this section;

"(ii) the minimum duration of the risk retention required under this section; and

"(iii) that a securitizer is not required to retain any part of the credit risk for an asset that is transferred, sold or conveyed through the issuance of an asset-backed security by the securitizer, if all of the assets that collateralize the asset-backed security are qualified residential mortgages;

"(D) apply, regardless of whether the securitizer is an insured depository institution;

"(E) with respect to a commercial mortgage, specify the permissible types, forms, and amounts of risk retention that would meet the requirements of subparagraph (B), which in the determination of the Federal banking agencies and the Commission may include—

"(i) retention of a specified amount or percentage of the total credit risk of the asset;

"(ii) retention of the first-loss position by a third-party purchaser that specifically negotiates for the purchase of such first loss position, holds adequate financial resources to back losses, provides due diligence on all individual assets in the pool before the issuance of the asset-backed securities, and meets the same standards for risk retention as the Federal banking agencies and the Commission require of the securitizer;

"(iii) a determination by the Federal banking agencies and the Commission that the underwriting standards and controls for the asset are adequate; and

"(iv) provision of adequate representations and warranties and related enforcement mechanisms; and

"(F) establish appropriate standards for retention of an economic interest with respect to collateralized debt obligations, securities collateralized by collateralized debt obligations, and similar instruments collateralized by other asset-backed securities; and

"(G) provide for—

"(i) a total or partial exemption of any securitization, as may be appropriate in the public interest and for the protection of investors;

"(ii) a total or partial exemption for the securitization of an asset issued or guaranteed by the United States, or an agency of the United States, as the Federal banking agencies and the Commission jointly determine appropriate in the public interest and for the protection of investors, except that, for purposes of this clause, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation are not agencies of the United States;

"(iii) a total or partial exemption for any asset-backed security that is a security issued or guaranteed by any State of the United States, or by any political subdivision of a State or territory, or by any public instrumentality of a State or territory that is exempt from the registration requirements of the Securities Act of 1933 by reason of section 3(a)(2) of that Act (15 U.S.C. 77c(a)(2)), or a security defined as a qualified scholarship funding bond in section 150(d)(2) of the Internal Revenue Code of 1986, as may be appropriate in the public interest and for the protection of investors; and

"(iv) the allocation of risk retention obligations between a securitizer and an originator in the case of a securitizer that purchases assets from an originator, as the Federal banking agencies and the Commission jointly determine appropriate.

"(2) ASSET CLASSES.—

"(A) ASSET CLASSES.—The regulations prescribed under subsection (b) shall establish asset classes with separate rules for securitizers of different classes of assets, including residential mortgages, commercial mortgages, commercial loans, auto loans, and any other class of assets that the Federal banking agencies and the Commission deem appropriate.

"(B) CONTENTS.—For each asset class established under subparagraph (A), the regulations prescribed under subsection (b) shall include underwriting standards established by the Federal banking agencies that specify the terms, conditions, and characteristics of a loan within the asset class that indicate a low credit risk with respect to the loan.

"(d) ORIGINATORS.—In determining how to allocate risk retention obligations between a securitizer and an originator under subsection (c)(1)(E)(iv), the Federal banking agencies and the Commission shall—

"(1) reduce the percentage of risk retention obligations required of the securitizer by the percentage of risk retention obligations required of the originator; and

"(2) consider—

"(A) whether the assets sold to the securitizer have terms, conditions, and characteristics that reflect low credit risk;

"(B) whether the form or volume of transactions in securitization markets creates incentives for imprudent

origination of the type of loan or asset to be sold to the securitizer; and

"(C) the potential impact of the risk retention obligations on the access of consumers and businesses to credit on reasonable terms, which may not include the transfer of credit risk to a third party.

"(e) EXEMPTIONS, EXCEPTIONS, AND ADJUSTMENTS.—

"(1) IN GENERAL.—The Federal banking agencies and the Commission may jointly adopt or issue exemptions, exceptions, or adjustments to the rules issued under this section, including exemptions, exceptions, or adjustments for classes of institutions or assets relating to the risk retention requirement and the prohibition on hedging under subsection (c)(1).

"(2) APPLICABLE STANDARDS.—Any exemption, exception, or adjustment adopted or issued by the Federal banking agencies and the Commission under this paragraph shall—

"(A) help ensure high quality underwriting standards for the securitizers and originators of assets that are securitized or available for securitization; and

"(B) encourage appropriate risk management practices by the securitizers and originators of assets, improve the access of consumers and businesses to credit on reasonable terms, or otherwise be in the public interest and for the protection of investors.

"(3) CERTAIN INSTITUTIONS AND PROGRAMS EXEMPT.—

"(A) FARM CREDIT SYSTEM INSTITUTIONS.—Notwithstanding any other provision of this section, the requirements of this section shall not apply to any loan or other financial asset made, insured, guaranteed, or purchased by any institution that is subject to the supervision of the Farm Credit Administration, including the Federal Agricultural Mortgage Corporation.

"(B) OTHER FEDERAL PROGRAMS.—This section shall not apply to any residential, multifamily, or health care facility mortgage loan asset, or securitization based directly or indirectly on such an asset, which is insured or guaranteed by the United States or an agency of the United States. For purposes of this subsection, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Federal home loan banks shall not be considered an agency of the United States.

"(4) EXEMPTION FOR QUALIFIED RESIDENTIAL MORTGAGES.—

"(A) IN GENERAL.—The Federal banking agencies, the Commission, the Secretary of Housing and Urban Development, and the Director of the Federal Housing Finance Agency shall jointly issue regulations to exempt qualified residential mortgages from the risk retention requirements of this subsection.

"(B) QUALIFIED RESIDENTIAL MORTGAGE.—The Federal banking agencies, the Commission, the Secretary of Housing and Urban Development, and the Director of the Federal Housing Finance Agency shall jointly define the term 'qualified residential mortgage' for purposes of this subsection, taking into consideration underwriting and product features that historical loan performance data indicate result in a lower risk of default, such as—

"(i) documentation and verification of the financial resources relied upon to qualify the mortgagor;

"(ii) standards with respect to—

"(I) the residual income of the mortgagor after all monthly obligations;

"(II) the ratio of the housing payments of the mortgagor to the monthly income of the mortgagor;

"(III) the ratio of total monthly installment payments of the mortgagor to the income of the mortgagor;

"(iii) mitigating the potential for payment shock on adjustable rate mortgages through product features and underwriting standards;

"(iv) mortgage guarantee insurance or other types of insurance or credit enhancement obtained at the time of origination, to the extent such insurance or credit enhancement reduces the risk of default; and

"(v) prohibiting or restricting the use of balloon payments, negative amortization, prepayment penalties, interest-only payments, and other features that have been demonstrated to exhibit a higher risk of borrower default.

"(C) LIMITATION ON DEFINITION.—The Federal banking agencies, the Commission, the Secretary of Housing and Urban Development, and the Director of the Federal Housing Finance Agency in defining the term 'qualified residential mortgage', as required by subparagraph (B), shall define that term to be no broader than the definition 'qualified mortgage' as the term is defined under section 129C(c)(2) of the Truth in Lending Act, as amended by the Consumer Financial Protection Act of 2010, and regulations adopted thereunder.

"(5) CONDITION FOR QUALIFIED RESIDENTIAL MORTGAGE EXEMPTION.—The regulations issued under paragraph (4) shall provide that an asset-backed security that is collateralized by tranches of other asset-backed securities shall not be exempt from the risk retention requirements of this subsection.

"(6) CERTIFICATION.—The Commission shall require an issuer to certify, for each issuance of an asset-backed security collateralized exclusively by qualified residential mortgages, that the issuer has evaluated the effectiveness of the internal supervisory controls of the issuer with respect to the process for ensuring that all assets that collateralize the asset-backed security are qualified residential mortgages.

"(f) ENFORCEMENT.—The regulations issued under this section shall be enforced by—

"(1) the appropriate Federal banking agency, with respect to any securitizer that is an insured depository institution; and

"(2) the Commission, with respect to any securitizer that is not an insured depository institution.

"(g) AUTHORITY OF COMMISSION.—The authority of the Commission under this section shall be in addition to the authority of the Commission to otherwise enforce the securities laws.

"(h) AUTHORITY TO COORDINATE ON RULEMAKING.—The Chairperson of the Financial Stability Oversight Council shall coordinate all joint rulemaking required under this section.

"(i) EFFECTIVE DATE OF REGULATIONS.—The regulations issued under this section shall become effective—

"(1) with respect to securitizers and originators of asset-backed securities backed by residential mortgages, 1 year after the date on which final rules under this section are published in the Federal Register; and

"(2) with respect to securitizers and originators of all other classes of asset-backed securities, 2 years after the date on which final rules under this section are published in the Federal Register.".

(c) STUDY ON RISK RETENTION.—

(1) STUDY.—The Board of Governors of the Federal Reserve System, in coordination and consultation with the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Chairperson of the Federal Deposit Insurance Corporation, and the Securities and Exchange Commission shall conduct a study of the combined impact on each individual class of asset-backed security established under section 15G(c)(2) of the Securities Exchange Act of 1934, as added by subsection (b), of—

(A) the new credit risk retention requirements contained in the amendment made by subsection (b), including the effect credit risk retention requirements have on increasing the market for Federally subsidized loans; and

(B) the Financial Accounting Statements 166 and 167 issued by the Financial Accounting Standards Board.

(2) REPORT.—Not later than 90 days after the date of enactment of this Act, the Board of Governors of the Federal Reserve System shall submit to Congress a report on the study conducted under paragraph (1). Such report shall include statutory and regulatory recommendations for eliminating any negative impacts on the continued viability of the asset-backed securitization markets and on the availability of credit for new lending identified by the study conducted under paragraph (1).

SEC. 942. DISCLOSURES AND REPORTING FOR ASSET-BACKED SECURITIES.

(a) SECURITIES EXCHANGE ACT OF 1934.—Section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)) is amended—

(1) by striking "(d) Each" and inserting the following:

"(d) SUPPLEMENTARY AND PERIODIC INFORMATION.—

"(1) IN GENERAL.—Each";

(2) in the third sentence, by inserting after "securities of each class" the following: ", other than any class of asset-backed securities,"; and

(3) by adding at the end the following:

"(2) ASSET-BACKED SECURITIES.—

"(A) SUSPENSION OF DUTY TO FILE.—The Commission may, by rule or regulation, provide for the suspension or termination of the duty to file under this subsection for any class of asset-backed security, on such terms and conditions and for such period or periods as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

"(B) CLASSIFICATION OF ISSUERS.—The Commission may, for purposes of this subsection, classify issuers and

prescribe requirements appropriate for each class of issuers of asset-backed securities.".

(b) SECURITIES ACT OF 1933.—Section 7 of the Securities Act of 1933 (15 U.S.C. 77g) is amended by adding at the end the following:

"(c) DISCLOSURE REQUIREMENTS.—

"(1) IN GENERAL.—The Commission shall adopt regulations under this subsection requiring each issuer of an asset-backed security to disclose, for each tranche or class of security, information regarding the assets backing that security.

"(2) CONTENT OF REGULATIONS.—In adopting regulations under this subsection, the Commission shall—

"(A) set standards for the format of the data provided by issuers of an asset-backed security, which shall, to the extent feasible, facilitate comparison of such data across securities in similar types of asset classes; and

"(B) require issuers of asset-backed securities, at a minimum, to disclose asset-level or loan-level data, if such data are necessary for investors to independently perform due diligence, including—

"(i) data having unique identifiers relating to loan brokers or originators;

"(ii) the nature and extent of the compensation of the broker or originator of the assets backing the security; and

"(iii) the amount of risk retention by the originator and the securitizer of such assets.".

SEC. 943. REPRESENTATIONS AND WARRANTIES IN ASSET-BACKED OFFERINGS.

Not later than 180 days after the date of enactment of this Act, the Securities and Exchange Commission shall prescribe regulations on the use of representations and warranties in the market for asset-backed securities (as that term is defined in section 3(a)(77) of the Securities Exchange Act of 1934, as added by this subtitle) that—

(1) require each national recognized statistical rating organization to include in any report accompanying a credit rating a description of—

(A) the representations, warranties, and enforcement mechanisms available to investors; and

(B) how they differ from the representations, warranties, and enforcement mechanisms in issuances of similar securities; and

(2) require any securitizer (as that term is defined in section 15G(a) of the Securities Exchange Act of 1934, as added by this subtitle) to disclose fulfilled and unfulfilled repurchase requests across all trusts aggregated by the securitizer, so that investors may identify asset originators with clear underwriting deficiencies.

SEC. 944. EXEMPTED TRANSACTIONS UNDER THE SECURITIES ACT OF 1933.

(a) EXEMPTION ELIMINATED.—Section 4 of the Securities Act of 1933 (15 U.S.C. 77d) is amended—

(1) by striking paragraph (5); and

(2) by striking "(6) transactions" and inserting the following:

"(5) transactions".

(b) CONFORMING AMENDMENT.—Section 3(a)(4)(B)(vii)(I) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)(B)(vii)(I)) is amended by striking "4(6)" and inserting "4(5)".

SEC. 945. DUE DILIGENCE ANALYSIS AND DISCLOSURE IN ASSET-BACKED SECURITIES ISSUES.

Section 7 of the Securities Act of 1933 (15 U.S.C. 77g), as amended by this subtitle, is amended by adding at the end the following:

"(d) REGISTRATION STATEMENT FOR ASSET-BACKED SECURITIES.—Not later than 180 days after the date of enactment of this subsection, the Commission shall issue rules relating to the registration statement required to be filed by any issuer of an asset-backed security (as that term is defined in section 3(a)(77) of the Securities Exchange Act of 1934) that require any issuer of an asset-backed security—

"(1) to perform a review of the assets underlying the asset-backed security; and

"(2) to disclose the nature of the review under paragraph (1).".

SEC. 946. STUDY ON THE MACROECONOMIC EFFECTS OF RISK RETENTION REQUIREMENTS.

(a) STUDY REQUIRED.—The Chairman of the Financial Services Oversight Council shall carry out a study on the macroeconomic effects of the risk retention requirements under this subtitle, and the amendments made by this subtitle, with emphasis placed on potential beneficial effects with respect to stabilizing the real estate market. Such study shall include—

(1) an analysis of the effects of risk retention on real estate asset price bubbles, including a retrospective estimate of what fraction of real estate losses may have been averted had such requirements been in force in recent years;

(2) an analysis of the feasibility of minimizing real estate price bubbles by proactively adjusting the percentage of risk retention that must be borne by creditors and securitizers of real estate debt, as a function of regional or national market conditions;

(3) a comparable analysis for proactively adjusting mortgage origination requirements;

(4) an assessment of whether such proactive adjustments should be made by an independent regulator, or in a formulaic and transparent manner;

(5) an assessment of whether such adjustments should take place independently or in concert with monetary policy; and

(6) recommendations for implementation and enabling legislation.

(b) REPORT.—Not later than the end of the 180-day period beginning on the date of the enactment of this title, the Chairman of the Financial Services Oversight Council shall issue a report to the Congress containing any findings and determinations made in carrying out the study required under subsection (a).

Subtitle E—Accountability and Executive Compensation

SEC. 951. SHAREHOLDER VOTE ON EXECUTIVE COMPENSATION DISCLOSURES.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 14 (15 U.S.C. 78n) the following:

"SEC. 14A. SHAREHOLDER APPROVAL OF EXECUTIVE COMPENSATION.

"(a) SEPARATE RESOLUTION REQUIRED.—

"(1) IN GENERAL.—Not less frequently than once every 3 years, a proxy or consent or authorization for an annual or other meeting of the shareholders for which the proxy solicitation rules of the Commission require compensation disclosure shall include a separate resolution subject to shareholder vote to approve the compensation of executives, as disclosed pursuant to section 229.402 of title 17, Code of Federal Regulations, or any successor thereto.

"(2) FREQUENCY OF VOTE.—Not less frequently than once every 6 years, a proxy or consent or authorization for an annual or other meeting of the shareholders for which the proxy solicitation rules of the Commission require compensation disclosure shall include a separate resolution subject to shareholder vote to determine whether votes on the resolutions required under paragraph (1) will occur every 1, 2, or 3 years.

"(3) EFFECTIVE DATE.—The proxy or consent or authorization for the first annual or other meeting of the shareholders occurring after the end of the 6-month period beginning on the date of enactment of this section shall include—

"(A) the resolution described in paragraph (1); and

"(B) a separate resolution subject to shareholder vote to determine whether votes on the resolutions required under paragraph (1) will occur every 1, 2, or 3 years.

"(b) SHAREHOLDER APPROVAL OF GOLDEN PARACHUTE COMPENSATION.—

"(1) DISCLOSURE.—In any proxy or consent solicitation material (the solicitation of which is subject to the rules of the Commission pursuant to subsection (a)) for a meeting of the shareholders occurring after the end of the 6-month period beginning on the date of enactment of this section, at which shareholders are asked to approve an acquisition, merger, consolidation, or proposed sale or other disposition of all or substantially all the assets of an issuer, the person making such solicitation shall disclose in the proxy or consent solicitation material, in a clear and simple form in accordance with regulations to be promulgated by the Commission, any agreements or understandings that such person has with any named executive officers of such issuer (or of the acquiring issuer, if such issuer is not the acquiring issuer) concerning any type of compensation (whether present, deferred, or contingent) that is based on or otherwise relates to the acquisition, merger, consolidation, sale, or other disposition of all or substantially all of the assets of the issuer and the aggregate total of all such compensation that may (and the conditions upon which

it may) be paid or become payable to or on behalf of such executive officer.

"(2) SHAREHOLDER APPROVAL.—Any proxy or consent or authorization relating to the proxy or consent solicitation material containing the disclosure required by paragraph (1) shall include a separate resolution subject to shareholder vote to approve such agreements or understandings and compensation as disclosed, unless such agreements or understandings have been subject to a shareholder vote under subsection (a).

"(c) RULE OF CONSTRUCTION.—The shareholder vote referred to in subsections (a) and (b) shall not be binding on the issuer or the board of directors of an issuer, and may not be construed—

"(1) as overruling a decision by such issuer or board of directors;

"(2) to create or imply any change to the fiduciary duties of such issuer or board of directors;

"(3) to create or imply any additional fiduciary duties for such issuer or board of directors; or

"(4) to restrict or limit the ability of shareholders to make proposals for inclusion in proxy materials related to executive compensation.

"(d) DISCLOSURE OF VOTES.—Every institutional investment manager subject to section 13(f) shall report at least annually how it voted on any shareholder vote pursuant to subsections (a) and (b), unless such vote is otherwise required to be reported publicly by rule or regulation of the Commission.

"(e) EXEMPTION.—The Commission may, by rule or order, exempt an issuer or class of issuers from the requirement under subsection (a) or (b). In determining whether to make an exemption under this subsection, the Commission shall take into account, among other considerations, whether the requirements under subsections (a) and (b) disproportionately burdens small issuers.".

SEC. 952. COMPENSATION COMMITTEE INDEPENDENCE.

(a) IN GENERAL.—The Securities Exchange Act of 1934 (15 U.S.C. 78 et seq.) is amended by inserting after section 10B, as added by section 753, the following:

"SEC. 10C. COMPENSATION COMMITTEES.

"(a) INDEPENDENCE OF COMPENSATION COMMITTEES.—

"(1) LISTING STANDARDS.—The Commission shall, by rule, direct the national securities exchanges and national securities associations to prohibit the listing of any equity security of an issuer, other than an issuer that is a controlled company, limited partnership, company in bankruptcy proceedings, open-ended management investment company that is registered under the Investment Company Act of 1940, or a foreign private issuer that provides annual disclosures to shareholders of the reasons that the foreign private issuer does not have an independent compensation committee, that does not comply with the requirements of this subsection.

"(2) INDEPENDENCE OF COMPENSATION COMMITTEES.—The rules of the Commission under paragraph (1) shall require that each member of the compensation committee of the board of directors of an issuer be—

"(A) a member of the board of directors of the issuer; and

"(B) independent.

"(3) INDEPENDENCE.—The rules of the Commission under paragraph (1) shall require that, in determining the definition of the term 'independence' for purposes of paragraph (2), the national securities exchanges and the national securities associations shall consider relevant factors, including—

"(A) the source of compensation of a member of the board of directors of an issuer, including any consulting, advisory, or other compensatory fee paid by the issuer to such member of the board of directors; and

"(B) whether a member of the board of directors of an issuer is affiliated with the issuer, a subsidiary of the issuer, or an affiliate of a subsidiary of the issuer.

"(4) EXEMPTION AUTHORITY.—The rules of the Commission under paragraph (1) shall permit a national securities exchange or a national securities association to exempt a particular relationship from the requirements of paragraph (2), with respect to the members of a compensation committee, as the national securities exchange or national securities association determines is appropriate, taking into consideration the size of an issuer and any other relevant factors.

"(b) INDEPENDENCE OF COMPENSATION CONSULTANTS AND OTHER COMPENSATION COMMITTEE ADVISERS.—

"(1) IN GENERAL.—The compensation committee of an issuer may only select a compensation consultant, legal counsel, or other adviser to the compensation committee after taking into consideration the factors identified by the Commission under paragraph (2).

"(2) RULES.—The Commission shall identify factors that affect the independence of a compensation consultant, legal counsel, or other adviser to a compensation committee of an issuer. Such factors shall be competitively neutral among categories of consultants, legal counsel, or other advisers and preserve the ability of compensation committees to retain the services of members of any such category, and shall include—

"(A) the provision of other services to the issuer by the person that employs the compensation consultant, legal counsel, or other adviser;

"(B) the amount of fees received from the issuer by the person that employs the compensation consultant, legal counsel, or other adviser, as a percentage of the total revenue of the person that employs the compensation consultant, legal counsel, or other adviser;

"(C) the policies and procedures of the person that employs the compensation consultant, legal counsel, or other adviser that are designed to prevent conflicts of interest;

"(D) any business or personal relationship of the compensation consultant, legal counsel, or other adviser with a member of the compensation committee; and

"(E) any stock of the issuer owned by the compensation consultant, legal counsel, or other adviser.

"(c) COMPENSATION COMMITTEE AUTHORITY RELATING TO COMPENSATION CONSULTANTS.—

"(1) AUTHORITY TO RETAIN COMPENSATION CONSULTANT.—

"(A) IN GENERAL.—The compensation committee of an issuer, in its capacity as a committee of the board of directors, may, in its sole discretion, retain or obtain the advice of a compensation consultant.

"(B) DIRECT RESPONSIBILITY OF COMPENSATION COMMITTEE.—The compensation committee of an issuer shall be directly responsible for the appointment, compensation, and oversight of the work of a compensation consultant.

"(C) RULE OF CONSTRUCTION.—This paragraph may not be construed—

"(i) to require the compensation committee to implement or act consistently with the advice or recommendations of the compensation consultant; or

"(ii) to affect the ability or obligation of a compensation committee to exercise its own judgment in fulfillment of the duties of the compensation committee.

"(2) DISCLOSURE.—In any proxy or consent solicitation material for an annual meeting of the shareholders (or a special meeting in lieu of the annual meeting) occurring on or after the date that is 1 year after the date of enactment of this section, each issuer shall disclose in the proxy or consent material, in accordance with regulations of the Commission, whether—

"(A) the compensation committee of the issuer retained or obtained the advice of a compensation consultant; and

"(B) the work of the compensation consultant has raised any conflict of interest and, if so, the nature of the conflict and how the conflict is being addressed.

"(d) AUTHORITY TO ENGAGE INDEPENDENT LEGAL COUNSEL AND OTHER ADVISERS.—

"(1) IN GENERAL.—The compensation committee of an issuer, in its capacity as a committee of the board of directors, may, in its sole discretion, retain and obtain the advice of independent legal counsel and other advisers.

"(2) DIRECT RESPONSIBILITY OF COMPENSATION COMMITTEE.—The compensation committee of an issuer shall be directly responsible for the appointment, compensation, and oversight of the work of independent legal counsel and other advisers.

"(3) RULE OF CONSTRUCTION.—This subsection may not be construed—

"(A) to require a compensation committee to implement or act consistently with the advice or recommendations of independent legal counsel or other advisers under this subsection; or

"(B) to affect the ability or obligation of a compensation committee to exercise its own judgment in fulfillment of the duties of the compensation committee.

"(e) COMPENSATION OF COMPENSATION CONSULTANTS, INDEPENDENT LEGAL COUNSEL, AND OTHER ADVISERS.—Each issuer shall provide for appropriate funding, as determined by the compensation committee in its capacity as a committee of the board of directors, for payment of reasonable compensation—

"(1) to a compensation consultant; and

"(2) to independent legal counsel or any other adviser to the compensation committee.

"(f) COMMISSION RULES.—

"(1) IN GENERAL.—Not later than 360 days after the date of enactment of this section, the Commission shall, by rule, direct the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that is not in compliance with the requirements of this section.

"(2) OPPORTUNITY TO CURE DEFECTS.—The rules of the Commission under paragraph (1) shall provide for appropriate procedures for an issuer to have a reasonable opportunity to cure any defects that would be the basis for the prohibition under paragraph (1), before the imposition of such prohibition.

"(3) EXEMPTION AUTHORITY.—

"(A) IN GENERAL.—The rules of the Commission under paragraph (1) shall permit a national securities exchange or a national securities association to exempt a category of issuers from the requirements under this section, as the national securities exchange or the national securities association determines is appropriate.

"(B) CONSIDERATIONS.—In determining appropriate exemptions under subparagraph (A), the national securities exchange or the national securities association shall take into account the potential impact of the requirements of this section on smaller reporting issuers.

"(g) CONTROLLED COMPANY EXEMPTION.—

"(1) IN GENERAL.—This section shall not apply to any controlled company.

"(2) DEFINITION.—For purposes of this section, the term 'controlled company' means an issuer—

"(A) that is listed on a national securities exchange or by a national securities association; and

"(B) that holds an election for the board of directors of the issuer in which more than 50 percent of the voting power is held by an individual, a group, or another issuer.".

(b) STUDY AND REPORT.—

(1) STUDY.—The Securities and Exchange Commission shall conduct a study and review of the use of compensation consultants and the effects of such use.

(2) REPORT.—Not later than 2 years after the date of the enactment of this Act, the Commission shall submit a report to Congress on the results of the study and review required by this subsection.

SEC. 953. EXECUTIVE COMPENSATION DISCLOSURES.

(a) DISCLOSURE OF PAY VERSUS PERFORMANCE.—Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n), as amended by this title, is amended by adding at the end the following:

"(i) DISCLOSURE OF PAY VERSUS PERFORMANCE.—The Commission shall, by rule, require each issuer to disclose in any proxy or consent solicitation material for an annual meeting of the shareholders of the issuer a clear description of any compensation required to be disclosed by the issuer under section 229.402 of title 17, Code of Federal Regulations (or any successor thereto), including information that shows the relationship between executive compensation actually paid and the financial performance of the issuer, taking into account any change in the value of the shares of stock and dividends of the issuer and any distributions. The

disclosure under this subsection may include a graphic representation of the information required to be disclosed.".

(b) ADDITIONAL DISCLOSURE REQUIREMENTS.—

(1) IN GENERAL.—The Commission shall amend section 229.402 of title 17, Code of Federal Regulations, to require each issuer to disclose in any filing of the issuer described in section 229.10(a) of title 17, Code of Federal Regulations (or any successor thereto)—

(A) the median of the annual total compensation of all employees of the issuer, except the chief executive officer (or any equivalent position) of the issuer;

(B) the annual total compensation of the chief executive officer (or any equivalent position) of the issuer; and

(C) the ratio of the amount described in subparagraph (A) to the amount described in subparagraph (B).

(2) TOTAL COMPENSATION.—For purposes of this subsection, the total compensation of an employee of an issuer shall be determined in accordance with section 229.402(c)(2)(x) of title 17, Code of Federal Regulations, as in effect on the day before the date of enactment of this Act.

SEC. 954. RECOVERY OF ERRONEOUSLY AWARDED COMPENSATION.

The Securities Exchange Act of 1934 is amended by inserting after section 10C, as added by section 952, the following:

"SEC. 10D. RECOVERY OF ERRONEOUSLY AWARDED COMPENSATION POLICY.

"(a) LISTING STANDARDS.—The Commission shall, by rule, direct the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that does not comply with the requirements of this section.

"(b) RECOVERY OF FUNDS.—The rules of the Commission under subsection (a) shall require each issuer to develop and implement a policy providing—

"(1) for disclosure of the policy of the issuer on incentive-based compensation that is based on financial information required to be reported under the securities laws; and

"(2) that, in the event that the issuer is required to prepare an accounting restatement due to the material noncompliance of the issuer with any financial reporting requirement under the securities laws, the issuer will recover from any current or former executive officer of the issuer who received incentive-based compensation (including stock options awarded as compensation) during the 3-year period preceding the date on which the issuer is required to prepare an accounting restatement, based on the erroneous data, in excess of what would have been paid to the executive officer under the accounting restatement.".

SEC. 955. DISCLOSURE REGARDING EMPLOYEE AND DIRECTOR HEDGING.

Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n), as amended by this title, is amended by adding at the end the following:

"(j) DISCLOSURE OF HEDGING BY EMPLOYEES AND DIRECTORS.—The Commission shall, by rule, require each issuer to disclose in any proxy or consent solicitation material for an annual meeting of the shareholders of the issuer whether any employee or member

of the board of directors of the issuer, or any designee of such employee or member, is permitted to purchase financial instruments (including prepaid variable forward contracts, equity swaps, collars, and exchange funds) that are designed to hedge or offset any decrease in the market value of equity securities—

"(1) granted to the employee or member of the board of directors by the issuer as part of the compensation of the employee or member of the board of directors; or

"(2) held, directly or indirectly, by the employee or member of the board of directors.".

SEC. 956. ENHANCED COMPENSATION STRUCTURE REPORTING.

(a) ENHANCED DISCLOSURE AND REPORTING OF COMPENSATION ARRANGEMENTS.—

(1) IN GENERAL.—Not later than 9 months after the date of enactment of this title, the appropriate Federal regulators jointly shall prescribe regulations or guidelines to require each covered financial institution to disclose to the appropriate Federal regulator the structures of all incentive-based compensation arrangements offered by such covered financial institutions sufficient to determine whether the compensation structure—

(A) provides an executive officer, employee, director, or principal shareholder of the covered financial institution with excessive compensation, fees, or benefits; or

(B) could lead to material financial loss to the covered financial institution.

(2) RULES OF CONSTRUCTION.—Nothing in this section shall be construed as requiring the reporting of the actual compensation of particular individuals. Nothing in this section shall be construed to require a covered financial institution that does not have an incentive-based payment arrangement to make the disclosures required under this subsection.

(b) PROHIBITION ON CERTAIN COMPENSATION ARRANGEMENTS.—Not later than 9 months after the date of enactment of this title, the appropriate Federal regulators shall jointly prescribe regulations or guidelines that prohibit any types of incentive-based payment arrangement, or any feature of any such arrangement, that the regulators determine encourages inappropriate risks by covered financial institutions—

(1) by providing an executive officer, employee, director, or principal shareholder of the covered financial institution with excessive compensation, fees, or benefits; or

(2) that could lead to material financial loss to the covered financial institution.

(c) STANDARDS.—The appropriate Federal regulators shall—

(1) ensure that any standards for compensation established under subsections (a) or (b) are comparable to the standards established under section of the Federal Deposit Insurance Act (12 U.S.C. 2 1831p–1) for insured depository institutions; and

(2) in establishing such standards under such subsections, take into consideration the compensation standards described in section 39(c) of the Federal Deposit Insurance Act (12 U.S.C. 1831p– 9 1(c)).

(d) ENFORCEMENT.—The provisions of this section and the regulations issued under this section shall be enforced under section

505 of the Gramm-Leach-Bliley Act and, for purposes of such section, a violation of this section or such regulations shall be treated as a violation of subtitle A of title V of such Act.

(e) DEFINITIONS.—As used in this section—

(1) the term "appropriate Federal regulator" means the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Board of Directors of the Federal Deposit Insurance Corporation, the Director of the Office of Thrift Supervision, the National Credit Union Administration Board, the Securities and Exchange Commission, the Federal Housing Finance Agency; and

(2) the term "covered financial institution" means—

(A) a depository institution or depository institution holding company, as such terms are defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(B) a broker-dealer registered under section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o);

(C) a credit union, as described in section 19(b)(1)(A)(iv) of the Federal Reserve Act;

(D) an investment advisor, as such term is defined in section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(11));

(E) the Federal National Mortgage Association;

(F) the Federal Home Loan Mortgage Corporation; and

(G) any other financial institution that the appropriate Federal regulators, jointly, by rule, determine should be treated as a covered financial institution for purposes of this section.

(f) EXEMPTION FOR CERTAIN FINANCIAL INSTITUTIONS.—The requirements of this section shall not apply to covered financial institutions with assets of less than $1,000,000,000.

SEC. 957. VOTING BY BROKERS.

Section 6(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(b)) is amended—

(1) in paragraph (9)—

(A) in subparagraph (A), by redesignating clauses (i) through (v) as subclauses (I) through (V), respectively, and adjusting the margins accordingly;

(B) by redesignating subparagraphs (A) through (D) as clauses (i) through (iv), respectively, and adjusting the margins accordingly;

(C) by inserting "(A)" after "(9)"; and

(D) in the matter immediately following clause (iv), as so redesignated, by striking "As used" and inserting the following:

"(B) As used".

(2) by adding at the end the following:

"(10)(A) The rules of the exchange prohibit any member that is not the beneficial owner of a security registered under section 12 from granting a proxy to vote the security in connection with a shareholder vote described in subparagraph (B), unless the beneficial owner of the security has instructed the member to vote the proxy in accordance with the voting instructions of the beneficial owner.

"(B) A shareholder vote described in this subparagraph is a shareholder vote with respect to the election of a member

of the board of directors of an issuer, executive compensation, or any other significant matter, as determined by the Commission, by rule, and does not include a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80b–1 et seq.).

"(C) Nothing in this paragraph shall be construed to prohibit a national securities exchange from prohibiting a member that is not the beneficial owner of a security registered under section 12 from granting a proxy to vote the security in connection with a shareholder vote not described in subparagraph (A).".

Subtitle F—Improvements to the Management of the Securities and Exchange Commission

SEC. 961. REPORT AND CERTIFICATION OF INTERNAL SUPERVISORY CONTROLS.

(a) ANNUAL REPORTS AND CERTIFICATION.—Not later than 90 days after the end of each fiscal year, the Commission shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the conduct by the Commission of examinations of registered entities, enforcement investigations, and review of corporate financial securities filings.

(b) CONTENTS OF REPORTS.—Each report under subsection (a) shall contain—

(1) an assessment, as of the end of the most recent fiscal year, of the effectiveness of—

(A) the internal supervisory controls of the Commission; and

(B) the procedures of the Commission applicable to the staff of the Commission who perform examinations of registered entities, enforcement investigations, and reviews of corporate financial securities filings;

(2) a certification that the Commission has adequate internal supervisory controls to carry out the duties of the Commission described in paragraph (1)(B); and

(3) a summary by the Comptroller General of the United States of the review carried out under subsection (d).

(c) CERTIFICATION.—

(1) SIGNATURE.—The certification under subsection (b)(2) shall be signed by the Director of the Division of Enforcement, the Director of the Division of Corporation Finance, and the Director of the Office of Compliance Inspections and Examinations (or the head of any successor division or office).

(2) CONTENT OF CERTIFICATION.—Each individual described in paragraph (1) shall certify that the individual—

(A) is directly responsible for establishing and maintaining the internal supervisory controls of the Division or Office of which the individual is the head;

(B) is knowledgeable about the internal supervisory controls of the Division or Office of which the individual is the head;

(C) has evaluated the effectiveness of the internal supervisory controls during the 90-day period ending on the final day of the fiscal year to which the report relates; and

(D) has disclosed to the Commission any significant deficiencies in the design or operation of internal supervisory controls that could adversely affect the ability of the Division or Office to consistently conduct inspections, or investigations, or reviews of filings with professional competence and integrity.

(d) NEW DIRECTOR OR ACTING DIRECTOR.—Notwithstanding subsection (a), if the Director of the Division of Enforcement, the Director of the Division of Corporate Finance, or the Director of the Office of Compliance Inspections and Examinations has served as Director of the Division or Office for less than 90 days on the date on which a report is required to be submitted under subsection (a), the Commission may submit the report on the date on which the Director has served as Director for 90 days. If there is no Director of the Division of Enforcement, the Division of Corporate Finance, or the Office of Compliance Inspections and Examinations, on the date on which a report is required to be submitted under subsection (a), the Acting Director of the Division or Office may make the certification required under subsection (c).

(e) REVIEW BY THE COMPTROLLER GENERAL.—

(1) REPORT.—The Comptroller General of the United States shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report that contains a review of the adequacy and effectiveness of the internal supervisory control structure and procedures described in subsection (b)(1), not less frequently than once every 3 years, at a time to coincide with the publication of the reports of the Commission under this section.

(2) AUTHORITY TO HIRE EXPERTS.—The Comptroller General of the United States may hire independent consultants with specialized expertise in any area relevant to the duties of the Comptroller General described in this section, in order to assist the Comptroller General in carrying out such duties.

SEC. 962. TRIENNIAL REPORT ON PERSONNEL MANAGEMENT.

(a) TRIENNIAL REPORT REQUIRED.—Once every 3 years, the Comptroller General of the United States shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the quality of personnel management by the Commission.

(b) CONTENTS OF REPORT.—Each report under subsection (a) shall include—

(1) an evaluation of—

(A) the effectiveness of supervisors in using the skills, talents, and motivation of the employees of the Commission to achieve the goals of the Commission;

(B) the criteria for promoting employees of the Commission to supervisory positions;

(C) the fairness of the application of the promotion criteria to the decisions of the Commission;

(D) the competence of the professional staff of the Commission;

(E) the efficiency of communication between the units of the Commission regarding the work of the Commission (including communication between divisions and between subunits of a division) and the efforts by the Commission to promote such communication;

(F) the turnover within subunits of the Commission, including the consideration of supervisors whose subordinates have an unusually high rate of turnover;

(G) whether there are excessive numbers of low-level, mid-level, or senior-level managers;

(H) any initiatives of the Commission that increase the competence of the staff of the Commission;

(I) the actions taken by the Commission regarding employees of the Commission who have failed to perform their duties and circumstances under which the Commission has issued to employees a notice of termination; and

(J) such other factors relating to the management of the Commission as the Comptroller General determines are appropriate;

(2) an evaluation of any improvements made with respect to the areas described in paragraph (1) since the date of submission of the previous report; and

(3) recommendations for how the Commission can use the human resources of the Commission more effectively and efficiently to carry out the mission of the Commission.

(c) CONSULTATION.—In preparing the report under subsection (a), the Comptroller General shall consult with current employees of the Commission, retired employees and other former employees of the Commission, the Inspector General of the Commission, persons that have business before the Commission, any union representing the employees of the Commission, private management consultants, academics, and any other source that the Comptroller General deems appropriate.

(d) REPORT BY COMMISSION.—Not later than 90 days after the date on which the Comptroller General submits each report under subsection (a), the Commission shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report describing the actions taken by the Commission in response to the recommendations contained in the report under subsection (a).

(e) REIMBURSEMENTS FOR COST OF REPORTS.—

(1) REIMBURSEMENTS REQUIRED.—The Commission shall reimburse the Government Accountability Office for the full cost of making the reports under this section, as billed therefor by the Comptroller General.

(2) CREDITING AND USE OF REIMBURSEMENTS.—Such reimbursements shall—

(A) be credited to the appropriation account "Salaries and Expenses, Government Accountability Office" current when the payment is received; and

(B) remain available until expended.

(f) AUTHORITY TO HIRE EXPERTS.—The Comptroller General of the United States may hire independent consultants with specialized expertise in any area relevant to the duties of the Comptroller

General described in this section, in order to assist the Comptroller General in carrying out such duties.

SEC. 963. ANNUAL FINANCIAL CONTROLS AUDIT.

(a) REPORTS OF COMMISSION.—

(1) ANNUAL REPORTS REQUIRED.—Not later than 6 months after the end of each fiscal year, the Commission shall publish and submit to Congress a report that—

(A) describes the responsibility of the management of the Commission for establishing and maintaining an adequate internal control structure and procedures for financial reporting; and

(B) contains an assessment of the effectiveness of the internal control structure and procedures for financial reporting of the Commission during that fiscal year.

(2) ATTESTATION.—The reports required under paragraph (1) shall be attested to by the Chairman and chief financial officer of the Commission.

(b) REPORT BY COMPTROLLER GENERAL.—

(1) REPORT REQUIRED.—Not later than 6 months after the end of the first fiscal year after the date of enactment of this Act, the Comptroller General of the United States shall submit a report to Congress that assesses—

(A) the effectiveness of the internal control structure and procedures of the Commission for financial reporting; and

(B) the assessment of the Commission under subsection (a)(1)(B).

(2) ATTESTATION.—The Comptroller General shall attest to, and report on, the assessment made by the Commission under subsection (a).

(c) REIMBURSEMENTS FOR COST OF REPORTS.—

(1) REIMBURSEMENTS REQUIRED.—The Commission shall reimburse the Government Accountability Office for the full cost of making the reports under subsection (b), as billed therefor by the Comptroller General.

(2) CREDITING AND USE OF REIMBURSEMENTS.—Such reimbursements shall—

(A) be credited to the appropriation account "Salaries and Expenses, Government Accountability Office" current when the payment is received; and

(B) remain available until expended.

SEC. 964. REPORT ON OVERSIGHT OF NATIONAL SECURITIES ASSOCIATIONS.

(a) REPORT REQUIRED.—Not later than 2 years after the date of enactment of this Act, and every 3 years thereafter, the Comptroller General of the United States shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report that includes an evaluation of the oversight by the Commission of national securities associations registered under section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o–3) with respect to—

(1) the governance of such national securities associations, including the identification and management of conflicts of interest by such national securities associations, together with an analysis of the impact of any conflicts of interest on the

regulatory enforcement or rulemaking by such national securities associations;

(2) the examinations carried out by the national securities associations, including the expertise of the examiners;

(3) the executive compensation practices of such national securities associations;

(4) the arbitration services provided by the national securities associations;

(5) the review performed by national securities associations of advertising by the members of the national securities associations;

(6) the cooperation with and assistance to State securities administrators by the national securities associations to promote investor protection;

(7) how the funding of national securities associations is used to support the mission of the national securities associations, including—

(A) the methods of funding;

(B) the sufficiency of funds;

(C) how funds are invested by the national securities association pending use; and

(D) the impact of the methods, sufficiency, and investment of funds on regulatory enforcement by the national securities associations;

(8) the policies regarding the employment of former employees of national securities associations by regulated entities;

(9) the ongoing effectiveness of the rules of the national securities associations in achieving the goals of the rules;

(10) the transparency of governance and activities of the national securities associations; and

(11) any other issue that has an impact, as determined by the Comptroller General, on the effectiveness of such national securities associations in performing their mission and in dealing fairly with investors and members;

(b) REIMBURSEMENTS FOR COST OF REPORTS.—

(1) REIMBURSEMENTS REQUIRED.—The Commission shall reimburse the Government Accountability Office for the full cost of making the reports under subsection (a), as billed therefor by the Comptroller General.

(2) CREDITING AND USE OF REIMBURSEMENTS.—Such reimbursements shall—

(A) be credited to the appropriation account "Salaries and Expenses, Government Accountability Office" current when the payment is received; and

(B) remain available until expended.

SEC. 965. COMPLIANCE EXAMINERS.

Section 4 of the Securities Exchange Act of 1934 (15 U.S.C. 78d) is amended by adding at the end the following:

"(h) EXAMINERS.—

"(1) DIVISION OF TRADING AND MARKETS.—The Division of Trading and Markets of the Commission, or any successor organizational unit, shall have a staff of examiners who shall—

"(A) perform compliance inspections and examinations of entities under the jurisdiction of that Division; and

"(B) report to the Director of that Division.

"(2) DIVISION OF INVESTMENT MANAGEMENT.—The Division of Investment Management of the Commission, or any successor organizational unit, shall have a staff of examiners who shall—

"(A) perform compliance inspections and examinations of entities under the jurisdiction of that Division; and

"(B) report to the Director of that Division.".

SEC. 966. SUGGESTION PROGRAM FOR EMPLOYEES OF THE COMMISSION.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 4C (15 U.S.C. 78d–3) the following:

"SEC. 4D. ADDITIONAL DUTIES OF INSPECTOR GENERAL.

"(a) SUGGESTION SUBMISSIONS BY COMMISSION EMPLOYEES.—

"(1) HOTLINE ESTABLISHED.—The Inspector General of the Commission shall establish and maintain a telephone hotline or other electronic means for the receipt of—

"(A) suggestions by employees of the Commission for improvements in the work efficiency, effectiveness, and productivity, and the use of the resources, of the Commission; and

"(B) allegations by employees of the Commission of waste, abuse, misconduct, or mismanagement within the Commission.

"(2) CONFIDENTIALITY.—The Inspector General shall maintain as confidential—

"(A) the identity of any individual who provides information by the means established under paragraph (1), unless the individual requests otherwise, in writing; and

"(B) at the request of any such individual, any specific information provided by the individual.

"(b) CONSIDERATION OF REPORTS.—The Inspector General shall consider any suggestions or allegations received by the means established under subsection (a)(1), and shall recommend appropriate action in relation to such suggestions or allegations.

"(c) RECOGNITION.—The Inspector General may recognize any employee who makes a suggestion under subsection (a)(1) (or by other means) that would or does—

"(1) increase the work efficiency, effectiveness, or productivity of the Commission; or

"(2) reduce waste, abuse, misconduct, or mismanagement within the Commission.

"(d) REPORT.—The Inspector General of the Commission shall submit to Congress an annual report containing a description of—

"(1) the nature, number, and potential benefits of any suggestions received under subsection (a);

"(2) the nature, number, and seriousness of any allegations received under subsection (a);

"(3) any recommendations made or actions taken by the Inspector General in response to substantiated allegations received under subsection (a); and

"(4) any action the Commission has taken in response to suggestions or allegations received under subsection (a).

"(e) FUNDING.—The activities of the Inspector General under this subsection shall be funded by the Securities and Exchange

Commission Investor Protection Fund established under section 21F.".

SEC. 967. COMMISSION ORGANIZATIONAL STUDY AND REFORM.

(a) STUDY REQUIRED.—

(1) IN GENERAL.—Not later than the end of the 90-day period beginning on the date of the enactment of this subtitle, the Securities and Exchange Commission (hereinafter in this section referred to as the "SEC") shall hire an independent consultant of high caliber and with expertise in organizational restructuring and the operations of capital markets to examine the internal operations, structure, funding, and the need for comprehensive reform of the SEC, as well as the SEC's relationship with and the reliance on self-regulatory organizations and other entities relevant to the regulation of securities and the protection of securities investors that are under the SEC's oversight.

(2) SPECIFIC AREAS FOR STUDY.—The study required under paragraph (1) shall, at a minimum, include the study of—

(A) the possible elimination of unnecessary or redundant units at the SEC;

(B) improving communications between SEC offices and divisions;

(C) the need to put in place a clear chain-of-command structure, particularly for enforcement examinations and compliance inspections;

(D) the effect of high-frequency trading and other technological advances on the market and what the SEC requires to monitor the effect of such trading and advances on the market;

(E) the SEC's hiring authorities, workplace policies, and personal practices, including—

(i) whether there is a need to further streamline hiring authorities for those who are not lawyers, accountants, compliance examiners, or economists;

(ii) whether there is a need for further pay reforms;

(iii) the diversity of skill sets of SEC employees and whether the present skill set diversity efficiently and effectively fosters the SEC's mission of investor protection; and

(iv) the application of civil service laws by the SEC;

(F) whether the SEC's oversight and reliance on self-regulatory organizations promotes efficient and effective governance for the securities markets; and

(G) whether adjusting the SEC's reliance on self-regulatory organizations is necessary to promote more efficient and effective governance for the securities markets.

(b) CONSULTANT REPORT.—Not later than the end of the 150-day period after being retained, the independent consultant hired pursuant to subsection (a)(1) shall issue a report to the SEC and the Congress containing—

(1) a detailed description of any findings and conclusions made while carrying out the study required under subsection (a)(1); and

(2) recommendations for legislative, regulatory, or administrative action that the consultant determines appropriate to

enable the SEC and other entities on which the consultant reports to perform their statutorily or otherwise mandated missions.

(c) SEC REPORT.—Not later than the end of the 6-month period beginning on the date the consultant issues the report under subsection (b), and every 6-months thereafter during the 2-year period following the date on which the consultant issues such report, the SEC shall issue a report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate describing the SEC's implementation of the regulatory and administrative recommendations contained in the consultant's report.

SEC. 968. STUDY ON SEC REVOLVING DOOR.

(a) GOVERNMENT ACCOUNTABILITY OFFICE STUDY.—The Comptroller General of the United States shall conduct a study that will—

(1) review the number of employees who leave the Securities and Exchange Commission to work for financial institutions regulated by such Commission;

(2) determine how many employees who leave the Securities and Exchange Commission worked on cases that involved financial institutions regulated by such Commission;

(3) review the length of time employees work for the Securities and Exchange Commission before leaving to be employed by financial institutions regulated by such Commission;

(4) review existing internal controls and make recommendations on strengthening such controls to ensure that employees of the Securities and Exchange Commission who are later employed by financial institutions did not assist such institutions in violating any rules or regulations of the Commission during the course of their employment with such Commission;

(5) determine if greater post-employment restrictions are necessary to prevent employees of the Securities and Exchange Commission from being employed by financial institutions after employment with such Commission;

(6) determine if the volume of employees of the Securities and Exchange Commission who are later employed by financial institutions has led to inefficiencies in enforcement;

(7) determine if employees of the Securities and Exchange Commission who are later employed by financial institutions assisted such institutions in circumventing Federal rules and regulations while employed by such Commission;

(8) review any information that may address the volume of employees of the Securities and Exchange Commission who are later employed by financial institutions, and make recommendations to Congress; and

(9) review other additional issues as may be raised during the course of the study conducted under this subsection.

(b) REPORT.—Not later than 1 year after the date of the enactment of this subtitle, the Comptroller General of the United States shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report on the results of the study required by subsection (a).

Subtitle G—Strengthening Corporate Governance

SEC. 971. PROXY ACCESS.

(a) PROXY ACCESS.—Section 14(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(a)) is amended—

(1) by inserting "(1)" after "(a)"; and

(2) by adding at the end the following:

"(2) The rules and regulations prescribed by the Commission under paragraph (1) may include—

"(A) a requirement that a solicitation of proxy, consent, or authorization by (or on behalf of) an issuer include a nominee submitted by a shareholder to serve on the board of directors of the issuer; and

"(B) a requirement that an issuer follow a certain procedure in relation to a solicitation described in subparagraph (A).".

(b) REGULATIONS.—The Commission may issue rules permitting the use by a shareholder of proxy solicitation materials supplied by an issuer of securities for the purpose of nominating individuals to membership on the board of directors of the issuer, under such terms and conditions as the Commission determines are in the interests of shareholders and for the protection of investors.

(c) EXEMPTIONS.—The Commission may, by rule or order, exempt an issuer or class of issuers from the requirement made by this section or an amendment made by this section. In determining whether to make an exemption under this subsection, the Commission shall take into account, among other considerations, whether the requirement in the amendment made by subsection (a) disproportionately burdens small issuers.

SEC. 972. DISCLOSURES REGARDING CHAIRMAN AND CEO STRUCTURES.

The Securities Exchange Act of 1934 (15 U.S. C. 78a et seq.) is amended by inserting after section 14A, as added by this title, the following:

"SEC. 14B. CORPORATE GOVERNANCE.

"Not later than 180 days after the date of enactment of this subsection, the Commission shall issue rules that require an issuer to disclose in the annual proxy sent to investors the reasons why the issuer has chosen—

"(1) the same person to serve as chairman of the board of directors and chief executive officer (or in equivalent positions); or

"(2) different individuals to serve as chairman of the board of directors and chief executive officer (or in equivalent positions of the issuer).".

Subtitle H—Municipal Securities

SEC. 975. REGULATION OF MUNICIPAL SECURITIES AND CHANGES TO THE BOARD OF THE MSRB.

(a) REGISTRATION OF MUNICIPAL SECURITIES DEALERS AND MUNICIPAL ADVISORS.—Section 15B(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–4(a)) is amended—

(1) in paragraph (1)—

(A) by inserting "(A)" after "(1)"; and

(B) by adding at the end the following:

"(B) It shall be unlawful for a municipal advisor to provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, or to undertake a solicitation of a municipal entity or obligated person, unless the municipal advisor is registered in accordance with this subsection.";

(2) in paragraph (2), by inserting "or municipal advisor" after "municipal securities dealer" each place that term appears;

(3) in paragraph (3), by inserting "or municipal advisor" after "municipal securities dealer" each place that term appears;

(4) in paragraph (4), by striking "dealer, or municipal securities dealer or class of brokers, dealers, or municipal securities dealers" and inserting "dealer, municipal securities dealer, or municipal advisor, or class of brokers, dealers, municipal securities dealers, or municipal advisors"; and

(5) by adding at the end the following:

"(5) No municipal advisor shall make use of the mails or any means or instrumentality of interstate commerce to provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products, the issuance of municipal securities, or to undertake a solicitation of a municipal entity or obligated person, in connection with which such municipal advisor engages in any fraudulent, deceptive, or manipulative act or practice.".

(b) MUNICIPAL SECURITIES RULEMAKING BOARD.—Section 15B(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–4(b)) is amended—

(1) in paragraph (1)—

(A) in the first sentence, by striking "Not later than" and all that follows through "appointed by the Commission" and inserting "The Municipal Securities Rulemaking Board shall be composed of 15 members, or such other number of members as specified by rules of the Board pursuant to paragraph (2)(B),";

(B) by striking the second sentence and inserting the following: "The members of the Board shall serve as members for a term of 3 years or for such other terms as specified by rules of the Board pursuant to paragraph (2)(B), and shall consist of (A) 8 individuals who are independent of any municipal securities broker, municipal securities dealer, or municipal advisor, at least 1 of whom shall be representative of institutional or retail investors in municipal securities, at least 1 of whom shall be representative of municipal entities, and at least 1 of whom shall be a member of the public with knowledge of or experience in the municipal industry (which members are hereinafter referred to as 'public representatives'); and (B) 7 individuals who are associated with a broker, dealer, municipal securities dealer, or municipal advisor, including at least 1 individual who is associated with and representative of brokers, dealers, or municipal securities dealers that are not banks or subsidiaries or departments or divisions of banks (which members are hereinafter referred

to as 'broker-dealer representatives'), at least 1 individual who is associated with and representative of municipal securities dealers which are banks or subsidiaries or departments or divisions of banks (which members are hereinafter referred to as 'bank representatives'), and at least 1 individual who is associated with a municipal advisor (which members are hereinafter referred to as 'advisor representatives' and, together with the broker-dealer representatives and the bank representatives, are referred to as 'regulated representatives'). Each member of the board shall be knowledgeable of matters related to the municipal securities markets."; and

(C) in the third sentence, by striking "initial";

(2) in paragraph (2)—

(A) in the matter preceding subparagraph (A)—

(i) by inserting before the period at the end of the first sentence the following: "and advice provided to or on behalf of municipal entities or obligated persons by brokers, dealers, municipal securities dealers, and municipal advisors with respect to municipal financial products, the issuance of municipal securities, and solicitations of municipal entities or obligated persons undertaken by brokers, dealers, municipal securities dealers, and municipal advisors"; and

(ii) by striking the second sentence;

(B) in subparagraph (A)—

(i) in the matter preceding clause (i)—

(I) by inserting ", and no broker, dealer, municipal securities dealer, or municipal advisor shall provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities," after "sale of, any municipal security"; and

(II) by inserting "and municipal entities or obligated persons" after "protection of investors";

(ii) in clause (i), by striking "municipal securities brokers and municipal securities dealers" each place that term appears and inserting "municipal securities brokers, municipal securities dealers, and municipal advisors";

(iii) in clause (ii), by adding "and" at the end;

(iv) in clause (iii), by striking "; and" and inserting a period; and

(v) by striking clause (iv);

(C) by amending subparagraph (B) to read as follows:

"(B) establish fair procedures for the nomination and election of members of the Board and assure fair representation in such nominations and elections of public representatives, broker dealer representatives, bank representatives, and advisor representatives. Such rules—

"(i) shall provide that the number of public representatives of the Board shall at all times exceed the total number of regulated representatives and that the membership shall at all times be as evenly divided in number as possible between public representatives and regulated representatives;

"(ii) shall specify the length or lengths of terms members shall serve;

"(iii) may increase the number of members which shall constitute the whole Board, provided that such number is an odd number; and

"(iv) shall establish requirements regarding the independence of public representatives.".

(D) in subparagraph (C)—

(i) by inserting "and municipal financial products" after "municipal securities" the first two times that term appears;

(ii) by inserting ", municipal entities, obligated persons," before "and the public interest";

(iii) by striking "between" and inserting "among";

(iv) by striking "issuers, municipal securities brokers, or municipal securities dealers, to fix" and inserting "municipal entities, obligated persons, municipal securities brokers, municipal securities dealers, or municipal advisors, to fix"; and

(v) by striking "brokers or municipal securities dealers, to regulate" and inserting "brokers, municipal securities dealers, or municipal advisors, to regulate";

(E) in subparagraph (D)—

(i) by inserting "and advice concerning municipal financial products" after "transactions in municipal securities";

(ii) by striking "That no" and inserting "that no";

(iii) by inserting "municipal advisor," before "or person associated"; and

(iv) by striking "a municipal securities broker or municipal securities dealer may be compelled" and inserting "a municipal securities broker, municipal securities dealer, or municipal advisor may be compelled";

(F) in subparagraph (E)—

(i) by striking "municipal securities brokers and municipal securities dealers" and inserting "municipal securities brokers, municipal securities dealers, and municipal advisors"; and

(ii) by striking "municipal securities broker or municipal securities dealer" and inserting "municipal securities broker, municipal securities dealer, or municipal advisor";

(G) in subparagraph (G), by striking "municipal securities brokers and municipal securities dealers" and inserting "municipal securities brokers, municipal securities dealers, and municipal advisors";

(H) in subparagraph (J)—

(i) by striking "municipal securities broker and each municipal securities dealer" and inserting "municipal securities broker, municipal securities dealer, and municipal advisor"; and

(ii) by striking the period at the end of the second sentence and inserting ", which may include charges for failure to submit to the Board, or to any information system operated by the Board, within the prescribed timeframes, any items of information or documents

required to be submitted under any rule issued by the Board.";

(I) in subparagraph (K)—

(i) by inserting "broker, dealer, or" before "municipal securities dealer" each place that term appears; and

(ii) by striking "municipal securities investment portfolio" and inserting "related account of a broker, dealer, or municipal securities dealer"; and

(J) by adding at the end the following:

"(L) with respect to municipal advisors—

"(i) prescribe means reasonably designed to prevent acts, practices, and courses of business as are not consistent with a municipal advisor's fiduciary duty to its clients;

"(ii) provide continuing education requirements for municipal advisors;

"(iii) provide professional standards; and

"(iv) not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated persons, provided that there is robust protection of investors against fraud.";

(3) by redesignating paragraph (3) as paragraph (7); and

(4) by inserting after paragraph (2) the following:

"(3) The Board, in conjunction with or on behalf of any Federal financial regulator or self-regulatory organization, may—

"(A) establish information systems; and

"(B) assess such reasonable fees and charges for the submission of information to, or the receipt of information from, such systems from any persons which systems may be developed for the purposes of serving as a repository of information from municipal market participants or otherwise in furtherance of the purposes of the Board, a Federal financial regulator, or a self-regulatory organization, except that the Board—

"(i) may not charge a fee to municipal entities or obligated persons to submit documents or other information to the Board or charge a fee to any person to obtain, directly from the Internet site of the Board, documents or information submitted by municipal entities, obligated persons, brokers, dealers, municipal securities dealers, or municipal advisors, including documents submitted under the rules of the Board or the Commission; and

"(ii) shall not be prohibited from charging commercially reasonable fees for automated subscription-based feeds or similar services, or for charging for other data or document-based services customized upon request of any person, made available to commercial enterprises, municipal securities market professionals, or the general public, whether delivered through the Internet or any other means, that contain all or part of the documents or information, subject to approval of the fees by the Commission under section 19(b).

"(4) The Board may provide guidance and assistance in the enforcement of, and examination for, compliance with the rules of the Board to the Commission, a registered securities association under section 15A, or any other appropriate regulatory agency, as applicable.

"(5) The Board, the Commission, and a registered securities association under section 15A, or the designees of the Board, the Commission, or such association, shall meet not less frequently than 2 times a year—

"(A) to describe the work of the Board, the Commission, and the registered securities association involving the regulation of municipal securities; and

"(B) to share information about—

"(i) the interpretation of the Board, the Commission, and the registered securities association of Board rules; and

"(ii) examination and enforcement of compliance with Board rules.".

(c) DISCIPLINE OF BROKERS, DEALERS, MUNICIPAL SECURITIES DEALERS AND MUNICIPAL ADVISORS; FIDUCIARY DUTY OF MUNICIPAL ADVISORS.—Section 15B(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–4(c)) is amended—

(1) in paragraph (1), by inserting ", and no broker, dealer, municipal securities dealer, or municipal advisor shall make use of the mails or any means or instrumentality of interstate commerce to provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products, the issuance of municipal securities, or to undertake a solicitation of a municipal entity or obligated person," after "any municipal security";

(2) by adding at the end of paragraph (1) the following: "A municipal advisor and any person associated with such municipal advisor shall be deemed to have a fiduciary duty to any municipal entity for whom such municipal advisor acts as a municipal advisor, and no municipal advisor may engage in any act, practice, or course of business which is not consistent with a municipal advisor's fiduciary duty or that is in contravention of any rule of the Board.".

(3) in paragraph (2), by inserting "or municipal advisor" after "municipal securities dealer" each place that term appears;

(4) in paragraph (3)—

(A) by inserting "or municipal entities or obligated person" after "protection of investors" each place that term appears; and

(B) by inserting "or municipal advisor" after "municipal securities dealer" each place that term appears;

(5) in paragraph (4), by inserting "or municipal advisor" after "municipal securities dealer or obligated person" each place that term appears;

(6) in paragraph (6)(B), by inserting "or municipal entities or obligated person" after "protection of investors";

(7) in paragraph (7)—

(A) in subparagraph (A)—

(i) in clause (i), by striking "; and" and inserting a semicolon;

(ii) in clause (ii), by striking the period and inserting "; and"; and

(iii) by adding at the end the following:

"(iii) the Commission, or its designee, in the case of municipal advisors.".

(B) in subparagraph (B), by inserting "or municipal entities or obligated person" after "protection of investors"; and

(8) by adding at the end the following:

"(9)(A) Fines collected by the Commission for violations of the rules of the Board shall be equally divided between the Commission and the Board.

"(B) Fines collected by a registered securities association under section 15A(7) with respect to violations of the rules of the Board shall be accounted for by such registered securities association separately from other fines collected under section 15A(7) and shall be allocated between such registered securities association and the Board, and such allocation shall require the registered securities association to pay to the Board ⅓ of all fines collected by the registered securities association reasonably allocable to violations of the rules of the Board, or such other portion of such fines as may be directed by the Commission upon agreement between the registered securities association and the Board.".

(d) ISSUANCE OF MUNICIPAL SECURITIES.—Section 15B(d)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–4(d)) is amended—

(1) by striking "through a municipal securities broker or municipal securities dealer or otherwise" and inserting "through a municipal securities broker, municipal securities dealer, municipal advisor, or otherwise"; and

(2) by inserting "or municipal advisors" before "to furnish".

(e) DEFINITIONS.—Section 15B of the Securities Exchange Act of 1934 (15 U.S.C. 78o–4) is amended by adding at the end the following:

"(e) DEFINITIONS.—For purposes of this section—

"(1) the term 'Board' means the Municipal Securities Rulemaking Board established under subsection (b)(1);

"(2) the term 'guaranteed investment contract' includes any investment that has specified withdrawal or reinvestment provisions and a specifically negotiated or bid interest rate, and also includes any agreement to supply investments on 2 or more future dates, such as a forward supply contract;

"(3) the term 'investment strategies' includes plans or programs for the investment of the proceeds of municipal securities that are not municipal derivatives, guaranteed investment contracts, and the recommendation of and brokerage of municipal escrow investments;

"(4) the term 'municipal advisor'—

"(A) means a person (who is not a municipal entity or an employee of a municipal entity) that—

"(i) provides advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues; or

"(ii) undertakes a solicitation of a municipal entity;

"(B) includes financial advisors, guaranteed investment contract brokers, third-party marketers, placement agents, solicitors, finders, and swap advisors, if such persons are described in any of clauses (i) through (iii) of subparagraph (A); and

"(C) does not include a broker, dealer, or municipal securities dealer serving as an underwriter (as defined in section 2(a)(11) of the Securities Act of 1933) (15 U.S.C. 77b(a)(11)), any investment adviser registered under the Investment Advisers Act of 1940, or persons associated with such investment advisers who are providing investment advice, any commodity trading advisor registered under the Commodity Exchange Act or persons associated with a commodity trading advisor who are providing advice related to swaps, attorneys offering legal advice or providing services that are of a traditional legal nature, or engineers providing engineering advice;

"(5) the term 'municipal financial product' means municipal derivatives, guaranteed investment contracts, and investment strategies;

"(6) the term 'rules of the Board' means the rules proposed and adopted by the Board under subsection (b)(2);

"(7) the term 'person associated with a municipal advisor' or 'associated person of an advisor' means—

"(A) any partner, officer, director, or branch manager of such municipal advisor (or any person occupying a similar status or performing similar functions);

"(B) any other employee of such municipal advisor who is engaged in the management, direction, supervision, or performance of any activities relating to the provision of advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities; and

"(C) any person directly or indirectly controlling, controlled by, or under common control with such municipal advisor;

"(8) the term 'municipal entity' means any State, political subdivision of a State, or municipal corporate instrumentality of a State, including—

"(A) any agency, authority, or instrumentality of the State, political subdivision, or municipal corporate instrumentality;

"(B) any plan, program, or pool of assets sponsored or established by the State, political subdivision, or municipal corporate instrumentality or any agency, authority, or instrumentality thereof; and

"(C) any other issuer of municipal securities;

"(9) the term 'solicitation of a municipal entity or obligated person' means a direct or indirect communication with a municipal entity or obligated person made by a person, for direct or indirect compensation, on behalf of a broker, dealer, municipal securities dealer, municipal advisor, or investment adviser (as defined in section 202 of the Investment Advisers Act of 1940) that does not control, is not controlled by, or is not under common control with the person undertaking such solicitation for the purpose of obtaining or retaining an engagement by a municipal entity or obligated person of a broker, dealer,

municipal securities dealer, or municipal advisor for or in connection with municipal financial products, the issuance of municipal securities, or of an investment adviser to provide investment advisory services to or on behalf of a municipal entity; and

"(10) the term 'obligated person' means any person, including an issuer of municipal securities, who is either generally or through an enterprise, fund, or account of such person, committed by contract or other arrangement to support the payment of all or part of the obligations on the municipal securities to be sold in an offering of municipal securities.".

(f) REGISTERED SECURITIES ASSOCIATION.—Section 15A(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–3(b)) is amended by adding at the end the following:

"(15) The rules of the association provide that the association shall—

"(A) request guidance from the Municipal Securities Rulemaking Board in interpretation of the rules of the Municipal Securities Rulemaking Board; and

"(B) provide information to the Municipal Securities Rulemaking Board about the enforcement actions and examinations of the association under section 15B(b)(2)(E), so that the Municipal Securities Rulemaking Board may—

"(i) assist in such enforcement actions and examinations; and

"(ii) evaluate the ongoing effectiveness of the rules of the Board.".

(g) REGISTRATION AND REGULATION OF BROKERS AND DEALERS.—Section 15 of the Securities Exchange Act of 1934 is amended—

(1) in subsection (b)(4), by inserting "municipal advisor," after "municipal securities dealer" each place that term appears; and

(2) in subsection (c), by inserting "broker, dealer, or" before "municipal securities dealer" each place that term appears.

(h) ACCOUNTS AND RECORDS, REPORTS, EXAMINATIONS OF EXCHANGES, MEMBERS, AND OTHERS.—Section 17(a)(1) of the Securities Exchange Act of 1934 is amended by inserting "municipal advisor," after "municipal securities dealer".

(i) EFFECTIVE DATE.—This section, and the amendments made by this section, shall take effect on October 1, 2010.

SEC. 976. GOVERNMENT ACCOUNTABILITY OFFICE STUDY OF INCREASED DISCLOSURE TO INVESTORS.

(a) STUDY.—The Comptroller General of the United States shall conduct a study and review of the disclosure required to be made by issuers of municipal securities.

(b) SUBJECTS FOR EVALUATION.—In conducting the study under subsection (a), the Comptroller General of the United States shall—

(1) broadly describe—

(A) the size of the municipal securities markets and the issuers and investors; and

(B) the disclosures provided by issuers to investors;

(2) compare the amount, frequency, and quality of disclosures that issuers of municipal securities are required by law to provide for the benefit of municipal securities holders, including the amount of and frequency of disclosures actually

provided by issuers of municipal securities, with the amount of and frequency of disclosures that issuers of corporate securities provide for the benefit of corporate securities holders, taking into account the differences between issuers of municipal securities and issuers of corporate securities;

(3) evaluate the costs and benefits to various types of issuers of municipal securities of requiring issuers of municipal bonds to provide additional financial disclosures for the benefit of investors;

(4) evaluate the potential benefit to investors from additional financial disclosures by issuers of municipal bonds; and

(5) make recommendations relating to disclosure requirements for municipal issuers, including the advisability of the repeal or retention of section 15B(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–4(d)) (commonly known as the "Tower Amendment").

(c) REPORT.—Not later than 24 months after the date of enactment of this Act, the Comptroller General of the United States shall submit a report to Congress on the results of the study conducted under subsection (a), including recommendations for how to improve disclosure by issuers of municipal securities.

SEC. 977. GOVERNMENT ACCOUNTABILITY OFFICE STUDY ON THE MUNICIPAL SECURITIES MARKETS.

(a) STUDY.—The Comptroller General of the United States shall conduct a study of the municipal securities markets.

(b) REPORT.—Not later than 18 months after the date of enactment of this Act, the Comptroller General of the United States shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives, with copies to the Special Committee on Aging of the Senate and the Commission, on the results of the study conducted under subsection (a), including—

(1) an analysis of the mechanisms for trading, quality of trade executions, market transparency, trade reporting, price discovery, settlement clearing, and credit enhancements;

(2) the needs of the markets and investors and the impact of recent innovations;

(3) recommendations for how to improve the transparency, efficiency, fairness, and liquidity of trading in the municipal securities markets, including with reference to items listed in paragraph (1); and

(4) potential uses of derivatives in the municipal securities markets.

(c) RESPONSES.—Not later than 180 days after receipt of the report required under subsection (b), the Commission shall submit a response to the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives, with a copy to the Special Committee on Aging of the Senate, stating the actions the Commission has taken in response to the recommendations contained in such report.

SEC. 978. FUNDING FOR GOVERNMENTAL ACCOUNTING STANDARDS BOARD.

(a) AMENDMENT TO THE SECURITIES ACT OF 1933.—Section 19 of the Securities Act of 1933 (15 U.S.C. 77s), as amended by section 912, is further amended by adding at the end the following:

"(g) FUNDING FOR THE GASB.—

"(1) IN GENERAL.—The Commission may, subject to the limitations imposed by section 15B of the Securities Exchange Act of 1934 (15 U.S.C. 78o–4), require a national securities association registered under the Securities Exchange Act of 1934 to establish—

"(A) a reasonable annual accounting support fee to adequately fund the annual budget of the Governmental Accounting Standards Board (referred to in this subsection as the 'GASB'); and

"(B) rules and procedures, in consultation with the principal organizations representing State governors, legislators, local elected officials, and State and local finance officers, to provide for the equitable allocation, assessment, and collection of the accounting support fee established under subparagraph (A) from the members of the association, and the remittance of all such accounting support fees to the Financial Accounting Foundation.

"(2) ANNUAL BUDGET.—For purposes of this subsection, the annual budget of the GASB is the annual budget reviewed and approved according to the internal procedures of the Financial Accounting Foundation.

"(3) USE OF FUNDS.—Any fees or funds collected under this subsection shall be used to support the efforts of the GASB to establish standards of financial accounting and reporting recognized as generally accepted accounting principles applicable to State and local governments of the United States.

"(4) LIMITATION ON FEE.—The annual accounting support fees collected under this subsection for a fiscal year shall not exceed the recoverable annual budgeted expenses of the GASB (which may include operating expenses, capital, and accrued items).

"(5) RULES OF CONSTRUCTION.—

"(A) FEES NOT PUBLIC MONIES.—Accounting support fees collected under this subsection and other receipts of the GASB shall not be considered public monies of the United States.

"(B) LIMITATION ON AUTHORITY OF THE COMMISSION.—Nothing in this subsection shall be construed to—

"(i) provide the Commission or any national securities association direct or indirect oversight of the budget or technical agenda of the GASB; or

"(ii) affect the setting of generally accepted accounting principles by the GASB.

"(C) NONINTERFERENCE WITH STATES.—Nothing in this subsection shall be construed to impair or limit the authority of a State or local government to establish accounting and financial reporting standards.".

(b) STUDY OF FUNDING FOR GOVERNMENTAL ACCOUNTING STANDARDS BOARD.—

(1) STUDY.—The Comptroller General of the United States shall conduct a study that evaluates—

(A) the role and importance of the Governmental Accounting Standards Board in the municipal securities markets; and

(B) the manner and the level at which the Governmental Accounting Standards Board has been funded.

(2) CONSULTATION.—In conducting the study required under paragraph (1), the Comptroller General shall consult with the principal organizations representing State governors, legislators, local elected officials, and State and local finance officers.

(3) REPORT.—Not later than 180 days after the date of enactment of this Act, the Comptroller General shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the study required under paragraph (1).

SEC. 979. COMMISSION OFFICE OF MUNICIPAL SECURITIES.

(a) IN GENERAL.—There shall be in the Commission an Office of Municipal Securities, which shall—

(1) administer the rules of the Commission with respect to the practices of municipal securities brokers and dealers, municipal securities advisors, municipal securities investors, and municipal securities issuers; and

(2) coordinate with the Municipal Securities Rulemaking Board for rulemaking and enforcement actions as required by law.

(b) DIRECTOR OF THE OFFICE.—The head of the Office of Municipal Securities shall be the Director, who shall report to the Chairman.

(c) STAFFING.—

(1) IN GENERAL.—The Office of Municipal Securities shall be staffed sufficiently to carry out the requirements of this section.

(2) REQUIREMENT.—The staff of the Office of Municipal Securities shall include individuals with knowledge of and expertise in municipal finance.

Subtitle I—Public Company Accounting Oversight Board, Portfolio Margining, and Other Matters

SEC. 981. AUTHORITY TO SHARE CERTAIN INFORMATION WITH FOREIGN AUTHORITIES.

(a) DEFINITION.—Section 2(a) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201(a)) is amended by adding at the end the following:

"(17) FOREIGN AUDITOR OVERSIGHT AUTHORITY.—The term 'foreign auditor oversight authority' means any governmental body or other entity empowered by a foreign government to conduct inspections of public accounting firms or otherwise to administer or enforce laws related to the regulation of public accounting firms.".

(b) AVAILABILITY TO SHARE INFORMATION.—Section 105(b)(5) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7215(b)(5)) is amended by adding at the end the following:

"(C) AVAILABILITY TO FOREIGN OVERSIGHT AUTHORITIES.—Without the loss of its status as confidential and privileged in the hands of the Board, all information referred to in subparagraph (A) that relates to a public accounting firm that a foreign government has empowered

a foreign auditor oversight authority to inspect or otherwise enforce laws with respect to, may, at the discretion of the Board, be made available to the foreign auditor oversight authority, if—

"(i) the Board finds that it is necessary to accomplish the purposes of this Act or to protect investors;

"(ii) the foreign auditor oversight authority provides—

"(I) such assurances of confidentiality as the Board may request;

"(II) a description of the applicable information systems and controls of the foreign auditor oversight authority; and

"(III) a description of the laws and regulations of the foreign government of the foreign auditor oversight authority that are relevant to information access; and

"(iii) the Board determines that it is appropriate to share such information.".

(c) CONFORMING AMENDMENT.—Section 105(b)(5)(A) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7215(b)(5)(A)) is amended by striking "subparagraph (B)" and inserting "subparagraphs (B) and (C)".

SEC. 982. OVERSIGHT OF BROKERS AND DEALERS.

(a) DEFINITIONS.—

(1) DEFINITIONS AMENDED.—Title I of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201 et seq.) is amended by adding at the end the following new section:

"SEC. 110. DEFINITIONS.

"For the purposes of this title, the following definitions shall apply:

"(1) AUDIT.—The term 'audit' means an examination of the financial statements, reports, documents, procedures, controls, or notices of any issuer, broker, or dealer by an independent public accounting firm in accordance with the rules of the Board or the Commission, for the purpose of expressing an opinion on the financial statements or providing an audit report.

"(2) AUDIT REPORT.—The term 'audit report' means a document, report, notice, or other record—

"(A) prepared following an audit performed for purposes of compliance by an issuer, broker, or dealer with the requirements of the securities laws; and

"(B) in which a public accounting firm either—

"(i) sets forth the opinion of that firm regarding a financial statement, report, notice, or other document, procedures, or controls; or

"(ii) asserts that no such opinion can be expressed.

"(3) BROKER.—The term 'broker' means a broker (as such term is defined in section 3(a)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4))) that is required to file a balance sheet, income statement, or other financial statement under section 17(e)(1)(A) of such Act (15 U.S.C. 78q(e)(1)(A)), where such balance sheet, income statement, or financial statement is required to be certified by a registered public accounting firm.

"(4) DEALER.—The term 'dealer' means a dealer (as such term is defined in section 3(a)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(5))) that is required to file a balance sheet, income statement, or other financial statement under section 17(e)(1)(A) of such Act (15 U.S.C. 78q(e)(1)(A)), where such balance sheet, income statement, or financial statement is required to be certified by a registered public accounting firm.

"(5) PROFESSIONAL STANDARDS.—The term 'professional standards' means—

"(A) accounting principles that are—

"(i) established by the standard setting body described in section 19(b) of the Securities Act of 1933, as amended by this Act, or prescribed by the Commission under section 19(a) of that Act (15 U.S.C. 17a(s)) or section 13(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78a(m)); and

"(ii) relevant to audit reports for particular issuers, brokers, or dealers, or dealt with in the quality control system of a particular registered public accounting firm; and

"(B) auditing standards, standards for attestation engagements, quality control policies and procedures, ethical and competency standards, and independence standards (including rules implementing title II) that the Board or the Commission determines—

"(i) relate to the preparation or issuance of audit reports for issuers, brokers, or dealers; and

"(ii) are established or adopted by the Board under section 103(a), or are promulgated as rules of the Commission.

"(6) SELF-REGULATORY ORGANIZATION.—The term 'self-regulatory organization' has the same meaning as in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).".

(2) CONFORMING AMENDMENT.—Section 2(a) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201(a)) is amended in the matter preceding paragraph (1), by striking "In this" and inserting "Except as otherwise specifically provided in this Act, in this".

(b) ESTABLISHMENT AND ADMINISTRATION OF THE PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD.—Section 101 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7211) is amended—

(1) by striking "issuers" each place that term appears and inserting "issuers, brokers, and dealers"; and

(2) in subsection (a)—

(A) by striking "public companies" and inserting "companies"; and

(B) by striking "for companies the securities of which are sold to, and held by and for, public investors".

(c) REGISTRATION WITH THE BOARD.—Section 102 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7212) is amended—

(1) in subsection (a)—

(A) by striking "Beginning 180" and all that follows through "101(d), it" and inserting "It"; and

(B) by striking "issuer" and inserting "issuer, broker, or dealer";

(2) in subsection (b)—

(A) in paragraph (2)(A), by striking "issuers" and inserting "issuers, brokers, and dealers"; and

(B) by striking "issuer" each place that term appears and inserting "issuer, broker, or dealer".

(d) AUDITING AND INDEPENDENCE.—Section 103(a) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7213(a)) is amended—

(1) in paragraph (1), by striking "and such ethics standards" and inserting "such ethics standards, and such independence standards";

(2) in paragraph (2)(A)(iii), by striking "describe in each audit report" and inserting "in each audit report for an issuer, describe"; and

(3) in paragraph (2)(B)(i), by striking "issuers" and inserting "issuers, brokers, and dealers".

(e) INSPECTIONS OF REGISTERED PUBLIC ACCOUNTING FIRMS.—

(1) AMENDMENTS.—Section 104(a) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7214(a)) is amended—

(A) by striking "The Board shall" and inserting the following:

"(1) INSPECTIONS GENERALLY.—The Board shall"; and

(B) by adding at the end the following:

"(2) INSPECTIONS OF AUDIT REPORTS FOR BROKERS AND DEALERS.—

"(A) The Board may, by rule, conduct and require a program of inspection in accordance with paragraph (1), on a basis to be determined by the Board, of registered public accounting firms that provide one or more audit reports for a broker or dealer. The Board, in establishing such a program, may allow for differentiation among classes of brokers and dealers, as appropriate.

"(B) If the Board determines to establish a program of inspection pursuant to subparagraph (A), the Board shall consider in establishing any inspection schedules whether differing schedules would be appropriate with respect to registered public accounting firms that issue audit reports only for one or more brokers or dealers that do not receive, handle, or hold customer securities or cash or are not a member of the Securities Investor Protection Corporation.

"(C) Any rules of the Board pursuant to this paragraph shall be subject to prior approval by the Commission pursuant to section 107(b) before the rules become effective, including an opportunity for public notice and comment.

"(D) Notwithstanding anything to the contrary in section 102 of this Act, a public accounting firm shall not be required to register with the Board if the public accounting firm is exempt from the inspection program which may be established by the Board under subparagraph (A).".

(2) CONFORMING AMENDMENT.—Section 17(e)(1)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(e)(1)(A)) is amended by striking "registered public accounting firm" and inserting "independent public accounting firm, or by a registered public accounting firm if the firm is required to be registered under the Sarbanes-Oxley Act of 2002,".

(f) INVESTIGATIONS AND DISCIPLINARY PROCEEDINGS.—Section 105(c)(7)(B) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7215(c)(7)(B)) is amended—

(1) in the subparagraph heading, by inserting ", BROKER, OR DEALER" after "ISSUER";

(2) by striking "any issuer" each place that term appears and inserting "any issuer, broker, or dealer"; and

(3) by striking "an issuer under this subsection" and inserting "a registered public accounting firm under this subsection".

(g) FOREIGN PUBLIC ACCOUNTING FIRMS.—Section 106(a) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7216(a)) is amended—

(1) in paragraph (1), by striking "issuer" and inserting "issuer, broker, or dealer"; and

(2) in paragraph (2), by striking "issuers" and inserting "issuers, brokers, or dealers".

(h) FUNDING.—Section 109 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7219) is amended—

(1) in subsection (c)(2), by striking "subsection (i)" and inserting "subsection (j)";

(2) in subsection (d)—

(A) in paragraph (2), by striking "allowing for differentiation among classes of issuers, as appropriate" and inserting "and among brokers and dealers, in accordance with subsection (h), and allowing for differentiation among classes of issuers, brokers and dealers, as appropriate"; and

(B) by adding at the end the following:

"(3) BROKERS AND DEALERS.—The Board shall begin the allocation, assessment, and collection of fees under paragraph (2) with respect to brokers and dealers with the payment of support fees to fund the first full fiscal year beginning after the date of enactment of the Investor Protection and Securities Reform Act of 2010.";

(3) by redesignating subsections (h), (i), and (j) as subsections (i), (j), and (k), respectively; and

(4) by inserting after subsection (g) the following:

"(h) ALLOCATION OF ACCOUNTING SUPPORT FEES AMONG BROKERS AND DEALERS.—

"(1) OBLIGATION TO PAY.—Each broker or dealer shall pay to the Board the annual accounting support fee allocated to such broker or dealer under this section.

"(2) ALLOCATION.—Any amount due from a broker or dealer (or from a particular class of brokers and dealers) under this section shall be allocated among brokers and dealers and payable by the broker or dealer (or the brokers and dealers in the particular class, as applicable).

"(3) PROPORTIONALITY.—The amount due from a broker or dealer shall be in proportion to the net capital of the broker or dealer (before or after any adjustments), compared to the total net capital of all brokers and dealers (before or after any adjustments), in accordance with rules issued by the Board.".

(i) REFERRAL OF INVESTIGATIONS TO A SELF-REGULATORY ORGANIZATION.—Section 105(b)(4)(B) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7215(b)(4)(B)) is amended—

(1) by redesignating clauses (ii) and (iii) as clauses (iii) and (iv), respectively; and

(2) by inserting after clause (i) the following:

"(ii) to a self-regulatory organization, in the case of an investigation that concerns an audit report for a broker or dealer that is under the jurisdiction of such self-regulatory organization;".

(j) USE OF DOCUMENTS RELATED TO AN INSPECTION OR INVESTIGATION.—Section 105(b)(5)(B)(ii) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7215(b)(5)(B)(ii)) is amended—

(1) in subclause (III), by striking "and" at the end;

(2) in subclause (IV), by striking the comma and inserting "; and"; and

(3) by inserting after subclause (IV) the following:

"(V) a self-regulatory organization, with respect to an audit report for a broker or dealer that is under the jurisdiction of such self-regulatory organization,".

SEC. 983. PORTFOLIO MARGINING.

(a) ADVANCES.—Section 9(a)(1) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78fff3(a)(1)) is amended by inserting "or options on commodity futures contracts" after "claim for securities".

(b) DEFINITIONS.—Section 16 of the Securities Investor Protection Act of 1970 (15 U.S.C. 78lll) is amended—

(1) by striking paragraph (2) and inserting the following:

"(2) CUSTOMER.—

"(A) IN GENERAL.—The term 'customer' of a debtor means any person (including any person with whom the debtor deals as principal or agent) who has a claim on account of securities received, acquired, or held by the debtor in the ordinary course of its business as a broker or dealer from or for the securities accounts of such person for safekeeping, with a view to sale, to cover consummated sales, pursuant to purchases, as collateral, security, or for purposes of effecting transfer.

"(B) INCLUDED PERSONS.—The term 'customer' includes—

"(i) any person who has deposited cash with the debtor for the purpose of purchasing securities;

"(ii) any person who has a claim against the debtor for cash, securities, futures contracts, or options on futures contracts received, acquired, or held in a portfolio margining account carried as a securities account pursuant to a portfolio margining program approved by the Commission; and

"(iii) any person who has a claim against the debtor arising out of sales or conversions of such securities.

"(C) EXCLUDED PERSONS.—The term 'customer' does not include any person, to the extent that—

"(i) the claim of such person arises out of transactions with a foreign subsidiary of a member of SIPC; or

"(ii) such person has a claim for cash or securities which by contract, agreement, or understanding, or by operation of law, is part of the capital of the debtor, or is subordinated to the claims of any or all creditors of the debtor, notwithstanding that some ground exists

for declaring such contract, agreement, or understanding void or voidable in a suit between the claimant and the debtor.";

(2) in paragraph (4)—

(A) in subparagraph (C), by striking "and" at the end;

(B) by redesignating subparagraph (D) as subparagraph (E); and

(C) by inserting after subparagraph (C) the following:

"(D) in the case of a portfolio margining account of a customer that is carried as a securities account pursuant to a portfolio margining program approved by the Commission, a futures contract or an option on a futures contract received, acquired, or held by or for the account of a debtor from or for such portfolio margining account, and the proceeds thereof; and";

(3) in paragraph (9), in the matter following subparagraph (L), by inserting after "Such term" the following: "includes revenues earned by a broker or dealer in connection with a transaction in the portfolio margining account of a customer carried as securities accounts pursuant to a portfolio margining program approved by the Commission. Such term"; and

(4) in paragraph (11)—

(A) in subparagraph (A)—

(i) by striking "filing date, all" and all that follows through the end of the subparagraph and inserting the following: "filing date—

"(i) all securities positions of such customer (other than customer name securities reclaimed by such customer); and

"(ii) all positions in futures contracts and options on futures contracts held in a portfolio margining account carried as a securities account pursuant to a portfolio margining program approved by the Commission, including all property collateralizing such positions, to the extent that such property is not otherwise included herein; minus"; and

(B) in the matter following subparagraph (C), by striking "In determining" and inserting the following: "A claim for a commodity futures contract received, acquired, or held in a portfolio margining account pursuant to a portfolio margining program approved by the Commission or a claim for a security futures contract, shall be deemed to be a claim with respect to such contract as of the filing date, and such claim shall be treated as a claim for cash. In determining".

SEC. 984. LOAN OR BORROWING OF SECURITIES.

(a) RULEMAKING AUTHORITY.—Section 10 of the Securities Exchange Act of 1934 (15 U.S.C. 78j) is amended by adding at the end the following:

"(c)(1) To effect, accept, or facilitate a transaction involving the loan or borrowing of securities in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

"(2) Nothing in paragraph (1) may be construed to limit the authority of the appropriate Federal banking agency (as

defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q))), the National Credit Union Administration, or any other Federal department or agency having a responsibility under Federal law to prescribe rules or regulations restricting transactions involving the loan or borrowing of securities in order to protect the safety and soundness of a financial institution or to protect the financial system from systemic risk.".

(b) RULEMAKING REQUIRED.—Not later than 2 years after the date of enactment of this Act, the Commission shall promulgate rules that are designed to increase the transparency of information available to brokers, dealers, and investors, with respect to the loan or borrowing of securities.

SEC. 985. TECHNICAL CORRECTIONS TO FEDERAL SECURITIES LAWS.

(a) SECURITIES ACT OF 1933.—The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended—

(1) in section 3(a)(4) (15 U.S.C. 77c(a)(4)), by striking "individual;" and inserting "individual,";

(2) in section 18 (15 U.S.C. 77r)—

(A) in subsection (b)(1)(C), by striking "is a security" and inserting "a security"; and

(B) in subsection (c)(2)(B)(i), by striking "State, or" and inserting "State or";

(3) in section 19(d)(6)(A) (15 U.S.C. 77s(d)(6)(A)), by striking "in paragraph (1) of (3)" and inserting "in paragraph (1) or (3)"; and

(4) in section 27A(c)(1)(B)(ii) (15 U.S.C. 77z–2(c)(1)(B)(ii)), by striking "business entity;" and inserting "business entity,".

(b) SECURITIES EXCHANGE ACT OF 1934.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended—

(1) in section 2 (15 U.S.C. 78b), by striking "affected" and inserting "effected";

(2) in section 3 (15 U.S.C. 78c)—

(A) in subsection (a)(55)(A), by striking "section 3(a)(12) of the Securities Exchange Act of 1934" and inserting "section 3(a)(12) of this title"; and

(B) in subsection (g), by striking "company, account person, or entity" and inserting "company, account, person, or entity";

(3) in section 10A(i)(1)(B) (15 U.S.C. 78j–1(i)(1)(B))—

(A) in the subparagraph heading, by striking "MINIMUS" and inserting "MINIMIS"; and

(B) in clause (i), by striking "nonaudit" and inserting "non-audit";

(4) in section 13(b)(1) (15 U.S.C. 78m(b)(1)), by striking "earning statement" and inserting "earnings statement";

(5) in section 15 (15 U.S.C. 78o)—

(A) in subsection (b)(1)—

(i) in subparagraph (B), by striking "The order granting" and all that follows through "from such membership."; and

(ii) in the undesignated matter immediately following subparagraph (B), by inserting after the first sentence the following: "The order granting registration shall not be effective until such broker or dealer has become a member of a registered securities association,

or until such broker or dealer has become a member of a national securities exchange, if such broker or dealer effects transactions solely on that exchange, unless the Commission has exempted such broker or dealer, by rule or order, from such membership.";

(6) in section 15C(a)(2) (15 U.S.C. 78o–5(a)(2))—

(A) by redesignating clauses (i) and (ii) as subparagraphs (A) and (B), respectively, and adjusting the subparagraph margins accordingly;

(B) in subparagraph (B), as so redesignated, by striking "The order granting" and all that follows through "from such membership."; and

(C) in the matter following subparagraph (B), as so redesignated, by inserting after the first sentence the following: "The order granting registration shall not be effective until such government securities broker or government securities dealer has become a member of a national securities exchange registered under section 6 of this title, or a securities association registered under section 15A of this title, unless the Commission has exempted such government securities broker or government securities dealer, by rule or order, from such membership.";

(7) in section 17(b)(1)(B) (15 U.S.C. 78q(b)(1)(B)), by striking "15A(k) gives" and inserting "15A(k), give"; and

(8) in section 21C(c)(2) (15 U.S.C. 78u–3(c)(2)), by striking "paragraph (1) subsection" and inserting "Paragraph (1)".

(c) TRUST INDENTURE ACT OF 1939.—The Trust Indenture Act of 1939 (15 U.S.C. 77aaa et seq.) is amended—

(1) in section 304(b) (15 U.S.C. 77ddd(b)), by striking "section 2 of such Act" and inserting "section 2(a) of such Act"; and

(2) in section 317(a)(1) (15 U.S.C. 77qqq(a)(1)), by striking ", in the" and inserting "in the".

(d) INVESTMENT COMPANY ACT OF 1940.—The Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) is amended—

(1) in section 2(a)(19) (15 U.S.C. 80a–2(a)(19)), in the matter following subparagraph (B)(vii)—

(A) by striking "clause (vi)" each place that term appears and inserting "clause (vii)"; and

(B) in each of subparagraphs (A)(vi) and (B)(vi), by adding "and" at the end of subclause (III);

(2) in section 9(b)(4)(B) (15 U.S.C. 80a–9(b)(4)(B)), by adding "or" after the semicolon at the end;

(3) in section 12(d)(1)(J) (15 U.S.C. 80a–12(d)(1)(J)), by striking "any provision of this subsection" and inserting "any provision of this paragraph";

(4) in section 17(f) (15 U.S.C. 80a–17(f))—

(A) in paragraph (4), by striking "No such member" and inserting "No member of a national securities exchange"; and

(B) in paragraph (6), by striking "company may serve" and inserting "company, may serve"; and

(5) in section 61(a)(3)(B)(iii) (15 U.S.C. 80a–60(a)(3)(B)(iii))—

(A) by striking "paragraph (1) of section 205" and inserting "section 205(a)(1)"; and

(B) by striking "clause (A) or (B) of that section" and inserting "paragraph (1) or (2) of section 205(b)".

(e) INVESTMENT ADVISERS ACT OF 1940.—The Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) is amended—

(1) in section 203 (15 U.S.C. 80b–3)—

(A) in subsection (c)(1)(A), by striking "principal business office and" and inserting "principal office, principal place of business, and"; and

(B) in subsection (k)(4)(B), in the matter following clause (ii), by striking "principal place of business" and inserting "principal office or place of business";

(2) in section 206(3) (15 U.S.C. 80b–6(3)), by adding "or" after the semicolon at the end;

(3) in section 213(a) (15 U.S.C. 80b–13(a)), by striking "principal place of business" and inserting "principal office or place of business"; and

(4) in section 222 (15 U.S.C. 80b–18a), by striking "principal place of business" each place that term appears and inserting "principal office and place of business".

SEC. 986. CONFORMING AMENDMENTS RELATING TO REPEAL OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935.

(a) SECURITIES EXCHANGE ACT OF 1934.—The Securities Exchange Act of 1934 (15 U.S.C. 78 et seq.) is amended—

(1) in section 3(a)(47) (15 U.S.C. 78c(a)(47)), by striking "the Public Utility Holding Company Act of 1935 (15 U.S.C. 79a et seq.),";

(2) in section 12(k) (15 U.S.C. 78l(k)), by amending paragraph (7) to read as follows:

"(7) DEFINITION.—For purposes of this subsection, the term 'emergency' means—

"(A) a major market disturbance characterized by or constituting—

"(i) sudden and excessive fluctuations of securities prices generally, or a substantial threat thereof, that threaten fair and orderly markets; or

"(ii) a substantial disruption of the safe or efficient operation of the national system for clearance and settlement of transactions in securities, or a substantial threat thereof; or

"(B) a major disturbance that substantially disrupts, or threatens to substantially disrupt—

"(i) the functioning of securities markets, investment companies, or any other significant portion or segment of the securities markets; or

"(ii) the transmission or processing of securities transactions."; and

(3) in section 21(h)(2) (15 U.S.C. 78u(h)(2)), by striking "section 18(c) of the Public Utility Holding Company Act of 1935,".

(b) TRUST INDENTURE ACT OF 1939.—The Trust Indenture Act of 1939 (15 U.S.C. 77aaa et seq.) is amended—

(1) in section 303 (15 U.S.C. 77ccc), by striking paragraph (17) and inserting the following:

"(17) The terms 'Securities Act of 1933' and 'Securities Exchange Act of 1934' shall be deemed to refer, respectively,

to such Acts, as amended, whether amended prior to or after the enactment of this title.";

(2) in section 308 (15 U.S.C. 77hhh), by striking "Securities Act of 1933, the Securities Exchange Act of 1934, or the Public Utility Holding Company Act of 1935" each place that term appears and inserting "Securities Act of 1933 or the Securities Exchange Act of 1934";

(3) in section 310 (15 U.S.C. 77jjj), by striking subsection (c);

(4) in section 311 (15 U.S.C. 77kkk), by striking subsection (c);

(5) in section 323(b) (15 U.S.C. 77www(b)), by striking "Securities Act of 1933, or the Securities Exchange Act of 1934, or the Public Utility Holding Company Act of 1935" and inserting "Securities Act of 1933 or the Securities Exchange Act of 1934"; and

(6) in section 326 (15 U.S.C. 77zzz), by striking "Securities Act of 1933, or the Securities Exchange Act of 1934, or the Public Utility Holding Company Act of 1935," and inserting "Securities Act of 1933 or the Securities Exchange Act of 1934".

(c) INVESTMENT COMPANY ACT OF 1940.—The Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) is amended—

(1) in section 2(a)(44) (15 U.S.C. 80a–2(a)(44)), by striking "'Public Utility Holding Company Act of 1935',";

(2) in section 3(c) (15 U.S.C. 80a–3(c)), by striking paragraph (8) and inserting the following:

"(8) [Repealed]";

(3) in section 38(b) (15 U.S.C. 80a–37(b)), by striking "the Public Utility Holding Company Act of 1935,"; and

(4) in section 50 (15 U.S.C. 80a–49), by striking "the Public Utility Holding Company Act of 1935,".

(d) INVESTMENT ADVISERS ACT OF 1940.—Section 202(a)(21) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(21)) is amended by striking "'Public Utility Holding Company Act of 1935',".

SEC. 987. AMENDMENT TO DEFINITION OF MATERIAL LOSS AND NONMATERIAL LOSSES TO THE DEPOSIT INSURANCE FUND FOR PURPOSES OF INSPECTOR GENERAL REVIEWS.

(a) IN GENERAL.—Section 38(k) of the Federal Deposit Insurance Act (U.S.C. 1831o(k)) is amended—

(1) in paragraph (2), by striking subparagraph (B) and inserting the following:

"(B) MATERIAL LOSS DEFINED.—The term 'material loss' means any estimated loss in excess of—

"(i) $200,000,000, if the loss occurs during the period beginning on January 1, 2010, and ending on December 31, 2011;

"(ii) $150,000,000, if the loss occurs during the period beginning on January 1, 2012, and ending on December 31, 2013; and

"(iii) $50,000,000, if the loss occurs on or after January 1, 2014, provided that if the inspector general of a Federal banking agency certifies to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House

of Representatives that the number of projected failures of depository institutions that would require material loss reviews for the following 12 months will be greater than 30 and would hinder the effectiveness of its oversight functions, then the definition of 'material loss' shall be $75,000,000 for a duration of 1 year from the date of the certification.";

(2) in paragraph (4)(A) by striking "the report" and inserting "any report on losses required under this subsection,";

(3) by striking paragraph (6);

(4) by redesignating paragraph (5) as paragraph (6); and

(5) by inserting after paragraph (4) the following:

"(5) LOSSES THAT ARE NOT MATERIAL.—

"(A) SEMIANNUAL REPORT.—For the 6-month period ending on March 31, 2010, and each 6-month period thereafter, the Inspector General of each Federal banking agency shall—

"(i) identify losses that the Inspector General estimates have been incurred by the Deposit Insurance Fund during that 6-month period, with respect to the insured depository institutions supervised by the Federal banking agency;

"(ii) for each loss incurred by the Deposit Insurance Fund that is not a material loss, determine—

"(I) the grounds identified by the Federal banking agency or State bank supervisor for appointing the Corporation as receiver under section 11(c)(5); and

"(II) whether any unusual circumstances exist that might warrant an in-depth review of the loss; and

"(iii) prepare and submit a written report to the appropriate Federal banking agency and to Congress on the results of any determination by the Inspector General, including—

"(I) an identification of any loss that warrants an in-depth review, together with the reasons why such review is warranted, or, if the Inspector General determines that no review is warranted, an explanation of such determination; and

"(II) for each loss identified under subclause (I) that warrants an in-depth review, the date by which such review, and a report on such review prepared in a manner consistent with reports under paragraph (1)(A), will be completed and submitted to the Federal banking agency and Congress.

"(B) DEADLINE FOR SEMIANNUAL REPORT.—The Inspector General of each Federal banking agency shall—

"(i) submit each report required under paragraph (A) expeditiously, and not later than 90 days after the end of the 6-month period covered by the report; and

"(ii) provide a copy of the report required under paragraph (A) to any Member of Congress, upon request.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—The heading for subsection (k) of section 38 of the Federal Deposit Insurance Act (U.S.C. 1831o(k)) is amended to read as follows:

"(k) REVIEWS REQUIRED WHEN DEPOSIT INSURANCE FUND INCURS LOSSES.—".

SEC. 988. AMENDMENT TO DEFINITION OF MATERIAL LOSS AND NON-MATERIAL LOSSES TO THE NATIONAL CREDIT UNION SHARE INSURANCE FUND FOR PURPOSES OF INSPECTOR GENERAL REVIEWS.

(a) IN GENERAL.—Section 216(j) of the Federal Credit Union Act (12 U.S.C. 1790d(j)) is amended to read as follows:

"(j) REVIEWS REQUIRED WHEN SHARE INSURANCE FUND EXPERIENCES LOSSES.—

"(1) IN GENERAL.—If the Fund incurs a material loss with respect to an insured credit union, the Inspector General of the Board shall—

"(A) submit to the Board a written report reviewing the supervision of the credit union by the Administration (including the implementation of this section by the Administration), which shall include—

"(i) a description of the reasons why the problems of the credit union resulted in a material loss to the Fund; and

"(ii) recommendations for preventing any such loss in the future; and

"(B) submit a copy of the report under subparagraph (A) to—

"(i) the Comptroller General of the United States;

"(ii) the Corporation;

"(iii) in the case of a report relating to a State credit union, the appropriate State supervisor; and

"(iv) to any Member of Congress, upon request.

"(2) MATERIAL LOSS DEFINED.—For purposes of determining whether the Fund has incurred a material loss with respect to an insured credit union, a loss is material if it exceeds the sum of—

"(A) $25,000,000; and

"(B) an amount equal to 10 percent of the total assets of the credit union on the date on which the Board initiated assistance under section 208 or was appointed liquidating agent.

"(3) PUBLIC DISCLOSURE REQUIRED.—

"(A) IN GENERAL.—The Board shall disclose a report under this subsection, upon request under section 552 of title 5, United States Code, without excising—

"(i) any portion under section 552(b)(5) of title 5, United States Code; or

"(ii) any information about the insured credit union (other than trade secrets) under section 552(b)(8) of title 5, United States Code.

"(B) RULE OF CONSTRUCTION.—Subparagraph (A) may not be construed as requiring the agency to disclose the name of any customer of the insured credit union (other than an institution-affiliated party), or information from which the identity of such customer could reasonably be ascertained.

"(4) LOSSES THAT ARE NOT MATERIAL.—

"(A) SEMIANNUAL REPORT.—For the 6-month period ending on March 31, 2010, and each 6-month period thereafter, the Inspector General of the Board shall—

"(i) identify any losses that the Inspector General estimates were incurred by the Fund during such 6-month period, with respect to insured credit unions;

"(ii) for each loss to the Fund that is not a material loss, determine—

"(I) the grounds identified by the Board or the State official having jurisdiction over a State credit union for appointing the Board as the liquidating agent for any Federal or State credit union; and

"(II) whether any unusual circumstances exist that might warrant an in-depth review of the loss; and

"(iii) prepare and submit a written report to the Board and to Congress on the results of the determinations of the Inspector General that includes—

"(I) an identification of any loss that warrants an in-depth review, and the reasons such review is warranted, or if the Inspector General determines that no review is warranted, an explanation of such determination; and

"(II) for each loss identified in subclause (I) that warrants an in-depth review, the date by which such review, and a report on the review prepared in a manner consistent with reports under paragraph (1)(A), will be completed.

"(B) DEADLINE FOR SEMIANNUAL REPORT.—The Inspector General of the Board shall—

"(i) submit each report required under subparagraph (A) expeditiously, and not later than 90 days after the end of the 6-month period covered by the report; and

"(ii) provide a copy of the report required under subparagraph (A) to any Member of Congress, upon request.

"(5) GAO REVIEW.—The Comptroller General of the United States shall, under such conditions as the Comptroller General determines to be appropriate—

"(A) review each report made under paragraph (1), including the extent to which the Inspector General of the Board complied with the requirements under section 8L of the Inspector General Act of 1978 (5 U.S.C. App.) with respect to each such report; and

"(B) recommend improvements to the supervision of insured credit unions (including improvements relating to the implementation of this section).".

SEC. 989. GOVERNMENT ACCOUNTABILITY OFFICE STUDY ON PROPRIETARY TRADING.

(a) DEFINITIONS.—In this section—

(1) the term "covered entity" means—

(A) an insured depository institution, an affiliate of an insured depository institution, a bank holding company,

a financial holding company, or a subsidiary of a bank holding company or a financial holding company, as those terms are defined in the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.); and

(B) any other entity, as the Comptroller General of the United States may determine; and

(2) the term "proprietary trading" means the act of a covered entity investing as a principal in securities, commodities, derivatives, hedge funds, private equity firms, or such other financial products or entities as the Comptroller General may determine.

(b) STUDY.—

(1) IN GENERAL.—The Comptroller General of the United States shall conduct a study regarding the risks and conflicts associated with proprietary trading by and within covered entities, including an evaluation of—

(A) whether proprietary trading presents a material systemic risk to the stability of the United States financial system, and if so, the costs and benefits of options for mitigating such systemic risk;

(B) whether proprietary trading presents material risks to the safety and soundness of the covered entities that engage in such activities, and if so, the costs and benefits of options for mitigating such risks;

(C) whether proprietary trading presents material conflicts of interest between covered entities that engage in proprietary trading and the clients of the institutions who use the firm to execute trades or who rely on the firm to manage assets, and if so, the costs and benefits of options for mitigating such conflicts of interest;

(D) whether adequate disclosure regarding the risks and conflicts of proprietary trading is provided to the depositors, trading and asset management clients, and investors of covered entities that engage in proprietary trading, and if not, the costs and benefits of options for the improvement of such disclosure; and

(E) whether the banking, securities, and commodities regulators of institutions that engage in proprietary trading have in place adequate systems and controls to monitor and contain any risks and conflicts of interest related to proprietary trading, and if not, the costs and benefits of options for the improvement of such systems and controls.

(2) CONSIDERATIONS.—In carrying out the study required under paragraph (1), the Comptroller General shall consider—

(A) current practice relating to proprietary trading;

(B) the advisability of a complete ban on proprietary trading;

(C) limitations on the scope of activities that covered entities may engage in with respect to proprietary trading;

(D) the advisability of additional capital requirements for covered entities that engage in proprietary trading;

(E) enhanced restrictions on transactions between affiliates related to proprietary trading;

(F) enhanced accounting disclosures relating to proprietary trading;

(G) enhanced public disclosure relating to proprietary trading; and

(H) any other options the Comptroller General deems appropriate.

(c) REPORT TO CONGRESS.—Not later than 15 months after the date of enactment of this Act, the Comptroller General shall submit a report to Congress on the results of the study conducted under subsection (b).

(d) ACCESS BY COMPTROLLER GENERAL.—For purposes of conducting the study required under subsection (b), the Comptroller General shall have access, upon request, to any information, data, schedules, books, accounts, financial records, reports, files, electronic communications, or other papers, things, or property belonging to or in use by a covered entity that engages in proprietary trading, and to the officers, directors, employees, independent public accountants, financial advisors, staff, and agents and representatives of a covered entity (as related to the activities of the agent or representative on behalf of the covered entity), at such reasonable times as the Comptroller General may request. The Comptroller General may make and retain copies of books, records, accounts, and other records, as the Comptroller General deems appropriate.

(e) CONFIDENTIALITY OF REPORTS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the Comptroller General may not disclose information regarding—

(A) any proprietary trading activity of a covered entity, unless such information is disclosed at a level of generality that does not reveal the investment or trading position or strategy of the covered entity for any specific security, commodity, derivative, or other investment or financial product; or

(B) any individual interviewed by the Comptroller General for purposes of the study under subsection (b), unless such information is disclosed at a level of generality that does not reveal—

(i) the name of or identifying details relating to such individual; or

(ii) in the case of an individual who is an employee of a third party that provides professional services to a covered entity believed to be engaged in proprietary trading, the name of or any identifying details relating to such third party.

(2) EXCEPTIONS.—The Comptroller General may disclose the information described in paragraph (1)—

(A) to a department, agency, or official of the Federal Government, for official use, upon request;

(B) to a committee of Congress, upon request; and

(C) to a court, upon an order of such court.

SEC. 989A. SENIOR INVESTOR PROTECTIONS.

(a) DEFINITIONS.—As used in this section—

(1) the term "eligible entity" means—

(A) a securities commission (or any agency or office performing like functions) of a State that the Office determines has adopted rules on the appropriate use of designations in the offer or sale of securities or the provision of investment advice that meet or exceed the minimum requirements of the NASAA Model Rule on the Use of

Senior-Specific Certifications and Professional Designations (or any successor thereto);

(B) the insurance commission (or any agency or office performing like functions) of any State that the Office determines has—

(i) adopted rules on the appropriate use of designations in the sale of insurance products that, to the extent practicable, conform to the minimum requirements of the National Association of Insurance Commissioners Model Regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities (or any successor thereto); and

(ii) adopted rules with respect to fiduciary or suitability requirements in the sale of annuities that meet or exceed the minimum requirements established by the Suitability in Annuity Transactions Model Regulation of the National Association of Insurance Commissioners (or any successor thereto); or

(C) a consumer protection agency of any State, if—

(i) the securities commission (or any agency or office performing like functions) of the State is eligible under subparagraph (A); or

(ii) the insurance commission (or any agency or office performing like functions) of the State is eligible under subparagraph (B);

(2) the term "financial product" means a security, an insurance product (including an insurance product that pays a return, whether fixed or variable), a bank product, and a loan product;

(3) the term "misleading designation"—

(A) means a certification, professional designation, or other purported credential that indicates or implies that a salesperson or adviser has special certification or training in advising or servicing seniors; and

(B) does not include a certification, professional designation, license, or other credential that—

(i) was issued by or obtained from an academic institution having regional accreditation;

(ii) meets the standards for certifications and professional designations outlined by the NASAA Model Rule on the Use of Senior-Specific Certifications and Professional Designations (or any successor thereto) or by the Model Regulations on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities, adopted by the National Association of Insurance Commissioners (or any successor thereto); or

(iii) was issued by or obtained from a State;

(4) the term "misleading or fraudulent marketing" means the use of a misleading designation by a person that sells to or advises a senior in connection with the sale of a financial product;

(5) the term "NASAA" means the North American Securities Administrators Association;

(6) the term "Office" means the Office of Financial Literacy of the Bureau;

(7) the term "senior" means any individual who has attained the age of 62 years or older; and

(8) the term "State" has the same meaning as in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

(b) GRANTS TO STATES FOR ENHANCED PROTECTION OF SENIORS FROM BEING MISLED BY FALSE DESIGNATIONS.—The Office shall establish a program under which the Office may make grants to States or eligible entities—

(1) to hire staff to identify, investigate, and prosecute (through civil, administrative, or criminal enforcement actions) cases involving misleading or fraudulent marketing;

(2) to fund technology, equipment, and training for regulators, prosecutors, and law enforcement officers, in order to identify salespersons and advisers who target seniors through the use of misleading designations;

(3) to fund technology, equipment, and training for prosecutors to increase the successful prosecution of salespersons and advisers who target seniors with the use of misleading designations;

(4) to provide educational materials and training to regulators on the appropriateness of the use of designations by salespersons and advisers in connection with the sale and marketing of financial products;

(5) to provide educational materials and training to seniors to increase awareness and understanding of misleading or fraudulent marketing;

(6) to develop comprehensive plans to combat misleading or fraudulent marketing of financial products to seniors; and

(7) to enhance provisions of State law to provide protection for seniors against misleading or fraudulent marketing.

(c) APPLICATIONS.—A State or eligible entity desiring a grant under this section shall submit an application to the Office, in such form and in such a manner as the Office may determine, that includes—

(1) a proposal for activities to protect seniors from misleading or fraudulent marketing that are proposed to be funded using a grant under this section, including—

(A) an identification of the scope of the problem of misleading or fraudulent marketing in the State;

(B) a description of how the proposed activities would—

(i) protect seniors from misleading or fraudulent marketing in the sale of financial products, including by proactively identifying victims of misleading and fraudulent marketing who are seniors;

(ii) assist in the investigation and prosecution of those using misleading or fraudulent marketing; and

(iii) discourage and reduce cases of misleading or fraudulent marketing; and

(C) a description of how the proposed activities would be coordinated with other State efforts; and

(2) any other information, as the Office determines is appropriate.

(d) PERFORMANCE OBJECTIVES AND REPORTING REQUIREMENTS.—The Office may establish such performance objectives and reporting requirements for States and eligible entities receiving a grant under this section as the Office determines are necessary

to carry out and assess the effectiveness of the program under this section.

(e) MAXIMUM AMOUNT.—The amount of a grant under this section may not exceed—

(1) $500,000 for each of 3 consecutive fiscal years, if the recipient is a State, or an eligible entity of a State, that has adopted rules—

(A) on the appropriate use of designations in the offer or sale of securities or investment advice that meet or exceed the minimum requirements of the NASAA Model Rule on the Use of Senior-Specific Certifications and Professional Designations (or any successor thereto);

(B) on the appropriate use of designations in the sale of insurance products that, to the extent practicable, conform to the minimum requirements of the National Association of Insurance Commissioners Model Regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities (or any successor thereto); and

(C) with respect to fiduciary or suitability requirements in the sale of annuities that meet or exceed the minimum requirements established by the Suitability in Annuity Transactions Model Regulation of the National Association of Insurance Commissioners (or any successor thereto); and

(2) $100,000 for each of 3 consecutive fiscal years, if the recipient is a State, or an eligible entity of a State, that has adopted—

(A) rules on the appropriate use of designations in the offer or sale of securities or investment advice that meet or exceed the minimum requirements of the NASAA Model Rule on the Use of Senior-Specific Certifications and Professional Designations (or any successor thereto); or

(B) rules—

(i) on the appropriate use of designations in the sale of insurance products that, to the extent practicable, conform to the minimum requirements of the National Association of Insurance Commissioners Model Regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities (or any successor thereto); and

(ii) with respect to fiduciary or suitability requirements in the sale of annuities that meet or exceed the minimum requirements established by the Suitability in Annuity Transactions Model Regulation of the National Association of Insurance Commissioners (or any successor thereto).

(f) SUBGRANTS.—A State or eligible entity that receives a grant under this section may make a subgrant, as the State or eligible entity determines is necessary to carry out the activities funded using a grant under this section.

(g) REAPPLICATION.—A State or eligible entity that receives a grant under this section may reapply for a grant under this section, notwithstanding the limitations on grant amounts under subsection (e).

(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section, $8,000,000 for each of fiscal years 2011 through 2015.

SEC. 989B. DESIGNATED FEDERAL ENTITY INSPECTORS GENERAL INDEPENDENCE.

Section 8G of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in subsection (a)(4)—

(A) in the matter preceding subparagraph (A), by inserting "the board or commission of the designated Federal entity, or in the event the designated Federal entity does not have a board or commission," after "means";

(B) in subparagraph (A), by striking "and" after the semicolon; and

(C) by adding after subparagraph (B) the following:

"(C) with respect to the Federal Labor Relations Authority, such term means the members of the Authority (described under section 7104 of title 5, United States Code);

"(D) with respect to the National Archives and Records Administration, such term means the Archivist of the United States;

"(E) with respect to the National Credit Union Administration, such term means the National Credit Union Administration Board (described under section 102 of the Federal Credit Union Act (12 U.S.C. 1752a);

"(F) with respect to the National Endowment of the Arts, such term means the National Council on the Arts;

"(G) with respect to the National Endowment for the Humanities, such term means the National Council on the Humanities; and

"(H) with respect to the Peace Corps, such term means the Director of the Peace Corps;"; and

(2) in subsection (h), by inserting "if the designated Federal entity is not a board or commission, include" after "designated Federal entities and".

SEC. 989C. STRENGTHENING INSPECTOR GENERAL ACCOUNTABILITY.

Section 5(a) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in paragraph (12), by striking "and" after the semicolon;

(2) in paragraph (13), by striking the period and inserting a semicolon; and

(3) by adding at the end the following:

"(14)(A) an appendix containing the results of any peer review conducted by another Office of Inspector General during the reporting period; or

"(B) if no peer review was conducted within that reporting period, a statement identifying the date of the last peer review conducted by another Office of Inspector General;

"(15) a list of any outstanding recommendations from any peer review conducted by another Office of Inspector General that have not been fully implemented, including a statement describing the status of the implementation and why implementation is not complete; and

"(16) a list of any peer reviews conducted by the Inspector General of another Office of the Inspector General during the

reporting period, including a list of any outstanding recommendations made from any previous peer review (including any peer review conducted before the reporting period) that remain outstanding or have not been fully implemented.".

SEC. 989D. REMOVAL OF INSPECTORS GENERAL OF DESIGNATED FEDERAL ENTITIES.

Section 8G(e) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) by redesignating the sentences following "(e)" as paragraph (2); and

(2) by striking "(e)" and inserting the following:

"(e)(1) In the case of a designated Federal entity for which a board or commission is the head of the designated Federal entity, a removal under this subsection may only be made upon the written concurrence of a ⅔ majority of the board or commission.".

SEC. 989E. ADDITIONAL OVERSIGHT OF FINANCIAL REGULATORY SYSTEM.

(a) COUNCIL OF INSPECTORS GENERAL ON FINANCIAL OVERSIGHT.—

(1) ESTABLISHMENT AND MEMBERSHIP.—There is established a Council of Inspectors General on Financial Oversight (in this section referred to as the "Council of Inspectors General") chaired by the Inspector General of the Department of the Treasury and composed of the inspectors general of the following:

(A) The Board of Governors of the Federal Reserve System.

(B) The Commodity Futures Trading Commission.

(C) The Department of Housing and Urban Development.

(D) The Department of the Treasury.

(E) The Federal Deposit Insurance Corporation.

(F) The Federal Housing Finance Agency.

(G) The National Credit Union Administration.

(H) The Securities and Exchange Commission.

(I) The Troubled Asset Relief Program (until the termination of the authority of the Special Inspector General for such program under section 121(k) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5231(k))).

(2) DUTIES.—

(A) MEETINGS.—The Council of Inspectors General shall meet not less than once each quarter, or more frequently if the chair considers it appropriate, to facilitate the sharing of information among inspectors general and to discuss the ongoing work of each inspector general who is a member of the Council of Inspectors General, with a focus on concerns that may apply to the broader financial sector and ways to improve financial oversight.

(B) ANNUAL REPORT.—Each year the Council of Inspectors General shall submit to the Council and to Congress a report including—

(i) for each inspector general who is a member of the Council of Inspectors General, a section within the exclusive editorial control of such inspector general that highlights the concerns and recommendations of such inspector general in such inspector general's

ongoing and completed work, with a focus on issues that may apply to the broader financial sector; and

(ii) a summary of the general observations of the Council of Inspectors General based on the views expressed by each inspector general as required by clause (i), with a focus on measures that should be taken to improve financial oversight.

(3) WORKING GROUPS TO EVALUATE COUNCIL.—

(A) CONVENING A WORKING GROUP.—The Council of Inspectors General may, by majority vote, convene a Council of Inspectors General Working Group to evaluate the effectiveness and internal operations of the Council.

(B) PERSONNEL AND RESOURCES.—The inspectors general who are members of the Council of Inspectors General may detail staff and resources to a Council of Inspectors General Working Group established under this paragraph to enable it to carry out its duties.

(C) REPORTS.—A Council of Inspectors General Working Group established under this paragraph shall submit regular reports to the Council and to Congress on its evaluations pursuant to this paragraph.

(b) RESPONSE TO REPORT BY COUNCIL.—The Council shall respond to the concerns raised in the report of the Council of Inspectors General under subsection (a)(2)(B) for such year.

SEC. 989F. GAO STUDY OF PERSON TO PERSON LENDING.

(a) STUDY.—

(1) IN GENERAL.—The Comptroller General of the United States shall conduct a study of person to person lending to determine the optimal Federal regulatory structure.

(2) CONSULTATION.—In conducting the study required under paragraph (1), the Comptroller General shall consult with Federal banking agencies, the Commission, consumer groups, outside experts, and the person to person lending industry.

(3) CONTENT OF STUDY.—The study required under paragraph (1) shall include an examination of—

(A) the regulatory structure as it exists on the date of enactment of this Act, as determined by the Commission, with particular attention to—

(i) the application of the Securities Act of 1933 to person to person lending platforms;

(ii) the posting of consumer loan information on the EDGAR database of the Commission; and

(iii) the treatment of privately held person to person lending platforms as public companies;

(B) the State and other Federal regulators responsible for the oversight and regulation of person to person lending markets;

(C) any Federal, State, or local government or private studies of person to person lending completed or in progress on the date of enactment of this Act;

(D) consumer privacy and data protections, minimum credit standards, anti-money laundering and risk management in the regulatory structure as it exists on the date of enactment of this Act, and whether additional or alternative safeguards are needed; and

(E) the uses of person to person lending.

(b) REPORT.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall submit a report on the study required under subsection (a) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

(2) CONTENT OF REPORT.—The report required under paragraph (1) shall include alternative regulatory options, including—

(A) the involvement of other Federal agencies; and

(B) alternative approaches by the Commission and recommendations on whether the alternative approaches are effective.

SEC. 989G. EXEMPTION FOR NONACCELERATED FILERS.

(a) EXEMPTION.—Section 404 of the Sarbanes-Oxley Act of 2002 is amended by adding at the end the following:

"(c) EXEMPTION FOR SMALLER ISSUERS.—Subsection (b) shall not apply with respect to any audit report prepared for an issuer that is neither a 'large accelerated filer' nor an 'accelerated filer' as those terms are defined in Rule 12b–2 of the Commission (17 C.F.R. 240.12b–2).".

(b) STUDY.—The Securities and Exchange Commission shall conduct a study to determine how the Commission could reduce the burden of complying with section 404(b) of the Sarbanes-Oxley Act of 2002 for companies whose market capitalization is between $75,000,000 and $250,000,000 for the relevant reporting period while maintaining investor protections for such companies. The study shall also consider whether any such methods of reducing the compliance burden or a complete exemption for such companies from compliance with such section would encourage companies to list on exchanges in the United States in their initial public offerings. Not later than 9 months after the date of the enactment of this subtitle, the Commission shall transmit a report of such study to Congress.

SEC. 989H. CORRECTIVE RESPONSES BY HEADS OF CERTAIN ESTABLISHMENTS TO DEFICIENCIES IDENTIFIED BY INSPECTORS GENERAL.

The Chairman of the Board of Governors of the Federal Reserve System, the Chairman of the Commodity Futures Trading Commission, the Chairman of the National Credit Union Administration, the Director of the Pension Benefit Guaranty Corporation, and the Chairman of the Securities and Exchange Commission shall each—

(1) take action to address deficiencies identified by a report or investigation of the Inspector General of the establishment concerned; or

(2) certify to both Houses of Congress that no action is necessary or appropriate in connection with a deficiency described in paragraph (1).

SEC. 989I. GAO STUDY REGARDING EXEMPTION FOR SMALLER ISSUERS.

(a) STUDY REGARDING EXEMPTION FOR SMALLER ISSUERS.—The Comptroller General of the United States shall carry out a study

on the impact of the amendments made by this Act to section 404(b) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7262(b)), which shall include an analysis of—

(1) whether issuers that are exempt from such section 404(b) have fewer or more restatements of published accounting statements than issuers that are required to comply with such section 404(b);

(2) the cost of capital for issuers that are exempt from such section 404(b) compared to the cost of capital for issuers that are required to comply with such section 404(b);

(3) whether there is any difference in the confidence of investors in the integrity of financial statements of issuers that comply with such section 404(b) and issuers that are exempt from compliance with such section 404(b);

(4) whether issuers that do not receive the attestation for internal controls required under such section 404(b) should be required to disclose the lack of such attestation to investors; and

(5) the costs and benefits to issuers that are exempt from such section 404(b) that voluntarily have obtained the attestation of an independent auditor.

(b) REPORT.—Not later than 3 years after the date of enactment of this Act, the Comptroller General shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the results of the study required under subsection (a).

SEC. 989J. FURTHER PROMOTING THE ADOPTION OF THE NAIC MODEL REGULATIONS THAT ENHANCE PROTECTION OF SENIORS AND OTHER CONSUMERS.

(a) IN GENERAL.—The Commission shall treat as exempt securities described under section 3(a)(8) of the Securities Act of 1933 (15 U.S.C. 77c(a)(8)) any insurance or endowment policy or annuity contract or optional annuity contract—

(1) the value of which does not vary according to the performance of a separate account;

(2) that—

(A) satisfies standard nonforfeiture laws or similar requirements of the applicable State at the time of issue; or

(B) in the absence of applicable standard nonforfeiture laws or requirements, satisfies the Model Standard Nonforfeiture Law for Life Insurance or Model Standard Nonforfeiture Law for Individual Deferred Annuities, or any successor model law, as published by the National Association of Insurance Commissioners; and

(3) that is issued—

(A) on and after June 16, 2013, in a State, or issued by an insurance company that is domiciled in a State, that—

(i) adopts rules that govern suitability requirements in the sale of an insurance or endowment policy or annuity contract or optional annuity contract, which shall substantially meet or exceed the minimum requirements established by the Suitability in Annuity Transactions Model Regulation adopted by the

National Association of Insurance Commissioners in March 2010; and

(ii) adopts rules that substantially meet or exceed the minimum requirements of any successor modifications to the model regulations described in subparagraph (A) within 5 years of the adoption by the Association of any further successors thereto; or

(B) by an insurance company that adopts and implements practices on a nationwide basis for the sale of any insurance or endowment policy or annuity contract or optional annuity contract that meet or exceed the minimum requirements established by the National Association of Insurance Commissioners Suitability in Annuity Transactions Model Regulation (Model 275), and any successor thereto, and is therefore subject to examination by the State of domicile of the insurance company, or by any other State where the insurance company conducts sales of such products, for the purpose of monitoring compliance under this section.

(b) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to affect whether any insurance or endowment policy or annuity contract or optional annuity contract that is not described in this section is or is not an exempt security under section 3(a)(8) of the Securities Act of 1933 (15 U.S.C. 77c(a)(8)).

Subtitle J—Securities and Exchange Commission Match Funding

SEC. 991. SECURITIES AND EXCHANGE COMMISSION MATCH FUNDING.

(a) MATCH FUNDING AUTHORITY.—

(1) AMENDMENTS.—Section 31 of the Securities Exchange Act of 1934 (15 U.S.C. 78ee) is amended—

(A) by striking subsection (a) and inserting the following:

"(a) RECOVERY OF COSTS OF ANNUAL APPROPRIATION.—The Commission shall, in accordance with this section, collect transaction fees and assessments that are designed to recover the costs to the Government of the annual appropriation to the Commission by Congress.";

(B) in subsection (e)(2), by striking "September 30" and inserting "September 25";

(C) in subsection (g), by striking "April 30 of the fiscal year preceding the fiscal year to which such rate applies" and inserting "30 days after the date on which an Act making a regular appropriation to the Commission for such fiscal year is enacted";

(D) by striking subsection (j) and inserting the following:

"(j) ADJUSTMENTS TO FEE RATES.—

"(1) ANNUAL ADJUSTMENT.—Subject to subsections (i)(1)(B) and (k), for each fiscal year, the Commission shall by order adjust each of the rates applicable under subsections (b) and (c) for such fiscal year to a uniform adjusted rate that, when applied to the baseline estimate of the aggregate dollar amount of sales for such fiscal year, is reasonably likely to produce

aggregate fee collections under this section (including assessments collected under subsection (d) of this section) that are equal to the regular appropriation to the Commission by Congress for such fiscal year.

"(2) MID-YEAR ADJUSTMENT.—Subject to subsections (i)(1)(B) and (k), for each fiscal year, the Commission shall determine, by March 1 of such fiscal year, whether, based on the actual aggregate dollar volume of sales during the first 5 months of such fiscal year, the baseline estimate of the aggregate dollar volume of sales used under paragraph (1) for such fiscal year is reasonably likely to be 10 percent (or more) greater or less than the actual aggregate dollar volume of sales for such fiscal year. If the Commission so determines, the Commission shall by order, no later than March 1, adjust each of the rates applicable under subsections (b) and (c) for such fiscal year to a uniform adjusted rate that, when applied to the revised estimate of the aggregate dollar amount of sales for the remainder of such fiscal year, is reasonably likely to produce aggregate fee collections under this section (including fees collected during such five-month period and assessments collected under subsection (d) of this section) that are equal to the regular appropriation to the Commission by Congress for such fiscal year. In making such revised estimate, the Commission shall, after consultation with the Congressional Budget Office and the Office of Management and Budget, use the same methodology required by subsection (l).

"(3) REVIEW.—In exercising its authority under this subsection, the Commission shall not be required to comply with the provisions of section 553 of title 5, United States Code. An adjusted rate prescribed under paragraph (1) or (2) and published under subsection (g) shall not be subject to judicial review.

"(4) EFFECTIVE DATE.—

"(A) ANNUAL ADJUSTMENT.—Subject to subsections (i)(1)(B) and (k), an adjusted rate prescribed under paragraph (1) shall take effect on the later of—

"(i) the first day of the fiscal year to which such rate applies; or

"(ii) 60 days after the date on which an Act making a regular appropriation to the Commission for such fiscal year is enacted.

"(B) MID-YEAR ADJUSTMENT.—An adjusted rate prescribed under paragraph (2) shall take effect on April 1 of the fiscal year to which such rate applies.";

(E) in subsection (k), by striking "30 days" and inserting "60 days"; and

(F) in subsection (l), by striking "DEFINITIONS.—" and all that follows through "SALES.—The baseline" and inserting "BASELINE ESTIMATE OF THE AGGREGATE DOLLAR AMOUNT OF SALES.—The baseline".

(2) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the later of—

(A) October 1, 2011; or

(B) the date of enactment of an Act making a regular appropriation to the Commission for fiscal year 2012.

(b) AMENDMENTS TO REGISTRATION FEE PROVISIONS.—

(1) SECTION 6(b) OF THE SECURITIES ACT OF 1933.—Section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)) is amended—

(A) by striking "offsetting" each place that term appears and inserting "fee";

(B) by striking paragraphs (1), (3), (4), (6), (8), and (9);

(C) by redesignating paragraph (2) as paragraph (1);

(D) by redesignating paragraph (5) as paragraph (2);

(E) by redesignating paragraph (7) as paragraph (3);

(F) by redesignating paragraph (10) as paragraph (5);

(G) by redesignating paragraph (11) as paragraph (6);

(H) in paragraph (1), as so redesignated, by striking "paragraph (5) or (6)." and inserting "paragraph (2).";

(I) in paragraph (2), as so redesignated—

(i) by striking "of the fiscal years 2003 through 2011" and inserting "fiscal year"; and

(ii) by striking "paragraph (2)" and inserting "paragraph (1)";

(J) by inserting after paragraph (3), as so redesignated, the following:

"(4) REVIEW AND EFFECTIVE DATE.—In exercising its authority under this subsection, the Commission shall not be required to comply with the provisions of section 553 of title 5, United States Code. An adjusted rate prescribed under paragraph (2) and published under paragraph (5) shall not be subject to judicial review. An adjusted rate prescribed under paragraph (2) shall take effect on the first day of the fiscal year to which such rate applies.";

(K) in paragraph (5), as redesignated, by striking "April 30" and inserting "August 31";

(L) in paragraph (6), as so redesignated—

(i) by striking "of the fiscal years 2002 through 2011" and inserting "fiscal year"; and

(ii) by inserting at the end of the table in subparagraph (A) the following:

"2012	$425,000,000
2013	$455,000,000
2014	$485,000,000
2015	$515,000,000
2016	$550,000,000
2017	$585,000,000
2018	$620,000,000
2019	$660,000,000
2020	$705,000,000
2021 and each fiscal year thereafter	An amount that is equal to the target fee collection amount for the prior fiscal year, adjusted by the rate of inflation.".

(2) SECTION 13(e) OF THE SECURITIES EXCHANGE ACT OF 1934.—Section 13(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(e)) is amended—

(A) in paragraph (3), by striking "paragraphs (5) and (6)" and inserting "paragraph (4)";

(B) by striking paragraphs (4), (5), and (6);

(C) by inserting after paragraph (3) the following:

"(4) ANNUAL ADJUSTMENT.—For each fiscal year, the Commission shall by order adjust the rate required by paragraph (3) for such fiscal year to a rate that is equal to the rate (expressed in dollars per million) that is applicable under section 6(b) of the Securities Act of 1933 for such fiscal year.

"(5) FEE COLLECTIONS.—Fees collected pursuant to this subsection for fiscal year 2012 and each fiscal year thereafter shall be deposited and credited as general revenue of the Treasury and shall not be available for obligation.

"(6) EFFECTIVE DATE; PUBLICATION.—In exercising its authority under this subsection, the Commission shall not be required to comply with the provisions of section 553 of title 5, United States Code. An adjusted rate prescribed under paragraph (4) shall be published and take effect in accordance with section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)).''; and

(D) by striking paragraphs (8), (9), and (10).

(3) SECTION 14(g) OF THE SECURITIES EXCHANGE ACT OF 1934.—Section 14(g) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(g)) is amended—

(A) in paragraph (1), by striking "paragraphs (5) and (6)" each time that term appears and inserting "paragraph (4)";

(B) in paragraph (3), by striking "paragraphs (5) and (6)" and inserting "paragraph (4)";

(C) by striking paragraphs (4), (5), and (6);

(D) by inserting after paragraph (3) the following:

"(4) ANNUAL ADJUSTMENT.—For each fiscal year, the Commission shall by order adjust the rate required by paragraphs (1) and (3) for such fiscal year to a rate that is equal to the rate (expressed in dollars per million) that is applicable under section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)) for such fiscal year.

"(5) FEE COLLECTION.—Fees collected pursuant to this subsection for fiscal year 2012 and each fiscal year thereafter shall be deposited and credited as general revenue of the Treasury and shall not be available for obligation.

"(6) REVIEW; EFFECTIVE DATE; PUBLICATION.—In exercising its authority under this subsection, the Commission shall not be required to comply with the provisions of section 553 of title 5, United States Code. An adjusted rate prescribed under paragraph (4) shall be published and take effect in accordance with section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)).";

(E) by striking paragraphs (8), (9), and (10); and

(F) by redesignating paragraph (11) as paragraph (8).

(4) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on October 1, 2011, except that for fiscal year 2012, the Commission shall publish the rate established under section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)), as amended by this Act, on August 31, 2011.

(c) AUTHORIZATION OF APPROPRIATIONS.—Section 35 of the Securities Exchange Act of 1934 (15 U.S.C. 78kk) is amended to read as follows:

"SEC. 35. AUTHORIZATION OF APPROPRIATIONS.

"In addition to any other funds authorized to be appropriated to the Commission, there are authorized to be appropriated to carry out the functions, powers, and duties of the Commission—

"(1) for fiscal year 2011, $1,300,000,000;

"(2) for fiscal year 2012, $1,500,000,000;

"(3) for fiscal year 2013, $1,750,000,000;

"(4) for fiscal year 2014, $2,000,000,000; and

"(5) for fiscal year 2015, $2,250,000,000.".

(d) TRANSMITTAL OF BUDGET REQUESTS.—

(1) AMENDMENT.—Section 31 of the Securities Exchange Act of 1934 (15 U.S.C. 78ee) is amended by adding at the end the following:

"(m) TRANSMITTAL OF COMMISSION BUDGET REQUESTS.—

"(1) BUDGET REQUIRED.—For fiscal year 2012, and each fiscal year thereafter, the Commission shall prepare and submit a budget to the President. Whenever the Commission submits a budget estimate or request to the President or the Office of Management and Budget, the Commission shall concurrently transmit copies of the estimate or request to the Committee on Appropriations of the Senate, the Committee on Appropriations of the House of Representatives, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives.

"(2) SUBMISSION TO CONGRESS.—The President shall submit each budget submitted under paragraph (1) to Congress, in unaltered form, together with the annual budget for the Administration submitted by the President.

"(3) CONTENTS.—The Commission shall include in each budget submitted under paragraph (1)—

"(A) an itemization of the amount of funds necessary to carry out the functions of the Commission.

"(B) an amount to be designated as contingency funding to be used by the Commission to address unanticipated needs; and

"(C) a designation of any activities of the Commission for which multi-year budget authority would be suitable.".

(2) BUDGET OF THE PRESIDENT.—For fiscal year 2012, and each fiscal year thereafter, the annual budget for the Administration submitted by the President to Congress shall reflect the amendments made by this section.

(e) SECURITIES AND EXCHANGE COMMISSION RESERVE FUND.—

(1) AMENDMENT.—Section 4 of the Securities Exchange Act of 1934 (15 U.S.C. 78d), as amended by this Act, is amended by adding at the end the following:

"(i) SECURITIES AND EXCHANGE COMMISSION RESERVE FUND.—

"(1) RESERVE FUND ESTABLISHED.—There is established in the Treasury of the United States a separate fund, to be known as the 'Securities and Exchange Commission Reserve Fund' (referred to in this subsection as the 'Reserve Fund').

"(2) RESERVE FUND AMOUNTS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), any registration fees collected by the Commission under section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)) or section 24(f) of the Investment Company Act of 1940

(15 U.S.C. 80a-24(f)) shall be deposited into the Reserve Fund.

"(B) LIMITATIONS.—For any 1 fiscal year—

"(i) the amount deposited in the Fund may not exceed $50,000,000; and

"(ii) the balance in the Fund may not exceed $100,000,000.

"(C) EXCESS FEES.—Any amounts in excess of the limitations described in subparagraph (B) that the Commission collects from registration fees under section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)) or section 24(f) of the Investment Company Act of 1940 (15 U.S.C. 80a-24(f)) shall be deposited in the General Fund of the Treasury of the United States and shall not be available for obligation by the Commission.

"(3) USE OF AMOUNTS IN RESERVE FUND.—The Commission may obligate amounts in the Reserve Fund, not to exceed a total of $100,000,000 in any 1 fiscal year, as the Commission determines is necessary to carry out the functions of the Commission. Any amounts in the reserve fund shall remain available until expended. Not later than 10 days after the date on which the Commission obligates amounts under this paragraph, the Commission shall notify Congress of the date, amount, and purpose of the obligation.

"(4) RULE OF CONSTRUCTION.—Amounts collected and deposited in the Reserve Fund shall not be construed to be Government funds or appropriated monies and shall not be subject to apportionment for the purpose of chapter 15 of title 31, United States Code, or under any other authority.".

(2) EFFECTIVE DATE.—The amendment made by this subsection shall take effect on October 1, 2011.

TITLE X—BUREAU OF CONSUMER FINANCIAL PROTECTION

SEC. 1001. SHORT TITLE.

This title may be cited as the "Consumer Financial Protection Act of 2010".

SEC. 1002. DEFINITIONS.

Except as otherwise provided in this title, for purposes of this title, the following definitions shall apply:

(1) AFFILIATE.—The term "affiliate" means any person that controls, is controlled by, or is under common control with another person.

(2) BUREAU.—The term "Bureau" means the Bureau of Consumer Financial Protection.

(3) BUSINESS OF INSURANCE.—The term "business of insurance" means the writing of insurance or the reinsuring of risks by an insurer, including all acts necessary to such writing or reinsuring and the activities relating to the writing of insurance or the reinsuring of risks conducted by persons who act as, or are, officers, directors, agents, or employees of insurers or who are other persons authorized to act on behalf of such persons.

(4) CONSUMER.—The term "consumer" means an individual or an agent, trustee, or representative acting on behalf of an individual.

(5) CONSUMER FINANCIAL PRODUCT OR SERVICE.—The term "consumer financial product or service" means any financial product or service that is described in one or more categories under—

(A) paragraph (15) and is offered or provided for use by consumers primarily for personal, family, or household purposes; or

(B) clause (i), (iii), (ix), or (x) of paragraph (15)(A), and is delivered, offered, or provided in connection with a consumer financial product or service referred to in subparagraph (A).

(6) COVERED PERSON.—The term "covered person" means—

(A) any person that engages in offering or providing a consumer financial product or service; and

(B) any affiliate of a person described in subparagraph (A) if such affiliate acts as a service provider to such person.

(7) CREDIT.—The term "credit" means the right granted by a person to a consumer to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment for such purchase.

(8) DEPOSIT-TAKING ACTIVITY.—The term "deposit-taking activity" means—

(A) the acceptance of deposits, maintenance of deposit accounts, or the provision of services related to the acceptance of deposits or the maintenance of deposit accounts;

(B) the acceptance of funds, the provision of other services related to the acceptance of funds, or the maintenance of member share accounts by a credit union; or

(C) the receipt of funds or the equivalent thereof, as the Bureau may determine by rule or order, received or held by a covered person (or an agent for a covered person) for the purpose of facilitating a payment or transferring funds or value of funds between a consumer and a third party.

(9) DESIGNATED TRANSFER DATE.—The term "designated transfer date" means the date established under section 1062.

(10) DIRECTOR.—The term "Director" means the Director of the Bureau.

(11) ELECTRONIC CONDUIT SERVICES.—The term "electronic conduit services"—

(A) means the provision, by a person, of electronic data transmission, routing, intermediate or transient storage, or connections to a telecommunications system or network; and

(B) does not include a person that provides electronic conduit services if, when providing such services, the person—

(i) selects or modifies the content of the electronic data;

(ii) transmits, routes, stores, or provides connections for electronic data, including financial data, in a manner that such financial data is differentiated from other types of data of the same form that such

person transmits, routes, or stores, or with respect to which, provides connections; or

(iii) is a payee, payor, correspondent, or similar party to a payment transaction with a consumer.

(12) ENUMERATED CONSUMER LAWS.—Except as otherwise specifically provided in section 1029, subtitle G or subtitle H, the term "enumerated consumer laws" means—

(A) the Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3801 et seq.);

(B) the Consumer Leasing Act of 1976 (15 U.S.C. 1667 et seq.);

(C) the Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.), except with respect to section 920 of that Act;

(D) the Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.);

(E) the Fair Credit Billing Act (15 U.S.C. 1666 et seq.);

(F) the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.), except with respect to sections 615(e) and 628 of that Act (15 U.S.C. 1681m(e), 1681w);

(G) the Home Owners Protection Act of 1998 (12 U.S.C. 4901 et seq.);

(H) the Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.);

(I) subsections (b) through (f) of section 43 of the Federal Deposit Insurance Act (12 U.S.C. 1831t(c)–(f));

(J) sections 502 through 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6802–6809) except for section 505 as it applies to section 501(b);

(K) the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2801 et seq.);

(L) the Home Ownership and Equity Protection Act of 1994 (15 U.S.C. 1601 note);

(M) the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.);

(N) the S.A.F.E. Mortgage Licensing Act of 2008 (12 U.S.C. 5101 et seq.);

(O) the Truth in Lending Act (15 U.S.C. 1601 et seq.);

(P) the Truth in Savings Act (12 U.S.C. 4301 et seq.);

(Q) section 626 of the Omnibus Appropriations Act, 2009 (Public Law 111–8); and

(R) the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1701).

(13) FAIR LENDING.—The term "fair lending" means fair, equitable, and nondiscriminatory access to credit for consumers.

(14) FEDERAL CONSUMER FINANCIAL LAW.—The term "Federal consumer financial law" means the provisions of this title, the enumerated consumer laws, the laws for which authorities are transferred under subtitles F and H, and any rule or order prescribed by the Bureau under this title, an enumerated consumer law, or pursuant to the authorities transferred under subtitles F and H. The term does not include the Federal Trade Commission Act.

(15) FINANCIAL PRODUCT OR SERVICE.—

(A) IN GENERAL.—The term "financial product or service" means—

(i) extending credit and servicing loans, including acquiring, purchasing, selling, brokering, or other extensions of credit (other than solely extending commercial credit to a person who originates consumer credit transactions);

(ii) extending or brokering leases of personal or real property that are the functional equivalent of purchase finance arrangements, if—

(I) the lease is on a non-operating basis;

(II) the initial term of the lease is at least 90 days; and

(III) in the case of a lease involving real property, at the inception of the initial lease, the transaction is intended to result in ownership of the leased property to be transferred to the lessee, subject to standards prescribed by the Bureau;

(iii) providing real estate settlement services, except such services excluded under subparagraph (C), or performing appraisals of real estate or personal property;

(iv) engaging in deposit-taking activities, transmitting or exchanging funds, or otherwise acting as a custodian of funds or any financial instrument for use by or on behalf of a consumer;

(v) selling, providing, or issuing stored value or payment instruments, except that, in the case of a sale of, or transaction to reload, stored value, only if the seller exercises substantial control over the terms or conditions of the stored value provided to the consumer where, for purposes of this clause—

(I) a seller shall not be found to exercise substantial control over the terms or conditions of the stored value if the seller is not a party to the contract with the consumer for the stored value product, and another person is principally responsible for establishing the terms or conditions of the stored value; and

(II) advertising the nonfinancial goods or services of the seller on the stored value card or device is not in itself an exercise of substantial control over the terms or conditions;

(vi) providing check cashing, check collection, or check guaranty services;

(vii) providing payments or other financial data processing products or services to a consumer by any technological means, including processing or storing financial or banking data for any payment instrument, or through any payments systems or network used for processing payments data, including payments made through an online banking system or mobile telecommunications network, except that a person shall not be deemed to be a covered person with respect to financial data processing solely because the person—

(I) is a merchant, retailer, or seller of any nonfinancial good or service who engages in financial data processing by transmitting or storing payments data about a consumer exclusively for purpose of initiating payments instructions by the consumer to pay such person for the purchase of, or to complete a commercial transaction for, such nonfinancial good or service sold directly by such person to the consumer; or

(II) provides access to a host server to a person for purposes of enabling that person to establish and maintain a website;

(viii) providing financial advisory services (other than services relating to securities provided by a person regulated by the Commission or a person regulated by a State securities Commission, but only to the extent that such person acts in a regulated capacity) to consumers on individual financial matters or relating to proprietary financial products or services (other than by publishing any bona fide newspaper, news magazine, or business or financial publication of general and regular circulation, including publishing market data, news, or data analytics or investment information or recommendations that are not tailored to the individual needs of a particular consumer), including—

(I) providing credit counseling to any consumer; and

(II) providing services to assist a consumer with debt management or debt settlement, modifying the terms of any extension of credit, or avoiding foreclosure;

(ix) collecting, analyzing, maintaining, or providing consumer report information or other account information, including information relating to the credit history of consumers, used or expected to be used in connection with any decision regarding the offering or provision of a consumer financial product or service, except to the extent that—

(I) a person—

(aa) collects, analyzes, or maintains information that relates solely to the transactions between a consumer and such person;

(bb) provides the information described in item (aa) to an affiliate of such person; or

(cc) provides information that is used or expected to be used solely in any decision regarding the offering or provision of a product or service that is not a consumer financial product or service, including a decision for employment, government licensing, or a residential lease or tenancy involving a consumer; and

(II) the information described in subclause (I)(aa) is not used by such person or affiliate in connection with any decision regarding the offering or provision of a consumer financial product or

service to the consumer, other than credit described in section 1027(a)(2)(A);

(x) collecting debt related to any consumer financial product or service; and

(xi) such other financial product or service as may be defined by the Bureau, by regulation, for purposes of this title, if the Bureau finds that such financial product or service is—

(I) entered into or conducted as a subterfuge or with a purpose to evade any Federal consumer financial law; or

(II) permissible for a bank or for a financial holding company to offer or to provide under any provision of a Federal law or regulation applicable to a bank or a financial holding company, and has, or likely will have, a material impact on consumers.

(B) RULE OF CONSTRUCTION.—

(i) IN GENERAL.—For purposes of subparagraph (A)(xi)(II), and subject to clause (ii) of this subparagraph, the following activities provided to a covered person shall not, for purposes of this title, be considered incidental or complementary to a financial activity permissible for a financial holding company to engage in under any provision of a Federal law or regulation applicable to a financial holding company:

(I) Providing information products or services to a covered person for identity authentication.

(II) Providing information products or services for fraud or identify theft detection, prevention, or investigation.

(III) Providing document retrieval or delivery services.

(IV) Providing public records information retrieval.

(V) Providing information products or services for anti-money laundering activities.

(ii) LIMITATION.—Nothing in clause (i) may be construed as modifying or limiting the authority of the Bureau to exercise any—

(I) examination or enforcement powers authority under this title with respect to a covered person or service provider engaging in an activity described in subparagraph (A)(ix); or

(II) powers authorized by this title to prescribe rules, issue orders, or take other actions under any enumerated consumer law or law for which the authorities are transferred under subtitle F or H.

(C) EXCLUSIONS.—The term "financial product or service" does not include—

(i) the business of insurance; or

(ii) electronic conduit services.

(16) FOREIGN EXCHANGE.—The term "foreign exchange" means the exchange, for compensation, of currency of the United States or of a foreign government for currency of another government.

(17) INSURED CREDIT UNION.—The term "insured credit union" has the same meaning as in section 101 of the Federal Credit Union Act (12 U.S.C. 1752).

(18) PAYMENT INSTRUMENT.—The term "payment instrument" means a check, draft, warrant, money order, traveler's check, electronic instrument, or other instrument, payment of funds, or monetary value (other than currency).

(19) PERSON.—The term "person" means an individual, partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity.

(20) PERSON REGULATED BY THE COMMODITY FUTURES TRADING COMMISSION.—The term "person regulated by the Commodity Futures Trading Commission" means any person that is registered, or required by statute or regulation to be registered, with the Commodity Futures Trading Commission, but only to the extent that the activities of such person are subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act.

(21) PERSON REGULATED BY THE COMMISSION.—The term "person regulated by the Commission" means a person who is—

(A) a broker or dealer that is required to be registered under the Securities Exchange Act of 1934;

(B) an investment adviser that is registered under the Investment Advisers Act of 1940;

(C) an investment company that is required to be registered under the Investment Company Act of 1940, and any company that has elected to be regulated as a business development company under that Act;

(D) a national securities exchange that is required to be registered under the Securities Exchange Act of 1934;

(E) a transfer agent that is required to be registered under the Securities Exchange Act of 1934;

(F) a clearing corporation that is required to be registered under the Securities Exchange Act of 1934;

(G) any self-regulatory organization that is required to be registered with the Commission;

(H) any nationally recognized statistical rating organization that is required to be registered with the Commission;

(I) any securities information processor that is required to be registered with the Commission;

(J) any municipal securities dealer that is required to be registered with the Commission;

(K) any other person that is required to be registered with the Commission under the Securities Exchange Act of 1934; and

(L) any employee, agent, or contractor acting on behalf of, registered with, or providing services to, any person described in any of subparagraphs (A) through (K), but only to the extent that any person described in any of subparagraphs (A) through (K), or the employee, agent, or contractor of such person, acts in a regulated capacity.

(22) PERSON REGULATED BY A STATE INSURANCE REGULATOR.—The term "person regulated by a State insurance regulator" means any person that is engaged in the business of

insurance and subject to regulation by any State insurance regulator, but only to the extent that such person acts in such capacity.

(23) PERSON THAT PERFORMS INCOME TAX PREPARATION ACTIVITIES FOR CONSUMERS.—The term "person that performs income tax preparation activities for consumers" means—

(A) any tax return preparer (as defined in section 7701(a)(36) of the Internal Revenue Code of 1986), regardless of whether compensated, but only to the extent that the person acts in such capacity;

(B) any person regulated by the Secretary under section 330 of title 31, United States Code, but only to the extent that the person acts in such capacity; and

(C) any authorized IRS e-file Providers (as defined for purposes of section 7216 of the Internal Revenue Code of 1986), but only to the extent that the person acts in such capacity.

(24) PRUDENTIAL REGULATOR.—The term "prudential regulator" means—

(A) in the case of an insured depository institution or depository institution holding company (as defined in section 3 of the Federal Deposit Insurance Act), or subsidiary of such institution or company, the appropriate Federal banking agency, as that term is defined in section 3 of the Federal Deposit Insurance Act; and

(B) in the case of an insured credit union, the National Credit Union Administration.

(25) RELATED PERSON.—The term "related person"—

(A) shall apply only with respect to a covered person that is not a bank holding company (as that term is defined in section 2 of the Bank Holding Company Act of 1956), credit union, or depository institution;

(B) shall be deemed to mean a covered person for all purposes of any provision of Federal consumer financial law; and

(C) means—

(i) any director, officer, or employee charged with managerial responsibility for, or controlling shareholder of, or agent for, such covered person;

(ii) any shareholder, consultant, joint venture partner, or other person, as determined by the Bureau (by rule or on a case-by-case basis) who materially participates in the conduct of the affairs of such covered person; and

(iii) any independent contractor (including any attorney, appraiser, or accountant) who knowingly or recklessly participates in any—

(I) violation of any provision of law or regulation; or

(II) breach of a fiduciary duty.

(26) SERVICE PROVIDER.—

(A) IN GENERAL.—The term "service provider" means any person that provides a material service to a covered person in connection with the offering or provision by such covered person of a consumer financial product or service, including a person that—

(i) participates in designing, operating, or maintaining the consumer financial product or service; or

(ii) processes transactions relating to the consumer financial product or service (other than unknowingly or incidentally transmitting or processing financial data in a manner that such data is undifferentiated from other types of data of the same form as the person transmits or processes).

(B) EXCEPTIONS.—The term "service provider" does not include a person solely by virtue of such person offering or providing to a covered person—

(i) a support service of a type provided to businesses generally or a similar ministerial service; or

(ii) time or space for an advertisement for a consumer financial product or service through print, newspaper, or electronic media.

(C) RULE OF CONSTRUCTION.—A person that is a service provider shall be deemed to be a covered person to the extent that such person engages in the offering or provision of its own consumer financial product or service.

(27) STATE.—The term "State" means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, or the United States Virgin Islands or any federally recognized Indian tribe, as defined by the Secretary of the Interior under section 104(a) of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a–1(a)).

(28) STORED VALUE.—

(A) IN GENERAL.—The term "stored value" means funds or monetary value represented in any electronic format, whether or not specially encrypted, and stored or capable of storage on electronic media in such a way as to be retrievable and transferred electronically, and includes a prepaid debit card or product, or any other similar product, regardless of whether the amount of the funds or monetary value may be increased or reloaded.

(B) EXCLUSION.—Notwithstanding subparagraph (A), the term "stored value" does not include a special purpose card or certificate, which shall be defined for purposes of this paragraph as funds or monetary value represented in any electronic format, whether or not specially encrypted, that is—

(i) issued by a merchant, retailer, or other seller of nonfinancial goods or services;

(ii) redeemable only for transactions with the merchant, retailer, or seller of nonfinancial goods or services or with an affiliate of such person, which affiliate itself is a merchant, retailer, or seller of nonfinancial goods or services;

(iii) issued in a specified amount that, except in the case of a card or product used solely for telephone services, may not be increased or reloaded;

(iv) purchased on a prepaid basis in exchange for payment; and

(v) honored upon presentation to such merchant, retailer, or seller of nonfinancial goods or services or an affiliate of such person, which affiliate itself is a merchant, retailer, or seller of nonfinancial goods or services, only for any nonfinancial goods or services.

(29) TRANSMITTING OR EXCHANGING FUNDS.—The term "transmitting or exchanging funds" means receiving currency, monetary value, or payment instruments from a consumer for the purpose of exchanging or transmitting the same by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment services or through other businesses that facilitate third-party transfers within the United States or to or from the United States.

Subtitle A—Bureau of Consumer Financial Protection

SEC. 1011. ESTABLISHMENT OF THE BUREAU OF CONSUMER FINANCIAL PROTECTION.

(a) BUREAU ESTABLISHED.—There is established in the Federal Reserve System, an independent bureau to be known as the "Bureau of Consumer Financial Protection", which shall regulate the offering and provision of consumer financial products or services under the Federal consumer financial laws. The Bureau shall be considered an Executive agency, as defined in section 105 of title 5, United States Code. Except as otherwise provided expressly by law, all Federal laws dealing with public or Federal contracts, property, works, officers, employees, budgets, or funds, including the provisions of chapters 5 and 7 of title 5, shall apply to the exercise of the powers of the Bureau.

(b) DIRECTOR AND DEPUTY DIRECTOR.—

(1) IN GENERAL.—There is established the position of the Director, who shall serve as the head of the Bureau.

(2) APPOINTMENT.—Subject to paragraph (3), the Director shall be appointed by the President, by and with the advice and consent of the Senate.

(3) QUALIFICATION.—The President shall nominate the Director from among individuals who are citizens of the United States.

(4) COMPENSATION.—The Director shall be compensated at the rate prescribed for level II of the Executive Schedule under section 5313 of title 5, United States Code.

(5) DEPUTY DIRECTOR.—There is established the position of Deputy Director, who shall—

(A) be appointed by the Director; and

(B) serve as acting Director in the absence or unavailability of the Director.

(c) TERM.—

(1) IN GENERAL.—The Director shall serve for a term of 5 years.

(2) EXPIRATION OF TERM.—An individual may serve as Director after the expiration of the term for which appointed, until a successor has been appointed and qualified.

(3) REMOVAL FOR CAUSE.—The President may remove the Director for inefficiency, neglect of duty, or malfeasance in office.

(d) SERVICE RESTRICTION.—No Director or Deputy Director may hold any office, position, or employment in any Federal reserve bank, Federal home loan bank, covered person, or service provider during the period of service of such person as Director or Deputy Director.

(e) OFFICES.—The principal office of the Bureau shall be in the District of Columbia. The Director may establish regional offices of the Bureau, including in cities in which the Federal reserve banks, or branches of such banks, are located, in order to carry out the responsibilities assigned to the Bureau under the Federal consumer financial laws.

SEC. 1012. EXECUTIVE AND ADMINISTRATIVE POWERS.

(a) POWERS OF THE BUREAU.—The Bureau is authorized to establish the general policies of the Bureau with respect to all executive and administrative functions, including—

(1) the establishment of rules for conducting the general business of the Bureau, in a manner not inconsistent with this title;

(2) to bind the Bureau and enter into contracts;

(3) directing the establishment and maintenance of divisions or other offices within the Bureau, in order to carry out the responsibilities under the Federal consumer financial laws, and to satisfy the requirements of other applicable law;

(4) to coordinate and oversee the operation of all administrative, enforcement, and research activities of the Bureau;

(5) to adopt and use a seal;

(6) to determine the character of and the necessity for the obligations and expenditures of the Bureau;

(7) the appointment and supervision of personnel employed by the Bureau;

(8) the distribution of business among personnel appointed and supervised by the Director and among administrative units of the Bureau;

(9) the use and expenditure of funds;

(10) implementing the Federal consumer financial laws through rules, orders, guidance, interpretations, statements of policy, examinations, and enforcement actions; and

(11) performing such other functions as may be authorized or required by law.

(b) DELEGATION OF AUTHORITY.—The Director of the Bureau may delegate to any duly authorized employee, representative, or agent any power vested in the Bureau by law.

(c) AUTONOMY OF THE BUREAU.—

(1) COORDINATION WITH THE BOARD OF GOVERNORS.—Notwithstanding any other provision of law applicable to the supervision or examination of persons with respect to Federal consumer financial laws, the Board of Governors may delegate to the Bureau the authorities to examine persons subject to the jurisdiction of the Board of Governors for compliance with the Federal consumer financial laws.

(2) AUTONOMY.—Notwithstanding the authorities granted to the Board of Governors under the Federal Reserve Act, the Board of Governors may not—

(A) intervene in any matter or proceeding before the Director, including examinations or enforcement actions, unless otherwise specifically provided by law;

(B) appoint, direct, or remove any officer or employee of the Bureau; or

(C) merge or consolidate the Bureau, or any of the functions or responsibilities of the Bureau, with any division or office of the Board of Governors or the Federal reserve banks.

(3) RULES AND ORDERS.—No rule or order of the Bureau shall be subject to approval or review by the Board of Governors. The Board of Governors may not delay or prevent the issuance of any rule or order of the Bureau.

(4) RECOMMENDATIONS AND TESTIMONY.—No officer or agency of the United States shall have any authority to require the Director or any other officer of the Bureau to submit legislative recommendations, or testimony or comments on legislation, to any officer or agency of the United States for approval, comments, or review prior to the submission of such recommendations, testimony, or comments to the Congress, if such recommendations, testimony, or comments to the Congress include a statement indicating that the views expressed therein are those of the Director or such officer, and do not necessarily reflect the views of the Board of Governors or the President.

(5) CLARIFICATION OF AUTONOMY OF THE BUREAU IN LEGAL PROCEEDINGS.—The Bureau shall not be liable under any provision of law for any action or inaction of the Board of Governors, and the Board of Governors shall not be liable under any provision of law for any action or inaction of the Bureau.

SEC. 1013. ADMINISTRATION.

(a) PERSONNEL.—

(1) APPOINTMENT.—

(A) IN GENERAL.—The Director may fix the number of, and appoint and direct, all employees of the Bureau, in accordance with the applicable provisions of title 5, United States Code.

(B) EMPLOYEES OF THE BUREAU.—The Director is authorized to employ attorneys, compliance examiners, compliance supervision analysts, economists, statisticians, and other employees as may be deemed necessary to conduct the business of the Bureau. Unless otherwise provided expressly by law, any individual appointed under this section shall be an employee as defined in section 2105 of title 5, United States Code, and subject to the provisions of such title and other laws generally applicable to the employees of an Executive agency.

(C) WAIVER AUTHORITY.—

(i) IN GENERAL.—In making any appointment under subparagraph (A), the Director may waive the requirements of chapter 33 of title 5, United States Code, and the regulations implementing such chapter, to the extent necessary to appoint employees on terms and conditions that are consistent with those set forth in section 11(1) of the Federal Reserve Act (12 U.S.C. 248(1)), while providing for—

(I) fair, credible, and transparent methods of establishing qualification requirements for, recruitment for, and appointments to positions;

(II) fair and open competition and equitable treatment in the consideration and selection of individuals to positions;

(III) fair, credible, and transparent methods of assigning, reassigning, detailing, transferring, and promoting employees.

(ii) VETERANS PREFERENCES.—In implementing this subparagraph, the Director shall comply with the provisions of section 2302(b)(11), regarding veterans' preference requirements, in a manner consistent with that in which such provisions are applied under chapter 33 of title 5, United States Code. The authority under this subparagraph to waive the requirements of that chapter 33 shall expire 5 years after the date of enactment of this Act.

(2) COMPENSATION.—Notwithstanding any otherwise applicable provision of title 5, United States Code, concerning compensation, including the provisions of chapter 51 and chapter 53, the following provisions shall apply with respect to employees of the Bureau:

(A) The rates of basic pay for all employees of the Bureau may be set and adjusted by the Director.

(B) The Director shall at all times provide compensation (including benefits) to each class of employees that, at a minimum, are comparable to the compensation and benefits then being provided by the Board of Governors for the corresponding class of employees.

(C) All such employees shall be compensated (including benefits) on terms and conditions that are consistent with the terms and conditions set forth in section 11(l) of the Federal Reserve Act (12 U.S.C. 248(l)).

(3) BUREAU PARTICIPATION IN FEDERAL RESERVE SYSTEM RETIREMENT PLAN AND FEDERAL RESERVE SYSTEM THRIFT PLAN.—

(A) EMPLOYEE ELECTION.—Employees appointed to the Bureau may elect to participate in either—

(i) both the Federal Reserve System Retirement Plan and the Federal Reserve System Thrift Plan, under the same terms on which such participation is offered to employees of the Board of Governors who participate in such plans and under the terms and conditions specified under section 1064(i)(1)(C); or

(ii) the Civil Service Retirement System under chapter 83 of title 5, United States Code, or the Federal Employees Retirement System under chapter 84 of title 5, United States Code, if previously covered under one of those Federal employee retirement systems.

(B) ELECTION PERIOD.—Bureau employees shall make an election under this paragraph not later than 1 year after the date of appointment by, or transfer under subtitle F to, the Bureau. Participation in, and benefit accruals under, any other retirement plan established or maintained by the Federal Government shall end not later than the date on which participation in, and benefit accruals under, the Federal Reserve System Retirement Plan and Federal Reserve System Thrift Plan begin.

(C) EMPLOYER CONTRIBUTION.—The Bureau shall pay an employer contribution to the Federal Reserve System Retirement Plan, in the amount established as an employer contribution under the Federal Employees Retirement System, as established under chapter 84 of title 5, United States Code, for each Bureau employee who elects to participate in the Federal Reserve System Retirement Plan. The Bureau shall pay an employer contribution to the Federal Reserve System Thrift Plan for each Bureau employee who elects to participate in such plan, as required under the terms of such plan.

(D) CONTROLLED GROUP STATUS.—The Bureau is the same employer as the Federal Reserve System (as comprised of the Board of Governors and each of the 12 Federal reserve banks prior to the date of enactment of this Act) for purposes of subsections (b), (c), (m), and (o) of section 414 of the Internal Revenue Code of 1986, (26 U.S.C. 414).

(4) LABOR-MANAGEMENT RELATIONS.—Chapter 71 of title 5, United States Code, shall apply to the Bureau and the employees of the Bureau.

(5) AGENCY OMBUDSMAN.—

(A) ESTABLISHMENT REQUIRED.—Not later than 180 days after the designated transfer date, the Bureau shall appoint an ombudsman.

(B) DUTIES OF OMBUDSMAN.—The ombudsman appointed in accordance with subparagraph (A) shall—

(i) act as a liaison between the Bureau and any affected person with respect to any problem that such party may have in dealing with the Bureau, resulting from the regulatory activities of the Bureau; and

(ii) assure that safeguards exist to encourage complainants to come forward and preserve confidentiality.

(b) SPECIFIC FUNCTIONAL UNITS.—

(1) RESEARCH.—The Director shall establish a unit whose functions shall include researching, analyzing, and reporting on—

(A) developments in markets for consumer financial products or services, including market areas of alternative consumer financial products or services with high growth rates and areas of risk to consumers;

(B) access to fair and affordable credit for traditionally underserved communities;

(C) consumer awareness, understanding, and use of disclosures and communications regarding consumer financial products or services;

(D) consumer awareness and understanding of costs, risks, and benefits of consumer financial products or services;

(E) consumer behavior with respect to consumer financial products or services, including performance on mortgage loans; and

(F) experiences of traditionally underserved consumers, including un-banked and under-banked consumers.

(2) COMMUNITY AFFAIRS.—The Director shall establish a unit whose functions shall include providing information, guidance, and technical assistance regarding the offering and provision of consumer financial products or services to traditionally underserved consumers and communities.

(3) COLLECTING AND TRACKING COMPLAINTS.—

(A) IN GENERAL.—The Director shall establish a unit whose functions shall include establishing a single, toll-free telephone number, a website, and a database or utilizing an existing database to facilitate the centralized collection of, monitoring of, and response to consumer complaints regarding consumer financial products or services. The Director shall coordinate with the Federal Trade Commission or other Federal agencies to route complaints to such agencies, where appropriate.

(B) ROUTING CALLS TO STATES.—To the extent practicable, State agencies may receive appropriate complaints from the systems established under subparagraph (A), if—

(i) the State agency system has the functional capacity to receive calls or electronic reports routed by the Bureau systems;

(ii) the State agency has satisfied any conditions of participation in the system that the Bureau may establish, including treatment of personally identifiable information and sharing of information on complaint resolution or related compliance procedures and resources; and

(iii) participation by the State agency includes measures necessary to provide for protection of personally identifiable information that conform to the standards for protection of the confidentiality of personally identifiable information and for data integrity and security that apply to the Federal agencies described in subparagraph (D).

(C) REPORTS TO THE CONGRESS.—The Director shall present an annual report to Congress not later than March 31 of each year on the complaints received by the Bureau in the prior year regarding consumer financial products and services. Such report shall include information and analysis about complaint numbers, complaint types, and, where applicable, information about resolution of complaints.

(D) DATA SHARING REQUIRED.—To facilitate preparation of the reports required under subparagraph (C), supervision and enforcement activities, and monitoring of the market for consumer financial products and services, the Bureau shall share consumer complaint information with prudential regulators, the Federal Trade Commission, other Federal agencies, and State agencies, subject to the standards applicable to Federal agencies for protection of the confidentiality of personally identifiable information and for data security and integrity. The prudential regulators, the Federal Trade Commission, and other Federal agencies shall share data relating to consumer complaints regarding consumer financial products and services with the Bureau, subject to the standards applicable to Federal agencies

for protection of confidentiality of personally identifiable information and for data security and integrity.

(c) OFFICE OF FAIR LENDING AND EQUAL OPPORTUNITY.—

(1) ESTABLISHMENT.—The Director shall establish within the Bureau the Office of Fair Lending and Equal Opportunity.

(2) FUNCTIONS.—The Office of Fair Lending and Equal Opportunity shall have such powers and duties as the Director may delegate to the Office, including—

(A) providing oversight and enforcement of Federal laws intended to ensure the fair, equitable, and nondiscriminatory access to credit for both individuals and communities that are enforced by the Bureau, including the Equal Credit Opportunity Act and the Home Mortgage Disclosure Act;

(B) coordinating fair lending efforts of the Bureau with other Federal agencies and State regulators, as appropriate, to promote consistent, efficient, and effective enforcement of Federal fair lending laws;

(C) working with private industry, fair lending, civil rights, consumer and community advocates on the promotion of fair lending compliance and education; and

(D) providing annual reports to Congress on the efforts of the Bureau to fulfill its fair lending mandate.

(3) ADMINISTRATION OF OFFICE.—There is established the position of Assistant Director of the Bureau for Fair Lending and Equal Opportunity, who—

(A) shall be appointed by the Director; and

(B) shall carry out such duties as the Director may delegate to such Assistant Director.

(d) OFFICE OF FINANCIAL EDUCATION.—

(1) ESTABLISHMENT.—The Director shall establish an Office of Financial Education, which shall be responsible for developing and implementing initiatives intended to educate and empower consumers to make better informed financial decisions.

(2) OTHER DUTIES.—The Office of Financial Education shall develop and implement a strategy to improve the financial literacy of consumers that includes measurable goals and objectives, in consultation with the Financial Literacy and Education Commission, consistent with the National Strategy for Financial Literacy, through activities including providing opportunities for consumers to access—

(A) financial counseling, including community-based financial counseling, where practicable;

(B) information to assist with the evaluation of credit products and the understanding of credit histories and scores;

(C) savings, borrowing, and other services found at mainstream financial institutions;

(D) activities intended to—

(i) prepare the consumer for educational expenses and the submission of financial aid applications, and other major purchases;

(ii) reduce debt; and

(iii) improve the financial situation of the consumer;

(E) assistance in developing long-term savings strategies; and

(F) wealth building and financial services during the preparation process to claim earned income tax credits and Federal benefits.

(3) COORDINATION.—The Office of Financial Education shall coordinate with other units within the Bureau in carrying out its functions, including—

(A) working with the Community Affairs Office to implement the strategy to improve financial literacy of consumers; and

(B) working with the research unit established by the Director to conduct research related to consumer financial education and counseling.

(4) REPORT.—Not later than 24 months after the designated transfer date, and annually thereafter, the Director shall submit a report on its financial literacy activities and strategy to improve financial literacy of consumers to—

(A) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

(B) the Committee on Financial Services of the House of Representatives.

(5) MEMBERSHIP IN FINANCIAL LITERACY AND EDUCATION COMMISSION.—Section 513(c)(1) of the Financial Literacy and Education Improvement Act (20 U.S.C. 9702(c)(1)) is amended—

(A) in subparagraph (B), by striking "and" at the end;

(B) by redesignating subparagraph (C) as subparagraph (D); and

(C) by inserting after subparagraph (B) the following new subparagraph:

"(C) the Director of the Bureau of Consumer Financial Protection; and".

(6) CONFORMING AMENDMENT.—Section 513(d) of the Financial Literacy and Education Improvement Act (20 U.S.C. 9702(d)) is amended by adding at the end the following: "The Director of the Bureau of Consumer Financial Protection shall serve as the Vice Chairman.".

(7) STUDY AND REPORT ON FINANCIAL LITERACY PROGRAM.—

(A) IN GENERAL.—The Comptroller General of the United States shall conduct a study to identify—

(i) the feasibility of certification of persons providing the programs or performing the activities described in paragraph (2), including recognizing outstanding programs, and developing guidelines and resources for community-based practitioners, including—

(I) a potential certification process and standards for certification;

(II) appropriate certifying entities;

(III) resources required for funding such a process; and

(IV) a cost-benefit analysis of such certification;

(ii) technological resources intended to collect, analyze, evaluate, or promote financial literacy and counseling programs;

(iii) effective methods, tools, and strategies intended to educate and empower consumers about personal finance management; and

(iv) recommendations intended to encourage the development of programs that effectively improve financial education outcomes and empower consumers to make better informed financial decisions based on findings.

(B) REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States shall submit a report on the results of the study conducted under this paragraph to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

(e) OFFICE OF SERVICE MEMBER AFFAIRS.—

(1) IN GENERAL.—The Director shall establish an Office of Service Member Affairs, which shall be responsible for developing and implementing initiatives for service members and their families intended to—

(A) educate and empower service members and their families to make better informed decisions regarding consumer financial products and services;

(B) coordinate with the unit of the Bureau established under subsection (b)(3), in order to monitor complaints by service members and their families and responses to those complaints by the Bureau or other appropriate Federal or State agency; and

(C) coordinate efforts among Federal and State agencies, as appropriate, regarding consumer protection measures relating to consumer financial products and services offered to, or used by, service members and their families.

(2) COORDINATION.—

(A) REGIONAL SERVICES.—The Director is authorized to assign employees of the Bureau as may be deemed necessary to conduct the business of the Office of Service Member Affairs, including by establishing and maintaining the functions of the Office in regional offices of the Bureau located near military bases, military treatment facilities, or other similar military facilities.

(B) AGREEMENTS.—The Director is authorized to enter into memoranda of understanding and similar agreements with the Department of Defense, including any branch or agency as authorized by the department, in order to carry out the business of the Office of Service Member Affairs.

(3) DEFINITION.—As used in this subsection, the term "service member" means any member of the United States Armed Forces and any member of the National Guard or Reserves.

(f) TIMING.—The Office of Fair Lending and Equal Opportunity, the Office of Financial Education, and the Office of Service Member Affairs shall each be established not later than 1 year after the designated transfer date.

(g) OFFICE OF FINANCIAL PROTECTION FOR OLDER AMERICANS.—

(1) ESTABLISHMENT.—Before the end of the 180-day period beginning on the designated transfer date, the Director shall

establish the Office of Financial Protection for Older Americans, the functions of which shall include activities designed to facilitate the financial literacy of individuals who have attained the age of 62 years or more (in this subsection, referred to as "seniors") on protection from unfair, deceptive, and abusive practices and on current and future financial choices, including through the dissemination of materials to seniors on such topics.

(2) ASSISTANT DIRECTOR.—The Office of Financial Protection for Older Americans (in this subsection referred to as the "Office") shall be headed by an assistant director.

(3) DUTIES.—The Office shall—

(A) develop goals for programs that provide seniors financial literacy and counseling, including programs that—

(i) help seniors recognize warning signs of unfair, deceptive, or abusive practices, protect themselves from such practices;

(ii) provide one-on-one financial counseling on issues including long-term savings and later-life economic security; and

(iii) provide personal consumer credit advocacy to respond to consumer problems caused by unfair, deceptive, or abusive practices;

(B) monitor certifications or designations of financial advisors who advise seniors and alert the Commission and State regulators of certifications or designations that are identified as unfair, deceptive, or abusive;

(C) not later than 18 months after the date of the establishment of the Office, submit to Congress and the Commission any legislative and regulatory recommendations on the best practices for—

(i) disseminating information regarding the legitimacy of certifications of financial advisers who advise seniors;

(ii) methods in which a senior can identify the financial advisor most appropriate for the senior's needs; and

(iii) methods in which a senior can verify a financial advisor's credentials;

(D) conduct research to identify best practices and effective methods, tools, technology and strategies to educate and counsel seniors about personal finance management with a focus on—

(i) protecting themselves from unfair, deceptive, and abusive practices;

(ii) long-term savings; and

(iii) planning for retirement and long-term care;

(E) coordinate consumer protection efforts of seniors with other Federal agencies and State regulators, as appropriate, to promote consistent, effective, and efficient enforcement; and

(F) work with community organizations, non-profit organizations, and other entities that are involved with educating or assisting seniors (including the National Education and Resource Center on Women and Retirement Planning).

SEC. 1014. CONSUMER ADVISORY BOARD.

(a) ESTABLISHMENT REQUIRED.—The Director shall establish a Consumer Advisory Board to advise and consult with the Bureau in the exercise of its functions under the Federal consumer financial laws, and to provide information on emerging practices in the consumer financial products or services industry, including regional trends, concerns, and other relevant information.

(b) MEMBERSHIP.—In appointing the members of the Consumer Advisory Board, the Director shall seek to assemble experts in consumer protection, financial services, community development, fair lending and civil rights, and consumer financial products or services and representatives of depository institutions that primarily serve underserved communities, and representatives of communities that have been significantly impacted by higher-priced mortgage loans, and seek representation of the interests of covered persons and consumers, without regard to party affiliation. Not fewer than 6 members shall be appointed upon the recommendation of the regional Federal Reserve Bank Presidents, on a rotating basis.

(c) MEETINGS.—The Consumer Advisory Board shall meet from time to time at the call of the Director, but, at a minimum, shall meet at least twice in each year.

(d) COMPENSATION AND TRAVEL EXPENSES.—Members of the Consumer Advisory Board who are not full-time employees of the United States shall—

(1) be entitled to receive compensation at a rate fixed by the Director while attending meetings of the Consumer Advisory Board, including travel time; and

(2) be allowed travel expenses, including transportation and subsistence, while away from their homes or regular places of business.

SEC. 1015. COORDINATION.

The Bureau shall coordinate with the Commission, the Commodity Futures Trading Commission, the Federal Trade Commission, and other Federal agencies and State regulators, as appropriate, to promote consistent regulatory treatment of consumer financial and investment products and services.

SEC. 1016. APPEARANCES BEFORE AND REPORTS TO CONGRESS.

(a) APPEARANCES BEFORE CONGRESS.—The Director of the Bureau shall appear before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services and the Committee on Energy and Commerce of the House of Representatives at semi-annual hearings regarding the reports required under subsection (b).

(b) REPORTS REQUIRED.—The Bureau shall, concurrent with each semi-annual hearing referred to in subsection (a), prepare and submit to the President and to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services and the Committee on Energy and Commerce of the House of Representatives, a report, beginning with the session following the designated transfer date. The Bureau may also submit such report to the Committee on Commerce, Science, and Transportation of the Senate.

(c) CONTENTS.—The reports required by subsection (b) shall include—

(1) a discussion of the significant problems faced by consumers in shopping for or obtaining consumer financial products or services;

(2) a justification of the budget request of the previous year;

(3) a list of the significant rules and orders adopted by the Bureau, as well as other significant initiatives conducted by the Bureau, during the preceding year and the plan of the Bureau for rules, orders, or other initiatives to be undertaken during the upcoming period;

(4) an analysis of complaints about consumer financial products or services that the Bureau has received and collected in its central database on complaints during the preceding year;

(5) a list, with a brief statement of the issues, of the public supervisory and enforcement actions to which the Bureau was a party during the preceding year;

(6) the actions taken regarding rules, orders, and supervisory actions with respect to covered persons which are not credit unions or depository institutions;

(7) an assessment of significant actions by State attorneys general or State regulators relating to Federal consumer financial law;

(8) an analysis of the efforts of the Bureau to fulfill the fair lending mission of the Bureau; and

(9) an analysis of the efforts of the Bureau to increase workforce and contracting diversity consistent with the procedures established by the Office of Minority and Women Inclusion.

SEC. 1017. FUNDING; PENALTIES AND FINES.

(a) TRANSFER OF FUNDS FROM BOARD OF GOVERNORS.—

(1) IN GENERAL.—Each year (or quarter of such year), beginning on the designated transfer date, and each quarter thereafter, the Board of Governors shall transfer to the Bureau from the combined earnings of the Federal Reserve System, the amount determined by the Director to be reasonably necessary to carry out the authorities of the Bureau under Federal consumer financial law, taking into account such other sums made available to the Bureau from the preceding year (or quarter of such year).

(2) FUNDING CAP.—

(A) IN GENERAL.—Notwithstanding paragraph (1), and in accordance with this paragraph, the amount that shall be transferred to the Bureau in each fiscal year shall not exceed a fixed percentage of the total operating expenses of the Federal Reserve System, as reported in the Annual Report, 2009, of the Board of Governors, equal to—

(i) 10 percent of such expenses in fiscal year 2011;

(ii) 11 percent of such expenses in fiscal year 2012; and

(iii) 12 percent of such expenses in fiscal year 2013, and in each year thereafter.

(B) ADJUSTMENT OF AMOUNT.—The dollar amount referred to in subparagraph (A)(iii) shall be adjusted

annually, using the percent increase, if any, in the employment cost index for total compensation for State and local government workers published by the Federal Government, or the successor index thereto, for the 12-month period ending on September 30 of the year preceding the transfer.

(C) REVIEWABILITY.—Notwithstanding any other provision in this title, the funds derived from the Federal Reserve System pursuant to this subsection shall not be subject to review by the Committees on Appropriations of the House of Representatives and the Senate.

(3) TRANSITION PERIOD.—Beginning on the date of enactment of this Act and until the designated transfer date, the Board of Governors shall transfer to the Bureau the amount estimated by the Secretary needed to carry out the authorities granted to the Bureau under Federal consumer financial law, from the date of enactment of this Act until the designated transfer date.

(4) BUDGET AND FINANCIAL MANAGEMENT.—

(A) FINANCIAL OPERATING PLANS AND FORECASTS.—The Director shall provide to the Director of the Office of Management and Budget copies of the financial operating plans and forecasts of the Director, as prepared by the Director in the ordinary course of the operations of the Bureau, and copies of the quarterly reports of the financial condition and results of operations of the Bureau, as prepared by the Director in the ordinary course of the operations of the Bureau.

(B) FINANCIAL STATEMENTS.—The Bureau shall prepare annually a statement of—

(i) assets and liabilities and surplus or deficit;

(ii) income and expenses; and

(iii) sources and application of funds.

(C) FINANCIAL MANAGEMENT SYSTEMS.—The Bureau shall implement and maintain financial management systems that comply substantially with Federal financial management systems requirements and applicable Federal accounting standards.

(D) ASSERTION OF INTERNAL CONTROLS.—The Director shall provide to the Comptroller General of the United States an assertion as to the effectiveness of the internal controls that apply to financial reporting by the Bureau, using the standards established in section 3512(c) of title 31, United States Code.

(E) RULE OF CONSTRUCTION.—This subsection may not be construed as implying any obligation on the part of the Director to consult with or obtain the consent or approval of the Director of the Office of Management and Budget with respect to any report, plan, forecast, or other information referred to in subparagraph (A) or any jurisdiction or oversight over the affairs or operations of the Bureau.

(F) FINANCIAL STATEMENTS.—The financial statements of the Bureau shall not be consolidated with the financial statements of either the Board of Governors or the Federal Reserve System.

(5) AUDIT OF THE BUREAU.—

(A) IN GENERAL.—The Comptroller General shall annually audit the financial transactions of the Bureau in accordance with the United States generally accepted government auditing standards, as may be prescribed by the Comptroller General of the United States. The audit shall be conducted at the place or places where accounts of the Bureau are normally kept. The representatives of the Government Accountability Office shall have access to the personnel and to all books, accounts, documents, papers, records (including electronic records), reports, files, and all other papers, automated data, things, or property belonging to or under the control of or used or employed by the Bureau pertaining to its financial transactions and necessary to facilitate the audit, and such representatives shall be afforded full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians. All such books, accounts, documents, records, reports, files, papers, and property of the Bureau shall remain in possession and custody of the Bureau. The Comptroller General may obtain and duplicate any such books, accounts, documents, records, working papers, automated data and files, or other information relevant to such audit without cost to the Comptroller General, and the right of access of the Comptroller General to such information shall be enforceable pursuant to section 716(c) of title 31, United States Code.

(B) REPORT.—The Comptroller General shall submit to the Congress a report of each annual audit conducted under this subsection. The report to the Congress shall set forth the scope of the audit and shall include the statement of assets and liabilities and surplus or deficit, the statement of income and expenses, the statement of sources and application of funds, and such comments and information as may be deemed necessary to inform Congress of the financial operations and condition of the Bureau, together with such recommendations with respect thereto as the Comptroller General may deem advisable. A copy of each report shall be furnished to the President and to the Bureau at the time submitted to the Congress.

(C) ASSISTANCE AND COSTS.—For the purpose of conducting an audit under this subsection, the Comptroller General may, in the discretion of the Comptroller General, employ by contract, without regard to section 3709 of the Revised Statutes of the United States (41 U.S.C. 5), professional services of firms and organizations of certified public accountants for temporary periods or for special purposes. Upon the request of the Comptroller General, the Director of the Bureau shall transfer to the Government Accountability Office from funds available, the amount requested by the Comptroller General to cover the full costs of any audit and report conducted by the Comptroller General. The Comptroller General shall credit funds transferred to the account established for salaries and expenses of the Government Accountability Office, and such amount shall be available upon receipt and without fiscal year limitation to cover the full costs of the audit and report.

(b) CONSUMER FINANCIAL PROTECTION FUND.—

(1) SEPARATE FUND IN FEDERAL RESERVE ESTABLISHED.—There is established in the Federal Reserve a separate fund, to be known as the "Bureau of Consumer Financial Protection Fund" (referred to in this section as the "Bureau Fund"). The Bureau Fund shall be maintained and established at a Federal reserve bank, in accordance with such requirements as the Board of Governors may impose.

(2) FUND RECEIPTS.—All amounts transferred to the Bureau under subsection (a) shall be deposited into the Bureau Fund.

(3) INVESTMENT AUTHORITY.—

(A) AMOUNTS IN BUREAU FUND MAY BE INVESTED.—The Bureau may request the Board of Governors to direct the investment of the portion of the Bureau Fund that is not, in the judgment of the Bureau, required to meet the current needs of the Bureau.

(B) ELIGIBLE INVESTMENTS.—Investments authorized by this paragraph shall be made in obligations of the United States or obligations that are guaranteed as to principal and interest by the United States, with maturities suitable to the needs of the Bureau Fund, as determined by the Bureau.

(C) INTEREST AND PROCEEDS CREDITED.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the Bureau Fund shall be credited to the Bureau Fund.

(c) USE OF FUNDS.—

(1) IN GENERAL.—Funds obtained by, transferred to, or credited to the Bureau Fund shall be immediately available to the Bureau and under the control of the Director, and shall remain available until expended, to pay the expenses of the Bureau in carrying out its duties and responsibilities. The compensation of the Director and other employees of the Bureau and all other expenses thereof may be paid from, obtained by, transferred to, or credited to the Bureau Fund under this section.

(2) FUNDS THAT ARE NOT GOVERNMENT FUNDS.—Funds obtained by or transferred to the Bureau Fund shall not be construed to be Government funds or appropriated monies.

(3) AMOUNTS NOT SUBJECT TO APPORTIONMENT.—Notwithstanding any other provision of law, amounts in the Bureau Fund and in the Civil Penalty Fund established under subsection (d) shall not be subject to apportionment for purposes of chapter 15 of title 31, United States Code, or under any other authority.

(d) PENALTIES AND FINES.—

(1) ESTABLISHMENT OF VICTIMS RELIEF FUND.—There is established in the Federal Reserve a separate fund, to be known as the "Consumer Financial Civil Penalty Fund" (referred to in this section as the "Civil Penalty Fund"). The Civil Penalty Fund shall be maintained and established at a Federal reserve bank, in accordance with such requirements as the Board of Governors may impose. If the Bureau obtains a civil penalty against any person in any judicial or administrative action under Federal consumer financial laws, the Bureau shall deposit into the Civil Penalty Fund, the amount of the penalty collected.

(2) PAYMENT TO VICTIMS.—Amounts in the Civil Penalty Fund shall be available to the Bureau, without fiscal year limitation, for payments to the victims of activities for which civil penalties have been imposed under the Federal consumer financial laws. To the extent that such victims cannot be located or such payments are otherwise not practicable, the Bureau may use such funds for the purpose of consumer education and financial literacy programs.

(e) AUTHORIZATION OF APPROPRIATIONS; ANNUAL REPORT.—

(1) DETERMINATION REGARDING NEED FOR APPROPRIATED FUNDS.—

(A) IN GENERAL.—The Director is authorized to determine that sums available to the Bureau under this section will not be sufficient to carry out the authorities of the Bureau under Federal consumer financial law for the upcoming year.

(B) REPORT REQUIRED.—When making a determination under subparagraph (A), the Director shall prepare a report regarding the funding of the Bureau, including the assets and liabilities of the Bureau, and the extent to which the funding needs of the Bureau are anticipated to exceed the level of the amount set forth in subsection (a)(2). The Director shall submit the report to the President and to the Committee on Appropriations of the Senate and the Committee on Appropriations of the House of Representatives.

(2) AUTHORIZATION OF APPROPRIATIONS.—If the Director makes the determination and submits the report pursuant to paragraph (1), there are hereby authorized to be appropriated to the Bureau, for the purposes of carrying out the authorities granted in Federal consumer financial law, $200,000,000 for each of fiscal years 2010, 2011, 2012, 2013, and 2014.

(3) APPORTIONMENT.—Notwithstanding any other provision of law, the amounts in paragraph (2) shall be subject to apportionment under section 1517 of title 31, United States Code, and restrictions that generally apply to the use of appropriated funds in title 31, United States Code, and other laws.

(4) ANNUAL REPORT.—The Director shall prepare and submit a report, on an annual basis, to the Committee on Appropriations of the Senate and the Committee on Appropriations of the House of Representatives regarding the financial operating plans and forecasts of the Director, the financial condition and results of operations of the Bureau, and the sources and application of funds of the Bureau, including any funds appropriated in accordance with this subsection.

SEC. 1018. EFFECTIVE DATE.

This subtitle shall become effective on the date of enactment of this Act.

Subtitle B—General Powers of the Bureau

SEC. 1021. PURPOSE, OBJECTIVES, AND FUNCTIONS.

(a) PURPOSE.—The Bureau shall seek to implement and, where applicable, enforce Federal consumer financial law consistently for the purpose of ensuring that all consumers have access to markets

for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive.

(b) OBJECTIVES.—The Bureau is authorized to exercise its authorities under Federal consumer financial law for the purposes of ensuring that, with respect to consumer financial products and services—

(1) consumers are provided with timely and understandable information to make responsible decisions about financial transactions;

(2) consumers are protected from unfair, deceptive, or abusive acts and practices and from discrimination;

(3) outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens;

(4) Federal consumer financial law is enforced consistently, without regard to the status of a person as a depository institution, in order to promote fair competition; and

(5) markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.

(c) FUNCTIONS.—The primary functions of the Bureau are—

(1) conducting financial education programs;

(2) collecting, investigating, and responding to consumer complaints;

(3) collecting, researching, monitoring, and publishing information relevant to the functioning of markets for consumer financial products and services to identify risks to consumers and the proper functioning of such markets;

(4) subject to sections 1024 through 1026, supervising covered persons for compliance with Federal consumer financial law, and taking appropriate enforcement action to address violations of Federal consumer financial law;

(5) issuing rules, orders, and guidance implementing Federal consumer financial law; and

(6) performing such support activities as may be necessary or useful to facilitate the other functions of the Bureau.

SEC. 1022. RULEMAKING AUTHORITY.

(a) IN GENERAL.—The Bureau is authorized to exercise its authorities under Federal consumer financial law to administer, enforce, and otherwise implement the provisions of Federal consumer financial law.

(b) RULEMAKING, ORDERS, AND GUIDANCE.—

(1) GENERAL AUTHORITY.—The Director may prescribe rules and issue orders and guidance, as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof.

(2) STANDARDS FOR RULEMAKING.—In prescribing a rule under the Federal consumer financial laws—

(A) the Bureau shall consider—

(i) the potential benefits and costs to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services resulting from such rule; and

(ii) the impact of proposed rules on covered persons, as described in section 1026, and the impact on consumers in rural areas;

(B) the Bureau shall consult with the appropriate prudential regulators or other Federal agencies prior to proposing a rule and during the comment process regarding consistency with prudential, market, or systemic objectives administered by such agencies; and

(C) if, during the consultation process described in subparagraph (B), a prudential regulator provides the Bureau with a written objection to the proposed rule of the Bureau or a portion thereof, the Bureau shall include in the adopting release a description of the objection and the basis for the Bureau decision, if any, regarding such objection, except that nothing in this clause shall be construed as altering or limiting the procedures under section 1023 that may apply to any rule prescribed by the Bureau.

(3) EXEMPTIONS.—

(A) IN GENERAL.—The Bureau, by rule, may conditionally or unconditionally exempt any class of covered persons, service providers, or consumer financial products or services, from any provision of this title, or from any rule issued under this title, as the Bureau determines necessary or appropriate to carry out the purposes and objectives of this title, taking into consideration the factors in subparagraph (B).

(B) FACTORS.—In issuing an exemption, as permitted under subparagraph (A), the Bureau shall, as appropriate, take into consideration—

(i) the total assets of the class of covered persons;

(ii) the volume of transactions involving consumer financial products or services in which the class of covered persons engages; and

(iii) existing provisions of law which are applicable to the consumer financial product or service and the extent to which such provisions provide consumers with adequate protections.

(4) EXCLUSIVE RULEMAKING AUTHORITY.—

(A) IN GENERAL.—Notwithstanding any other provisions of Federal law and except as provided in section 1061(b)(5), to the extent that a provision of Federal consumer financial law authorizes the Bureau and another Federal agency to issue regulations under that provision of law for purposes of assuring compliance with Federal consumer financial law and any regulations thereunder, the Bureau shall have the exclusive authority to prescribe rules subject to those provisions of law.

(B) DEFERENCE.—Notwithstanding any power granted to any Federal agency or to the Council under this title, and subject to section 1061(b)(5)(E), the deference that a court affords to the Bureau with respect to a determination by the Bureau regarding the meaning or interpretation of any provision of a Federal consumer financial law shall be applied as if the Bureau were the only agency authorized to apply, enforce, interpret, or administer the provisions of such Federal consumer financial law.

(c) MONITORING.—

(1) IN GENERAL.—In order to support its rulemaking and other functions, the Bureau shall monitor for risks to consumers in the offering or provision of consumer financial products or services, including developments in markets for such products or services.

(2) CONSIDERATIONS.—In allocating its resources to perform the monitoring required by this section, the Bureau may consider, among other factors—

(A) likely risks and costs to consumers associated with buying or using a type of consumer financial product or service;

(B) understanding by consumers of the risks of a type of consumer financial product or service;

(C) the legal protections applicable to the offering or provision of a consumer financial product or service, including the extent to which the law is likely to adequately protect consumers;

(D) rates of growth in the offering or provision of a consumer financial product or service;

(E) the extent, if any, to which the risks of a consumer financial product or service may disproportionately affect traditionally underserved consumers; or

(F) the types, number, and other pertinent characteristics of covered persons that offer or provide the consumer financial product or service.

(3) SIGNIFICANT FINDINGS.—

(A) IN GENERAL.—The Bureau shall publish not fewer than 1 report of significant findings of its monitoring required by this subsection in each calendar year, beginning with the first calendar year that begins at least 1 year after the designated transfer date.

(B) CONFIDENTIAL INFORMATION.—The Bureau may make public such information obtained by the Bureau under this section as is in the public interest, through aggregated reports or other appropriate formats designed to protect confidential information in accordance with paragraphs (4), (6), (8), and (9).

(4) COLLECTION OF INFORMATION.—

(A) IN GENERAL.—In conducting any monitoring or assessment required by this section, the Bureau shall have the authority to gather information from time to time regarding the organization, business conduct, markets, and activities of covered persons and service providers.

(B) METHODOLOGY.—In order to gather information described in subparagraph (A), the Bureau may—

(i) gather and compile information from a variety of sources, including examination reports concerning covered persons or service providers, consumer complaints, voluntary surveys and voluntary interviews of consumers, surveys and interviews with covered persons and service providers, and review of available databases; and

(ii) require covered persons and service providers participating in consumer financial services markets to file with the Bureau, under oath or otherwise, in such form and within such reasonable period of time as the Bureau may prescribe by rule or order, annual

or special reports, or answers in writing to specific questions, furnishing information described in paragraph (4), as necessary for the Bureau to fulfill the monitoring, assessment, and reporting responsibilities imposed by Congress.

(C) LIMITATION.—The Bureau may not use its authorities under this paragraph to obtain records from covered persons and service providers participating in consumer financial services markets for purposes of gathering or analyzing the personally identifiable financial information of consumers.

(5) LIMITED INFORMATION GATHERING.—In order to assess whether a nondepository is a covered person, as defined in section 1002, the Bureau may require such nondepository to file with the Bureau, under oath or otherwise, in such form and within such reasonable period of time as the Bureau may prescribe by rule or order, annual or special reports, or answers in writing to specific questions.

(6) CONFIDENTIALITY RULES.—

(A) RULEMAKING.—The Bureau shall prescribe rules regarding the confidential treatment of information obtained from persons in connection with the exercise of its authorities under Federal consumer financial law.

(B) ACCESS BY THE BUREAU TO REPORTS OF OTHER REGULATORS.—

(i) EXAMINATION AND FINANCIAL CONDITION REPORTS.—Upon providing reasonable assurances of confidentiality, the Bureau shall have access to any report of examination or financial condition made by a prudential regulator or other Federal agency having jurisdiction over a covered person or service provider, and to all revisions made to any such report.

(ii) PROVISION OF OTHER REPORTS TO THE BUREAU.—In addition to the reports described in clause (i), a prudential regulator or other Federal agency having jurisdiction over a covered person or service provider may, in its discretion, furnish to the Bureau any other report or other confidential supervisory information concerning any insured depository institution, credit union, or other entity examined by such agency under authority of any provision of Federal law.

(C) ACCESS BY OTHER REGULATORS TO REPORTS OF THE BUREAU.—

(i) EXAMINATION REPORTS.—Upon providing reasonable assurances of confidentiality, a prudential regulator, a State regulator, or any other Federal agency having jurisdiction over a covered person or service provider shall have access to any report of examination made by the Bureau with respect to such person, and to all revisions made to any such report.

(ii) PROVISION OF OTHER REPORTS TO OTHER REGULATORS.—In addition to the reports described in clause (i), the Bureau may, in its discretion, furnish to a prudential regulator or other agency having jurisdiction over a covered person or service provider any

other report or other confidential supervisory information concerning such person examined by the Bureau under the authority of any other provision of Federal law.

(7) REGISTRATION.—

(A) IN GENERAL.—The Bureau may prescribe rules regarding registration requirements applicable to a covered person, other than an insured depository institution, insured credit union, or related person.

(B) REGISTRATION INFORMATION.—Subject to rules prescribed by the Bureau, the Bureau may publicly disclose registration information to facilitate the ability of consumers to identify covered persons that are registered with the Bureau.

(C) CONSULTATION WITH STATE AGENCIES.—In developing and implementing registration requirements under this paragraph, the Bureau shall consult with State agencies regarding requirements or systems (including coordinated or combined systems for registration), where appropriate.

(8) PRIVACY CONSIDERATIONS.—In collecting information from any person, publicly releasing information held by the Bureau, or requiring covered persons to publicly report information, the Bureau shall take steps to ensure that proprietary, personal, or confidential consumer information that is protected from public disclosure under section 552(b) or 552a of title 5, United States Code, or any other provision of law, is not made public under this title.

(9) CONSUMER PRIVACY.—

(A) IN GENERAL.—The Bureau may not obtain from a covered person or service provider any personally identifiable financial information about a consumer from the financial records of the covered person or service provider, except—

(i) if the financial records are reasonably described in a request by the Bureau and the consumer provides written permission for the disclosure of such information by the covered person or service provider to the Bureau; or

(ii) as may be specifically permitted or required under other applicable provisions of law and in accordance with the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et seq.).

(B) TREATMENT OF COVERED PERSON OR SERVICE PROVIDER.—With respect to the application of any provision of the Right to Financial Privacy Act of 1978, to a disclosure by a covered person or service provider subject to this subsection, the covered person or service provider shall be treated as if it were a "financial institution", as defined in section 1101 of that Act (12 U.S.C. 3401).

(d) ASSESSMENT OF SIGNIFICANT RULES.—

(1) IN GENERAL.—The Bureau shall conduct an assessment of each significant rule or order adopted by the Bureau under Federal consumer financial law. The assessment shall address, among other relevant factors, the effectiveness of the rule or order in meeting the purposes and objectives of this title and the specific goals stated by the Bureau. The assessment shall

reflect available evidence and any data that the Bureau reasonably may collect.

(2) REPORTS.—The Bureau shall publish a report of its assessment under this subsection not later than 5 years after the effective date of the subject rule or order.

(3) PUBLIC COMMENT REQUIRED.—Before publishing a report of its assessment, the Bureau shall invite public comment on recommendations for modifying, expanding, or eliminating the newly adopted significant rule or order.

SEC. 1023. REVIEW OF BUREAU REGULATIONS.

(a) REVIEW OF BUREAU REGULATIONS.—On the petition of a member agency of the Council, the Council may set aside a final regulation prescribed by the Bureau, or any provision thereof, if the Council decides, in accordance with subsection (c), that the regulation or provision would put the safety and soundness of the United States banking system or the stability of the financial system of the United States at risk.

(b) PETITION.—

(1) PROCEDURE.—An agency represented by a member of the Council may petition the Council, in writing, and in accordance with rules prescribed pursuant to subsection (f), to stay the effectiveness of, or set aside, a regulation if the member agency filing the petition—

(A) has in good faith attempted to work with the Bureau to resolve concerns regarding the effect of the rule on the safety and soundness of the United States banking system or the stability of the financial system of the United States; and

(B) files the petition with the Council not later than 10 days after the date on which the regulation has been published in the Federal Register.

(2) PUBLICATION.—Any petition filed with the Council under this section shall be published in the Federal Register and transmitted contemporaneously with filing to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

(c) STAYS AND SET ASIDES.—

(1) STAY.—

(A) IN GENERAL.—Upon the request of any member agency, the Chairperson of the Council may stay the effectiveness of a regulation for the purpose of allowing appropriate consideration of the petition by the Council.

(B) EXPIRATION.—A stay issued under this paragraph shall expire on the earlier of—

(i) 90 days after the date of filing of the petition under subsection (b); or

(ii) the date on which the Council makes a decision under paragraph (3).

(2) NO ADVERSE INFERENCE.—After the expiration of any stay imposed under this section, no inference shall be drawn regarding the validity or enforceability of a regulation which was the subject of the petition.

(3) VOTE.—

(A) IN GENERAL.—The decision to issue a stay of, or set aside, any regulation under this section shall be made

only with the affirmative vote in accordance with subparagraph (B) of ⅔ of the members of the Council then serving.

(B) AUTHORIZATION TO VOTE.—A member of the Council may vote to stay the effectiveness of, or set aside, a final regulation prescribed by the Bureau only if the agency or department represented by that member has—

(i) considered any relevant information provided by the agency submitting the petition and by the Bureau; and

(ii) made an official determination, at a public meeting where applicable, that the regulation which is the subject of the petition would put the safety and soundness of the United States banking system or the stability of the financial system of the United States at risk.

(4) DECISIONS TO SET ASIDE.—

(A) EFFECT OF DECISION.—A decision by the Council to set aside a regulation prescribed by the Bureau, or provision thereof, shall render such regulation, or provision thereof, unenforceable.

(B) TIMELY ACTION REQUIRED.—The Council may not issue a decision to set aside a regulation, or provision thereof, which is the subject of a petition under this section after the expiration of the later of—

(i) 45 days following the date of filing of the petition, unless a stay is issued under paragraph (1); or

(ii) the expiration of a stay issued by the Council under this section.

(C) SEPARATE AUTHORITY.—The issuance of a stay under this section does not affect the authority of the Council to set aside a regulation.

(5) DISMISSAL DUE TO INACTION.—A petition under this section shall be deemed dismissed if the Council has not issued a decision to set aside a regulation, or provision thereof, within the period for timely action under paragraph (4)(B).

(6) PUBLICATION OF DECISION.—Any decision under this subsection to issue a stay of, or set aside, a regulation or provision thereof shall be published by the Council in the Federal Register as soon as practicable after the decision is made, with an explanation of the reasons for the decision.

(7) RULEMAKING PROCEDURES INAPPLICABLE.—The notice and comment procedures under section 553 of title 5, United States Code, shall not apply to any decision under this section of the Council to issue a stay of, or set aside, a regulation.

(8) JUDICIAL REVIEW OF DECISIONS BY THE COUNCIL.—A decision by the Council to set aside a regulation prescribed by the Bureau, or provision thereof, shall be subject to review under chapter 7 of title 5, United States Code.

(d) APPLICATION OF OTHER LAW.—Nothing in this section shall be construed as altering, limiting, or restricting the application of any other provision of law, except as otherwise specifically provided in this section, including chapter 5 and chapter 7 of title 5, United States Code, to a regulation which is the subject of a petition filed under this section.

(e) SAVINGS CLAUSE.—Nothing in this section shall be construed as limiting or restricting the Bureau from engaging in a rulemaking in accordance with applicable law.

(f) IMPLEMENTING RULES.—The Council shall prescribe procedural rules to implement this section.

SEC. 1024. SUPERVISION OF NONDEPOSITORY COVERED PERSONS.

(a) SCOPE OF COVERAGE.—

(1) APPLICABILITY.—Notwithstanding any other provision of this title, and except as provided in paragraph (3), this section shall apply to any covered person who—

(A) offers or provides origination, brokerage, or servicing of loans secured by real estate for use by consumers primarily for personal, family, or household purposes, or loan modification or foreclosure relief services in connection with such loans;

(B) is a larger participant of a market for other consumer financial products or services, as defined by rule in accordance with paragraph (2);

(C) the Bureau has reasonable cause to determine, by order, after notice to the covered person and a reasonable opportunity for such covered person to respond, based on complaints collected through the system under section 1013(b)(3) or information from other sources, that such covered person is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services;

(D) offers or provides to a consumer any private education loan, as defined in section 140 of the Truth in Lending Act (15 U.S.C. 1650), notwithstanding section 1027(a)(2)(A) and subject to section 1027(a)(2)(C); or

(E) offers or provides to a consumer a payday loan.

(2) RULEMAKING TO DEFINE COVERED PERSONS SUBJECT TO THIS SECTION.—The Bureau shall consult with the Federal Trade Commission prior to issuing a rule, in accordance with paragraph (1)(B), to define covered persons subject to this section. The Bureau shall issue its initial rule not later than 1 year after the designated transfer date.

(3) RULES OF CONSTRUCTION.—

(A) CERTAIN PERSONS EXCLUDED.—This section shall not apply to persons described in section 1025(a) or 1026(a).

(B) ACTIVITY LEVELS.—For purposes of computing activity levels under paragraph (1) or rules issued thereunder, activities of affiliated companies (other than insured depository institutions or insured credit unions) shall be aggregated.

(b) SUPERVISION.—

(1) IN GENERAL.—The Bureau shall require reports and conduct examinations on a periodic basis of persons described in subsection (a)(1) for purposes of—

(A) assessing compliance with the requirements of Federal consumer financial law;

(B) obtaining information about the activities and compliance systems or procedures of such person; and

(C) detecting and assessing risks to consumers and to markets for consumer financial products and services.

(2) RISK-BASED SUPERVISION PROGRAM.—The Bureau shall exercise its authority under paragraph (1) in a manner designed to ensure that such exercise, with respect to persons described in subsection (a)(1), is based on the assessment by the Bureau

of the risks posed to consumers in the relevant product markets and geographic markets, and taking into consideration, as applicable—

(A) the asset size of the covered person;

(B) the volume of transactions involving consumer financial products or services in which the covered person engages;

(C) the risks to consumers created by the provision of such consumer financial products or services;

(D) the extent to which such institutions are subject to oversight by State authorities for consumer protection; and

(E) any other factors that the Bureau determines to be relevant to a class of covered persons.

(3) COORDINATION.—To minimize regulatory burden, the Bureau shall coordinate its supervisory activities with the supervisory activities conducted by prudential regulators and the State bank regulatory authorities, including establishing their respective schedules for examining persons described in subsection (a)(1) and requirements regarding reports to be submitted by such persons.

(4) USE OF EXISTING REPORTS.—The Bureau shall, to the fullest extent possible, use—

(A) reports pertaining to persons described in subsection (a)(1) that have been provided or required to have been provided to a Federal or State agency; and

(B) information that has been reported publicly.

(5) PRESERVATION OF AUTHORITY.—Nothing in this title may be construed as limiting the authority of the Director to require reports from persons described in subsection (a)(1), as permitted under paragraph (1), regarding information owned or under the control of such person, regardless of whether such information is maintained, stored, or processed by another person.

(6) REPORTS OF TAX LAW NONCOMPLIANCE.—The Bureau shall provide the Commissioner of Internal Revenue with any report of examination or related information identifying possible tax law noncompliance.

(7) REGISTRATION, RECORDKEEPING AND OTHER REQUIREMENTS FOR CERTAIN PERSONS.—

(A) IN GENERAL.—The Bureau shall prescribe rules to facilitate supervision of persons described in subsection (a)(1) and assessment and detection of risks to consumers.

(B) RECORDKEEPING.—The Bureau may require a person described in subsection (a)(1), to generate, provide, or retain records for the purposes of facilitating supervision of such persons and assessing and detecting risks to consumers.

(C) REQUIREMENTS CONCERNING OBLIGATIONS.—The Bureau may prescribe rules regarding a person described in subsection (a)(1), to ensure that such persons are legitimate entities and are able to perform their obligations to consumers. Such requirements may include background checks for principals, officers, directors, or key personnel and bonding or other appropriate financial requirements.

(D) CONSULTATION WITH STATE AGENCIES.—In developing and implementing requirements under this paragraph, the Bureau shall consult with State agencies regarding requirements or systems (including coordinated or combined systems for registration), where appropriate.

(c) ENFORCEMENT AUTHORITY.—

(1) THE BUREAU TO HAVE ENFORCEMENT AUTHORITY.—Except as provided in paragraph (3) and section 1061, with respect to any person described in subsection (a)(1), to the extent that Federal law authorizes the Bureau and another Federal agency to enforce Federal consumer financial law, the Bureau shall have exclusive authority to enforce that Federal consumer financial law.

(2) REFERRAL.—Any Federal agency authorized to enforce a Federal consumer financial law described in paragraph (1) may recommend in writing to the Bureau that the Bureau initiate an enforcement proceeding, as the Bureau is authorized by that Federal law or by this title.

(3) COORDINATION WITH THE FEDERAL TRADE COMMISSION.—

(A) IN GENERAL.—The Bureau and the Federal Trade Commission shall negotiate an agreement for coordinating with respect to enforcement actions by each agency regarding the offering or provision of consumer financial products or services by any covered person that is described in subsection (a)(1), or service providers thereto. The agreement shall include procedures for notice to the other agency, where feasible, prior to initiating a civil action to enforce any Federal law regarding the offering or provision of consumer financial products or services.

(B) CIVIL ACTIONS.—Whenever a civil action has been filed by, or on behalf of, the Bureau or the Federal Trade Commission for any violation of any provision of Federal law described in subparagraph (A), or any regulation prescribed under such provision of law—

(i) the other agency may not, during the pendency of that action, institute a civil action under such provision of law against any defendant named in the complaint in such pending action for any violation alleged in the complaint; and

(ii) the Bureau or the Federal Trade Commission may intervene as a party in any such action brought by the other agency, and, upon intervening—

(I) be heard on all matters arising in such enforcement action; and

(II) file petitions for appeal in such actions.

(C) AGREEMENT TERMS.—The terms of any agreement negotiated under subparagraph (A) may modify or supersede the provisions of subparagraph (B).

(D) DEADLINE.—The agencies shall reach the agreement required under subparagraph (A) not later than 6 months after the designated transfer date.

(d) EXCLUSIVE RULEMAKING AND EXAMINATION AUTHORITY.—Notwithstanding any other provision of Federal law and except as provided in section 1061, to the extent that Federal law authorizes the Bureau and another Federal agency to issue regulations or guidance, conduct examinations, or require reports from a person described in subsection (a)(1) under such law for purposes of

assuring compliance with Federal consumer financial law and any regulations thereunder, the Bureau shall have the exclusive authority to prescribe rules, issue guidance, conduct examinations, require reports, or issue exemptions with regard to a person described in subsection (a)(1), subject to those provisions of law.

(e) SERVICE PROVIDERS.—A service provider to a person described in subsection (a)(1) shall be subject to the authority of the Bureau under this section, to the same extent as if such service provider were engaged in a service relationship with a bank, and the Bureau were an appropriate Federal banking agency under section 7(c) of the Bank Service Company Act (12 U.S.C. 1867(c)). In conducting any examination or requiring any report from a service provider subject to this subsection, the Bureau shall coordinate with the appropriate prudential regulator, as applicable.

(f) PRESERVATION OF FARM CREDIT ADMINISTRATION AUTHORITY.—No provision of this title may be construed as modifying, limiting, or otherwise affecting the authority of the Farm Credit Administration.

SEC. 1025. SUPERVISION OF VERY LARGE BANKS, SAVINGS ASSOCIATIONS, AND CREDIT UNIONS.

(a) SCOPE OF COVERAGE.—This section shall apply to any covered person that is—

(1) an insured depository institution with total assets of more than $10,000,000,000 and any affiliate thereof; or

(2) an insured credit union with total assets of more than $10,000,000,000 and any affiliate thereof.

(b) SUPERVISION.—

(1) IN GENERAL.—The Bureau shall have exclusive authority to require reports and conduct examinations on a periodic basis of persons described in subsection (a) for purposes of—

(A) assessing compliance with the requirements of Federal consumer financial laws;

(B) obtaining information about the activities subject to such laws and the associated compliance systems or procedures of such persons; and

(C) detecting and assessing associated risks to consumers and to markets for consumer financial products and services.

(2) COORDINATION.—To minimize regulatory burden, the Bureau shall coordinate its supervisory activities with the supervisory activities conducted by prudential regulators and the State bank regulatory authorities, including consultation regarding their respective schedules for examining such persons described in subsection (a) and requirements regarding reports to be submitted by such persons.

(3) USE OF EXISTING REPORTS.—The Bureau shall, to the fullest extent possible, use—

(A) reports pertaining to a person described in subsection (a) that have been provided or required to have been provided to a Federal or State agency; and

(B) information that has been reported publicly.

(4) PRESERVATION OF AUTHORITY.—Nothing in this title may be construed as limiting the authority of the Director to require reports from a person described in subsection (a), as permitted under paragraph (1), regarding information owned

or under the control of such person, regardless of whether such information is maintained, stored, or processed by another person.

(5) REPORTS OF TAX LAW NONCOMPLIANCE.—The Bureau shall provide the Commissioner of Internal Revenue with any report of examination or related information identifying possible tax law noncompliance.

(c) PRIMARY ENFORCEMENT AUTHORITY.—

(1) THE BUREAU TO HAVE PRIMARY ENFORCEMENT AUTHORITY.—To the extent that the Bureau and another Federal agency are authorized to enforce a Federal consumer financial law, the Bureau shall have primary authority to enforce that Federal consumer financial law with respect to any person described in subsection (a).

(2) REFERRAL.—Any Federal agency, other than the Federal Trade Commission, that is authorized to enforce a Federal consumer financial law may recommend, in writing, to the Bureau that the Bureau initiate an enforcement proceeding with respect to a person described in subsection (a), as the Bureau is authorized to do by that Federal consumer financial law.

(3) BACKUP ENFORCEMENT AUTHORITY OF OTHER FEDERAL AGENCY.—If the Bureau does not, before the end of the 120-day period beginning on the date on which the Bureau receives a recommendation under paragraph (2), initiate an enforcement proceeding, the other agency referred to in paragraph (2) may initiate an enforcement proceeding, including performing follow up supervisory and support functions incidental thereto, to assure compliance with such proceeding.

(d) SERVICE PROVIDERS.—A service provider to a person described in subsection (a) shall be subject to the authority of the Bureau under this section, to the same extent as if the Bureau were an appropriate Federal banking agency under section 7(c) of the Bank Service Company Act 12 U.S.C. 1867(c). In conducting any examination or requiring any report from a service provider subject to this subsection, the Bureau shall coordinate with the appropriate prudential regulator.

(e) SIMULTANEOUS AND COORDINATED SUPERVISORY ACTION.—

(1) EXAMINATIONS.—A prudential regulator and the Bureau shall, with respect to each insured depository institution, insured credit union, or other covered person described in subsection (a) that is supervised by the prudential regulator and the Bureau, respectively—

(A) coordinate the scheduling of examinations of the insured depository institution, insured credit union, or other covered person described in subsection (a);

(B) conduct simultaneous examinations of each insured depository institution or insured credit union, unless such institution requests examinations to be conducted separately;

(C) share each draft report of examination with the other agency and permit the receiving agency a reasonable opportunity (which shall not be less than a period of 30 days after the date of receipt) to comment on the draft report before such report is made final; and

(D) prior to issuing a final report of examination or taking supervisory action, take into consideration concerns, if any, raised in the comments made by the other agency.

(2) COORDINATION WITH STATE BANK SUPERVISORS.—The Bureau shall pursue arrangements and agreements with State bank supervisors to coordinate examinations, consistent with paragraph (1).

(3) AVOIDANCE OF CONFLICT IN SUPERVISION.—

(A) REQUEST.—If the proposed supervisory determinations of the Bureau and a prudential regulator (in this section referred to collectively as the "agencies") are conflicting, an insured depository institution, insured credit union, or other covered person described in subsection (a) may request the agencies to coordinate and present a joint statement of coordinated supervisory action.

(B) JOINT STATEMENT.—The agencies shall provide a joint statement under subparagraph (A), not later than 30 days after the date of receipt of the request of the insured depository institution, credit union, or covered person described in subsection (a).

(4) APPEALS TO GOVERNING PANEL.—

(A) IN GENERAL.—If the agencies do not resolve the conflict or issue a joint statement required by subparagraph (B), or if either of the agencies takes or attempts to take any supervisory action relating to the request for the joint statement without the consent of the other agency, an insured depository institution, insured credit union, or other covered person described in subsection (a) may institute an appeal to a governing panel, as provided in this subsection, not later than 30 days after the expiration of the period during which a joint statement is required to be filed under paragraph (3)(B).

(B) COMPOSITION OF GOVERNING PANEL.—The governing panel for an appeal under this paragraph shall be composed of—

(i) a representative from the Bureau and a representative of the prudential regulator, both of whom—

(I) have not participated in the material supervisory determinations under appeal; and

(II) do not directly or indirectly report to the person who participated materially in the supervisory determinations under appeal; and

(ii) one individual representative, to be determined on a rotating basis, from among the Board of Governors, the Corporation, the National Credit Union Administration, and the Office of the Comptroller of the Currency, other than any agency involved in the subject dispute.

(C) CONDUCT OF APPEAL.—In an appeal under this paragraph—

(i) the insured depository institution, insured credit union, or other covered person described in subsection (a)—

(I) shall include in its appeal all the facts and legal arguments pertaining to the matter; and

(II) may, through counsel, employees, or representatives, appear before the governing panel in person or by telephone; and

(ii) the governing panel—

(I) may request the insured depository institution, insured credit union, or other covered person described in subsection (a), the Bureau, or the prudential regulator to produce additional information relevant to the appeal; and

(II) by a majority vote of its members, shall provide a final determination, in writing, not later than 30 days after the date of filing of an informationally complete appeal, or such longer period as the panel and the insured depository institution, insured credit union, or other covered person described in subsection (a) may jointly agree.

(D) PUBLIC AVAILABILITY OF DETERMINATIONS.—A governing panel shall publish all information contained in a determination by the governing panel, with appropriate redactions of information that would be subject to an exemption from disclosure under section 552 of title 5, United States Code.

(E) PROHIBITION AGAINST RETALIATION.—The Bureau and the prudential regulators shall prescribe rules to provide safeguards from retaliation against the insured depository institution, insured credit union, or other covered person described in subsection (a) instituting an appeal under this paragraph, as well as their officers and employees.

(F) LIMITATION.—The process provided in this paragraph shall not apply to a determination by a prudential regulator to appoint a conservator or receiver for an insured depository institution or a liquidating agent for an insured credit union, as the case may be, or a decision to take action pursuant to section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831o) or section 212 of the Federal Credit Union Act (112 U.S.C. 1790a), as applicable.

(G) EFFECT ON OTHER AUTHORITY.—Nothing in this section shall modify or limit the authority of the Bureau to interpret, or take enforcement action under, any Federal consumer financial law, or the authority of a prudential regulator to interpret or take enforcement action under any other provision of Federal law for safety and soundness purposes.

SEC. 1026. OTHER BANKS, SAVINGS ASSOCIATIONS, AND CREDIT UNIONS.

(a) SCOPE OF COVERAGE.—This section shall apply to any covered person that is—

(1) an insured depository institution with total assets of $10,000,000,000 or less; or

(2) an insured credit union with total assets of $10,000,000,000 or less.

(b) REPORTS.—The Director may require reports from a person described in subsection (a), as necessary to support the role of the Bureau in implementing Federal consumer financial law, to

support its examination activities under subsection (c), and to assess and detect risks to consumers and consumer financial markets.

(1) USE OF EXISTING REPORTS.—The Bureau shall, to the fullest extent possible, use—

(A) reports pertaining to a person described in subsection (a) that have been provided or required to have been provided to a Federal or State agency; and

(B) information that has been reported publicly.

(2) PRESERVATION OF AUTHORITY.—Nothing in this subsection may be construed as limiting the authority of the Director from requiring from a person described in subsection (a), as permitted under paragraph (1), information owned or under the control of such person, regardless of whether such information is maintained, stored, or processed by another person.

(3) REPORTS OF TAX LAW NONCOMPLIANCE.—The Bureau shall provide the Commissioner of Internal Revenue with any report of examination or related information identifying possible tax law noncompliance.

(c) EXAMINATIONS.—

(1) IN GENERAL.—The Bureau may, at its discretion, include examiners on a sampling basis of the examinations performed by the prudential regulator to assess compliance with the requirements of Federal consumer financial law of persons described in subsection (a).

(2) AGENCY COORDINATION.—The prudential regulator shall—

(A) provide all reports, records, and documentation related to the examination process for any institution included in the sample referred to in paragraph (1) to the Bureau on a timely and continual basis;

(B) involve such Bureau examiner in the entire examination process for such person; and

(C) consider input of the Bureau concerning the scope of an examination, conduct of the examination, the contents of the examination report, the designation of matters requiring attention, and examination ratings.

(d) ENFORCEMENT.—

(1) IN GENERAL.—Except for requiring reports under subsection (b), the prudential regulator is authorized to enforce the requirements of Federal consumer financial laws and, with respect to a covered person described in subsection (a), shall have exclusive authority (relative to the Bureau) to enforce such laws .

(2) COORDINATION WITH PRUDENTIAL REGULATOR.—

(A) REFERRAL.—When the Bureau has reason to believe that a person described in subsection (a) has engaged in a material violation of a Federal consumer financial law, the Bureau shall notify the prudential regulator in writing and recommend appropriate action to respond.

(B) RESPONSE.—Upon receiving a recommendation under subparagraph (A), the prudential regulator shall provide a written response to the Bureau not later than 60 days thereafter.

(e) SERVICE PROVIDERS.—A service provider to a substantial number of persons described in subsection (a) shall be subject to the authority of the Bureau under section 1025 to the same

extent as if the Bureau were an appropriate Federal bank agency under section 7(c) of the Bank Service Company Act (12 U.S.C. 1867(c)). When conducting any examination or requiring any report from a service provider subject to this subsection, the Bureau shall coordinate with the appropriate prudential regulator.

SEC. 1027. LIMITATIONS ON AUTHORITIES OF THE BUREAU; PRESERVATION OF AUTHORITIES.

(a) EXCLUSION FOR MERCHANTS, RETAILERS, AND OTHER SELLERS OF NONFINANCIAL GOODS OR SERVICES.—

(1) SALE OR BROKERAGE OF NONFINANCIAL GOOD OR SERVICE.—The Bureau may not exercise any rulemaking, supervisory, enforcement or other authority under this title with respect to a person who is a merchant, retailer, or seller of any nonfinancial good or service and is engaged in the sale or brokerage of such nonfinancial good or service, except to the extent that such person is engaged in offering or providing any consumer financial product or service, or is otherwise subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H.

(2) OFFERING OR PROVISION OF CERTAIN CONSUMER FINANCIAL PRODUCTS OR SERVICES IN CONNECTION WITH THE SALE OR BROKERAGE OF NONFINANCIAL GOOD OR SERVICE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), and subject to subparagraph (C), the Bureau may not exercise any rulemaking, supervisory, enforcement, or other authority under this title with respect to a merchant, retailer, or seller of nonfinancial goods or services, but only to the extent that such person—

(i) extends credit directly to a consumer, in a case in which the good or service being provided is not itself a consumer financial product or service (other than credit described in this subparagraph), exclusively for the purpose of enabling that consumer to purchase such nonfinancial good or service directly from the merchant, retailer, or seller;

(ii) directly, or through an agreement with another person, collects debt arising from credit extended as described in clause (i); or

(iii) sells or conveys debt described in clause (i) that is delinquent or otherwise in default.

(B) APPLICABILITY.—Subparagraph (A) does not apply to any credit transaction or collection of debt, other than as described in subparagraph (C)(i), arising from a transaction described in subparagraph (A)—

(i) in which the merchant, retailer, or seller of nonfinancial goods or services assigns, sells or otherwise conveys to another person such debt owed by the consumer (except for a sale of debt that is delinquent or otherwise in default, as described in subparagraph (A)(iii));

(ii) in which the credit extended significantly exceeds the market value of the nonfinancial good or service provided, or the Bureau otherwise finds that the sale of the nonfinancial good or service is done as a subterfuge, so as to evade or circumvent the provisions of this title; or

(iii) in which the merchant, retailer, or seller of nonfinancial goods or services regularly extends credit and the credit is subject to a finance charge.

(C) LIMITATIONS.—

(i) IN GENERAL.—Notwithstanding subparagraph (B), subparagraph (A) shall apply with respect to a merchant, retailer, or seller of nonfinancial goods or services that is not engaged significantly in offering or providing consumer financial products or services.

(ii) EXCEPTION.—Subparagraph (A) and clause (i) of this subparagraph do not apply to any merchant, retailer, or seller of nonfinancial goods or services—

(I) if such merchant, retailer, or seller of nonfinancial goods or services is engaged in a transaction described in subparagraph (B)(i) or (B)(ii); or

(II) to the extent that such merchant, retailer, or seller is subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H, but the Bureau may exercise such authority only with respect to that law.

(D) RULES.—

(i) AUTHORITY OF OTHER AGENCIES.—No provision of this title shall be construed as modifying, limiting, or superseding the supervisory or enforcement authority of the Federal Trade Commission or any other agency (other than the Bureau) with respect to credit extended, or the collection of debt arising from such extension, directly by a merchant or retailer to a consumer exclusively for the purpose of enabling that consumer to purchase nonfinancial goods or services directly from the merchant or retailer.

(ii) SMALL BUSINESSES.—A merchant, retailer, or seller of nonfinancial goods or services that would otherwise be subject to the authority of the Bureau solely by virtue of the application of subparagraph (B)(iii) shall be deemed not to be engaged significantly in offering or providing consumer financial products or services under subparagraph (C)(i), if such person—

(I) only extends credit for the sale of nonfinancial goods or services, as described in subparagraph (A)(i);

(II) retains such credit on its own accounts (except to sell or convey such debt that is delinquent or otherwise in default); and

(III) meets the relevant industry size threshold to be a small business concern, based on annual receipts, pursuant to section 3 of the Small Business Act (15 U.S.C. 632) and the implementing rules thereunder.

(iii) INITIAL YEAR.—A merchant, retailer, or seller of nonfinancial goods or services shall be deemed to meet the relevant industry size threshold described in clause (ii)(III) during the first year of operations of that business concern if, during that year, the

receipts of that business concern reasonably are expected to meet that size threshold.

(iv) OTHER STANDARDS FOR SMALL BUSINESS.—With respect to a merchant, retailer, or seller of nonfinancial goods or services that is a classified on a basis other than annual receipts for the purposes of section 3 of the Small Business Act (15 U.S.C. 632) and the implementing rules thereunder, such merchant, retailer, or seller shall be deemed to meet the relevant industry size threshold described in clause (ii)(III) if such merchant, retailer, or seller meets the relevant industry size threshold to be a small business concern based on the number of employees, or other such applicable measure, established under that Act.

(E) EXCEPTION FROM STATE ENFORCEMENT.—To the extent that the Bureau may not exercise authority under this subsection with respect to a merchant, retailer, or seller of nonfinancial goods or services, no action by a State attorney general or State regulator with respect to a claim made under this title may be brought under subsection 1042(a), with respect to an activity described in any of clauses (i) through (iii) of subparagraph (A) by such merchant, retailer, or seller of nonfinancial goods or services.

(b) EXCLUSION FOR REAL ESTATE BROKERAGE ACTIVITIES.—

(1) REAL ESTATE BROKERAGE ACTIVITIES EXCLUDED.—Without limiting subsection (a), and except as permitted in paragraph (2), the Bureau may not exercise any rulemaking, supervisory, enforcement, or other authority under this title with respect to a person that is licensed or registered as a real estate broker or real estate agent, in accordance with State law, to the extent that such person—

(A) acts as a real estate agent or broker for a buyer, seller, lessor, or lessee of real property;

(B) brings together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(C) negotiates, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than in connection with the provision of financing with respect to any such transaction); or

(D) offers to engage in any activity, or act in any capacity, described in subparagraph (A), (B), or (C).

(2) DESCRIPTION OF ACTIVITIES.—The Bureau may exercise rulemaking, supervisory, enforcement, or other authority under this title with respect to a person described in paragraph (1) when such person is—

(A) engaged in an activity of offering or providing any consumer financial product or service, except that the Bureau may exercise such authority only with respect to that activity; or

(B) otherwise subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H, but the Bureau may exercise such authority only with respect to that law.

(c) EXCLUSION FOR MANUFACTURED HOME RETAILERS AND MODULAR HOME RETAILERS.—

(1) IN GENERAL.—The Director may not exercise any rulemaking, supervisory, enforcement, or other authority over a person to the extent that—

(A) such person is not described in paragraph (2); and

(B) such person—

(i) acts as an agent or broker for a buyer or seller of a manufactured home or a modular home;

(ii) facilitates the purchase by a consumer of a manufactured home or modular home, by negotiating the purchase price or terms of the sales contract (other than providing financing with respect to such transaction); or

(iii) offers to engage in any activity described in clause (i) or (ii).

(2) DESCRIPTION OF ACTIVITIES.—A person is described in this paragraph to the extent that such person is engaged in the offering or provision of any consumer financial product or service or is otherwise subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H.

(3) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

(A) MANUFACTURED HOME.—The term "manufactured home" has the same meaning as in section 603 of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5402).

(B) MODULAR HOME.—The term "modular home" means a house built in a factory in 2 or more modules that meet the State or local building codes where the house will be located, and where such modules are transported to the building site, installed on foundations, and completed.

(d) EXCLUSION FOR ACCOUNTANTS AND TAX PREPARERS.—

(1) IN GENERAL.—Except as permitted in paragraph (2), the Bureau may not exercise any rulemaking, supervisory, enforcement, or other authority over—

(A) any person that is a certified public accountant, permitted to practice as a certified public accounting firm, or certified or licensed for such purpose by a State, or any individual who is employed by or holds an ownership interest with respect to a person described in this subparagraph, when such person is performing or offering to perform—

(i) customary and usual accounting activities, including the provision of accounting, tax, advisory, or other services that are subject to the regulatory authority of a State board of accountancy or a Federal authority; or

(ii) other services that are incidental to such customary and usual accounting activities, to the extent that such incidental services are not offered or provided—

(I) by the person separate and apart from such customary and usual accounting activities; or

(II) to consumers who are not receiving such customary and usual accounting activities; or

(B) any person, other than a person described in subparagraph (A) that performs income tax preparation activities for consumers.

(2) DESCRIPTION OF ACTIVITIES.—

(A) IN GENERAL.—Paragraph (1) shall not apply to any person described in paragraph (1)(A) or (1)(B) to the extent that such person is engaged in any activity which is not a customary and usual accounting activity described in paragraph (1)(A) or incidental thereto but which is the offering or provision of any consumer financial product or service, except to the extent that a person described in paragraph (1)(A) is engaged in an activity which is a customary and usual accounting activity described in paragraph (1)(A), or incidental thereto.

(B) NOT A CUSTOMARY AND USUAL ACCOUNTING ACTIVITY.—For purposes of this subsection, extending or brokering credit is not a customary and usual accounting activity, or incidental thereto.

(C) RULE OF CONSTRUCTION.—For purposes of subparagraphs (A) and (B), a person described in paragraph (1)(A) shall not be deemed to be extending credit, if such person is only extending credit directly to a consumer, exclusively for the purpose of enabling such consumer to purchase services described in clause (i) or (ii) of paragraph (1)(A) directly from such person, and such credit is—

(i) not subject to a finance charge; and

(ii) not payable by written agreement in more than 4 installments.

(D) OTHER LIMITATIONS.—Paragraph (1) does not apply to any person described in paragraph (1)(A) or (1)(B) that is otherwise subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H.

(e) EXCLUSION FOR PRACTICE OF LAW.—

(1) IN GENERAL.—Except as provided under paragraph (2), the Bureau may not exercise any supervisory or enforcement authority with respect to an activity engaged in by an attorney as part of the practice of law under the laws of a State in which the attorney is licensed to practice law.

(2) RULE OF CONSTRUCTION.—Paragraph (1) shall not be construed so as to limit the exercise by the Bureau of any supervisory, enforcement, or other authority regarding the offering or provision of a consumer financial product or service described in any subparagraph of section 1002(5)—

(A) that is not offered or provided as part of, or incidental to, the practice of law, occurring exclusively within the scope of the attorney-client relationship; or

(B) that is otherwise offered or provided by the attorney in question with respect to any consumer who is not receiving legal advice or services from the attorney in connection with such financial product or service.

(3) EXISTING AUTHORITY.—Paragraph (1) shall not be construed so as to limit the authority of the Bureau with respect to any attorney, to the extent that such attorney is otherwise subject to any of the enumerated consumer laws or the authorities transferred under subtitle F or H.

(f) EXCLUSION FOR PERSONS REGULATED BY A STATE INSURANCE REGULATOR.—

(1) IN GENERAL.—No provision of this title shall be construed as altering, amending, or affecting the authority of any State insurance regulator to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by a State insurance regulator. Except as provided in paragraph (2), the Bureau shall have no authority to exercise any power to enforce this title with respect to a person regulated by a State insurance regulator.

(2) DESCRIPTION OF ACTIVITIES.—Paragraph (1) does not apply to any person described in such paragraph to the extent that such person is engaged in the offering or provision of any consumer financial product or service or is otherwise subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H.

(3) STATE INSURANCE AUTHORITY UNDER GRAMM-LEACH-BLILEY.—Notwithstanding paragraph (2), the Bureau shall not exercise any authorities that are granted a State insurance authority under section 505(a)(6) of the Gramm-Leach-Bliley Act with respect to a person regulated by a State insurance authority.

(g) EXCLUSION FOR EMPLOYEE BENEFIT AND COMPENSATION PLANS AND CERTAIN OTHER ARRANGEMENTS UNDER THE INTERNAL REVENUE CODE OF 1986.—

(1) PRESERVATION OF AUTHORITY OF OTHER AGENCIES.—No provision of this title shall be construed as altering, amending, or affecting the authority of the Secretary of the Treasury, the Secretary of Labor, or the Commissioner of Internal Revenue to adopt regulations, initiate enforcement proceedings, or take any actions with respect to any specified plan or arrangement.

(2) ACTIVITIES NOT CONSTITUTING THE OFFERING OR PROVISION OF ANY CONSUMER FINANCIAL PRODUCT OR SERVICE.—For purposes of this title, a person shall not be treated as having engaged in the offering or provision of any consumer financial product or service solely because such person is—

(A) a specified plan or arrangement;

(B) engaged in the activity of establishing or maintaining, for the benefit of employees of such person (or for members of an employee organization), any specified plan or arrangement; or

(C) engaged in the activity of establishing or maintaining a qualified tuition program under section 529(b)(1) of the Internal Revenue Code of 1986 offered by a State or other prepaid tuition program offered by a State.

(3) LIMITATION ON BUREAU AUTHORITY.—

(A) IN GENERAL.—Except as provided under subparagraphs (B) and (C), the Bureau may not exercise any rulemaking or enforcement authority with respect to products or services that relate to any specified plan or arrangement.

(B) BUREAU ACTION PURSUANT TO AGENCY REQUEST.—

(i) AGENCY REQUEST.—The Secretary and the Secretary of Labor may jointly issue a written request to the Bureau regarding implementation of appropriate consumer protection standards under this title with

respect to the provision of services relating to any specified plan or arrangement.

(ii) AGENCY RESPONSE.—In response to a request by the Bureau, the Secretary and the Secretary of Labor shall jointly issue a written response, not later than 90 days after receipt of such request, to grant or deny the request of the Bureau regarding implementation of appropriate consumer protection standards under this title with respect to the provision of services relating to any specified plan or arrangement.

(iii) SCOPE OF BUREAU ACTION.—Subject to a request or response pursuant to clause (i) or clause (ii) by the agencies made under this subparagraph, the Bureau may exercise rulemaking authority, and may act to enforce a rule prescribed pursuant to such request or response, in accordance with the provisions of this title. A request or response made by the Secretary and the Secretary of Labor under this subparagraph shall describe the basis for, and scope of, appropriate consumer protection standards to be implemented under this title with respect to the provision of services relating to any specified plan or arrangement.

(C) DESCRIPTION OF PRODUCTS OR SERVICES.—To the extent that a person engaged in providing products or services relating to any specified plan or arrangement is subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H, subparagraph (A) shall not apply with respect to that law.

(4) SPECIFIED PLAN OR ARRANGEMENT.—For purposes of this subsection, the term "specified plan or arrangement" means any plan, account, or arrangement described in section 220, 223, 401(a), 403(a), 403(b), 408, 408A, 529, or 530 of the Internal Revenue Code of 1986, or any employee benefit or compensation plan or arrangement, including a plan that is subject to title I of the Employee Retirement Income Security Act of 1974, or any prepaid tuition program offered by a State.

(h) PERSONS REGULATED BY A STATE SECURITIES COMMISSION.—

(1) IN GENERAL.—No provision of this title shall be construed as altering, amending, or affecting the authority of any securities commission (or any agency or office performing like functions) of any State to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by any securities commission (or any agency or office performing like functions) of any State. Except as permitted in paragraph (2) and subsection (f), the Bureau shall have no authority to exercise any power to enforce this title with respect to a person regulated by any securities commission (or any agency or office performing like functions) of any State, but only to the extent that the person acts in such regulated capacity.

(2) DESCRIPTION OF ACTIVITIES.—Paragraph (1) shall not apply to any person to the extent such person is engaged in the offering or provision of any consumer financial product or service, or is otherwise subject to any enumerated consumer

law or any law for which authorities are transferred under subtitle F or H.

(i) EXCLUSION FOR PERSONS REGULATED BY THE COMMISSION.—

(1) IN GENERAL.—No provision of this title may be construed as altering, amending, or affecting the authority of the Commission to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by the Commission. The Bureau shall have no authority to exercise any power to enforce this title with respect to a person regulated by the Commission.

(2) CONSULTATION AND COORDINATION.—Notwithstanding paragraph (1), the Commission shall consult and coordinate, where feasible, with the Bureau with respect to any rule (including any advance notice of proposed rulemaking) regarding an investment product or service that is the same type of product as, or that competes directly with, a consumer financial product or service that is subject to the jurisdiction of the Bureau under this title or under any other law. In carrying out this paragraph, the agencies shall negotiate an agreement to establish procedures for such coordination, including procedures for providing advance notice to the Bureau when the Commission is initiating a rulemaking.

(j) EXCLUSION FOR PERSONS REGULATED BY THE COMMODITY FUTURES TRADING COMMISSION.—

(1) IN GENERAL.—No provision of this title shall be construed as altering, amending, or affecting the authority of the Commodity Futures Trading Commission to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by the Commodity Futures Trading Commission. The Bureau shall have no authority to exercise any power to enforce this title with respect to a person regulated by the Commodity Futures Trading Commission.

(2) CONSULTATION AND COORDINATION.—Notwithstanding paragraph (1), the Commodity Futures Trading Commission shall consult and coordinate with the Bureau with respect to any rule (including any advance notice of proposed rulemaking) regarding a product or service that is the same type of product as, or that competes directly with, a consumer financial product or service that is subject to the jurisdiction of the Bureau under this title or under any other law.

(k) EXCLUSION FOR PERSONS REGULATED BY THE FARM CREDIT ADMINISTRATION.—

(1) IN GENERAL.—No provision of this title shall be construed as altering, amending, or affecting the authority of the Farm Credit Administration to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by the Farm Credit Administration. The Bureau shall have no authority to exercise any power to enforce this title with respect to a person regulated by the Farm Credit Administration.

(2) DEFINITION.—For purposes of this subsection, the term "person regulated by the Farm Credit Administration" means any Farm Credit System institution that is chartered and subject to the provisions of the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.).

(l) EXCLUSION FOR ACTIVITIES RELATING TO CHARITABLE CONTRIBUTIONS.—

(1) IN GENERAL.—The Director and the Bureau may not exercise any rulemaking, supervisory, enforcement, or other authority, including authority to order penalties, over any activities related to the solicitation or making of voluntary contributions to a tax-exempt organization as recognized by the Internal Revenue Service, by any agent, volunteer, or representative of such organizations to the extent the organization, agent, volunteer, or representative thereof is soliciting or providing advice, information, education, or instruction to any donor or potential donor relating to a contribution to the organization.

(2) LIMITATION.—The exclusion in paragraph (1) does not apply to other activities not described in paragraph (1) that are the offering or provision of any consumer financial product or service, or are otherwise subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H.

(m) INSURANCE.—The Bureau may not define as a financial product or service, by regulation or otherwise, engaging in the business of insurance.

(n) LIMITED AUTHORITY OF THE BUREAU.—Notwithstanding subsections (a) through (h) and (l), a person subject to or described in one or more of such provisions—

(1) may be a service provider; and

(2) may be subject to requests from, or requirements imposed by, the Bureau regarding information in order to carry out the responsibilities and functions of the Bureau and in accordance with section 1022, 1052, or 1053.

(o) NO AUTHORITY TO IMPOSE USURY LIMIT.—No provision of this title shall be construed as conferring authority on the Bureau to establish a usury limit applicable to an extension of credit offered or made by a covered person to a consumer, unless explicitly authorized by law.

(p) ATTORNEY GENERAL.—No provision of this title, including section 1024(c)(1), shall affect the authorities of the Attorney General under otherwise applicable provisions of law.

(q) SECRETARY OF THE TREASURY.—No provision of this title shall affect the authorities of the Secretary, including with respect to prescribing rules, initiating enforcement proceedings, or taking other actions with respect to a person that performs income tax preparation activities for consumers.

(r) DEPOSIT INSURANCE AND SHARE INSURANCE.—Nothing in this title shall affect the authority of the Corporation under the Federal Deposit Insurance Act or the National Credit Union Administration Board under the Federal Credit Union Act as to matters related to deposit insurance and share insurance, respectively.

(s) FAIR HOUSING ACT.—No provision of this title shall be construed as affecting any authority arising under the Fair Housing Act.

SEC. 1028. AUTHORITY TO RESTRICT MANDATORY PRE-DISPUTE ARBITRATION.

(a) STUDY AND REPORT.—The Bureau shall conduct a study of, and shall provide a report to Congress concerning, the use of agreements providing for arbitration of any future dispute

between covered persons and consumers in connection with the offering or providing of consumer financial products or services.

(b) FURTHER AUTHORITY.—The Bureau, by regulation, may prohibit or impose conditions or limitations on the use of an agreement between a covered person and a consumer for a consumer financial product or service providing for arbitration of any future dispute between the parties, if the Bureau finds that such a prohibition or imposition of conditions or limitations is in the public interest and for the protection of consumers. The findings in such rule shall be consistent with the study conducted under subsection (a).

(c) LIMITATION.—The authority described in subsection (b) may not be construed to prohibit or restrict a consumer from entering into a voluntary arbitration agreement with a covered person after a dispute has arisen.

(d) EFFECTIVE DATE.—Notwithstanding any other provision of law, any regulation prescribed by the Bureau under subsection (b) shall apply, consistent with the terms of the regulation, to any agreement between a consumer and a covered person entered into after the end of the 180-day period beginning on the effective date of the regulation, as established by the Bureau.

SEC. 1029. EXCLUSION FOR AUTO DEALERS.

(a) SALE, SERVICING, AND LEASING OF MOTOR VEHICLES EXCLUDED.—Except as permitted in subsection (b), the Bureau may not exercise any rulemaking, supervisory, enforcement or any other authority, including any authority to order assessments, over a motor vehicle dealer that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.

(b) CERTAIN FUNCTIONS EXCEPTED.—Subsection (a) shall not apply to any person, to the extent that such person—

(1) provides consumers with any services related to residential or commercial mortgages or self-financing transactions involving real property;

(2) operates a line of business—

(A) that involves the extension of retail credit or retail leases involving motor vehicles; and

(B) in which—

(i) the extension of retail credit or retail leases are provided directly to consumers; and

(ii) the contract governing such extension of retail credit or retail leases is not routinely assigned to an unaffiliated third party finance or leasing source; or

(3) offers or provides a consumer financial product or service not involving or related to the sale, financing, leasing, rental, repair, refurbishment, maintenance, or other servicing of motor vehicles, motor vehicle parts, or any related or ancillary product or service.

(c) PRESERVATION OF AUTHORITIES OF OTHER AGENCIES.—Except as provided in subsections (b) and (d), nothing in this title, including subtitle F, shall be construed as modifying, limiting, or superseding the operation of any provision of Federal law, or otherwise affecting the authority of the Board of Governors, the Federal Trade Commission, or any other Federal agency, with respect to a person described in subsection (a).

(d) FEDERAL TRADE COMMISSION AUTHORITY.—Notwithstanding section 18 of the Federal Trade Commission Act, the Federal Trade

Commission is authorized to prescribe rules under sections 5 and 18(a)(1)(B) of the Federal Trade Commission Act. in accordance with section 553 of title 5, United States Code, with respect to a person described in subsection (a).

(e) COORDINATION WITH OFFICE OF SERVICE MEMBER AFFAIRS.—The Board of Governors and the Federal Trade Commission shall coordinate with the Office of Service Member Affairs, to ensure that—

(1) service members and their families are educated and empowered to make better informed decisions regarding consumer financial products and services offered by motor vehicle dealers, with a focus on motor vehicle dealers in the proximity of military installations; and

(2) complaints by service members and their families concerning such motor vehicle dealers are effectively monitored and responded to, and where appropriate, enforcement action is pursued by the authorized agencies.

(f) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

(1) MOTOR VEHICLE.—The term "motor vehicle" means—

(A) any self-propelled vehicle designed for transporting persons or property on a street, highway, or other road;

(B) recreational boats and marine equipment;

(C) motorcycles;

(D) motor homes, recreational vehicle trailers, and slide-in campers, as those terms are defined in sections 571.3 and 575.103 (d) of title 49, Code of Federal Regulations, or any successor thereto; and

(E) other vehicles that are titled and sold through dealers.

(2) MOTOR VEHICLE DEALER.—The term "motor vehicle dealer" means any person or resident in the United States, or any territory of the United States, who—

(A) is licensed by a State, a territory of the United States, or the District of Columbia to engage in the sale of motor vehicles; and

(B) takes title to, holds an ownership in, or takes physical custody of motor vehicles.

SEC. 1029A. EFFECTIVE DATE.

This subtitle shall become effective on the designated transfer date, except that sections 1022, 1024, and 1025(e) shall become effective on the date of enactment of this Act.

Subtitle C—Specific Bureau Authorities

SEC. 1031. PROHIBITING UNFAIR, DECEPTIVE, OR ABUSIVE ACTS OR PRACTICES.

(a) IN GENERAL.—The Bureau may take any action authorized under subtitle E to prevent a covered person or service provider from committing or engaging in an unfair, deceptive, or abusive act or practice under Federal law in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service.

(b) RULEMAKING.—The Bureau may prescribe rules applicable to a covered person or service provider identifying as unlawful

unfair, deceptive, or abusive acts or practices in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service. Rules under this section may include requirements for the purpose of preventing such acts or practices.

(c) UNFAIRNESS.—

(1) IN GENERAL.—The Bureau shall have no authority under this section to declare an act or practice in connection with a transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service, to be unlawful on the grounds that such act or practice is unfair, unless the Bureau has a reasonable basis to conclude that—

(A) the act or practice causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers; and

(B) such substantial injury is not outweighed by countervailing benefits to consumers or to competition.

(2) CONSIDERATION OF PUBLIC POLICIES.—In determining whether an act or practice is unfair, the Bureau may consider established public policies as evidence to be considered with all other evidence. Such public policy considerations may not serve as a primary basis for such determination.

(d) ABUSIVE.—The Bureau shall have no authority under this section to declare an act or practice abusive in connection with the provision of a consumer financial product or service, unless the act or practice—

(1) materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service; or

(2) takes unreasonable advantage of—

(A) a lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service;

(B) the inability of the consumer to protect the interests of the consumer in selecting or using a consumer financial product or service; or

(C) the reasonable reliance by the consumer on a covered person to act in the interests of the consumer.

(e) CONSULTATION.—In prescribing rules under this section, the Bureau shall consult with the Federal banking agencies, or other Federal agencies, as appropriate, concerning the consistency of the proposed rule with prudential, market, or systemic objectives administered by such agencies.

(f) CONSIDERATION OF SEASONAL INCOME.—The rules of the Bureau under this section shall provide, with respect to an extension of credit secured by residential real estate or a dwelling, if documented income of the borrower, including income from a small business, is a repayment source for an extension of credit secured by residential real estate or a dwelling, the creditor may consider the seasonality and irregularity of such income in the underwriting of and scheduling of payments for such credit.

SEC. 1032. DISCLOSURES.

(a) IN GENERAL.—The Bureau may prescribe rules to ensure that the features of any consumer financial product or service, both initially and over the term of the product or service, are

fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.

(b) MODEL DISCLOSURES.—

(1) IN GENERAL.—Any final rule prescribed by the Bureau under this section requiring disclosures may include a model form that may be used at the option of the covered person for provision of the required disclosures.

(2) FORMAT.—A model form issued pursuant to paragraph (1) shall contain a clear and conspicuous disclosure that, at a minimum—

(A) uses plain language comprehensible to consumers;

(B) contains a clear format and design, such as an easily readable type font; and

(C) succinctly explains the information that must be communicated to the consumer.

(3) CONSUMER TESTING.—Any model form issued pursuant to this subsection shall be validated through consumer testing.

(c) BASIS FOR RULEMAKING.—In prescribing rules under this section, the Bureau shall consider available evidence about consumer awareness, understanding of, and responses to disclosures or communications about the risks, costs, and benefits of consumer financial products or services.

(d) SAFE HARBOR.—Any covered person that uses a model form included with a rule issued under this section shall be deemed to be in compliance with the disclosure requirements of this section with respect to such model form.

(e) TRIAL DISCLOSURE PROGRAMS.—

(1) IN GENERAL.—The Bureau may permit a covered person to conduct a trial program that is limited in time and scope, subject to specified standards and procedures, for the purpose of providing trial disclosures to consumers that are designed to improve upon any model form issued pursuant to subsection (b)(1), or any other model form issued to implement an enumerated statute, as applicable.

(2) SAFE HARBOR.—The standards and procedures issued by the Bureau shall be designed to encourage covered persons to conduct trial disclosure programs. For the purposes of administering this subsection, the Bureau may establish a limited period during which a covered person conducting a trial disclosure program shall be deemed to be in compliance with, or may be exempted from, a requirement of a rule or an enumerated consumer law.

(3) PUBLIC DISCLOSURE.—The rules of the Bureau shall provide for public disclosure of trial disclosure programs, which public disclosure may be limited, to the extent necessary to encourage covered persons to conduct effective trials.

(f) COMBINED MORTGAGE LOAN DISCLOSURE.—Not later than 1 year after the designated transfer date, the Bureau shall propose for public comment rules and model disclosures that combine the disclosures required under the Truth in Lending Act and sections 4 and 5 of the Real Estate Settlement Procedures Act of 1974, into a single, integrated disclosure for mortgage loan transactions covered by those laws, unless the Bureau determines that any proposal issued by the Board of Governors and the Secretary of Housing and Urban Development carries out the same purpose.

SEC. 1033. CONSUMER RIGHTS TO ACCESS INFORMATION.

(a) IN GENERAL.—Subject to rules prescribed by the Bureau, a covered person shall make available to a consumer, upon request, information in the control or possession of the covered person concerning the consumer financial product or service that the consumer obtained from such covered person, including information relating to any transaction, series of transactions, or to the account including costs, charges and usage data. The information shall be made available in an electronic form usable by consumers.

(b) EXCEPTIONS.—A covered person may not be required by this section to make available to the consumer—

(1) any confidential commercial information, including an algorithm used to derive credit scores or other risk scores or predictors;

(2) any information collected by the covered person for the purpose of preventing fraud or money laundering, or detecting, or making any report regarding other unlawful or potentially unlawful conduct;

(3) any information required to be kept confidential by any other provision of law; or

(4) any information that the covered person cannot retrieve in the ordinary course of its business with respect to that information.

(c) NO DUTY TO MAINTAIN RECORDS.—Nothing in this section shall be construed to impose any duty on a covered person to maintain or keep any information about a consumer.

(d) STANDARDIZED FORMATS FOR DATA.—The Bureau, by rule, shall prescribe standards applicable to covered persons to promote the development and use of standardized formats for information, including through the use of machine readable files, to be made available to consumers under this section.

(e) CONSULTATION.—The Bureau shall, when prescribing any rule under this section, consult with the Federal banking agencies and the Federal Trade Commission to ensure, to the extent appropriate, that the rules—

(1) impose substantively similar requirements on covered persons;

(2) take into account conditions under which covered persons do business both in the United States and in other countries; and

(3) do not require or promote the use of any particular technology in order to develop systems for compliance.

SEC. 1034. RESPONSE TO CONSUMER COMPLAINTS AND INQUIRIES.

(a) TIMELY REGULATOR RESPONSE TO CONSUMERS.—The Bureau shall establish, in consultation with the appropriate Federal regulatory agencies, reasonable procedures to provide a timely response to consumers, in writing where appropriate, to complaints against, or inquiries concerning, a covered person, including—

(1) steps that have been taken by the regulator in response to the complaint or inquiry of the consumer;

(2) any responses received by the regulator from the covered person; and

(3) any follow-up actions or planned follow-up actions by the regulator in response to the complaint or inquiry of the consumer.

(b) TIMELY RESPONSE TO REGULATOR BY COVERED PERSON.—A covered person subject to supervision and primary enforcement by the Bureau pursuant to section 1025 shall provide a timely response, in writing where appropriate, to the Bureau, the prudential regulators, and any other agency having jurisdiction over such covered person concerning a consumer complaint or inquiry, including—

(1) steps that have been taken by the covered person to respond to the complaint or inquiry of the consumer;

(2) responses received by the covered person from the consumer; and

(3) follow-up actions or planned follow-up actions by the covered person to respond to the complaint or inquiry of the consumer.

(c) PROVISION OF INFORMATION TO CONSUMERS.—

(1) IN GENERAL.—A covered person subject to supervision and primary enforcement by the Bureau pursuant to section 1025 shall, in a timely manner, comply with a consumer request for information in the control or possession of such covered person concerning the consumer financial product or service that the consumer obtained from such covered person, including supporting written documentation, concerning the account of the consumer.

(2) EXCEPTIONS.—A covered person subject to supervision and primary enforcement by the Bureau pursuant to section 1025, a prudential regulator, and any other agency having jurisdiction over a covered person subject to supervision and primary enforcement by the Bureau pursuant to section 1025 may not be required by this section to make available to the consumer—

(A) any confidential commercial information, including an algorithm used to derive credit scores or other risk scores or predictors;

(B) any information collected by the covered person for the purpose of preventing fraud or money laundering, or detecting or making any report regarding other unlawful or potentially unlawful conduct;

(C) any information required to be kept confidential by any other provision of law; or

(D) any nonpublic or confidential information, including confidential supervisory information.

(d) AGREEMENTS WITH OTHER AGENCIES.—The Bureau shall enter into a memorandum of understanding with any affected Federal regulatory agency regarding procedures by which any covered person, and the prudential regulators, and any other agency having jurisdiction over a covered person, including the Secretary of the Department of Housing and Urban Development and the Secretary of Education, shall comply with this section.

SEC. 1035. PRIVATE EDUCATION LOAN OMBUDSMAN.

(a) ESTABLISHMENT.—The Secretary, in consultation with the Director, shall designate a Private Education Loan Ombudsman (in this section referred to as the "Ombudsman") within the Bureau, to provide timely assistance to borrowers of private education loans.

(b) PUBLIC INFORMATION.—The Secretary and the Director shall disseminate information about the availability and functions of the Ombudsman to borrowers and potential borrowers, as well

as institutions of higher education, lenders, guaranty agencies, loan servicers, and other participants in private education student loan programs.

(c) FUNCTIONS OF OMBUDSMAN.—The Ombudsman designated under this subsection shall—

(1) in accordance with regulations of the Director, receive, review, and attempt to resolve informally complaints from borrowers of loans described in subsection (a), including, as appropriate, attempts to resolve such complaints in collaboration with the Department of Education and with institutions of higher education, lenders, guaranty agencies, loan servicers, and other participants in private education loan programs;

(2) not later than 90 days after the designated transfer date, establish a memorandum of understanding with the student loan ombudsman established under section 141(f) of the Higher Education Act of 1965 (20 U.S.C. 1018(f)), to ensure coordination in providing assistance to and serving borrowers seeking to resolve complaints related to their private education or Federal student loans;

(3) compile and analyze data on borrower complaints regarding private education loans; and

(4) make appropriate recommendations to the Director, the Secretary, the Secretary of Education, the Committee on Banking, Housing, and Urban Affairs and the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Financial Services and the Committee on Education and Labor of the House of Representatives.

(d) ANNUAL REPORTS.—

(1) IN GENERAL.—The Ombudsman shall prepare an annual report that describes the activities, and evaluates the effectiveness of the Ombudsman during the preceding year.

(2) SUBMISSION.—The report required by paragraph (1) shall be submitted on the same date annually to the Secretary, the Secretary of Education, the Committee on Banking, Housing, and Urban Affairs and the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Financial Services and the Committee on Education and Labor of the House of Representatives.

(e) DEFINITIONS.—For purposes of this section, the terms "private education loan" and "institution of higher education" have the same meanings as in section 140 of the Truth in Lending Act (15 U.S.C. 1650).

SEC. 1036. PROHIBITED ACTS.

(a) IN GENERAL.—It shall be unlawful for—

(1) any covered person or service provider—

(A) to offer or provide to a consumer any financial product or service not in conformity with Federal consumer financial law, or otherwise commit any act or omission in violation of a Federal consumer financial law; or

(B) to engage in any unfair, deceptive, or abusive act or practice;

(2) any covered person or service provider to fail or refuse, as required by Federal consumer financial law, or any rule or order issued by the Bureau thereunder—

(A) to permit access to or copying of records;

(B) to establish or maintain records; or

(C) to make reports or provide information to the Bureau; or

(3) any person to knowingly or recklessly provide substantial assistance to a covered person or service provider in violation of the provisions of section 1031, or any rule or order issued thereunder, and notwithstanding any provision of this title, the provider of such substantial assistance shall be deemed to be in violation of that section to the same extent as the person to whom such assistance is provided.

(b) EXCEPTION.—No person shall be held to have violated subsection (a)(1) solely by virtue of providing or selling time or space to a covered person or service provider placing an advertisement.

SEC. 1037. EFFECTIVE DATE.

This subtitle shall take effect on the designated transfer date.

Subtitle D—Preservation of State Law

SEC. 1041. RELATION TO STATE LAW.

(a) IN GENERAL.—

(1) RULE OF CONSTRUCTION.—This title, other than sections 1044 through 1048, may not be construed as annulling, altering, or affecting, or exempting any person subject to the provisions of this title from complying with, the statutes, regulations, orders, or interpretations in effect in any State, except to the extent that any such provision of law is inconsistent with the provisions of this title, and then only to the extent of the inconsistency.

(2) GREATER PROTECTION UNDER STATE LAW.—For purposes of this subsection, a statute, regulation, order, or interpretation in effect in any State is not inconsistent with the provisions of this title if the protection that such statute, regulation, order, or interpretation affords to consumers is greater than the protection provided under this title. A determination regarding whether a statute, regulation, order, or interpretation in effect in any State is inconsistent with the provisions of this title may be made by the Bureau on its own motion or in response to a nonfrivolous petition initiated by any interested person.

(b) RELATION TO OTHER PROVISIONS OF ENUMERATED CONSUMER LAWS THAT RELATE TO STATE LAW.—No provision of this title, except as provided in section 1083, shall be construed as modifying, limiting, or superseding the operation of any provision of an enumerated consumer law that relates to the application of a law in effect in any State with respect to such Federal law.

(c) ADDITIONAL CONSUMER PROTECTION REGULATIONS IN RESPONSE TO STATE ACTION.—

(1) NOTICE OF PROPOSED RULE REQUIRED.—The Bureau shall issue a notice of proposed rulemaking whenever a majority of the States has enacted a resolution in support of the establishment or modification of a consumer protection regulation by the Bureau.

(2) BUREAU CONSIDERATIONS REQUIRED FOR ISSUANCE OF FINAL REGULATION.—Before prescribing a final regulation based upon a notice issued pursuant to paragraph (1), the Bureau shall take into account whether—

(A) the proposed regulation would afford greater protection to consumers than any existing regulation;

(B) the intended benefits of the proposed regulation for consumers would outweigh any increased costs or inconveniences for consumers, and would not discriminate unfairly against any category or class of consumers; and

(C) a Federal banking agency has advised that the proposed regulation is likely to present an unacceptable safety and soundness risk to insured depository institutions.

(3) EXPLANATION OF CONSIDERATIONS.—The Bureau—

(A) shall include a discussion of the considerations required in paragraph (2) in the Federal Register notice of a final regulation prescribed pursuant to this subsection; and

(B) whenever the Bureau determines not to prescribe a final regulation, shall publish an explanation of such determination in the Federal Register, and provide a copy of such explanation to each State that enacted a resolution in support of the proposed regulation, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives.

(4) RESERVATION OF AUTHORITY.—No provision of this subsection shall be construed as limiting or restricting the authority of the Bureau to enhance consumer protection standards established pursuant to this title in response to its own motion or in response to a request by any other interested person.

(5) RULE OF CONSTRUCTION.—No provision of this subsection shall be construed as exempting the Bureau from complying with subchapter II of chapter 5 of title 5, United States Code.

(6) DEFINITION.—For purposes of this subsection, the term "consumer protection regulation" means a regulation that the Bureau is authorized to prescribe under the Federal consumer financial laws.

SEC. 1042. PRESERVATION OF ENFORCEMENT POWERS OF STATES.

(a) IN GENERAL.—

(1) ACTION BY STATE.—Except as provided in paragraph (2), the attorney general (or the equivalent thereof) of any State may bring a civil action in the name of such State in any district court of the United States in that State or in State court that is located in that State and that has jurisdiction over the defendant, to enforce provisions of this title or regulations issued under this title, and to secure remedies under provisions of this title or remedies otherwise provided under other law. A State regulator may bring a civil action or other appropriate proceeding to enforce the provisions of this title or regulations issued under this title with respect to any entity that is State-chartered, incorporated, licensed, or otherwise authorized to do business under State law (except as provided in paragraph (2)), and to secure remedies under provisions of this title or remedies otherwise provided under other provisions of law with respect to such an entity.

(2) ACTION BY STATE AGAINST NATIONAL BANK OR FEDERAL SAVINGS ASSOCIATION TO ENFORCE RULES.—

(A) IN GENERAL.—Except as permitted under subparagraph (B), the attorney general (or equivalent thereof) of any State may not bring a civil action in the name of such State against a national bank or Federal savings association to enforce a provision of this title.

(B) ENFORCEMENT OF RULES PERMITTED.—The attorney general (or the equivalent thereof) of any State may bring a civil action in the name of such State against a national bank or Federal savings association in any district court of the United States in the State or in State court that is located in that State and that has jurisdiction over the defendant to enforce a regulation prescribed by the Bureau under a provision of this title and to secure remedies under provisions of this title or remedies otherwise provided under other law.

(3) RULE OF CONSTRUCTION.—No provision of this title shall be construed as modifying, limiting, or superseding the operation of any provision of an enumerated consumer law that relates to the authority of a State attorney general or State regulator to enforce such Federal law.

(b) CONSULTATION REQUIRED.—

(1) NOTICE.—

(A) IN GENERAL.—Before initiating any action in a court or other administrative or regulatory proceeding against any covered person as authorized by subsection (a) to enforce any provision of this title, including any regulation prescribed by the Bureau under this title, a State attorney general or State regulator shall timely provide a copy of the complete complaint to be filed and written notice describing such action or proceeding to the Bureau and the prudential regulator, if any, or the designee thereof.

(B) EMERGENCY ACTION.—If prior notice is not practicable, the State attorney general or State regulator shall provide a copy of the complete complaint and the notice to the Bureau and the prudential regulator, if any, immediately upon instituting the action or proceeding.

(C) CONTENTS OF NOTICE.—The notification required under this paragraph shall, at a minimum, describe—

(i) the identity of the parties;

(ii) the alleged facts underlying the proceeding; and

(iii) whether there may be a need to coordinate the prosecution of the proceeding so as not to interfere with any action, including any rulemaking, undertaken by the Bureau, a prudential regulator, or another Federal agency.

(2) BUREAU RESPONSE.—In any action described in paragraph (1), the Bureau may—

(A) intervene in the action as a party;

(B) upon intervening—

(i) remove the action to the appropriate United States district court, if the action was not originally brought there; and

(ii) be heard on all matters arising in the action; and

(C) appeal any order or judgment, to the same extent as any other party in the proceeding may.

(c) REGULATIONS.—The Bureau shall prescribe regulations to implement the requirements of this section and, from time to time, provide guidance in order to further coordinate actions with the State attorneys general and other regulators.

(d) PRESERVATION OF STATE AUTHORITY.—

(1) STATE CLAIMS.—No provision of this section shall be construed as altering, limiting, or affecting the authority of a State attorney general or any other regulatory or enforcement agency or authority to bring an action or other regulatory proceeding arising solely under the law in effect in that State.

(2) STATE SECURITIES REGULATORS.—No provision of this title shall be construed as altering, limiting, or affecting the authority of a State securities commission (or any agency or office performing like functions) under State law to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by such commission or authority.

(3) STATE INSURANCE REGULATORS.—No provision of this title shall be construed as altering, limiting, or affecting the authority of a State insurance commission or State insurance regulator under State law to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by such commission or regulator.

SEC. 1043. PRESERVATION OF EXISTING CONTRACTS.

This title, and regulations, orders, guidance, and interpretations prescribed, issued, or established by the Bureau, shall not be construed to alter or affect the applicability of any regulation, order, guidance, or interpretation prescribed, issued, and established by the Comptroller of the Currency or the Director of the Office of Thrift Supervision regarding the applicability of State law under Federal banking law to any contract entered into on or before the date of enactment of this Act, by national banks, Federal savings associations, or subsidiaries thereof that are regulated and supervised by the Comptroller of the Currency or the Director of the Office of Thrift Supervision, respectively.

SEC. 1044. STATE LAW PREEMPTION STANDARDS FOR NATIONAL BANKS AND SUBSIDIARIES CLARIFIED.

(a) IN GENERAL.—Chapter one of title LXII of the Revised Statutes of the United States (12 U.S.C. 21 et seq.) is amended by inserting after section 5136B the following new section:

"SEC. 5136C. STATE LAW PREEMPTION STANDARDS FOR NATIONAL BANKS AND SUBSIDIARIES CLARIFIED.

"(a) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

"(1) NATIONAL BANK.—The term 'national bank' includes—

"(A) any bank organized under the laws of the United States; and

"(B) any Federal branch established in accordance with the International Banking Act of 1978.

"(2) STATE CONSUMER FINANCIAL LAWS.—The term 'State consumer financial law' means a State law that does not directly or indirectly discriminate against national banks and that

directly and specifically regulates the manner, content, or terms and conditions of any financial transaction (as may be authorized for national banks to engage in), or any account related thereto, with respect to a consumer.

"(3) OTHER DEFINITIONS.—The terms 'affiliate', 'subsidiary', 'includes', and 'including' have the same meanings as in section 3 of the Federal Deposit Insurance Act.

"(b) PREEMPTION STANDARD.—

"(1) IN GENERAL.—State consumer financial laws are preempted, only if—

"(A) application of a State consumer financial law would have a discriminatory effect on national banks, in comparison with the effect of the law on a bank chartered by that State;

"(B) in accordance with the legal standard for preemption in the decision of the Supreme Court of the United States in Barnett Bank of Marion County, N. A. v. Nelson, Florida Insurance Commissioner, et al., 517 U.S. 25 (1996), the State consumer financial law prevents or significantly interferes with the exercise by the national bank of its powers; and any preemption determination under this subparagraph may be made by a court, or by regulation or order of the Comptroller of the Currency on a case-by-case basis, in accordance with applicable law; or

"(C) the State consumer financial law is preempted by a provision of Federal law other than this title.

"(2) SAVINGS CLAUSE.—This title and section 24 of the Federal Reserve Act (12 U.S.C. 371) do not preempt, annul, or affect the applicability of any State law to any subsidiary or affiliate of a national bank (other than a subsidiary or affiliate that is chartered as a national bank).

"(3) CASE-BY-CASE BASIS.—

"(A) DEFINITION.—As used in this section the term 'case-by-case basis' refers to a determination pursuant to this section made by the Comptroller concerning the impact of a particular State consumer financial law on any national bank that is subject to that law, or the law of any other State with substantively equivalent terms.

"(B) CONSULTATION.—When making a determination on a case-by-case basis that a State consumer financial law of another State has substantively equivalent terms as one that the Comptroller is preempting, the Comptroller shall first consult with the Bureau of Consumer Financial Protection and shall take the views of the Bureau into account when making the determination.

"(4) RULE OF CONSTRUCTION.—This title does not occupy the field in any area of State law.

"(5) STANDARDS OF REVIEW.—

"(A) PREEMPTION.—A court reviewing any determinations made by the Comptroller regarding preemption of a State law by this title or section 24 of the Federal Reserve Act (12 U.S.C. 371) shall assess the validity of such determinations, depending upon the thoroughness evident in the consideration of the agency, the validity of the reasoning of the agency, the consistency with other valid determinations made by the agency, and other factors

which the court finds persuasive and relevant to its decision.

"(B) SAVINGS CLAUSE.—Except as provided in subparagraph (A), nothing in this section shall affect the deference that a court may afford to the Comptroller in making determinations regarding the meaning or interpretation of title LXII of the Revised Statutes of the United States or other Federal laws.

"(6) COMPTROLLER DETERMINATION NOT DELEGABLE.—Any regulation, order, or determination made by the Comptroller of the Currency under paragraph (1)(B) shall be made by the Comptroller, and shall not be delegable to another officer or employee of the Comptroller of the Currency.

"(c) SUBSTANTIAL EVIDENCE.—No regulation or order of the Comptroller of the Currency prescribed under subsection (b)(1)(B), shall be interpreted or applied so as to invalidate, or otherwise declare inapplicable to a national bank, the provision of the State consumer financial law, unless substantial evidence, made on the record of the proceeding, supports the specific finding regarding the preemption of such provision in accordance with the legal standard of the decision of the Supreme Court of the United States in Barnett Bank of Marion County, N.A. v. Nelson, Florida Insurance Commissioner, et al., 517 U.S. 25 (1996).

"(d) PERIODIC REVIEW OF PREEMPTION DETERMINATIONS.—

"(1) IN GENERAL.—The Comptroller of the Currency shall periodically conduct a review, through notice and public comment, of each determination that a provision of Federal law preempts a State consumer financial law. The agency shall conduct such review within the 5-year period after prescribing or otherwise issuing such determination, and at least once during each 5-year period thereafter. After conducting the review of, and inspecting the comments made on, the determination, the agency shall publish a notice in the Federal Register announcing the decision to continue or rescind the determination or a proposal to amend the determination. Any such notice of a proposal to amend a determination and the subsequent resolution of such proposal shall comply with the procedures set forth in subsections (a) and (b) of section 5244 of the Revised Statutes of the United States (12 U.S.C. 43 (a), (b)).

"(2) REPORTS TO CONGRESS.—At the time of issuing a review conducted under paragraph (1), the Comptroller of the Currency shall submit a report regarding such review to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate. The report submitted to the respective committees shall address whether the agency intends to continue, rescind, or propose to amend any determination that a provision of Federal law preempts a State consumer financial law, and the reasons therefor.

"(e) APPLICATION OF STATE CONSUMER FINANCIAL LAW TO SUBSIDIARIES AND AFFILIATES.—Notwithstanding any provision of this title or section 24 of Federal Reserve Act (12 U.S.C. 371), a State consumer financial law shall apply to a subsidiary or affiliate of a national bank (other than a subsidiary or affiliate that is chartered as a national bank) to the same extent that

the State consumer financial law applies to any person, corporation, or other entity subject to such State law.

"(f) PRESERVATION OF POWERS RELATED TO CHARGING INTEREST.—No provision of this title shall be construed as altering or otherwise affecting the authority conferred by section 5197 of the Revised Statutes of the United States (12 U.S.C. 85) for the charging of interest by a national bank at the rate allowed by the laws of the State, territory, or district where the bank is located, including with respect to the meaning of 'interest' under such provision.

"(g) TRANSPARENCY OF OCC PREEMPTION DETERMINATIONS.—The Comptroller of the Currency shall publish and update no less frequently than quarterly, a list of preemption determinations by the Comptroller of the Currency then in effect that identifies the activities and practices covered by each determination and the requirements and constraints determined to be preempted.".

(b) CLERICAL AMENDMENT.—The table of sections for chapter one of title LXII of the Revised Statutes of the United States is amended by inserting after the item relating to section 5136B the following new item:

"Sec. 5136C. State law preemption standards for national banks and subsidiaries clarified.".

SEC. 1045. CLARIFICATION OF LAW APPLICABLE TO NONDEPOSITORY INSTITUTION SUBSIDIARIES.

Section 5136C of the Revised Statutes of the United States (as added by this subtitle) is amended by adding at the end the following:

"(h) CLARIFICATION OF LAW APPLICABLE TO NONDEPOSITORY INSTITUTION SUBSIDIARIES AND AFFILIATES OF NATIONAL BANKS.—

"(1) DEFINITIONS.—For purposes of this subsection, the terms 'depository institution', 'subsidiary', and 'affiliate' have the same meanings as in section 3 of the Federal Deposit Insurance Act.

"(2) RULE OF CONSTRUCTION.—No provision of this title or section 24 of the Federal Reserve Act (12 U.S.C. 371) shall be construed as preempting, annulling, or affecting the applicability of State law to any subsidiary, affiliate, or agent of a national bank (other than a subsidiary, affiliate, or agent that is chartered as a national bank).".

SEC. 1046. STATE LAW PREEMPTION STANDARDS FOR FEDERAL SAVINGS ASSOCIATIONS AND SUBSIDIARIES CLARIFIED.

(a) IN GENERAL.—The Home Owners' Loan Act (12 U.S.C. 1461 et seq.) is amended by inserting after section 5 the following new section:

"SEC. 6. STATE LAW PREEMPTION STANDARDS FOR FEDERAL SAVINGS ASSOCIATIONS CLARIFIED.

"(a) IN GENERAL.—Any determination by a court or by the Director or any successor officer or agency regarding the relation of State law to a provision of this Act or any regulation or order prescribed under this Act shall be made in accordance with the laws and legal standards applicable to national banks regarding the preemption of State law.

"(b) PRINCIPLES OF CONFLICT PREEMPTION APPLICABLE.—Notwithstanding the authorities granted under sections 4 and 5, this Act does not occupy the field in any area of State law.".

(b) CLERICAL AMENDMENT.—The table of sections for the Home Owners' Loan Act (12 U.S.C. 1461 et seq.) is amended by striking the item relating to section 6 and inserting the following new item:

"Sec. 6. State law preemption standards for Federal savings associations and subsidiaries clarified.".

SEC. 1047. VISITORIAL STANDARDS FOR NATIONAL BANKS AND SAVINGS ASSOCIATIONS.

(a) NATIONAL BANKS.—Section 5136C of the Revised Statutes of the United States (as added by this subtitle) is amended by adding at the end the following:

"(i) VISITORIAL POWERS.—

"(1) IN GENERAL.—In accordance with the decision of the Supreme Court of the United States in Cuomo v. Clearing House Assn., L. L. C. (129 S. Ct. 2710 (2009)), no provision of this title which relates to visitorial powers or otherwise limits or restricts the visitorial authority to which any national bank is subject shall be construed as limiting or restricting the authority of any attorney general (or other chief law enforcement officer) of any State to bring an action against a national bank in a court of appropriate jurisdiction to enforce an applicable law and to seek relief as authorized by such law.

"(j) ENFORCEMENT ACTIONS.—The ability of the Comptroller of the Currency to bring an enforcement action under this title or section 5 of the Federal Trade Commission Act does not preclude any private party from enforcing rights granted under Federal or State law in the courts.".

(b) SAVINGS ASSOCIATIONS.—Section 6 of the Home Owners' Loan Act (as added by this title) is amended by adding at the end the following:

"(c) VISITORIAL POWERS.—The provisions of sections 5136C(i) of the Revised Statutes of the United States shall apply to Federal savings associations, and any subsidiary thereof, to the same extent and in the same manner as if such savings associations, or subsidiaries thereof, were national banks or subsidiaries of national banks, respectively."

"(d) ENFORCEMENT ACTIONS.—The ability of the Comptroller of the Currency to bring an enforcement action under this Act or section 5 of the Federal Trade Commission Act does not preclude any private party from enforcing rights granted under Federal or State law in the courts.".

SEC. 1048. EFFECTIVE DATE.

This subtitle shall become effective on the designated transfer date.

Subtitle E—Enforcement Powers

SEC. 1051. DEFINITIONS.

For purposes of this subtitle, the following definitions shall apply:

(1) BUREAU INVESTIGATION.—The term "Bureau investigation" means any inquiry conducted by a Bureau investigator for the purpose of ascertaining whether any person is or has

been engaged in any conduct that is a violation, as defined in this section.

(2) BUREAU INVESTIGATOR.—The term "Bureau investigator" means any attorney or investigator employed by the Bureau who is charged with the duty of enforcing or carrying into effect any Federal consumer financial law.

(3) CUSTODIAN.—The term "custodian" means the custodian or any deputy custodian designated by the Bureau.

(4) DOCUMENTARY MATERIAL.—The term "documentary material" includes the original or any copy of any book, document, record, report, memorandum, paper, communication, tabulation, chart, logs, electronic files, or other data or data compilations stored in any medium.

(5) VIOLATION.—The term "violation" means any act or omission that, if proved, would constitute a violation of any provision of Federal consumer financial law.

SEC. 1052. INVESTIGATIONS AND ADMINISTRATIVE DISCOVERY.

(a) JOINT INVESTIGATIONS.—

(1) IN GENERAL.—The Bureau or, where appropriate, a Bureau investigator, may engage in joint investigations and requests for information, as authorized under this title.

(2) FAIR LENDING.—The authority under paragraph (1) includes matters relating to fair lending, and where appropriate, joint investigations with, and requests for information from, the Secretary of Housing and Urban Development, the Attorney General of the United States, or both.

(b) SUBPOENAS.—

(1) IN GENERAL.—The Bureau or a Bureau investigator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, documents, or other material in connection with hearings under this title.

(2) FAILURE TO OBEY.—In the case of contumacy or refusal to obey a subpoena issued pursuant to this paragraph and served upon any person, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the Bureau or a Bureau investigator and after notice to such person, may issue an order requiring such person to appear and give testimony or to appear and produce documents or other material.

(3) CONTEMPT.—Any failure to obey an order of the court under this subsection may be punished by the court as a contempt thereof.

(c) DEMANDS.—

(1) IN GENERAL.—Whenever the Bureau has reason to believe that any person may be in possession, custody, or control of any documentary material or tangible things, or may have any information, relevant to a violation, the Bureau may, before the institution of any proceedings under the Federal consumer financial law, issue in writing, and cause to be served upon such person, a civil investigative demand requiring such person to—

(A) produce such documentary material for inspection and copying or reproduction in the form or medium requested by the Bureau;

(B) submit such tangible things;

(C) file written reports or answers to questions;

(D) give oral testimony concerning documentary material, tangible things, or other information; or

(E) furnish any combination of such material, answers, or testimony.

(2) REQUIREMENTS.—Each civil investigative demand shall state the nature of the conduct constituting the alleged violation which is under investigation and the provision of law applicable to such violation.

(3) PRODUCTION OF DOCUMENTS.—Each civil investigative demand for the production of documentary material shall—

(A) describe each class of documentary material to be produced under the demand with such definiteness and certainty as to permit such material to be fairly identified;

(B) prescribe a return date or dates which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying or reproduction; and

(C) identify the custodian to whom such material shall be made available.

(4) PRODUCTION OF THINGS.—Each civil investigative demand for the submission of tangible things shall—

(A) describe each class of tangible things to be submitted under the demand with such definiteness and certainty as to permit such things to be fairly identified;

(B) prescribe a return date or dates which will provide a reasonable period of time within which the things so demanded may be assembled and submitted; and

(C) identify the custodian to whom such things shall be submitted.

(5) DEMAND FOR WRITTEN REPORTS OR ANSWERS.—Each civil investigative demand for written reports or answers to questions shall—

(A) propound with definiteness and certainty the reports to be produced or the questions to be answered;

(B) prescribe a date or dates at which time written reports or answers to questions shall be submitted; and

(C) identify the custodian to whom such reports or answers shall be submitted.

(6) ORAL TESTIMONY.—Each civil investigative demand for the giving of oral testimony shall—

(A) prescribe a date, time, and place at which oral testimony shall be commenced; and

(B) identify a Bureau investigator who shall conduct the investigation and the custodian to whom the transcript of such investigation shall be submitted.

(7) SERVICE.—Any civil investigative demand issued, and any enforcement petition filed, under this section may be served—

(A) by any Bureau investigator at any place within the territorial jurisdiction of any court of the United States; and

(B) upon any person who is not found within the territorial jurisdiction of any court of the United States—

(i) in such manner as the Federal Rules of Civil Procedure prescribe for service in a foreign nation; and

(ii) to the extent that the courts of the United States have authority to assert jurisdiction over such person, consistent with due process, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance with this section by such person that such district court would have if such person were personally within the jurisdiction of such district court.

(8) METHOD OF SERVICE.—Service of any civil investigative demand or any enforcement petition filed under this section may be made upon a person, including any legal entity, by—

(A) delivering a duly executed copy of such demand or petition to the individual or to any partner, executive officer, managing agent, or general agent of such person, or to any agent of such person authorized by appointment or by law to receive service of process on behalf of such person;

(B) delivering a duly executed copy of such demand or petition to the principal office or place of business of the person to be served; or

(C) depositing a duly executed copy in the United States mails, by registered or certified mail, return receipt requested, duly addressed to such person at the principal office or place of business of such person.

(9) PROOF OF SERVICE.—

(A) IN GENERAL.—A verified return by the individual serving any civil investigative demand or any enforcement petition filed under this section setting forth the manner of such service shall be proof of such service.

(B) RETURN RECEIPTS.—In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand or enforcement petition.

(10) PRODUCTION OF DOCUMENTARY MATERIAL.—The production of documentary material in response to a civil investigative demand shall be made under a sworn certificate, in such form as the demand designates, by the person, if a natural person, to whom the demand is directed or, if not a natural person, by any person having knowledge of the facts and circumstances relating to such production, to the effect that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the custodian.

(11) SUBMISSION OF TANGIBLE THINGS.—The submission of tangible things in response to a civil investigative demand shall be made under a sworn certificate, in such form as the demand designates, by the person to whom the demand is directed or, if not a natural person, by any person having knowledge of the facts and circumstances relating to such production, to the effect that all of the tangible things required by the demand and in the possession, custody, or control of the person to whom the demand is directed have been submitted to the custodian.

(12) SEPARATE ANSWERS.—Each reporting requirement or question in a civil investigative demand shall be answered separately and fully in writing under oath, unless it is objected

to, in which event the reasons for the objection shall be stated in lieu of an answer, and it shall be submitted under a sworn certificate, in such form as the demand designates, by the person, if a natural person, to whom the demand is directed or, if not a natural person, by any person responsible for answering each reporting requirement or question, to the effect that all information required by the demand and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted.

(13) TESTIMONY.—

(A) IN GENERAL.—

(i) OATH AND RECORDATION.—The examination of any person pursuant to a demand for oral testimony served under this subsection shall be taken before an officer authorized to administer oaths and affirmations by the laws of the United States or of the place at which the examination is held. The officer before whom oral testimony is to be taken shall put the witness on oath or affirmation and shall personally, or by any individual acting under the direction of and in the presence of the officer, record the testimony of the witness.

(ii) TRANSCRIPTION.—The testimony shall be taken stenographically and transcribed.

(iii) TRANSMISSION TO CUSTODIAN.—After the testimony is fully transcribed, the officer investigator before whom the testimony is taken shall promptly transmit a copy of the transcript of the testimony to the custodian.

(B) PARTIES PRESENT.—Any Bureau investigator before whom oral testimony is to be taken shall exclude from the place where the testimony is to be taken all other persons, except the person giving the testimony, the attorney for that person, the officer before whom the testimony is to be taken, an investigator or representative of an agency with which the Bureau is engaged in a joint investigation, and any stenographer taking such testimony.

(C) LOCATION.—The oral testimony of any person taken pursuant to a civil investigative demand shall be taken in the judicial district of the United States in which such person resides, is found, or transacts business, or in such other place as may be agreed upon by the Bureau investigator before whom the oral testimony of such person is to be taken and such person.

(D) ATTORNEY REPRESENTATION.—

(i) IN GENERAL.—Any person compelled to appear under a civil investigative demand for oral testimony pursuant to this section may be accompanied, represented, and advised by an attorney.

(ii) AUTHORITY.—The attorney may advise a person described in clause (i), in confidence, either upon the request of such person or upon the initiative of the attorney, with respect to any question asked of such person.

(iii) OBJECTIONS.—A person described in clause (i), or the attorney for that person, may object on the record to any question, in whole or in part, and such

person shall briefly state for the record the reason for the objection. An objection may properly be made, received, and entered upon the record when it is claimed that such person is entitled to refuse to answer the question on grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination, but such person shall not otherwise object to or refuse to answer any question, and such person or attorney shall not otherwise interrupt the oral examination.

(iv) REFUSAL TO ANSWER.—If a person described in clause (i) refuses to answer any question—

(I) the Bureau may petition the district court of the United States pursuant to this section for an order compelling such person to answer such question; and

(II) if the refusal is on grounds of the privilege against self-incrimination, the testimony of such person may be compelled in accordance with the provisions of section 6004 of title 18, United States Code.

(E) TRANSCRIPTS.—For purposes of this subsection—

(i) after the testimony of any witness is fully transcribed, the Bureau investigator shall afford the witness (who may be accompanied by an attorney) a reasonable opportunity to examine the transcript;

(ii) the transcript shall be read to or by the witness, unless such examination and reading are waived by the witness;

(iii) any changes in form or substance which the witness desires to make shall be entered and identified upon the transcript by the Bureau investigator, with a statement of the reasons given by the witness for making such changes;

(iv) the transcript shall be signed by the witness, unless the witness in writing waives the signing, is ill, cannot be found, or refuses to sign; and

(v) if the transcript is not signed by the witness during the 30-day period following the date on which the witness is first afforded a reasonable opportunity to examine the transcript, the Bureau investigator shall sign the transcript and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with any reasons given for the failure to sign.

(F) CERTIFICATION BY INVESTIGATOR.—The Bureau investigator shall certify on the transcript that the witness was duly sworn by him or her and that the transcript is a true record of the testimony given by the witness, and the Bureau investigator shall promptly deliver the transcript or send it by registered or certified mail to the custodian.

(G) COPY OF TRANSCRIPT.—The Bureau investigator shall furnish a copy of the transcript (upon payment of reasonable charges for the transcript) to the witness only, except that the Bureau may for good cause limit such

witness to inspection of the official transcript of his testimony.

(H) WITNESS FEES.—Any witness appearing for the taking of oral testimony pursuant to a civil investigative demand shall be entitled to the same fees and mileage which are paid to witnesses in the district courts of the United States.

(d) CONFIDENTIAL TREATMENT OF DEMAND MATERIAL.—

(1) IN GENERAL.—Documentary materials and tangible things received as a result of a civil investigative demand shall be subject to requirements and procedures regarding confidentiality, in accordance with rules established by the Bureau.

(2) DISCLOSURE TO CONGRESS.—No rule established by the Bureau regarding the confidentiality of materials submitted to, or otherwise obtained by, the Bureau shall be intended to prevent disclosure to either House of Congress or to an appropriate committee of the Congress, except that the Bureau is permitted to adopt rules allowing prior notice to any party that owns or otherwise provided the material to the Bureau and had designated such material as confidential.

(e) PETITION FOR ENFORCEMENT.—

(1) IN GENERAL.—Whenever any person fails to comply with any civil investigative demand duly served upon him under this section, or whenever satisfactory copying or reproduction of material requested pursuant to the demand cannot be accomplished and such person refuses to surrender such material, the Bureau, through such officers or attorneys as it may designate, may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person, a petition for an order of such court for the enforcement of this section.

(2) SERVICE OF PROCESS.—All process of any court to which application may be made as provided in this subsection may be served in any judicial district.

(f) PETITION FOR ORDER MODIFYING OR SETTING ASIDE DEMAND.—

(1) IN GENERAL.—Not later than 20 days after the service of any civil investigative demand upon any person under subsection (b), or at any time before the return date specified in the demand, whichever period is shorter, or within such period exceeding 20 days after service or in excess of such return date as may be prescribed in writing, subsequent to service, by any Bureau investigator named in the demand, such person may file with the Bureau a petition for an order by the Bureau modifying or setting aside the demand.

(2) COMPLIANCE DURING PENDENCY.—The time permitted for compliance with the demand in whole or in part, as determined proper and ordered by the Bureau, shall not run during the pendency of a petition under paragraph (1) at the Bureau, except that such person shall comply with any portions of the demand not sought to be modified or set aside.

(3) SPECIFIC GROUNDS.—A petition under paragraph (1) shall specify each ground upon which the petitioner relies in seeking relief, and may be based upon any failure of the demand to comply with the provisions of this section, or upon any constitutional or other legal right or privilege of such person.

(g) CUSTODIAL CONTROL.—At any time during which any custodian is in custody or control of any documentary material, tangible things, reports, answers to questions, or transcripts of oral testimony given by any person in compliance with any civil investigative demand, such person may file, in the district court of the United States for the judicial district within which the office of such custodian is situated, and serve upon such custodian, a petition for an order of such court requiring the performance by such custodian of any duty imposed upon him by this section or rule promulgated by the Bureau.

(h) JURISDICTION OF COURT.—

(1) IN GENERAL.—Whenever any petition is filed in any district court of the United States under this section, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry out the provisions of this section.

(2) APPEAL.—Any final order entered as described in paragraph (1) shall be subject to appeal pursuant to section 1291 of title 28, United States Code.

SEC. 1053. HEARINGS AND ADJUDICATION PROCEEDINGS.

(a) IN GENERAL.—The Bureau is authorized to conduct hearings and adjudication proceedings with respect to any person in the manner prescribed by chapter 5 of title 5, United States Code in order to ensure or enforce compliance with—

(1) the provisions of this title, including any rules prescribed by the Bureau under this title; and

(2) any other Federal law that the Bureau is authorized to enforce, including an enumerated consumer law, and any regulations or order prescribed thereunder, unless such Federal law specifically limits the Bureau from conducting a hearing or adjudication proceeding and only to the extent of such limitation.

(b) SPECIAL RULES FOR CEASE-AND-DESIST PROCEEDINGS.—

(1) ORDERS AUTHORIZED.—

(A) IN GENERAL.—If, in the opinion of the Bureau, any covered person or service provider is engaging or has engaged in an activity that violates a law, rule, or any condition imposed in writing on the person by the Bureau, the Bureau may, subject to sections 1024, 1025, and 1026, issue and serve upon the covered person or service provider a notice of charges in respect thereof.

(B) CONTENT OF NOTICE.—The notice under subparagraph (A) shall contain a statement of the facts constituting the alleged violation or violations, and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist should issue against the covered person or service provider, such hearing to be held not earlier than 30 days nor later than 60 days after the date of service of such notice, unless an earlier or a later date is set by the Bureau, at the request of any party so served.

(C) CONSENT.—Unless the party or parties served under subparagraph (B) appear at the hearing personally or by a duly authorized representative, such person shall be deemed to have consented to the issuance of the cease-and-desist order.

(D) PROCEDURE.—In the event of consent under subparagraph (C), or if, upon the record, made at any such hearing, the Bureau finds that any violation specified in the notice of charges has been established, the Bureau may issue and serve upon the covered person or service provider an order to cease and desist from the violation or practice. Such order may, by provisions which may be mandatory or otherwise, require the covered person or service provider to cease and desist from the subject activity, and to take affirmative action to correct the conditions resulting from any such violation.

(2) EFFECTIVENESS OF ORDER.—A cease-and-desist order shall become effective at the expiration of 30 days after the date of service of an order under paragraph (1) upon the covered person or service provider concerned (except in the case of a cease-and-desist order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable as provided therein, except to such extent as the order is stayed, modified, terminated, or set aside by action of the Bureau or a reviewing court.

(3) DECISION AND APPEAL.—Any hearing provided for in this subsection shall be held in the Federal judicial district or in the territory in which the residence or principal office or place of business of the person is located unless the person consents to another place, and shall be conducted in accordance with the provisions of chapter 5 of title 5 of the United States Code. After such hearing, and within 90 days after the Bureau has notified the parties that the case has been submitted to the Bureau for final decision, the Bureau shall render its decision (which shall include findings of fact upon which its decision is predicated) and shall issue and serve upon each party to the proceeding an order or orders consistent with the provisions of this section. Judicial review of any such order shall be exclusively as provided in this subsection. Unless a petition for review is timely filed in a court of appeals of the United States, as provided in paragraph (4), and thereafter until the record in the proceeding has been filed as provided in paragraph (4), the Bureau may at any time, upon such notice and in such manner as the Bureau shall determine proper, modify, terminate, or set aside any such order. Upon filing of the record as provided, the Bureau may modify, terminate, or set aside any such order with permission of the court.

(4) APPEAL TO COURT OF APPEALS.—Any party to any proceeding under this subsection may obtain a review of any order served pursuant to this subsection (other than an order issued with the consent of the person concerned) by the filing in the court of appeals of the United States for the circuit in which the principal office of the covered person is located, or in the United States Court of Appeals for the District of Columbia Circuit, within 30 days after the date of service of such order, a written petition praying that the order of the Bureau be modified, terminated, or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Bureau, and thereupon the Bureau shall file in the court the record in the proceeding, as provided in section 2112 of title 28 of the United States Code. Upon the filing of such petition, such court shall have jurisdiction, which upon

the filing of the record shall except as provided in the last sentence of paragraph (3) be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Bureau. Review of such proceedings shall be had as provided in chapter 7 of title 5 of the United States Code. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court of the United States, upon certiorari, as provided in section 1254 of title 28 of the United States Code.

(5) NO STAY.—The commencement of proceedings for judicial review under paragraph (4) shall not, unless specifically ordered by the court, operate as a stay of any order issued by the Bureau.

(c) SPECIAL RULES FOR TEMPORARY CEASE-AND-DESIST PROCEEDINGS.—

(1) IN GENERAL.—Whenever the Bureau determines that the violation specified in the notice of charges served upon a person, including a service provider, pursuant to subsection (b), or the continuation thereof, is likely to cause the person to be insolvent or otherwise prejudice the interests of consumers before the completion of the proceedings conducted pursuant to subsection (b), the Bureau may issue a temporary order requiring the person to cease and desist from any such violation or practice and to take affirmative action to prevent or remedy such insolvency or other condition pending completion of such proceedings. Such order may include any requirement authorized under this subtitle. Such order shall become effective upon service upon the person and, unless set aside, limited, or suspended by a court in proceedings authorized by paragraph (2), shall remain effective and enforceable pending the completion of the administrative proceedings pursuant to such notice and until such time as the Bureau shall dismiss the charges specified in such notice, or if a cease-and-desist order is issued against the person, until the effective date of such order.

(2) APPEAL.—Not later than 10 days after the covered person or service provider concerned has been served with a temporary cease-and-desist order, the person may apply to the United States district court for the judicial district in which the residence or principal office or place of business of the person is located, or the United States District Court for the District of Columbia, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of such order pending the completion of the administrative proceedings pursuant to the notice of charges served upon the person under subsection (b), and such court shall have jurisdiction to issue such injunction.

(3) INCOMPLETE OR INACCURATE RECORDS.—

(A) TEMPORARY ORDER.—If a notice of charges served under subsection (b) specifies, on the basis of particular facts and circumstances, that the books and records of a covered person or service provider are so incomplete or inaccurate that the Bureau is unable to determine the financial condition of that person or the details or purpose of any transaction or transactions that may have a material effect on the financial condition of that person, the Bureau may issue a temporary order requiring—

(i) the cessation of any activity or practice which gave rise, whether in whole or in part, to the incomplete or inaccurate state of the books or records; or

(ii) affirmative action to restore such books or records to a complete and accurate state, until the completion of the proceedings under subsection (b)(1).

(B) EFFECTIVE PERIOD.—Any temporary order issued under subparagraph (A)—

(i) shall become effective upon service; and

(ii) unless set aside, limited, or suspended by a court in proceedings under paragraph (2), shall remain in effect and enforceable until the earlier of—

(I) the completion of the proceeding initiated under subsection (b) in connection with the notice of charges; or

(II) the date the Bureau determines, by examination or otherwise, that the books and records of the covered person or service provider are accurate and reflect the financial condition thereof.

(d) SPECIAL RULES FOR ENFORCEMENT OF ORDERS.—

(1) IN GENERAL.—The Bureau may in its discretion apply to the United States district court within the jurisdiction of which the principal office or place of business of the person is located, for the enforcement of any effective and outstanding notice or order issued under this section, and such court shall have jurisdiction and power to order and require compliance herewith.

(2) EXCEPTION.—Except as otherwise provided in this subsection, no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order or to review, modify, suspend, terminate, or set aside any such notice or order.

(e) RULES.—The Bureau shall prescribe rules establishing such procedures as may be necessary to carry out this section.

SEC. 1054. LITIGATION AUTHORITY.

(a) IN GENERAL.—If any person violates a Federal consumer financial law, the Bureau may, subject to sections 1024, 1025, and 1026, commence a civil action against such person to impose a civil penalty or to seek all appropriate legal and equitable relief including a permanent or temporary injunction as permitted by law.

(b) REPRESENTATION.—The Bureau may act in its own name and through its own attorneys in enforcing any provision of this title, rules thereunder, or any other law or regulation, or in any action, suit, or proceeding to which the Bureau is a party.

(c) COMPROMISE OF ACTIONS.—The Bureau may compromise or settle any action if such compromise is approved by the court.

(d) NOTICE TO THE ATTORNEY GENERAL.—

(1) IN GENERAL.—When commencing a civil action under Federal consumer financial law, or any rule thereunder, the Bureau shall notify the Attorney General and, with respect to a civil action against an insured depository institution or insured credit union, the appropriate prudential regulator.

(2) NOTICE AND COORDINATION.—

(A) NOTICE OF OTHER ACTIONS.—In addition to any notice required under paragraph (1), the Bureau shall

notify the Attorney General concerning any action, suit, or proceeding to which the Bureau is a party, except an action, suit, or proceeding that involves the offering or provision of consumer financial products or services.

(B) COORDINATION.—In order to avoid conflicts and promote consistency regarding litigation of matters under Federal law, the Attorney General and the Bureau shall consult regarding the coordination of investigations and proceedings, including by negotiating an agreement for coordination by not later than 180 days after the designated transfer date. The agreement under this subparagraph shall include provisions to ensure that parallel investigations and proceedings involving the Federal consumer financial laws are conducted in a manner that avoids conflicts and does not impede the ability of the Attorney General to prosecute violations of Federal criminal laws.

(C) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed to limit the authority of the Bureau under this title, including the authority to interpret Federal consumer financial law.

(e) APPEARANCE BEFORE THE SUPREME COURT.—The Bureau may represent itself in its own name before the Supreme Court of the United States, provided that the Bureau makes a written request to the Attorney General within the 10-day period which begins on the date of entry of the judgment which would permit any party to file a petition for writ of certiorari, and the Attorney General concurs with such request or fails to take action within 60 days of the request of the Bureau.

(f) FORUM.—Any civil action brought under this title may be brought in a United States district court or in any court of competent jurisdiction of a state in a district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to enjoin such person and to require compliance with any Federal consumer financial law.

(g) TIME FOR BRINGING ACTION.—

(1) IN GENERAL.—Except as otherwise permitted by law or equity, no action may be brought under this title more than 3 years after the date of discovery of the violation to which an action relates.

(2) LIMITATIONS UNDER OTHER FEDERAL LAWS.—

(A) IN GENERAL.—An action arising under this title does not include claims arising solely under enumerated consumer laws.

(B) BUREAU AUTHORITY.—In any action arising solely under an enumerated consumer law, the Bureau may commence, defend, or intervene in the action in accordance with the requirements of that provision of law, as applicable.

(C) TRANSFERRED AUTHORITY.—In any action arising solely under laws for which authorities were transferred under subtitles F and H, the Bureau may commence, defend, or intervene in the action in accordance with the requirements of that provision of law, as applicable.

SEC. 1055. RELIEF AVAILABLE.

(a) ADMINISTRATIVE PROCEEDINGS OR COURT ACTIONS.—

(1) JURISDICTION.—The court (or the Bureau, as the case may be) in an action or adjudication proceeding brought under Federal consumer financial law, shall have jurisdiction to grant any appropriate legal or equitable relief with respect to a violation of Federal consumer financial law, including a violation of a rule or order prescribed under a Federal consumer financial law.

(2) RELIEF.—Relief under this section may include, without limitation—

(A) rescission or reformation of contracts;

(B) refund of moneys or return of real property;

(C) restitution;

(D) disgorgement or compensation for unjust enrichment;

(E) payment of damages or other monetary relief;

(F) public notification regarding the violation, including the costs of notification;

(G) limits on the activities or functions of the person; and

(H) civil money penalties, as set forth more fully in subsection (c).

(3) NO EXEMPLARY OR PUNITIVE DAMAGES.—Nothing in this subsection shall be construed as authorizing the imposition of exemplary or punitive damages.

(b) RECOVERY OF COSTS.—In any action brought by the Bureau, a State attorney general, or any State regulator to enforce any Federal consumer financial law, the Bureau, the State attorney general, or the State regulator may recover its costs in connection with prosecuting such action if the Bureau, the State attorney general, or the State regulator is the prevailing party in the action.

(c) CIVIL MONEY PENALTY IN COURT AND ADMINISTRATIVE ACTIONS.—

(1) IN GENERAL.—Any person that violates, through any act or omission, any provision of Federal consumer financial law shall forfeit and pay a civil penalty pursuant to this subsection.

(2) PENALTY AMOUNTS.—

(A) FIRST TIER.—For any violation of a law, rule, or final order or condition imposed in writing by the Bureau, a civil penalty may not exceed $5,000 for each day during which such violation or failure to pay continues.

(B) SECOND TIER.—Notwithstanding paragraph (A), for any person that recklessly engages in a violation of a Federal consumer financial law, a civil penalty may not exceed $25,000 for each day during which such violation continues.

(C) THIRD TIER.—Notwithstanding subparagraphs (A) and (B), for any person that knowingly violates a Federal consumer financial law, a civil penalty may not exceed $1,000,000 for each day during which such violation continues.

(3) MITIGATING FACTORS.—In determining the amount of any penalty assessed under paragraph (2), the Bureau or the court shall take into account the appropriateness of the penalty with respect to—

(A) the size of financial resources and good faith of the person charged;

(B) the gravity of the violation or failure to pay;

(C) the severity of the risks to or losses of the consumer, which may take into account the number of products or services sold or provided;

(D) the history of previous violations; and

(E) such other matters as justice may require.

(4) AUTHORITY TO MODIFY OR REMIT PENALTY.—The Bureau may compromise, modify, or remit any penalty which may be assessed or had already been assessed under paragraph (2). The amount of such penalty, when finally determined, shall be exclusive of any sums owed by the person to the United States in connection with the costs of the proceeding, and may be deducted from any sums owing by the United States to the person charged.

(5) NOTICE AND HEARING.—No civil penalty may be assessed under this subsection with respect to a violation of any Federal consumer financial law, unless—

(A) the Bureau gives notice and an opportunity for a hearing to the person accused of the violation; or

(B) the appropriate court has ordered such assessment and entered judgment in favor of the Bureau.

SEC. 1056. REFERRALS FOR CRIMINAL PROCEEDINGS.

If the Bureau obtains evidence that any person, domestic or foreign, has engaged in conduct that may constitute a violation of Federal criminal law, the Bureau shall transmit such evidence to the Attorney General of the United States, who may institute criminal proceedings under appropriate law. Nothing in this section affects any other authority of the Bureau to disclose information.

SEC. 1057. EMPLOYEE PROTECTION.

(a) IN GENERAL.—No covered person or service provider shall terminate or in any other way discriminate against, or cause to be terminated or discriminated against, any covered employee or any authorized representative of covered employees by reason of the fact that such employee or representative, whether at the initiative of the employee or in the ordinary course of the duties of the employee (or any person acting pursuant to a request of the employee), has—

(1) provided, caused to be provided, or is about to provide or cause to be provided, information to the employer, the Bureau, or any other State, local, or Federal, government authority or law enforcement agency relating to any violation of, or any act or omission that the employee reasonably believes to be a violation of, any provision of this title or any other provision of law that is subject to the jurisdiction of the Bureau, or any rule, order, standard, or prohibition prescribed by the Bureau;

(2) testified or will testify in any proceeding resulting from the administration or enforcement of any provision of this title or any other provision of law that is subject to the jurisdiction of the Bureau, or any rule, order, standard, or prohibition prescribed by the Bureau;

(3) filed, instituted, or caused to be filed or instituted any proceeding under any Federal consumer financial law; or

(4) objected to, or refused to participate in, any activity, policy, practice, or assigned task that the employee (or other such person) reasonably believed to be in violation of any law,

rule, order, standard, or prohibition, subject to the jurisdiction of, or enforceable by, the Bureau.

(b) DEFINITION OF COVERED EMPLOYEE.—For the purposes of this section, the term "covered employee" means any individual performing tasks related to the offering or provision of a consumer financial product or service.

(c) PROCEDURES AND TIMETABLES.—

(1) COMPLAINT.—

(A) IN GENERAL.—A person who believes that he or she has been discharged or otherwise discriminated against by any person in violation of subsection (a) may, not later than 180 days after the date on which such alleged violation occurs, file (or have any person file on his or her behalf) a complaint with the Secretary of Labor alleging such discharge or discrimination and identifying the person responsible for such act.

(B) ACTIONS OF SECRETARY OF LABOR.—Upon receipt of such a complaint, the Secretary of Labor shall notify, in writing, the person named in the complaint who is alleged to have committed the violation, of—

(i) the filing of the complaint;

(ii) the allegations contained in the complaint;

(iii) the substance of evidence supporting the complaint; and

(iv) opportunities that will be afforded to such person under paragraph (2).

(2) INVESTIGATION BY SECRETARY OF LABOR.—

(A) IN GENERAL.—Not later than 60 days after the date of receipt of a complaint filed under paragraph (1), and after affording the complainant and the person named in the complaint who is alleged to have committed the violation that is the basis for the complaint an opportunity to submit to the Secretary of Labor a written response to the complaint and an opportunity to meet with a representative of the Secretary of Labor to present statements from witnesses, the Secretary of Labor shall—

(i) initiate an investigation and determine whether there is reasonable cause to believe that the complaint has merit; and

(ii) notify the complainant and the person alleged to have committed the violation of subsection (a), in writing, of such determination.

(B) NOTICE OF RELIEF AVAILABLE.—If the Secretary of Labor concludes that there is reasonable cause to believe that a violation of subsection (a) has occurred, the Secretary of Labor shall, together with the notice under subparagraph (A)(ii), issue a preliminary order providing the relief prescribed by paragraph (4)(B).

(C) REQUEST FOR HEARING.—Not later than 30 days after the date of receipt of notification of a determination of the Secretary of Labor under this paragraph, either the person alleged to have committed the violation or the complainant may file objections to the findings or preliminary order, or both, and request a hearing on the record. The filing of such objections shall not operate to stay any reinstatement remedy contained in the preliminary order. Any such hearing shall be conducted expeditiously, and

if a hearing is not requested in such 30-day period, the preliminary order shall be deemed a final order that is not subject to judicial review.

(3) GROUNDS FOR DETERMINATION OF COMPLAINTS.—

(A) IN GENERAL.—The Secretary of Labor shall dismiss a complaint filed under this subsection, and shall not conduct an investigation otherwise required under paragraph (2), unless the complainant makes a prima facie showing that any behavior described in paragraphs (1) through (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

(B) REBUTTAL EVIDENCE.—Notwithstanding a finding by the Secretary of Labor that the complainant has made the showing required under subparagraph (A), no investigation otherwise required under paragraph (2) shall be conducted, if the employer demonstrates, by clear and convincing evidence, that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

(C) EVIDENTIARY STANDARDS.—The Secretary of Labor may determine that a violation of subsection (a) has occurred only if the complainant demonstrates that any behavior described in paragraphs (1) through (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint. Relief may not be ordered under subparagraph (A) if the employer demonstrates by clear and convincing evidence that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

(4) ISSUANCE OF FINAL ORDERS; REVIEW PROCEDURES.—

(A) TIMING.—Not later than 120 days after the date of conclusion of any hearing under paragraph (2), the Secretary of Labor shall issue a final order providing the relief prescribed by this paragraph or denying the complaint. At any time before issuance of a final order, a proceeding under this subsection may be terminated on the basis of a settlement agreement entered into by the Secretary of Labor, the complainant, and the person alleged to have committed the violation.

(B) PENALTIES.—

(i) ORDER OF SECRETARY OF LABOR.—If, in response to a complaint filed under paragraph (1), the Secretary of Labor determines that a violation of subsection (a) has occurred, the Secretary of Labor shall order the person who committed such violation—

(I) to take affirmative action to abate the violation;

(II) to reinstate the complainant to his or her former position, together with compensation (including back pay) and restore the terms, conditions, and privileges associated with his or her employment; and

(III) to provide compensatory damages to the complainant.

(ii) PENALTY.—If an order is issued under clause (i), the Secretary of Labor, at the request of the complainant, shall assess against the person against

whom the order is issued, a sum equal to the aggregate amount of all costs and expenses (including attorney fees and expert witness fees) reasonably incurred, as determined by the Secretary of Labor, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

(C) PENALTY FOR FRIVOLOUS CLAIMS.—If the Secretary of Labor finds that a complaint under paragraph (1) is frivolous or has been brought in bad faith, the Secretary of Labor may award to the prevailing employer a reasonable attorney fee, not exceeding $1,000, to be paid by the complainant.

(D) DE NOVO REVIEW.—

(i) FAILURE OF THE SECRETARY TO ACT.—If the Secretary of Labor has not issued a final order within 210 days after the date of filing of a complaint under this subsection, or within 90 days after the date of receipt of a written determination, the complainant may bring an action at law or equity for de novo review in the appropriate district court of the United States having jurisdiction, which shall have jurisdiction over such an action without regard to the amount in controversy, and which action shall, at the request of either party to such action, be tried by the court with a jury.

(ii) PROCEDURES.—A proceeding under clause (i) shall be governed by the same legal burdens of proof specified in paragraph (3). The court shall have jurisdiction to grant all relief necessary to make the employee whole, including injunctive relief and compensatory damages, including—

(I) reinstatement with the same seniority status that the employee would have had, but for the discharge or discrimination;

(II) the amount of back pay, with interest; and

(III) compensation for any special damages sustained as a result of the discharge or discrimination, including litigation costs, expert witness fees, and reasonable attorney fees.

(E) OTHER APPEALS.—Unless the complainant brings an action under subparagraph (D), any person adversely affected or aggrieved by a final order issued under subparagraph (A) may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation with respect to which the order was issued, allegedly occurred or the circuit in which the complainant resided on the date of such violation, not later than 60 days after the date of the issuance of the final order of the Secretary of Labor under subparagraph (A). Review shall conform to chapter 7 of title 5, United States Code. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the order. An order of the Secretary of Labor with respect to which review could have been obtained under this subparagraph shall not be subject to judicial review in any criminal or other civil proceeding.

(5) FAILURE TO COMPLY WITH ORDER.—

(A) ACTIONS BY THE SECRETARY.—If any person has failed to comply with a final order issued under paragraph (4), the Secretary of Labor may file a civil action in the United States district court for the district in which the violation was found to have occurred, or in the United States district court for the District of Columbia, to enforce such order. In actions brought under this paragraph, the district courts shall have jurisdiction to grant all appropriate relief including injunctive relief and compensatory damages.

(B) CIVIL ACTIONS TO COMPEL COMPLIANCE.—A person on whose behalf an order was issued under paragraph (4) may commence a civil action against the person to whom such order was issued to require compliance with such order. The appropriate United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such order.

(C) AWARD OF COSTS AUTHORIZED.—The court, in issuing any final order under this paragraph, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate.

(D) MANDAMUS PROCEEDINGS.—Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28, United States Code.

(d) UNENFORCEABILITY OF CERTAIN AGREEMENTS.—

(1) NO WAIVER OF RIGHTS AND REMEDIES.—Except as provided under paragraph (3), and notwithstanding any other provision of law, the rights and remedies provided for in this section may not be waived by any agreement, policy, form, or condition of employment, including by any predispute arbitration agreement.

(2) NO PREDISPUTE ARBITRATION AGREEMENTS.—Except as provided under paragraph (3), and notwithstanding any other provision of law, no predispute arbitration agreement shall be valid or enforceable to the extent that it requires arbitration of a dispute arising under this section.

(3) EXCEPTION.—Notwithstanding paragraphs (1) and (2), an arbitration provision in a collective bargaining agreement shall be enforceable as to disputes arising under subsection (a)(4), unless the Bureau determines, by rule, that such provision is inconsistent with the purposes of this title.

SEC. 1058. EFFECTIVE DATE.

This subtitle shall become effective on the designated transfer date.

Subtitle F—Transfer of Functions and Personnel; Transitional Provisions

SEC. 1061. TRANSFER OF CONSUMER FINANCIAL PROTECTION FUNCTIONS.

(a) DEFINED TERMS.—For purposes of this subtitle—

(1) the term "consumer financial protection functions" means—

(A) all authority to prescribe rules or issue orders or guidelines pursuant to any Federal consumer financial law, including performing appropriate functions to promulgate and review such rules, orders, and guidelines; and

(B) the examination authority described in subsection (c)(1), with respect to a person described in subsection 1025(a); and

(2) the terms "transferor agency" and "transferor agencies" mean, respectively—

(A) the Board of Governors (and any Federal reserve bank, as the context requires), the Federal Deposit Insurance Corporation, the Federal Trade Commission, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the Department of Housing and Urban Development, and the heads of those agencies; and

(B) the agencies listed in subparagraph (A), collectively.

(b) IN GENERAL.—Except as provided in subsection (c), consumer financial protection functions are transferred as follows:

(1) BOARD OF GOVERNORS.—

(A) TRANSFER OF FUNCTIONS.—All consumer financial protection functions of the Board of Governors are transferred to the Bureau.

(B) BOARD OF GOVERNORS AUTHORITY.—The Bureau shall have all powers and duties that were vested in the Board of Governors, relating to consumer financial protection functions, on the day before the designated transfer date.

(2) COMPTROLLER OF THE CURRENCY.—

(A) TRANSFER OF FUNCTIONS.—All consumer financial protection functions of the Comptroller of the Currency are transferred to the Bureau.

(B) COMPTROLLER AUTHORITY.—The Bureau shall have all powers and duties that were vested in the Comptroller of the Currency, relating to consumer financial protection functions, on the day before the designated transfer date.

(3) DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION.—

(A) TRANSFER OF FUNCTIONS.—All consumer financial protection functions of the Director of the Office of Thrift Supervision are transferred to the Bureau.

(B) DIRECTOR AUTHORITY.—The Bureau shall have all powers and duties that were vested in the Director of the Office of Thrift Supervision, relating to consumer financial protection functions, on the day before the designated transfer date.

(4) FEDERAL DEPOSIT INSURANCE CORPORATION.—

(A) TRANSFER OF FUNCTIONS.—All consumer financial protection functions of the Federal Deposit Insurance Corporation are transferred to the Bureau.

(B) CORPORATION AUTHORITY.—The Bureau shall have all powers and duties that were vested in the Federal Deposit Insurance Corporation, relating to consumer financial protection functions, on the day before the designated transfer date.

(5) FEDERAL TRADE COMMISSION.—

(A) TRANSFER OF FUNCTIONS.—The authority of the Federal Trade Commission under an enumerated consumer law to prescribe rules, issue guidelines, or conduct a study or issue a report mandated under such law shall be transferred to the Bureau on the designated transfer date. Nothing in this title shall be construed to require a mandatory transfer of any employee of the Federal Trade Commission.

(B) BUREAU AUTHORITY.—

(i) IN GENERAL.—The Bureau shall have all powers and duties under the enumerated consumer laws to prescribe rules, issue guidelines, or to conduct studies or issue reports mandated by such laws, that were vested in the Federal Trade Commission on the day before the designated transfer date.

(ii) FEDERAL TRADE COMMISSION ACT.—Subject to subtitle B, the Bureau may enforce a rule prescribed under the Federal Trade Commission Act by the Federal Trade Commission with respect to an unfair or deceptive act or practice to the extent that such rule applies to a covered person or service provider with respect to the offering or provision of a consumer financial product or service as if it were a rule prescribed under section 1031 of this title.

(C) AUTHORITY OF THE FEDERAL TRADE COMMISSION.—

(i) IN GENERAL.—No provision of this title shall be construed as modifying, limiting, or otherwise affecting the authority of the Federal Trade Commission (including its authority with respect to affiliates described in section 1025(a)(1)) under the Federal Trade Commission Act or any other law, other than the authority under an enumerated consumer law to prescribe rules, issue official guidelines, or conduct a study or issue a report mandated under such law.

(ii) COMMISSION AUTHORITY RELATING TO RULES PRESCRIBED BY THE BUREAU.—Subject to subtitle B, the Federal Trade Commission shall have authority to enforce under the Federal Trade Commission Act (15 U.S.C. 41 et seq.) a rule prescribed by the Bureau under this title with respect to a covered person subject to the jurisdiction of the Federal Trade Commission under that Act, and a violation of such a rule by such a person shall be treated as a violation of a rule issued under section 18 of that Act (15 U.S.C. 57a) with respect to unfair or deceptive acts or practices.

(D) COORDINATION.—To avoid duplication of or conflict between rules prescribed by the Bureau under section 1031 of this title and the Federal Trade Commission under section 18(a)(1)(B) of the Federal Trade Commission Act that apply to a covered person or service provider with respect to the offering or provision of consumer financial products or services, the agencies shall negotiate an agreement with respect to rulemaking by each agency, including consultation with the other agency prior to proposing a rule and during the comment period.

(E) DEFERENCE.—No provision of this title shall be construed as altering, limiting, expanding, or otherwise affecting the deference that a court affords to the—

(i) Federal Trade Commission in making determinations regarding the meaning or interpretation of any provision of the Federal Trade Commission Act, or of any other Federal law for which the Commission has authority to prescribe rules; or

(ii) Bureau in making determinations regarding the meaning or interpretation of any provision of a Federal consumer financial law (other than any law described in clause (i)).

(6) NATIONAL CREDIT UNION ADMINISTRATION.—

(A) TRANSFER OF FUNCTIONS.—All consumer financial protection functions of the National Credit Union Administration are transferred to the Bureau.

(B) NATIONAL CREDIT UNION ADMINISTRATION AUTHORITY.—The Bureau shall have all powers and duties that were vested in the National Credit Union Administration, relating to consumer financial protection functions, on the day before the designated transfer date.

(7) DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.—

(A) TRANSFER OF FUNCTIONS.—All consumer protection functions of the Secretary of the Department of Housing and Urban Development relating to the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.), the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. 5102 et seq.), and the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1701 et seq.) are transferred to the Bureau.

(B) AUTHORITY OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.—The Bureau shall have all powers and duties that were vested in the Secretary of the Department of Housing and Urban Development relating to the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.), the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. 5101 et seq.), and the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1701 et seq.), on the day before the designated transfer date.

(c) AUTHORITIES OF THE PRUDENTIAL REGULATORS.—

(1) EXAMINATION.—A transferor agency that is a prudential regulator shall have—

(A) authority to require reports from and conduct examinations for compliance with Federal consumer financial laws with respect to a person described in section 1025(a), that is incidental to the backup and enforcement procedures provided to the regulator under section 1025(c); and

(B) exclusive authority (relative to the Bureau) to require reports from and conduct examinations for compliance with Federal consumer financial laws with respect to a person described in section 1026(a), except as provided to the Bureau under subsections (b) and (c) of section 1026.

(2) ENFORCEMENT.—

(A) LIMITATION.—The authority of a transferor agency that is a prudential regulator to enforce compliance with Federal consumer financial laws with respect to a person described in section 1025(a), shall be limited to the backup and enforcement procedures in described in section 1025(c).

(B) EXCLUSIVE AUTHORITY.—A transferor agency that is a prudential regulator shall have exclusive authority (relative to the Bureau) to enforce compliance with Federal consumer financial laws with respect to a person described in section 1026(a), except as provided to the Bureau under subsections (b) and (c) of section 1026.

(C) STATUTORY ENFORCEMENT.—For purposes of carrying out the authorities under, and subject to the limitations of, subtitle B, each prudential regulator may enforce compliance with the requirements imposed under this title, and any rule or order prescribed by the Bureau under this title, under—

(i) the Federal Credit Union Act (12 U.S.C. 1751 et seq.), by the National Credit Union Administration Board with respect to any covered person or service provider that is an insured credit union, or service provider thereto, or any affiliate of an insured credit union, who is subject to the jurisdiction of the Board under that Act; and

(ii) section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), by the appropriate Federal banking agency, as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), with respect to a covered person or service provider that is a person described in section 3(q) of that Act and who is subject to the jurisdiction of that agency, as set forth in sections 3(q) and 8 of the Federal Deposit Insurance Act; or

(iii) the Bank Service Company Act (12 U.S.C. 1861 et seq.).

(d) EFFECTIVE DATE.—Subsections (b) and (c) shall become effective on the designated transfer date.

SEC. 1062. DESIGNATED TRANSFER DATE.

(a) IN GENERAL.—Not later than 60 days after the date of enactment of this Act, the Secretary shall—

(1) in consultation with the Chairman of the Board of Governors, the Chairperson of the Corporation, the Chairman of the Federal Trade Commission, the Chairman of the National Credit Union Administration Board, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Secretary of the Department of Housing and Urban Development, and the Director of the Office of Management and Budget, designate a single calendar date for the transfer of functions to the Bureau under section 1061; and

(2) publish notice of that designated date in the Federal Register.

(b) CHANGING DESIGNATION.—The Secretary—

(1) may, in consultation with the Chairman of the Board of Governors, the Chairperson of the Federal Deposit Insurance Corporation, the Chairman of the Federal Trade Commission, the Chairman of the National Credit Union Administration

Board, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Secretary of the Department of Housing and Urban Development, and the Director of the Office of Management and Budget, change the date designated under subsection (a); and

(2) shall publish notice of any changed designated date in the Federal Register.

(c) PERMISSIBLE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), any date designated under this section shall be not earlier than 180 days, nor later than 12 months, after the date of enactment of this Act.

(2) EXTENSION OF TIME.—The Secretary may designate a date that is later than 12 months after the date of enactment of this Act if the Secretary transmits to appropriate committees of Congress—

(A) a written determination that orderly implementation of this title is not feasible before the date that is 12 months after the date of enactment of this Act;

(B) an explanation of why an extension is necessary for the orderly implementation of this title; and

(C) a description of the steps that will be taken to effect an orderly and timely implementation of this title within the extended time period.

(3) EXTENSION LIMITED.—In no case may any date designated under this section be later than 18 months after the date of enactment of this Act.

SEC. 1063. SAVINGS PROVISIONS.

(a) BOARD OF GOVERNORS.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 1061(b)(1) does not affect the validity of any right, duty, or obligation of the United States, the Board of Governors (or any Federal reserve bank), or any other person that—

(A) arises under any provision of law relating to any consumer financial protection function of the Board of Governors transferred to the Bureau by this title; and

(B) existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—No provision of this Act shall abate any proceeding commenced by or against the Board of Governors (or any Federal reserve bank) before the designated transfer date with respect to any consumer financial protection function of the Board of Governors (or any Federal reserve bank) transferred to the Bureau by this title, except that the Bureau, subject to sections 1024, 1025, and 1026, shall be substituted for the Board of Governors (or Federal reserve bank) as a party to any such proceeding as of the designated transfer date.

(b) FEDERAL DEPOSIT INSURANCE CORPORATION.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 1061(b)(4) does not affect the validity of any right, duty, or obligation of the United States, the Federal Deposit Insurance Corporation, the Board of Directors of that Corporation, or any other person, that—

(A) arises under any provision of law relating to any consumer financial protection function of the Federal Deposit Insurance Corporation transferred to the Bureau by this title; and

(B) existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—No provision of this Act shall abate any proceeding commenced by or against the Federal Deposit Insurance Corporation (or the Board of Directors of that Corporation) before the designated transfer date with respect to any consumer financial protection function of the Federal Deposit Insurance Corporation transferred to the Bureau by this title, except that the Bureau, subject to sections 1024, 1025, and 1026, shall be substituted for the Federal Deposit Insurance Corporation (or Board of Directors) as a party to any such proceeding as of the designated transfer date.

(c) FEDERAL TRADE COMMISSION.—Section 1061(b)(5) does not affect the validity of any right, duty, or obligation of the United States, the Federal Trade Commission, or any other person, that—

(1) arises under any provision of law relating to any consumer financial protection function of the Federal Trade Commission transferred to the Bureau by this title; and

(2) existed on the day before the designated transfer date.

(d) NATIONAL CREDIT UNION ADMINISTRATION.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 1061(b)(6) does not affect the validity of any right, duty, or obligation of the United States, the National Credit Union Administration, the National Credit Union Administration Board, or any other person, that—

(A) arises under any provision of law relating to any consumer financial protection function of the National Credit Union Administration transferred to the Bureau by this title; and

(B) existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—No provision of this Act shall abate any proceeding commenced by or against the National Credit Union Administration (or the National Credit Union Administration Board) before the designated transfer date with respect to any consumer financial protection function of the National Credit Union Administration transferred to the Bureau by this title, except that the Bureau, subject to sections 1024, 1025, and 1026, shall be substituted for the National Credit Union Administration (or National Credit Union Administration Board) as a party to any such proceeding as of the designated transfer date.

(e) OFFICE OF THE COMPTROLLER OF THE CURRENCY.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 1061(b)(2) does not affect the validity of any right, duty, or obligation of the United States, the Comptroller of the Currency, the Office of the Comptroller of the Currency, or any other person, that—

(A) arises under any provision of law relating to any consumer financial protection function of the Comptroller of the Currency transferred to the Bureau by this title; and

(B) existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—No provision of this Act shall abate any proceeding commenced by or against the Comptroller of the Currency (or the Office of the Comptroller of the Currency) with respect to any consumer financial protection function of the Comptroller of the Currency transferred to the Bureau by this title before the designated transfer date, except that the Bureau, subject to sections 1024, 1025, and 1026, shall be substituted for the Comptroller of the Currency (or the Office of the Comptroller of the Currency) as a party to any such proceeding as of the designated transfer date.

(f) OFFICE OF THRIFT SUPERVISION.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 1061(b)(3) does not affect the validity of any right, duty, or obligation of the United States, the Director of the Office of Thrift Supervision, the Office of Thrift Supervision, or any other person, that—

(A) arises under any provision of law relating to any consumer financial protection function of the Director of the Office of Thrift Supervision transferred to the Bureau by this title; and

(B) that existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—No provision of this Act shall abate any proceeding commenced by or against the Director of the Office of Thrift Supervision (or the Office of Thrift Supervision) with respect to any consumer financial protection function of the Director of the Office of Thrift Supervision transferred to the Bureau by this title before the designated transfer date, except that the Bureau, subject to sections 1024, 1025, and 1026, shall be substituted for the Director (or the Office of Thrift Supervision) as a party to any such proceeding as of the designated transfer date.

(g) DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 1061(b)(7) shall not affect the validity of any right, duty, or obligation of the United States, the Secretary of the Department of Housing and Urban Development (or the Department of Housing and Urban Development), or any other person, that—

(A) arises under any provision of law relating to any function of the Secretary of the Department of Housing and Urban Development with respect to the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.), the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. 5102 et seq.), or the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1701 et seq) transferred to the Bureau by this title; and

(B) existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—This title shall not abate any proceeding commenced by or against the Secretary of the Department of Housing and Urban Development (or the Department of Housing and Urban Development) with respect to any consumer financial protection function of the Secretary

of the Department of Housing and Urban Development transferred to the Bureau by this title before the designated transfer date, except that the Bureau, subject to sections 1024, 1025, and 1026, shall be substituted for the Secretary of the Department of Housing and Urban Development (or the Department of Housing and Urban Development) as a party to any such proceeding as of the designated transfer date.

(h) CONTINUATION OF EXISTING ORDERS, RULINGS, DETERMINATIONS, AGREEMENTS, AND RESOLUTIONS.—

(1) IN GENERAL.—Except as provided in paragraph (2) and under subsection (i), all orders, resolutions, determinations, agreements, and rulings that have been issued, made, prescribed, or allowed to become effective by any transferor agency or by a court of competent jurisdiction, in the performance of consumer financial protection functions that are transferred by this title and that are in effect on the day before the designated transfer date, shall continue in effect, and shall continue to be enforceable by the appropriate transferor agency, according to the terms of those orders, resolutions, determinations, agreements, and rulings, and shall not be enforceable by or against the Bureau.

(2) EXCEPTION FOR ORDERS APPLICABLE TO PERSONS DESCRIBED IN SECTION 1025(a).—All orders, resolutions, determinations, agreements, and rulings that have been issued, made, prescribed, or allowed to become effective by any transferor agency or by a court of competent jurisdiction, in the performance of consumer financial protection functions that are transferred by this title and that are in effect on the day before the designated transfer date with respect to any person described in section 1025(a), shall continue in effect, according to the terms of those orders, resolutions, determinations, agreements, and rulings, and shall be enforceable by or against the Bureau or transferor agency.

(i) IDENTIFICATION OF RULES AND ORDERS CONTINUED.—Not later than the designated transfer date, the Bureau—

(1) shall, after consultation with the head of each transferor agency, identify the rules and orders that will be enforced by the Bureau; and

(2) shall publish a list of such rules and orders in the Federal Register.

(j) STATUS OF RULES PROPOSED OR NOT YET EFFECTIVE.—

(1) PROPOSED RULES.—Any proposed rule of a transferor agency which that agency, in performing consumer financial protection functions transferred by this title, has proposed before the designated transfer date, but has not been published as a final rule before that date, shall be deemed to be a proposed rule of the Bureau.

(2) RULES NOT YET EFFECTIVE.—Any interim or final rule of a transferor agency which that agency, in performing consumer financial protection functions transferred by this title, has published before the designated transfer date, but which has not become effective before that date, shall become effective as a rule of the Bureau according to its terms.

SEC. 1064. TRANSFER OF CERTAIN PERSONNEL.

(a) IN GENERAL.—

(1) CERTAIN FEDERAL RESERVE SYSTEM EMPLOYEES TRANSFERRED.—

(A) IDENTIFYING EMPLOYEES FOR TRANSFER.—The Bureau and the Board of Governors shall—

(i) jointly determine the number of employees of the Board of Governors necessary to perform or support the consumer financial protection functions of the Board of Governors that are transferred to the Bureau by this title; and

(ii) consistent with the number determined under clause (i), jointly identify employees of the Board of Governors for transfer to the Bureau, in a manner that the Bureau and the Board of Governors, in their sole discretion, determine equitable.

(B) IDENTIFIED EMPLOYEES TRANSFERRED.—All employees of the Board of Governors identified under subparagraph (A)(ii) shall be transferred to the Bureau for employment.

(C) FEDERAL RESERVE BANK EMPLOYEES.—Employees of any Federal reserve bank who are performing consumer financial protection functions on behalf of the Board of Governors shall be treated as employees of the Board of Governors for purposes of subparagraphs (A) and (B).

(2) CERTAIN FDIC EMPLOYEES TRANSFERRED.—

(A) IDENTIFYING EMPLOYEES FOR TRANSFER.—The Bureau and the Board of Directors of the Federal Deposit Insurance Corporation shall—

(i) jointly determine the number of employees of that Corporation necessary to perform or support the consumer financial protection functions of the Corporation that are transferred to the Bureau by this title; and

(ii) consistent with the number determined under clause (i), jointly identify employees of the Corporation for transfer to the Bureau, in a manner that the Bureau and the Board of Directors of the Corporation, in their sole discretion, determine equitable.

(B) IDENTIFIED EMPLOYEES TRANSFERRED.—All employees of the Corporation identified under subparagraph (A)(ii) shall be transferred to the Bureau for employment.

(3) CERTAIN NCUA EMPLOYEES TRANSFERRED.—

(A) IDENTIFYING EMPLOYEES FOR TRANSFER.—The Bureau and the National Credit Union Administration Board shall—

(i) jointly determine the number of employees of the National Credit Union Administration necessary to perform or support the consumer financial protection functions of the National Credit Union Administration that are transferred to the Bureau by this title; and

(ii) consistent with the number determined under clause (i), jointly identify employees of the National Credit Union Administration for transfer to the Bureau, in a manner that the Bureau and the National Credit Union Administration Board, in their sole discretion, determine equitable.

(B) IDENTIFIED EMPLOYEES TRANSFERRED.—All employees of the National Credit Union Administration identified under subparagraph (A)(ii) shall be transferred to the Bureau for employment.

(4) CERTAIN OFFICE OF THE COMPTROLLER OF THE CURRENCY EMPLOYEES TRANSFERRED.—

(A) IDENTIFYING EMPLOYEES FOR TRANSFER.—The Bureau and the Comptroller of the Currency shall—

(i) jointly determine the number of employees of the Office of the Comptroller of the Currency necessary to perform or support the consumer financial protection functions of the Office of the Comptroller of the Currency that are transferred to the Bureau by this title; and

(ii) consistent with the number determined under clause (i), jointly identify employees of the Office of the Comptroller of the Currency for transfer to the Bureau, in a manner that the Bureau and the Office of the Comptroller of the Currency, in their sole discretion, determine equitable.

(B) IDENTIFIED EMPLOYEES TRANSFERRED.—All employees of the Office of the Comptroller of the Currency identified under subparagraph (A)(ii) shall be transferred to the Bureau for employment.

(5) CERTAIN OFFICE OF THRIFT SUPERVISION EMPLOYEES TRANSFERRED.—

(A) IDENTIFYING EMPLOYEES FOR TRANSFER.—The Bureau and the Director of the Office of Thrift Supervision shall—

(i) jointly determine the number of employees of the Office of Thrift Supervision necessary to perform or support the consumer financial protection functions of the Office of Thrift Supervision that are transferred to the Bureau by this title; and

(ii) consistent with the number determined under clause (i), jointly identify employees of the Office of Thrift Supervision for transfer to the Bureau, in a manner that the Bureau and the Office of Thrift Supervision, in their sole discretion, determine equitable.

(B) IDENTIFIED EMPLOYEES TRANSFERRED.—All employees of the Office of Thrift Supervision identified under subparagraph (A)(ii) shall be transferred to the Bureau for employment.

(6) CERTAIN EMPLOYEES OF DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT TRANSFERRED.—

(A) IDENTIFYING EMPLOYEES FOR TRANSFER.—The Bureau and the Secretary of the Department of Housing and Urban Development shall—

(i) jointly determine the number of employees of the Department of Housing and Urban Development necessary to perform or support the consumer protection functions of the Department that are transferred to the Bureau by this title; and

(ii) consistent with the number determined under clause (i), jointly identify employees of the Department of Housing and Urban Development for transfer to the Bureau in a manner that the Bureau and the

Secretary of the Department of Housing and Urban Development, in their sole discretion, deem equitable.

(B) IDENTIFIED EMPLOYEES TRANSFERRED.—All employees of the Department of Housing and Urban Development identified under subparagraph (A)(ii) shall be transferred to the Bureau for employment.

(7) CONSUMER EDUCATION, FINANCIAL LITERACY, CONSUMER COMPLAINTS, AND RESEARCH FUNCTIONS.—The Bureau and each of the transferor agencies (except the Federal Trade Commission) shall jointly determine the number of employees and the types and grades of employees necessary to perform the functions of the Bureau under subtitle A, including consumer education, financial literacy, policy analysis, responses to consumer complaints and inquiries, research, and similar functions. All employees jointly identified under this paragraph shall be transferred to the Bureau for employment.

(8) AUTHORITY OF THE PRESIDENT TO RESOLVE DISPUTES.—

(A) ACTION AUTHORIZED.—In the event that the Bureau and a transferor agency are unable to reach an agreement under paragraphs (1) through (7) by the designated transfer date, the President, or the designee thereof, may issue an order or directive to the transferor agency to effect the transfer of personnel and property under this subtitle.

(B) TRANSMITTAL TO CONGRESS REQUIRED.—If an order or directive is issued under subparagraph (A), the President shall transmit a copy of the written determination made with respect to such order or directive, including an explanation for the need for the order or directive, to the Committee on Banking, Housing, and Urban Affairs and the Committee on Appropriations of the Senate and the Committee on Financial Services and the Committee on Appropriations of the House of Representatives.

(C) SUNSET.—The authority provided in this paragraph shall terminate 3 years after the designated transfer date.

(9) APPOINTMENT AUTHORITY FOR EXCEPTED SERVICE AND SENIOR EXECUTIVE SERVICE TRANSFERRED.—

(A) IN GENERAL.—In the case of an employee occupying a position in the excepted service or the Senior Executive Service, any appointment authority established pursuant to law or regulations of the Office of Personnel Management for filling such positions shall be transferred, subject to subparagraph (B).

(B) DECLINING TRANSFERS ALLOWED.—An agency or entity may decline to make a transfer of authority under subparagraph (A) (and the employees appointed pursuant thereto) to the extent that such authority relates to positions excepted from the competitive service because of their confidential, policy-making, policy-determining, or policy-advocating character, and non-career positions in the Senior Executive Service (within the meaning of section 3132(a)(7) of title 5, United States Code).

(b) TIMING OF TRANSFERS AND POSITION ASSIGNMENTS.—Each employee to be transferred under this section shall—

(1) be transferred not later than 90 days after the designated transfer date; and

(2) receive notice of a position assignment not later than 120 days after the effective date of his or her transfer.

(c) TRANSFER OF FUNCTION.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the transfer of employees shall be deemed a transfer of functions for the purpose of section 3503 of title 5, United States Code.

(2) PRIORITY OF THIS TITLE.—If any provisions of this title conflict with any protection provided to transferred employees under section 3503 of title 5, United States Code, the provisions of this title shall control.

(d) EQUAL STATUS AND TENURE POSITIONS.—

(1) EMPLOYEES TRANSFERRED FROM THE FEDERAL RESERVE SYSTEM, FDIC, HUD, NCUA, OCC, AND OTS.—Each employee transferred to the Bureau from the Board of Governors, a Federal reserve bank, the Federal Deposit Insurance Corporation, the Department of Housing and Urban Development, the National Credit Union Administration, the Office of the Comptroller of the Currency, or the Office of Thrift Supervision shall be placed in a position at the Bureau with the same status and tenure as that employee held on the day before the designated transfer date.

(2) EMPLOYEES TRANSFERRED FROM THE FEDERAL RESERVE SYSTEM.—For purposes of determining the status and position placement of a transferred employee, any period of service with the Board of Governors or a Federal reserve bank shall be credited as a period of service with a Federal agency.

(e) ADDITIONAL CERTIFICATION REQUIREMENTS LIMITED.—Examiners transferred to the Bureau are not subject to any additional certification requirements before being placed in a comparable examiner position at the Bureau examining the same types of institutions as they examined before they were transferred.

(f) PERSONNEL ACTIONS LIMITED.—

(1) 2-YEAR PROTECTION.—Except as provided in paragraph (2), each transferred employee holding a permanent position on the day before the designated transfer date may not, during the 2-year period beginning on the designated transfer date, be involuntarily separated, or involuntarily reassigned outside his or her locality pay area.

(2) EXCEPTIONS.—Paragraph (1) does not limit the right of the Bureau—

(A) to separate an employee for cause or for unacceptable performance;

(B) to terminate an appointment to a position excepted from the competitive service because of its confidential policy-making, policy-determining, or policy-advocating character; or

(C) to reassign a supervisory employee outside of his or her locality pay area when the Bureau determines that the reassignment is necessary for the efficient operation of the Bureau.

(g) PAY.—

(1) 2-YEAR PROTECTION.—

(A) IN GENERAL.—Except as provided in paragraph (2), each transferred employee shall, during the 2-year period beginning on the designated transfer date, receive pay at a rate equal to not less than the basic rate of pay (including any geographic differential) that the employee received

during the pay period immediately preceding the date of transfer.

(B) LIMITATION.—Notwithstanding subparagraph (A), if the employee was receiving a higher rate of basic pay on a temporary basis (because of a temporary assignment, temporary promotion, or other temporary action) immediately before the date of transfer, the Bureau may reduce the rate of basic pay on the date on which the rate would have been reduced but for the transfer, and the protected rate for the remainder of the 2-year period shall be the reduced rate that would have applied, but for the transfer.

(2) EXCEPTIONS.—Paragraph (1) does not limit the right of the Bureau to reduce the rate of basic pay of a transferred employee—

(A) for cause;

(B) for unacceptable performance; or

(C) with the consent of the employee.

(3) PROTECTION ONLY WHILE EMPLOYED.—Paragraph (1) applies to a transferred employee only while that employee remains employed by the Bureau.

(4) PAY INCREASES PERMITTED.—Paragraph (1) does not limit the authority of the Bureau to increase the pay of a transferred employee.

(h) REORGANIZATION.—

(1) BETWEEN 1ST AND 3RD YEAR.—

(A) IN GENERAL.—If the Bureau determines, during the 2-year period beginning 1 year after the designated transfer date, that a reorganization of the staff of the Bureau is required—

(i) that reorganization shall be deemed a "substantial reorganization" for purposes of affording affected employees retirement under section 8336(d)(2) or 8414(b)(1)(B) of title 5, United States Code;

(ii) before the reorganization occurs, all employees in the same locality pay area as defined by the Office of Personnel Management shall be placed in a uniform position classification system; and

(iii) any resulting reduction in force shall be governed by the provisions of chapter 35 of title 5, United States Code, except that the Bureau shall—

(I) establish competitive areas (as that term is defined in regulations issued by the Office of Personnel Management) to include at a minimum all employees in the same locality pay area as defined by the Office of Personnel Management;

(II) establish competitive levels (as that term is defined in regulations issued by the Office of Personnel Management) without regard to whether the particular employees have been appointed to positions in the competitive service or the excepted service; and

(III) afford employees appointed to positions in the excepted service (other than to a position excepted from the competitive service because of its confidential policy-making, policy-determining, or policy-advocating character) the same assignment rights to positions within the Bureau as

employees appointed to positions in the competitive service.

(B) SERVICE CREDIT FOR REDUCTIONS IN FORCE.—For purposes of this paragraph, periods of service with a Federal home loan bank, a joint office of the Federal home loan banks, the Board of Governors, a Federal reserve bank, the Federal Deposit Insurance Corporation, or the National Credit Union Administration shall be credited as periods of service with a Federal agency.

(2) AFTER 3RD YEAR.—

(A) IN GENERAL.—If the Bureau determines, at any time after the 3-year period beginning on the designated transfer date, that a reorganization of the staff of the Bureau is required, any resulting reduction in force shall be governed by the provisions of chapter 35 of title 5, United States Code, except that the Bureau shall establish competitive levels (as that term is defined in regulations issued by the Office of Personnel Management) without regard to types of appointment held by particular employees transferred under this section.

(B) SERVICE CREDIT FOR REDUCTIONS IN FORCE.—For purposes of this paragraph, periods of service with a Federal home loan bank, a joint office of the Federal home loan banks, the Board of Governors, a Federal reserve bank, the Federal Deposit Insurance Corporation, or the National Credit Union Administration shall be credited as periods of service with a Federal agency.

(i) BENEFITS.—

(1) RETIREMENT BENEFITS FOR TRANSFERRED EMPLOYEES.—

(A) IN GENERAL.—

(i) CONTINUATION OF EXISTING RETIREMENT PLAN.—Unless an election is made under clause (iii) or subparagraph (B), each employee transferred pursuant to this subtitle shall remain enrolled in the existing retirement plan of that employee as of the date of transfer, through any period of continuous employment with the Bureau.

(ii) EMPLOYER CONTRIBUTION.—The Bureau shall pay any employer contributions to the existing retirement plan of each transferred employee, as required under that plan.

(iii) OPTION TO ELECT INTO THE FEDERAL RESERVE SYSTEM RETIREMENT PLAN AND FEDERAL RESERVE SYSTEM THRIFT PLAN.—Any employee transferred pursuant to this subtitle may, during the 1-year period beginning 6 months after the designated transfer date, elect to end their participation and benefit accruals under their existing retirement plan or plans and elect to participate in both the Federal Reserve System Retirement Plan and the Federal Reserve System Thrift Plan, through any period of continuous employment with the Bureau, under the same terms as are applicable to Federal Reserve System transferred employees, as provided in subparagraph (C). An election of coverage by the Federal Reserve System Retirement Plan and the Federal Reserve System Thrift Plan shall begin on the day following the end of the 18-

month period beginning on the designated transfer date, and benefit accruals under the existing retirement plan of the transferred employee shall end on the last day of the 18-month period beginning on the designated transfer date If an employee elects to participate in the Federal Reserve System Retirement Plan and the Federal Reserve System Thrift Plan, all of the service of the employee that was creditable under their existing retirement plan shall be transferred to the Federal Reserve System Retirement Plan on the day following the end of the 18-month period beginning on the designated transfer date.

(iv) BUREAU CONTRIBUTION.—The Bureau shall pay an employer contribution to the Federal Reserve System Retirement Plan, in the amount established as an employer contribution under the Federal Employees Retirement System, as established under chapter 84 of title 5, United States Code, for each Bureau employee who elects to participate in the Federal Reserve System Retirement Plan under this subparagraph. The Bureau shall pay an employer contribution to the Federal Reserve System Thrift Plan for each Bureau employee who elects to participate in such plan, as required under the terms of the Federal Reserve System Thrift Plan.

(v) ADDITIONAL FUNDING.—The Bureau shall transfer to the Federal Reserve System Retirement Plan an amount determined by the Board of Governors, in consultation with the Bureau, to be necessary to reimburse the Federal Reserve System Retirement Plan for the costs to such plan of providing benefits to employees electing coverage under the Federal Reserve System Retirement Plan under subparagraph (iii), and who were transferred to the Bureau from outside of the Federal Reserve System.

(vi) OPTION TO ELECT INTO THRIFT PLAN CREATED BY THE BUREAU.—If the Bureau chooses to establish a thrift plan, the employees transferred pursuant to this subtitle shall have the option to elect, under such terms and conditions as the Bureau may establish, coverage under such a thrift plan established by the Bureau. Transferred employees may not remain in the thrift plan of the agency from which the employee transferred under this subtitle, if the employee elects to participate in a thrift plan established by the Bureau.

(B) OPTION FOR EMPLOYEES TRANSFERRED FROM FEDERAL RESERVE SYSTEM TO BE SUBJECT TO THE FEDERAL EMPLOYEE RETIREMENT PROGRAM.—

(i) ELECTION.—Any Federal Reserve System transferred employee who was enrolled in the Federal Reserve System Retirement Plan on the day before the date of his or her transfer to the Bureau may, during the 1-year period beginning 6 months after the designated transfer date, elect to be subject to the Federal Employee Retirement Program.

(ii) EFFECTIVE DATE OF COVERAGE.—An election of coverage by the Federal Employee Retirement Program under this subparagraph shall begin on the day following the end of the 18-month period beginning on the designated transfer date, and benefit accruals under the existing retirement plan of the Federal Reserve System transferred employee shall end on the last day of the 18-month period beginning on the designated transfer date.

(C) BUREAU PARTICIPATION IN FEDERAL RESERVE SYSTEM RETIREMENT PLAN.—

(i) BENEFITS PROVIDED.—Federal Reserve System employees transferred pursuant to this subtitle shall continue to be eligible to participate in the Federal Reserve System Retirement Plan and Federal Reserve System Thrift Plan through any period of continuous employment with the Bureau, unless the employee makes an election under subparagraph (A)(vi) or (B). The retirement benefits, formulas, and features offered to the Federal Reserve System transferred employees shall be the same as those offered to employees of the Board of Governors who participate in the Federal Reserve System Retirement Plan and the Federal Reserve System Thrift Plan, as amended from time to time.

(ii) LIMITATION.—The Bureau shall not have responsibility or authority—

(I) to amend an existing retirement plan (including the Federal Reserve System Retirement Plan or Federal Reserve System Thrift Plan);

(II) for administering an existing retirement plan (including the Federal Reserve System Retirement Plan or Federal Reserve System Thrift Plan); or

(III) for ensuring the plans comply with applicable laws, fiduciary rules, and related responsibilities.

(iii) TAX QUALIFIED STATUS.—Notwithstanding any other provision of law, providing benefits to Federal Reserve System employees transferred to the Bureau pursuant to this subtitle, and to employees who elect coverage pursuant to subparagraph (A)(iii) or under section 1013(a)(2)(B), shall not cause any existing retirement plan (including the Federal Reserve System Retirement Plan and the Federal Reserve System Thrift Plan) to lose its tax-qualified status under sections 401(a) and 501(a) of the Internal Revenue Code of 1986.

(iv) BUREAU CONTRIBUTION.—The Bureau shall pay any employer contributions to the existing retirement plan (including the Federal Reserve System Retirement Plan and the Federal Reserve System Thrift Plan) for each Federal Reserve System transferred employee participating in those plans, as required under the plan, after the designated transfer date.

(v) CONTROLLED GROUP STATUS.—The Bureau is the same employer as the Federal Reserve System

(as comprised of the Board of Governors and each of the 12 Federal reserve banks prior to the date of enactment of this Act) for purposes of subsections (b), (c), (m), and (o) of section 414 of the Internal Revenue Code of 1986 (26 U.S.C. 414).

(D) DEFINITIONS.—For purposes of this paragraph—

(i) the term "existing retirement plan" means, with respect to an employee transferred pursuant to this subtitle, the retirement plan (including the Financial Institutions Retirement Fund) and any associated thrift savings plan, of the agency from which the employee was transferred under this subtitle, in which the employee was enrolled on the day before the date on which the employee was transferred;

(ii) the term "Federal Employee Retirement Program" means either the Civil Service Retirement System established under chapter 83 of title 5, United States Code, or the Federal Employees Retirement System established under chapter 84 of title 5, United States Code, depending upon the service history of the individual;

(iii) the term "Federal Reserve System transferred employee" means a transferred employee who is an employee of the Board of Governors or a Federal reserve bank on the day before the designated transfer date, and who is transferred to the Bureau on the designated transfer date pursuant to this subtitle;

(iv) the term "Federal Reserve System Retirement Plan" means the Retirement Plan for Employees of the Federal Reserve System; and

(v) the term "Federal Reserve System Thrift Plan" means the Thrift Plan for Employees of the Federal Reserve System.

(2) BENEFITS OTHER THAN RETIREMENT BENEFITS FOR TRANSFERRED EMPLOYEES.—

(A) DURING 1ST YEAR.—

(i) EXISTING PLANS CONTINUE.—Each employee transferred pursuant to this subtitle may, for 1 year after the designated transfer date, retain membership in any other employee benefit program of the agency or bank from which the employee transferred, including a medical, dental, vision, long term care, or life insurance program, to which the employee belonged on the day before the designated transfer date.

(ii) EMPLOYER CONTRIBUTION.—The Bureau shall reimburse the agency or bank from which an employee was transferred for any cost incurred by that agency or bank in continuing to extend coverage in the benefit program to the employee, as required under that program or negotiated agreements.

(B) MEDICAL, DENTAL, VISION, OR LIFE INSURANCE AFTER FIRST YEAR.—If, at the end of the 1-year period beginning on the designated transfer date, the Bureau has not established its own, or arranged for participation in another entity's, medical, dental, vision, or life insurance program, an employee transferred pursuant to this subtitle who was a member of such a program at the agency or

Federal reserve bank from which the employee transferred may, before the coverage of that employee ends under subparagraph (A)(i), elect to enroll, without regard to any regularly scheduled open season, in—

(i) the enhanced dental benefits program established under chapter 89A of title 5, United States Code;

(ii) the enhanced vision benefits established under chapter 89B of title 5, United States Code;

(iii) the Federal Employees Group Life Insurance Program established under chapter 87 of title 5, United States Code, without regard to any requirement of insurability; and

(iv) the Federal Employees Health Benefits Program established under chapter 89 of title 5, United States Code.

(C) LONG TERM CARE INSURANCE AFTER 1ST YEAR.—If, at the end of the 1-year period beginning on the designated transfer date, the Bureau has not established its own, or arranged for participation in another entity's, long term care insurance program, an employee transferred pursuant to this subtitle who was a member of such a program at the agency or Federal reserve bank from which the employee transferred may, before the coverage of that employee ends under subparagraph (A)(i), elect to apply for coverage under the Federal Long Term Care Insurance Program established under chapter 90 of title 5, United States Code, under the underwriting requirements applicable to a new active workforce member (as defined in part 875 of title 5, Code of Federal Regulations).

(D) EMPLOYEE CONTRIBUTION.—An individual enrolled in the Federal Employees Health Benefits program shall pay any employee contribution required by the plan.

(E) ADDITIONAL FUNDING.—The Bureau shall transfer to the Federal Employees Health Benefits Fund established under section 8909 of title 5, United States Code, an amount determined by the Director of the Office of Personnel Management, after consultation with the Bureau and the Office of Management and Budget, to be necessary to reimburse the Fund for the cost to the Fund of providing benefits under this paragraph.

(F) CREDIT FOR TIME ENROLLED IN OTHER PLANS.—For employees transferred under this title, enrollment in a health benefits plan administered by a transferor agency or a Federal reserve bank, as the case may be, immediately before enrollment in a health benefits plan under chapter 89 of title 5, United States Code, shall be considered as enrollment in a health benefits plan under that chapter for purposes of section 8905(b)(1)(A) of title 5, United States Code.

(G) SPECIAL PROVISIONS TO ENSURE CONTINUATION OF LIFE INSURANCE BENEFITS.—

(i) IN GENERAL.—An annuitant (as defined in section 8901(3) of title 5, United States Code) who is enrolled in a life insurance plan administered by a transferor agency on the day before the designated transfer date shall be eligible for coverage by a life

insurance plan under sections 8706(b), 8714a, 8714b, and 8714c of title 5, United States Code, or in a life insurance plan established by the Bureau, without regard to any regularly scheduled open season and requirement of insurability.

(ii) EMPLOYEE CONTRIBUTION.—An individual enrolled in a life insurance plan under this subparagraph shall pay any employee contribution required by the plan.

(iii) ADDITIONAL FUNDING.—The Bureau shall transfer to the Employees' Life Insurance Fund established under section 8714 of title 5, United States Code, an amount determined by the Director of the Office of Personnel Management, after consultation with the Bureau and the Office of Management and Budget, to be necessary to reimburse the Fund for the cost to the Fund of providing benefits under this subparagraph not otherwise paid for by the employee under clause (ii).

(iv) CREDIT FOR TIME ENROLLED IN OTHER PLANS.—For employees transferred under this title, enrollment in a life insurance plan administered by a transferor agency immediately before enrollment in a life insurance plan under chapter 87 of title 5, United States Code, shall be considered as enrollment in a life insurance plan under that chapter for purposes of section 8706(b)(1)(A) of title 5, United States Code.

(3) OPM RULES.—The Office of Personnel Management shall issue such rules as are necessary to carry out this subsection.

(j) IMPLEMENTATION OF UNIFORM PAY AND CLASSIFICATION SYSTEM.—Not later than 2 years after the designated transfer date, the Bureau shall implement a uniform pay and classification system for all employees transferred under this title.

(k) EQUITABLE TREATMENT.—In administering the provisions of this section, the Bureau—

(1) shall take no action that would unfairly disadvantage transferred employees relative to each other based on their prior employment by the Board of Governors, the Federal Deposit Insurance Corporation, the Department of Housing and Urban Development, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, a Federal reserve bank, a Federal home loan bank, or a joint office of the Federal home loan banks; and

(2) may take such action as is appropriate in individual cases so that employees transferred under this section receive equitable treatment, with respect to the status, tenure, pay, benefits (other than benefits under programs administered by the Office of Personnel Management), and accrued leave or vacation time of those employees, for prior periods of service with any Federal agency, including the Board of Governors, the Corporation, the Department of Housing and Urban Development, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, a Federal reserve bank, a Federal home loan bank, or a joint office of the Federal home loan banks.

(l) IMPLEMENTATION.—In implementing the provisions of this section, the Bureau shall coordinate with the Office of Personnel Management and other entities having expertise in matters related to employment to ensure a fair and orderly transition for affected employees.

SEC. 1065. INCIDENTAL TRANSFERS.

(a) INCIDENTAL TRANSFERS AUTHORIZED.—The Director of the Office of Management and Budget, in consultation with the Secretary, shall make such additional incidental transfers and dispositions of assets and liabilities held, used, arising from, available, or to be made available, in connection with the functions transferred by this title, as the Director may determine necessary to accomplish the purposes of this title.

(b) SUNSET.—The authority provided in this section shall terminate 5 years after the date of enactment of this Act.

SEC. 1066. INTERIM AUTHORITY OF THE SECRETARY.

(a) IN GENERAL.—The Secretary is authorized to perform the functions of the Bureau under this subtitle until the Director of the Bureau is confirmed by the Senate in accordance with section 1011.

(b) INTERIM ADMINISTRATIVE SERVICES BY THE DEPARTMENT OF THE TREASURY.—The Department of the Treasury may provide administrative services necessary to support the Bureau before the designated transfer date.

SEC. 1067. TRANSITION OVERSIGHT.

(a) PURPOSE.—The purpose of this section is to ensure that the Bureau—

(1) has an orderly and organized startup;

(2) attracts and retains a qualified workforce; and

(3) establishes comprehensive employee training and benefits programs.

(b) REPORTING REQUIREMENT.—

(1) IN GENERAL.—The Bureau shall submit an annual report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives that includes the plans described in paragraph (2).

(2) PLANS.—The plans described in this paragraph are as follows:

(A) TRAINING AND WORKFORCE DEVELOPMENT PLAN.—The Bureau shall submit a training and workforce development plan that includes, to the extent practicable—

(i) identification of skill and technical expertise needs and actions taken to meet those requirements;

(ii) steps taken to foster innovation and creativity;

(iii) leadership development and succession planning; and

(iv) effective use of technology by employees.

(B) WORKPLACE FLEXIBILITIES PLAN.—The Bureau shall submit a workforce flexibility plan that includes, to the extent practicable—

(i) telework;

(ii) flexible work schedules;

(iii) phased retirement;

(iv) reemployed annuitants;

(v) part-time work;
(vi) job sharing;
(vii) parental leave benefits and childcare assistance;
(viii) domestic partner benefits;
(ix) other workplace flexibilities; or
(x) any combination of the items described in clauses (i) through (ix).

(C) RECRUITMENT AND RETENTION PLAN.—The Bureau shall submit a recruitment and retention plan that includes, to the extent practicable, provisions relating to—
(i) the steps necessary to target highly qualified applicant pools with diverse backgrounds;
(ii) streamlined employment application processes;
(iii) the provision of timely notification of the status of employment applications to applicants; and
(iv) the collection of information to measure indicators of hiring effectiveness.

(c) EXPIRATION.—The reporting requirement under subsection (b) shall terminate 5 years after the date of enactment of this Act.

(d) RULE OF CONSTRUCTION.—Nothing in this section may be construed to affect—
(1) a collective bargaining agreement, as that term is defined in section 7103(a)(8) of title 5, United States Code, that is in effect on the date of enactment of this Act; or
(2) the rights of employees under chapter 71 of title 5, United States Code.

(e) PARTICIPATION IN EXAMINATIONS.—In order to prepare the Bureau to conduct examinations under section 1025 upon the designated transfer date, the Bureau and the applicable prudential regulator may agree to include, on a sampling basis, examiners on examinations of the compliance with Federal consumer financial law of institutions described in section 1025(a) conducted by the prudential regulators prior to the designated transfer date.

Subtitle G—Regulatory Improvements

SEC. 1071. SMALL BUSINESS DATA COLLECTION.

(a) IN GENERAL.—The Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.) is amended by inserting after section 704A the following:

"SEC. 704B. SMALL BUSINESS LOAN DATA COLLECTION.

"(a) PURPOSE.—The purpose of this section is to facilitate enforcement of fair lending laws and enable communities, governmental entities, and creditors to identify business and community development needs and opportunities of women-owned, minority-owned, and small businesses.

"(b) INFORMATION GATHERING.—Subject to the requirements of this section, in the case of any application to a financial institution for credit for women-owned, minority-owned, or small business, the financial institution shall—
"(1) inquire whether the business is a women-owned, minority-owned, or small business, without regard to whether such application is received in person, by mail, by telephone,

by electronic mail or other form of electronic transmission, or by any other means, and whether or not such application is in response to a solicitation by the financial institution; and

"(2) maintain a record of the responses to such inquiry, separate from the application and accompanying information.

"(c) RIGHT TO REFUSE.—Any applicant for credit may refuse to provide any information requested pursuant to subsection (b) in connection with any application for credit.

"(d) NO ACCESS BY UNDERWRITERS.—

"(1) LIMITATION.—Where feasible, no loan underwriter or other officer or employee of a financial institution, or any affiliate of a financial institution, involved in making any determination concerning an application for credit shall have access to any information provided by the applicant pursuant to a request under subsection (b) in connection with such application.

"(2) LIMITED ACCESS.—If a financial institution determines that a loan underwriter or other officer or employee of a financial institution, or any affiliate of a financial institution, involved in making any determination concerning an application for credit should have access to any information provided by the applicant pursuant to a request under subsection (b), the financial institution shall provide notice to the applicant of the access of the underwriter to such information, along with notice that the financial institution may not discriminate on the basis of such information.

"(e) FORM AND MANNER OF INFORMATION.—

"(1) IN GENERAL.—Each financial institution shall compile and maintain, in accordance with regulations of the Bureau, a record of the information provided by any loan applicant pursuant to a request under subsection (b).

"(2) ITEMIZATION.—Information compiled and maintained under paragraph (1) shall be itemized in order to clearly and conspicuously disclose—

"(A) the number of the application and the date on which the application was received;

"(B) the type and purpose of the loan or other credit being applied for;

"(C) the amount of the credit or credit limit applied for, and the amount of the credit transaction or the credit limit approved for such applicant;

"(D) the type of action taken with respect to such application, and the date of such action;

"(E) the census tract in which is located the principal place of business of the women-owned, minority-owned, or small business loan applicant;

"(F) the gross annual revenue of the business in the last fiscal year of the women-owned, minority-owned, or small business loan applicant preceding the date of the application;

"(G) the race, sex, and ethnicity of the principal owners of the business; and

"(H) any additional data that the Bureau determines would aid in fulfilling the purposes of this section.

"(3) NO PERSONALLY IDENTIFIABLE INFORMATION.—In compiling and maintaining any record of information under this

section, a financial institution may not include in such record the name, specific address (other than the census tract required under paragraph (1)(E)), telephone number, electronic mail address, or any other personally identifiable information concerning any individual who is, or is connected with, the women-owned, minority-owned, or small business loan applicant.

"(4) DISCRETION TO DELETE OR MODIFY PUBLICLY AVAILABLE DATA.—The Bureau may, at its discretion, delete or modify data collected under this section which is or will be available to the public, if the Bureau determines that the deletion or modification of the data would advance a privacy interest.

"(f) AVAILABILITY OF INFORMATION.—

"(1) SUBMISSION TO BUREAU.—The data required to be compiled and maintained under this section by any financial institution shall be submitted annually to the Bureau.

"(2) AVAILABILITY OF INFORMATION.—Information compiled and maintained under this section shall be—

"(A) retained for not less than 3 years after the date of preparation;

"(B) made available to any member of the public, upon request, in the form required under regulations prescribed by the Bureau;

"(C) annually made available to the public generally by the Bureau, in such form and in such manner as is determined by the Bureau, by regulation.

"(3) COMPILATION OF AGGREGATE DATA.—The Bureau may, at its discretion—

"(A) compile and aggregate data collected under this section for its own use; and

"(B) make public such compilations of aggregate data.

"(g) BUREAU ACTION.—

"(1) IN GENERAL.—The Bureau shall prescribe such rules and issue such guidance as may be necessary to carry out, enforce, and compile data pursuant to this section.

"(2) EXCEPTIONS.—The Bureau, by rule or order, may adopt exceptions to any requirement of this section and may, conditionally or unconditionally, exempt any financial institution or class of financial institutions from the requirements of this section, as the Bureau deems necessary or appropriate to carry out the purposes of this section.

"(3) GUIDANCE.—The Bureau shall issue guidance designed to facilitate compliance with the requirements of this section, including assisting financial institutions in working with applicants to determine whether the applicants are women-owned, minority-owned, or small businesses for purposes of this section.

"(h) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

"(1) FINANCIAL INSTITUTION.—The term 'financial institution' means any partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity that engages in any financial activity.

"(2) SMALL BUSINESS.—The term 'small business' has the same meaning as the term 'small business concern' in section 3 of the Small Business Act (15 U.S.C. 632).

"(3) SMALL BUSINESS LOAN.—The term 'small business loan' means a loan made to a small business.

"(4) MINORITY.—The term 'minority' has the same meaning as in section 1204(c)(3) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

"(5) MINORITY-OWNED BUSINESS.—The term 'minority-owned business' means a business—

"(A) more than 50 percent of the ownership or control of which is held by 1 or more minority individuals; and

"(B) more than 50 percent of the net profit or loss of which accrues to 1 or more minority individuals.

"(6) WOMEN-OWNED BUSINESS.—The term 'women-owned business' means a business—

"(A) more than 50 percent of the ownership or control of which is held by 1 or more women; and

"(B) more than 50 percent of the net profit or loss of which accrues to 1 or more women.".

(b) TECHNICAL AND CONFORMING AMENDMENTS.—Section 701(b) of the Equal Credit Opportunity Act (15 U.S.C. 1691(b)) is amended—

(1) in paragraph (3), by striking "or" at the end;

(2) in paragraph (4), by striking the period at the end and inserting "; or"; and

(3) by inserting after paragraph (4), the following:

"(5) to make an inquiry under section 704B, in accordance with the requirements of that section.".

(c) CLERICAL AMENDMENT.—The table of sections for title VII of the Consumer Credit Protection Act is amended by inserting after the item relating to section 704A the following new item:

"704B. Small business loan data collection.".

(d) EFFECTIVE DATE.—This section shall become effective on the designated transfer date.

SEC. 1072. ASSISTANCE FOR ECONOMICALLY VULNERABLE INDIVIDUALS AND FAMILIES.

(a) HERA AMENDMENTS.—Section 1132 of the Housing and Economic Recovery Act of 2008 (12 U.S.C. 1701x note) is amended—

(1) in subsection (a), by inserting in each of paragraphs (1), (2), (3), and (4) "or economically vulnerable individuals and families" after "homebuyers" each place that term appears;

(2) in subsection (b)(1), by inserting "or economically vulnerable individuals and families" after "homebuyers";

(3) in subsection (c)(1)—

(A) in subparagraph (A), by striking "or" at the end;

(B) in subparagraph (B), by striking the period at the end and inserting "; or"; and

(C) by adding at the end the following:

"(C) a nonprofit corporation that—

"(i) is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986; and

"(ii) specializes or has expertise in working with economically vulnerable individuals and families, but whose primary purpose is not provision of credit counseling services."; and

(4) in subsection (d)(1), by striking "not more than 5".

(b) APPLICABILITY.—Amendments made by subsection (a) shall not apply to programs authorized by section 1132 of the Housing and Economic Recovery Act of 2008 (12 U.S.C. 1701x note) that are funded with appropriations prior to fiscal year 2011.

SEC. 1073. REMITTANCE TRANSFERS.

(a) TREATMENT OF REMITTANCE TRANSFERS.—The Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.) is amended—

(1) in section 902(b) (15 U.S.C. 1693(b)), by inserting "and remittance" after "electronic fund";

(2) in section 904(c) (15 U.S.C. 1693b(c)), in the first sentence, by inserting "or remittance transfers" after "electronic fund transfers";

(3) by redesignating sections 919, 920, 921, and 922 as sections 920, 921, 922, and 923, respectively; and

(4) by inserting after section 918 the following:

"SEC. 919. REMITTANCE TRANSFERS.

"(a) DISCLOSURES REQUIRED FOR REMITTANCE TRANSFERS.—

"(1) IN GENERAL.—Each remittance transfer provider shall make disclosures as required under this section and in accordance with rules prescribed by the Board. Disclosures required under this section shall be in addition to any other disclosures applicable under this title.

"(2) DISCLOSURES.—Subject to rules prescribed by the Board, a remittance transfer provider shall provide, in writing and in a form that the sender may keep, to each sender requesting a remittance transfer, as applicable to the transaction—

"(A) at the time at which the sender requests a remittance transfer to be initiated, and prior to the sender making any payment in connection with the remittance transfer, a disclosure describing—

"(i) the amount of currency that will be received by the designated recipient, using the values of the currency into which the funds will be exchanged;

"(ii) the amount of transfer and any other fees charged by the remittance transfer provider for the remittance transfer; and

"(iii) any exchange rate to be used by the remittance transfer provider for the remittance transfer, to the nearest 1/100th of a point; and

"(B) at the time at which the sender makes payment in connection with the remittance transfer—

"(i) a receipt showing—

"(I) the information described in subparagraph (A);

"(II) the promised date of delivery to the designated recipient; and

"(III) the name and either the telephone number or the address of the designated recipient, if either the telephone number or the address of the designated recipient is provided by the sender; and

"(ii) a statement containing—

"(I) information about the rights of the sender under this section regarding the resolution of errors; and

"(II) appropriate contact information for—

"(aa) the remittance transfer provider; and

"(bb) the State agency that regulates the remittance transfer provider and the Board, including the toll-free telephone number established under section 1013 of the Consumer Financial Protection Act of 2010.

"(3) REQUIREMENTS RELATING TO DISCLOSURES.—With respect to each disclosure required to be provided under paragraph (2) a remittance transfer provider shall—

"(A) provide an initial notice and receipt, as required by subparagraphs (A) and (B) of paragraph (2), and an error resolution statement, as required by subsection (d), that clearly and conspicuously describe the information required to be disclosed therein; and

"(B) with respect to any transaction that a sender conducts electronically, comply with the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001 et seq.).

"(4) EXCEPTION FOR DISCLOSURES OF AMOUNT RECEIVED.—

"(A) IN GENERAL.—Subject to the rules prescribed by the Board, and except as provided under subparagraph (B), the disclosures required regarding the amount of currency that will be received by the designated recipient shall be deemed to be accurate, so long as the disclosures provide a reasonably accurate estimate of the foreign currency to be received. This paragraph shall apply only to a remittance transfer provider who is an insured depository institution, as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813), or an insured credit union, as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752), and if—

"(i) a remittance transfer is conducted through a demand deposit, savings deposit, or other asset account that the sender holds with such remittance transfer provider; and

"(ii) at the time at which the sender requests the transaction, the remittance transfer provider is unable to know, for reasons beyond its control, the amount of currency that will be made available to the designated recipient.

"(B) DEADLINE.—The application of subparagraph (A) shall terminate 5 years after the date of enactment of the Consumer Financial Protection Act of 2010, unless the Board determines that termination of such provision would negatively affect the ability of remittance transfer providers described in subparagraph (A) to send remittances to locations in foreign countries, in which case, the Board may, by rule, extend the application of subparagraph (A) to not longer than 10 years after the date of enactment of the Consumer Financial Protection Act of 2010.

"(5) EXEMPTION AUTHORITY.—The Board may, by rule, permit a remittance transfer provider to satisfy the requirements of—

"(A) paragraph (2)(A) orally, if the transaction is conducted entirely by telephone;

"(B) paragraph (2)(B), in the case of a transaction conducted entirely by telephone, by mailing the disclosures required under such subparagraph to the sender, not later than 1 business day after the date on which the transaction is conducted, or by including such documents in the next periodic statement, if the telephone transaction is conducted through a demand deposit, savings deposit, or other asset account that the sender holds with the remittance transfer provider;

"(C) subparagraphs (A) and (B) of paragraph (2) together in one written disclosure, but only to the extent that the information provided in accordance with paragraph (3)(A) is accurate at the time at which payment is made in connection with the subject remittance transfer; and

"(D) paragraph (2)(A), without compliance with section 101(c) of the Electronic Signatures in Global Commerce Act, if a sender initiates the transaction electronically and the information is displayed electronically in a manner that the sender can keep.

"(6) STOREFRONT AND INTERNET NOTICES.—

"(A) IN GENERAL.—

"(i) PROMINENT POSTING.—Subject to subparagraph (B), the Board may prescribe rules to require a remittance transfer provider to prominently post, and timely update, a notice describing a model remittance transfer for one or more amounts, as the Board may determine, which notice shall show the amount of currency that will be received by the designated recipient, using the values of the currency into which the funds will be exchanged.

"(ii) ONSITE DISPLAYS.—The Board may require the notice prescribed under this subparagraph to be displayed in every physical storefront location owned or controlled by the remittance transfer provider.

"(iii) INTERNET NOTICES.—Subject to paragraph (3), the Board shall prescribe rules to require a remittance transfer provider that provides remittance transfers via the Internet to provide a notice, comparable to a storefront notice described in this subparagraph, located on the home page or landing page (with respect to such remittance transfer services) owned or controlled by the remittance transfer provider.

"(iv) RULEMAKING AUTHORITY.—In prescribing rules under this subparagraph, the Board may impose standards or requirements regarding the provision of the storefront and Internet notices required under this subparagraph and the provision of the disclosures required under paragraphs (2) and (3).

"(B) STUDY AND ANALYSIS.—Prior to proposing rules under subparagraph (A), the Board shall undertake appropriate studies and analyses, which shall be consistent with section 904(a)(2), and may include an advanced notice of proposed rulemaking, to determine whether a storefront notice or Internet notice facilitates the ability of a consumer—

"(i) to compare prices for remittance transfers; and

"(ii) to understand the types and amounts of any fees or costs imposed on remittance transfers.

"(b) FOREIGN LANGUAGE DISCLOSURES.—The disclosures required under this section shall be made in English and in each of the foreign languages principally used by the remittance transfer provider, or any of its agents, to advertise, solicit, or market, either orally or in writing, at that office.

"(c) REGULATIONS REGARDING TRANSFERS TO CERTAIN NATIONS.—If the Board determines that a recipient nation does not legally allow, or the method by which transactions are made in the recipient country do not allow, a remittance transfer provider to know the amount of currency that will be received by the designated recipient, the Board may prescribe rules (not later than 18 months after the date of enactment of the Consumer Financial Protection Act of 2010) addressing the issue, which rules shall include standards for a remittance transfer provider to provide—

"(1) a receipt that is consistent with subsections (a) and (b); and

"(2) a reasonably accurate estimate of the foreign currency to be received, based on the rate provided to the sender by the remittance transfer provider at the time at which the transaction was initiated by the sender.

"(d) REMITTANCE TRANSFER ERRORS.—

"(1) ERROR RESOLUTION.—

"(A) IN GENERAL.—If a remittance transfer provider receives oral or written notice from the sender within 180 days of the promised date of delivery that an error occurred with respect to a remittance transfer, including the amount of currency designated in subsection (a)(3)(A) that was to be sent to the designated recipient of the remittance transfer, using the values of the currency into which the funds should have been exchanged, but was not made available to the designated recipient in the foreign country, the remittance transfer provider shall resolve the error pursuant to this subsection and investigate the reason for the error.

"(B) REMEDIES.—Not later than 90 days after the date of receipt of a notice from the sender pursuant to subparagraph (A), the remittance transfer provider shall, as applicable to the error and as designated by the sender—

"(i) refund to the sender the total amount of funds tendered by the sender in connection with the remittance transfer which was not properly transmitted;

"(ii) make available to the designated recipient, without additional cost to the designated recipient or to the sender, the amount appropriate to resolve the error;

"(iii) provide such other remedy, as determined appropriate by rule of the Board for the protection of senders; or

"(iv) provide written notice to the sender that there was no error with an explanation responding to the specific complaint of the sender.

"(2) RULES.—The Board shall establish, by rule issued not later than 18 months after the date of enactment of the Consumer Financial Protection Act of 2010, clear and appropriate standards for remittance transfer providers with respect to

error resolution relating to remittance transfers, to protect senders from such errors. Standards prescribed under this paragraph shall include appropriate standards regarding record keeping, as required, including documentation—

"(A) of the complaint of the sender;

"(B) that the sender provides the remittance transfer provider with respect to the alleged error; and

"(C) of the findings of the remittance transfer provider regarding the investigation of the alleged error that the sender brought to their attention.

"(3) CANCELLATION AND REFUND POLICY RULES.—Not later than 18 months after the date of enactment of the Consumer Financial Protection Act of 2010, the Board shall issue final rules regarding appropriate remittance transfer cancellation and refund policies for consumers.

"(e) APPLICABILITY OF THIS TITLE.—

"(1) IN GENERAL.—A remittance transfer that is not an electronic fund transfer, as defined in section 903, shall not be subject to any of the provisions of sections 905 through 913. A remittance transfer that is an electronic fund transfer, as defined in section 903, shall be subject to all provisions of this title, except for section 908, that are otherwise applicable to electronic fund transfers under this title.

"(2) RULE OF CONSTRUCTION.—Nothing in this section shall be construed—

"(A) to affect the application to any transaction, to any remittance provider, or to any other person of any of the provisions of subchapter II of chapter 53 of title 31, United States Code, section 21 of the Federal Deposit Insurance Act (12 U.S.C. 1829b), or chapter 2 of title I of Public Law 91–508 (12 U.S.C. 1951–1959), or any regulations promulgated thereunder; or

"(B) to cause any fund transfer that would not otherwise be treated as such under paragraph (1) to be treated as an electronic fund transfer, or as otherwise subject to this title, for the purposes of any of the provisions referred to in subparagraph (A) or any regulations promulgated thereunder.

"(f) ACTS OF AGENTS.—

"(1) IN GENERAL.—A remittance transfer provider shall be liable for any violation of this section by any agent, authorized delegate, or person affiliated with such provider, when such agent, authorized delegate, or affiliate acts for that remittance transfer provider.

"(2) OBLIGATIONS OF REMITTANCE TRANSFER PROVIDERS.—The Board shall prescribe rules to implement appropriate standards or conditions of, liability of a remittance transfer provider, including a provider who acts through an agent or authorized delegate. An agency charged with enforcing the requirements of this section, or rules prescribed by the Board under this section, may consider, in any action or other proceeding against a remittance transfer provider, the extent to which the provider had established and maintained policies or procedures for compliance, including policies, procedures, or other appropriate oversight measures designed to assure compliance by an agent or authorized delegate acting for such provider.

"(g) DEFINITIONS.—As used in this section—

"(1) the term 'designated recipient' means any person located in a foreign country and identified by the sender as the authorized recipient of a remittance transfer to be made by a remittance transfer provider, except that a designated recipient shall not be deemed to be a consumer for purposes of this Act;

"(2) the term 'remittance transfer'—

"(A) means the electronic (as defined in section 106(2) of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7006(2))) transfer of funds requested by a sender located in any State to a designated recipient that is initiated by a remittance transfer provider, whether or not the sender holds an account with the remittance transfer provider or whether or not the remittance transfer is also an electronic fund transfer, as defined in section 903; and

"(B) does not include a transfer described in subparagraph (A) in an amount that is equal to or lesser than the amount of a small-value transaction determined, by rule, to be excluded from the requirements under section 906(a);

"(3) the term 'remittance transfer provider' means any person or financial institution that provides remittance transfers for a consumer in the normal course of its business, whether or not the consumer holds an account with such person or financial institution; and

"(4) the term 'sender' means a consumer who requests a remittance provider to send a remittance transfer for the consumer to a designated recipient.".

(b) AUTOMATED CLEARINGHOUSE SYSTEM.—

(1) EXPANSION OF SYSTEM.—The Board of Governors shall work with the Federal reserve banks and the Department of the Treasury to expand the use of the automated clearinghouse system and other payment mechanisms for remittance transfers to foreign countries, with a focus on countries that receive significant remittance transfers from the United States, based on—

(A) the number, volume, and size of such transfers;

(B) the significance of the volume of such transfers relative to the external financial flows of the receiving country, including—

(i) the total amount transferred; and

(ii) the total volume of payments made by United States Government agencies to beneficiaries and retirees living abroad;

(C) the feasibility of such an expansion; and

(D) the ability of the Federal Reserve System to establish payment gateways in different geographic regions and currency zones to receive remittance transfers and route them through the payments systems in the destination countries.

(2) REPORT TO CONGRESS.—Not later than one calendar year after the date of enactment of this Act, and on April 30 biennially thereafter during the 10-year period beginning on that date of enactment, the Board of Governors shall submit a report to the Committee on Banking, Housing, and Urban

Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the status of the automated clearinghouse system and its progress in complying with the requirements of this subsection. The report shall include an analysis of adoption rates of International ACH Transactions rules and formats, the efficacy of increasing adoption rates, and potential recommendations to increase adoption.

(c) EXPANSION OF FINANCIAL INSTITUTION PROVISION OF REMITTANCE TRANSFERS.—

(1) PROVISION OF GUIDELINES TO INSTITUTIONS.—Each of the Federal banking agencies and the National Credit Union Administration shall provide guidelines to financial institutions under the jurisdiction of the agency regarding the offering of low-cost remittance transfers and no-cost or low-cost basic consumer accounts, as well as agency services to remittance transfer providers.

(2) ASSISTANCE TO FINANCIAL LITERACY COMMISSION.—As part of its duties as members of the Financial Literacy and Education Commission, the Bureau, the Federal banking agencies, and the National Credit Union Administration shall assist the Financial Literacy and Education Commission in executing the Strategy for Assuring Financial Empowerment (or the "SAFE Strategy"), as it relates to remittances.

(d) FEDERAL CREDIT UNION ACT CONFORMING AMENDMENT.—Paragraph (12) of section 107 of the Federal Credit Union Act (12 U.S.C. 1757) is amended to read as follows:

"(12) in accordance with regulations prescribed by the Board—

"(A) to sell, to persons in the field of membership, negotiable checks (including travelers checks), money orders, and other similar money transfer instruments (including international and domestic electronic fund transfers and remittance transfers, as defined in section 919 of the Electronic Fund Transfer Act); and

"(B) to cash checks and money orders for persons in the field of membership for a fee;".

(e) REPORT ON FEASIBILITY OF AND IMPEDIMENTS TO USE OF REMITTANCE HISTORY IN CALCULATION OF CREDIT SCORE.—Before the end of the 365-day period beginning on the date of enactment of this Act, the Director shall submit a report to the President, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives regarding—

(1) the manner in which the remittance history of a consumer could be used to enhance the credit score of the consumer;

(2) the current legal and business model barriers and impediments that impede the use of the remittance history of the consumer to enhance the credit score of the consumer; and

(3) recommendations on the manner in which maximum transparency and disclosure to consumers of exchange rates for remittance transfers subject to this title and the amendments made by this title may be accomplished, whether or not such exchange rates are known at the time of origination or payment by the consumer for the remittance transfer, including disclosure to the sender of the actual exchange rate

used and the amount of currency that the recipient of the remittance transfer received, using the values of the currency into which the funds were exchanged, as contained in sections 919(a)(2)(D) and 919(a)(3) of the Electronic Fund Transfer Act (as amended by this section).

SEC. 1074. DEPARTMENT OF THE TREASURY STUDY ON ENDING THE CONSERVATORSHIP OF FANNIE MAE, FREDDIE MAC, AND REFORMING THE HOUSING FINANCE SYSTEM.

(a) STUDY REQUIRED.—

(1) IN GENERAL.—The Secretary of the Treasury shall conduct a study of and develop recommendations regarding the options for ending the conservatorship of the Federal National Mortgage Association (in this section referred to as "Fannie Mae") and the Federal Home Loan Mortgage Corporation (in this section referred to as "Freddie Mac"), while minimizing the cost to taxpayers, including such options as—

(A) the gradual wind-down and liquidation of such entities;

(B) the privatization of such entities;

(C) the incorporation of the functions of such entities into a Federal agency;

(D) the dissolution of Fannie Mae and Freddie Mac into smaller companies; or

(E) any other measures the Secretary determines appropriate.

(2) ANALYSES.—The study required under paragraph (1) shall include an analysis of—

(A) the role of the Federal Government in supporting a stable, well-functioning housing finance system, and whether and to what extent the Federal Government should bear risks in meeting Federal housing finance objectives;

(B) how the current structure of the housing finance system can be improved;

(C) how the housing finance system should support the continued availability of mortgage credit to all segments of the market;

(D) how the housing finance system should be structured to ensure that consumers continue to have access to 30-year, fixed rate, pre-payable mortgages and other mortgage products that have simple terms that can be easily understood;

(E) the role of the Federal Housing Administration and the Department of Veterans Affairs in a future housing system;

(F) the impact of reforms of the housing finance system on the financing of rental housing;

(G) the impact of reforms of the housing finance system on secondary market liquidity;

(H) the role of standardization in the housing finance system;

(I) how housing finance systems in other countries offer insights that can help inform options for reform in the United States; and

(J) the options for transition to a reformed housing finance system.

(b) REPORT AND RECOMMENDATIONS.—Not later than January 31, 2011, the Secretary of the Treasury shall submit the report and recommendations required under subsection (a) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

SEC. 1075. REASONABLE FEES AND RULES FOR PAYMENT CARD TRANSACTIONS.

(a) IN GENERAL.—The Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.) is amended—

(1) by redesignating sections 920 and 921 as sections 921 and 922, respectively; and

(2) by inserting after section 919 the following:

"SEC. 920. REASONABLE FEES AND RULES FOR PAYMENT CARD TRANSACTIONS.

"(a) REASONABLE INTERCHANGE TRANSACTION FEES FOR ELECTRONIC DEBIT TRANSACTIONS.—

"(1) REGULATORY AUTHORITY OVER INTERCHANGE TRANSACTION FEES.—The Board may prescribe regulations, pursuant to section 553 of title 5, United States Code, regarding any interchange transaction fee that an issuer may receive or charge with respect to an electronic debit transaction, to implement this subsection (including related definitions), and to prevent circumvention or evasion of this subsection.

"(2) REASONABLE INTERCHANGE TRANSACTION FEES.—The amount of any interchange transaction fee that an issuer may receive or charge with respect to an electronic debit transaction shall be reasonable and proportional to the cost incurred by the issuer with respect to the transaction.

"(3) RULEMAKING REQUIRED.—

"(A) IN GENERAL.—The Board shall prescribe regulations in final form not later than 9 months after the date of enactment of the Consumer Financial Protection Act of 2010, to establish standards for assessing whether the amount of any interchange transaction fee described in paragraph (2) is reasonable and proportional to the cost incurred by the issuer with respect to the transaction.

"(B) INFORMATION COLLECTION.—The Board may require any issuer (or agent of an issuer) or payment card network to provide the Board with such information as may be necessary to carry out the provisions of this subsection and the Board, in issuing rules under subparagraph (A) and on at least a bi-annual basis thereafter, shall disclose such aggregate or summary information concerning the costs incurred, and interchange transaction fees charged or received, by issuers or payment card networks in connection with the authorization, clearance or settlement of electronic debit transactions as the Board considers appropriate and in the public interest.

"(4) CONSIDERATIONS; CONSULTATION.—In prescribing regulations under paragraph (3)(A), the Board shall—

"(A) consider the functional similarity between—

"(i) electronic debit transactions; and

"(ii) checking transactions that are required within the Federal Reserve bank system to clear at par;

"(B) distinguish between—

"(i) the incremental cost incurred by an issuer for the role of the issuer in the authorization, clearance, or settlement of a particular electronic debit transaction, which cost shall be considered under paragraph (2); and

"(ii) other costs incurred by an issuer which are not specific to a particular electronic debit transaction, which costs shall not be considered under paragraph (2); and

"(C) consult, as appropriate, with the Comptroller of the Currency, the Board of Directors of the Federal Deposit Insurance Corporation, the Director of the Office of Thrift Supervision, the National Credit Union Administration Board, the Administrator of the Small Business Administration, and the Director of the Bureau of Consumer Financial Protection.

"(5) ADJUSTMENTS TO INTERCHANGE TRANSACTION FEES FOR FRAUD PREVENTION COSTS.—

"(A) ADJUSTMENTS.—The Board may allow for an adjustment to the fee amount received or charged by an issuer under paragraph (2), if—

"(i) such adjustment is reasonably necessary to make allowance for costs incurred by the issuer in preventing fraud in relation to electronic debit transactions involving that issuer; and

"(ii) the issuer complies with the fraud-related standards established by the Board under subparagraph (B), which standards shall—

"(I) be designed to ensure that any fraud-related adjustment of the issuer is limited to the amount described in clause (i) and takes into account any fraud-related reimbursements (including amounts from charge-backs) received from consumers, merchants, or payment card networks in relation to electronic debit transactions involving the issuer; and

"(II) require issuers to take effective steps to reduce the occurrence of, and costs from, fraud in relation to electronic debit transactions, including through the development and implementation of cost-effective fraud prevention technology.

"(B) RULEMAKING REQUIRED.—

"(i) IN GENERAL.—The Board shall prescribe regulations in final form not later than 9 months after the date of enactment of the Consumer Financial Protection Act of 2010, to establish standards for making adjustments under this paragraph.

"(ii) FACTORS FOR CONSIDERATION.—In issuing the standards and prescribing regulations under this paragraph, the Board shall consider—

"(I) the nature, type, and occurrence of fraud in electronic debit transactions;

"(II) the extent to which the occurrence of fraud depends on whether authorization in an electronic debit transaction is based on signature, PIN, or other means;

"(III) the available and economical means by which fraud on electronic debit transactions may be reduced;

"(IV) the fraud prevention and data security costs expended by each party involved in electronic debit transactions (including consumers, persons who accept debit cards as a form of payment, financial institutions, retailers and payment card networks);

"(V) the costs of fraudulent transactions absorbed by each party involved in such transactions (including consumers, persons who accept debit cards as a form of payment, financial institutions, retailers and payment card networks);

"(VI) the extent to which interchange transaction fees have in the past reduced or increased incentives for parties involved in electronic debit transactions to reduce fraud on such transactions; and

"(VII) such other factors as the Board considers appropriate.

"(6) EXEMPTION FOR SMALL ISSUERS.—

"(A) IN GENERAL.—This subsection shall not apply to any issuer that, together with its affiliates, has assets of less than $10,000,000,000, and the Board shall exempt such issuers from regulations prescribed under paragraph (3)(A).

"(B) DEFINITION.—For purposes of this paragraph, the term "issuer" shall be limited to the person holding the asset account that is debited through an electronic debit transaction.

"(7) EXEMPTION FOR GOVERNMENT-ADMINISTERED PAYMENT PROGRAMS AND RELOADABLE PREPAID CARDS.—

"(A) IN GENERAL.—This subsection shall not apply to an interchange transaction fee charged or received with respect to an electronic debit transaction in which a person uses—

"(i) a debit card or general-use prepaid card that has been provided to a person pursuant to a Federal, State or local government-administered payment program, in which the person may only use the debit card or general-use prepaid card to transfer or debit funds, monetary value, or other assets that have been provided pursuant to such program; or

"(ii) a plastic card, payment code, or device that is—

"(I) linked to funds, monetary value, or assets which are purchased or loaded on a prepaid basis;

"(II) not issued or approved for use to access or debit any account held by or for the benefit of the card holder (other than a subaccount or other method of recording or tracking funds purchased or loaded on the card on a prepaid basis);

"(III) redeemable at multiple, unaffiliated merchants or service providers, or automated teller machines;

"(IV) used to transfer or debit funds, monetary value, or other assets; and

"(V) reloadable and not marketed or labeled as a gift card or gift certificate.

"(B) EXCEPTION.—Notwithstanding subparagraph (A), after the end of the 1-year period beginning on the effective date provided in paragraph (9), this subsection shall apply to an interchange transaction fee charged or received with respect to an electronic debit transaction described in subparagraph (A)(i) in which a person uses a general-use prepaid card, or an electronic debit transaction described in subparagraph (A)(ii), if any of the following fees may be charged to a person with respect to the card:

"(i) A fee for an overdraft, including a shortage of funds or a transaction processed for an amount exceeding the account balance.

"(ii) A fee imposed by the issuer for the first withdrawal per month from an automated teller machine that is part of the issuer's designated automated teller machine network.

"(C) DEFINITION.—For purposes of subparagraph (B), the term 'designated automated teller machine network' means either—

"(i) all automated teller machines identified in the name of the issuer; or

"(ii) any network of automated teller machines identified by the issuer that provides reasonable and convenient access to the issuer's customers.

"(D) REPORTING.—Beginning 12 months after the date of enactment of the Consumer Financial Protection Act of 2010, the Board shall annually provide a report to the Congress regarding —

"(i) the prevalence of the use of general-use prepaid cards in Federal, State or local government-administered payment programs; and

"(ii) the interchange transaction fees and cardholder fees charged with respect to the use of such general-use prepaid cards.

"(8) REGULATORY AUTHORITY OVER NETWORK FEES.—

"(A) IN GENERAL.—The Board may prescribe regulations, pursuant to section 553 of title 5, United States Code, regarding any network fee.

"(B) LIMITATION.—The authority under subparagraph (A) to prescribe regulations shall be limited to regulations to ensure that—

"(i) a network fee is not used to directly or indirectly compensate an issuer with respect to an electronic debit transaction; and

"(ii) a network fee is not used to circumvent or evade the restrictions of this subsection and regulations prescribed under such subsection.

"(C) RULEMAKING REQUIRED.—The Board shall prescribe regulations in final form before the end of the 9-month period beginning on the date of the enactment of the Consumer Financial Protection Act of 2010, to carry out the authorities provided under subparagraph (A).

"(9) EFFECTIVE DATE.—This subsection shall take effect at the end of the 12-month period beginning on the date of the enactment of the Consumer Financial Protection Act of 2010.

"(b) LIMITATION ON PAYMENT CARD NETWORK RESTRICTIONS.—

"(1) PROHIBITIONS AGAINST EXCLUSIVITY ARRANGEMENTS.—

"(A) NO EXCLUSIVE NETWORK.—The Board shall, before the end of the 1-year period beginning on the date of the enactment of the Consumer Financial Protection Act of 2010, prescribe regulations providing that an issuer or payment card network shall not directly or through any agent, processor, or licensed member of a payment card network, by contract, requirement, condition, penalty, or otherwise, restrict the number of payment card networks on which an electronic debit transaction may be processed to—

"(i) 1 such network; or

"(ii) 2 or more such networks which are owned, controlled, or otherwise operated by —

"(I) affiliated persons; or

"(II) networks affiliated with such issuer.

"(B) NO ROUTING RESTRICTIONS.—The Board shall, before the end of the 1-year period beginning on the date of the enactment of the Consumer Financial Protection Act of 2010, prescribe regulations providing that an issuer or payment card network shall not, directly or through any agent, processor, or licensed member of the network, by contract, requirement, condition, penalty, or otherwise, inhibit the ability of any person who accepts debit cards for payments to direct the routing of electronic debit transactions for processing over any payment card network that may process such transactions.

"(2) LIMITATION ON RESTRICTIONS ON OFFERING DISCOUNTS FOR USE OF A FORM OF PAYMENT.—

"(A) IN GENERAL.—A payment card network shall not, directly or through any agent, processor, or licensed member of the network, by contract, requirement, condition, penalty, or otherwise, inhibit the ability of any person to provide a discount or in-kind incentive for payment by the use of cash, checks, debit cards, or credit cards to the extent that—

"(i) in the case of a discount or in-kind incentive for payment by the use of debit cards, the discount or in-kind incentive does not differentiate on the basis of the issuer or the payment card network;

"(ii) in the case of a discount or in-kind incentive for payment by the use of credit cards, the discount or in-kind incentive does not differentiate on the basis of the issuer or the payment card network; and

"(iii) to the extent required by Federal law and applicable State law, such discount or in-kind incentive is offered to all prospective buyers and disclosed clearly and conspicuously.

"(B) LAWFUL DISCOUNTS.—For purposes of this paragraph, the network may not penalize any person for the providing of a discount that is in compliance with Federal law and applicable State law.

"(3) LIMITATION ON RESTRICTIONS ON SETTING TRANSACTION MINIMUMS OR MAXIMUMS.—

"(A) IN GENERAL.—A payment card network shall not, directly or through any agent, processor, or licensed member of the network, by contract, requirement, condition, penalty, or otherwise, inhibit the ability—

"(i) of any person to set a minimum dollar value for the acceptance by that person of credit cards, to the extent that —

"(I) such minimum dollar value does not differentiate between issuers or between payment card networks; and

"(II) such minimum dollar value does not exceed $10.00; or

"(ii) of any Federal agency or institution of higher education to set a maximum dollar value for the acceptance by that Federal agency or institution of higher education of credit cards, to the extent that such maximum dollar value does not differentiate between issuers or between payment card networks.

"(B) INCREASE IN MINIMUM DOLLAR AMOUNT.—The Board may, by regulation prescribed pursuant to section 553 of title 5, United States Code, increase the amount of the dollar value listed in subparagraph (A)(i)(II).

"(4) RULE OF CONSTRUCTION:.—No provision of this subsection shall be construed to authorize any person—

"(A) to discriminate between debit cards within a payment card network on the basis of the issuer that issued the debit card; or

"(B) to discriminate between credit cards within a payment card network on the basis of the issuer that issued the credit card.

"(c) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

"(1) AFFILIATE.—The term 'affiliate' means any company that controls, is controlled by, or is under common control with another company.

"(2) DEBIT CARD.—The term 'debit card'—

"(A) means any card, or other payment code or device, issued or approved for use through a payment card network to debit an asset account (regardless of the purpose for which the account is established), whether authorization is based on signature, PIN, or other means;

"(B) includes a general-use prepaid card, as that term is defined in section 915(a)(2)(A); and

"(C) does not include paper checks.

"(3) CREDIT CARD.—The term 'credit card' has the same meaning as in section 103 of the Truth in Lending Act.

"(4) DISCOUNT.—The term 'discount'—

"(A) means a reduction made from the price that customers are informed is the regular price; and

"(B) does not include any means of increasing the price that customers are informed is the regular price.

"(5) ELECTRONIC DEBIT TRANSACTION.—The term 'electronic debit transaction' means a transaction in which a person uses a debit card.

"(6) FEDERAL AGENCY.—The term 'Federal agency' means—

"(A) an agency (as defined in section 101 of title 31, United States Code); and

"(B) a Government corporation (as defined in section 103 of title 5, United States Code).

"(7) INSTITUTION OF HIGHER EDUCATION.—The term 'institution of higher education' has the same meaning as in 101 and 102 of the Higher Education Act of 1965 (20 U.S.C. 1001, 1002).

"(8) INTERCHANGE TRANSACTION FEE.—The term 'interchange transaction fee' means any fee established, charged or received by a payment card network for the purpose of compensating an issuer for its involvement in an electronic debit transaction.

"(9) ISSUER.—The term 'issuer' means any person who issues a debit card, or credit card, or the agent of such person with respect to such card.

"(10) NETWORK FEE.—The term 'network fee' means any fee charged and received by a payment card network with respect to an electronic debit transaction, other than an interchange transaction fee.

"(11) PAYMENT CARD NETWORK.—The term 'payment card network' means an entity that directly, or through licensed members, processors, or agents, provides the proprietary services, infrastructure, and software that route information and data to conduct debit card or credit card transaction authorization, clearance, and settlement, and that a person uses in order to accept as a form of payment a brand of debit card, credit card or other device that may be used to carry out debit or credit transactions.

"(d) ENFORCEMENT.—

"(1) IN GENERAL.—Compliance with the requirements imposed under this section shall be enforced under section 918.

"(2) EXCEPTION.—Sections 916 and 917 shall not apply with respect to this section or the requirements imposed pursuant to this section.".

(b) AMENDMENT TO THE FOOD AND NUTRITION ACT OF 2008.—Section 7(h)(10) of the Food and Nutrition Act of 2008 (7 U.S.C. 2016(h)(10)) is amended to read as follows:

"(10) FEDERAL LAW NOT APPLICABLE.—Section 920 of the Electronic Fund Transfer Act shall not apply to electronic benefit transfer or reimbursement systems under this Act.".

(c) AMENDMENT TO THE FARM SECURITY AND RURAL INVESTMENT ACT OF 2002.—Section 4402 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 3007) is amended by adding at the end the following new subsection:

"(f) FEDERAL LAW NOT APPLICABLE.—Section 920 of the Electronic Fund Transfer Act shall not apply to electronic benefit transfer systems established under this section.".

(d) AMENDMENT TO THE CHILD NUTRITION ACT OF 1966.—Section 11 of the Child Nutrition Act of 1966 (42 U.S.C. 1780) is amended by adding at the end the following:

"(c) FEDERAL LAW NOT APPLICABLE.—Section 920 of the Electronic Fund Transfer Act shall not apply to electronic benefit transfer systems established under this Act or the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.).".

SEC. 1076. REVERSE MORTGAGE STUDY AND REGULATIONS.

(a) STUDY.—Not later than 1 year after the designated transfer date, the Bureau shall conduct a study on reverse mortgage transactions.

(b) REGULATIONS.—

(1) IN GENERAL.—If the Bureau determines through the study required under subsection (a) that conditions or limitations on reverse mortgage transactions are necessary or appropriate for accomplishing the purposes and objectives of this title, including protecting borrowers with respect to the obtaining of reverse mortgage loans for the purpose of funding investments, annuities, and other investment products and the suitability of a borrower in obtaining a reverse mortgage for such purpose.

(2) IDENTIFIED PRACTICES AND INTEGRATED DISCLOSURES.—The regulations prescribed under paragraph (1) may, as the Bureau may so determine—

(A) identify any practice as unfair, deceptive, or abusive in connection with a reverse mortgage transaction; and

(B) provide for an integrated disclosure standard and model disclosures for reverse mortgage transactions, consistent with section 4302(d), that combines the relevant disclosures required under the Truth in Lending Act (15 U.S.C. 1601 et seq.) and the Real Estate Settlement Procedures Act, with the disclosures required to be provided to consumers for Home Equity Conversion Mortgages under section 255 of the National Housing Act.

(c) RULE OF CONSTRUCTION.—This section shall not be construed as limiting the authority of the Bureau to issue regulations, orders, or guidance that apply to reverse mortgages prior to the completion of the study required under subsection (a).

SEC. 1077. REPORT ON PRIVATE EDUCATION LOANS AND PRIVATE EDUCATIONAL LENDERS.

(a) REPORT.—Not later than 2 years after the date of enactment of this Act, the Director and the Secretary of Education, in consultation with the Commissioners of the Federal Trade Commission, and the Attorney General of the United States, shall submit a report to the Committee on Banking, Housing, and Urban Affairs and the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Financial Services and the Committee on Education and Labor of the House of Representatives, on private education loans (as that term is defined in section 140 of the Truth in Lending Act (15 U.S.C. 1650)) and private educational lenders (as that term is defined in such section).

(b) CONTENT.—The report required by this section shall examine, at a minimum—

(1) the growth and changes of the private education loan market in the United States;

(2) factors influencing such growth and changes;

(3) the extent to which students and parents of students rely on private education loans to finance postsecondary education and the private education loan indebtedness of borrowers;

(4) the characteristics of private education loan borrowers, including—

(A) the types of institutions of higher education that they attend;

(B) socioeconomic characteristics (including income and education levels, racial characteristics, geographical background, age, and gender);

(C) what other forms of financing borrowers use to pay for education;

(D) whether they exhaust their Federal loan options before taking out a private loan;

(E) whether such borrowers are dependent or independent students (as determined under part F of title IV of the Higher Education Act of 1965) or parents of such students;

(F) whether such borrowers are students enrolled in a program leading to a certificate, license, or credential other than a degree, an associates degree, a baccalaureate degree, or a graduate or professional degree; and

(G) if practicable, employment and repayment behaviors;

(5) the characteristics of private educational lenders, including whether such creditors are for-profit, non-profit, or institutions of higher education;

(6) the underwriting criteria used by private educational lenders, including the use of cohort default rate (as such term is defined in section 435(m) of the Higher Education Act of 1965);

(7) the terms, conditions, and pricing of private education loans;

(8) the consumer protections available to private education loan borrowers, including the effectiveness of existing disclosures and requirements and borrowers' awareness and understanding about terms and conditions of various financial products;

(9) whether Federal regulators and the public have access to information sufficient to provide them with assurances that private education loans are provided in accord with the Nation's fair lending laws and that allows public officials to determine lender compliance with fair lending laws; and

(10) any statutory or legislative recommendations necessary to improve consumer protections for private education loan borrowers and to better enable Federal regulators and the public to ascertain private educational lender compliance with fair lending laws.

SEC. 1078. STUDY AND REPORT ON CREDIT SCORES.

(a) STUDY.—The Bureau shall conduct a study on the nature, range, and size of variations between the credit scores sold to creditors and those sold to consumers by consumer reporting agencies that compile and maintain files on consumers on a nationwide basis (as defined in section 603(p) of the Fair Credit Reporting Act; 15 U.S.C. 1681a(p)), and whether such variations disadvantage consumers.

(b) REPORT TO CONGRESS.—The Bureau shall submit a report to Congress on the results of the study conducted under subsection (a) not later than 1 year after the date of enactment of this Act.

SEC. 1079. REVIEW, REPORT, AND PROGRAM WITH RESPECT TO EXCHANGE FACILITATORS.

(a) REVIEW.—The Director shall review all Federal laws and regulations relating to the protection of consumers who use exchange facilitators for transactions primarily for personal, family, or household purposes.

(b) REPORT.—Not later than 1 year after the designated transfer date, the Director shall submit to Congress a report describing—

(1) recommendations for legislation to ensure the appropriate protection of consumers who use exchange facilitators for transactions primarily for personal, family, or household purposes;

(2) recommendations for updating the regulations of Federal departments and agencies to ensure the appropriate protection of such consumers; and

(3) recommendations for regulations to ensure the appropriate protection of such consumers.

(c) PROGRAM.—Not later than 2 years after the date of the submission of the report under subsection (b), the Bureau shall, consistent with subtitle B, propose regulations or otherwise establish a program to protect consumers who use exchange facilitators.

(d) EXCHANGE FACILITATOR DEFINED.—In this section, the term "exchange facilitator" means a person that—

(1) facilitates, for a fee, an exchange of like kind property by entering into an agreement with a taxpayer by which the exchange facilitator acquires from the taxpayer the contractual rights to sell the taxpayer's relinquished property and transfers a replacement property to the taxpayer as a qualified intermediary (within the meaning of Treasury Regulations section 1.1031(k)–1(g)(4)) or enters into an agreement with the taxpayer to take title to a property as an exchange accommodation titleholder (within the meaning of Revenue Procedure 2000–37) or enters into an agreement with a taxpayer to act as a qualified trustee or qualified escrow holder (within the meaning of Treasury Regulations section 1.1031(k)–1(g)(3));

(2) maintains an office for the purpose of soliciting business to perform the services described in paragraph (1); or

(3) advertises any of the services described in paragraph (1) or solicits clients in printed publications, direct mail, television or radio advertisements, telephone calls, facsimile transmissions, or other electronic communications directed to the general public for purposes of providing any such services.

SEC. 1079A. FINANCIAL FRAUD PROVISIONS.

(a) SENTENCING GUIDELINES.—

(1) SECURITIES FRAUD.—

(A) DIRECTIVE.—Pursuant to its authority under section 994 of title 28, United States Code, and in accordance with this paragraph, the United States Sentencing Commission shall review and, if appropriate, amend the Federal Sentencing Guidelines and policy statements applicable to persons convicted of offenses relating to securities fraud or any other similar provision of law, in order to reflect the intent of Congress that penalties for the offenses under the guidelines and policy statements appropriately account for the potential and actual harm to the public and the financial markets from the offenses.

(B) REQUIREMENTS.—In making any amendments to the Federal Sentencing Guidelines and policy statements under subparagraph (A), the United States Sentencing Commission shall—

(i) ensure that the guidelines and policy statements, particularly section 2B1.1(b)(14) and section 2B1.1(b)(17) (and any successors thereto), reflect—

(I) the serious nature of the offenses described in subparagraph (A);

(II) the need for an effective deterrent and appropriate punishment to prevent the offenses; and

(III) the effectiveness of incarceration in furthering the objectives described in subclauses (I) and (II);

(ii) consider the extent to which the guidelines appropriately account for the potential and actual harm to the public and the financial markets resulting from the offenses;

(iii) ensure reasonable consistency with other relevant directives and guidelines and Federal statutes;

(iv) make any necessary conforming changes to guidelines; and

(v) ensure that the guidelines adequately meet the purposes of sentencing, as set forth in section 3553(a)(2) of title 18, United States Code.

(2) FINANCIAL INSTITUTION FRAUD.—

(A) DIRECTIVE.—Pursuant to its authority under section 994 of title 28, United States Code, and in accordance with this paragraph, the United States Sentencing Commission shall review and, if appropriate, amend the Federal Sentencing Guidelines and policy statements applicable to persons convicted of fraud offenses relating to financial institutions or federally related mortgage loans and any other similar provisions of law, to reflect the intent of Congress that the penalties for the offenses under the guidelines and policy statements ensure appropriate terms of imprisonment for offenders involved in substantial bank frauds or other frauds relating to financial institutions.

(B) REQUIREMENTS.—In making any amendments to the Federal Sentencing Guidelines and policy statements under subparagraph (A), the United States Sentencing Commission shall—

(i) ensure that the guidelines and policy statements reflect—

(I) the serious nature of the offenses described in subparagraph (A);

(II) the need for an effective deterrent and appropriate punishment to prevent the offenses; and

(III) the effectiveness of incarceration in furthering the objectives described in subclauses (I) and (II);

(ii) consider the extent to which the guidelines appropriately account for the potential and actual harm

to the public and the financial markets resulting from the offenses;

(iii) ensure reasonable consistency with other relevant directives and guidelines and Federal statutes;

(iv) make any necessary conforming changes to guidelines; and

(v) ensure that the guidelines adequately meet the purposes of sentencing, as set forth in section 3553(a)(2) of title 18, United States Code.

(b) EXTENSION OF STATUTE OF LIMITATIONS FOR SECURITIES FRAUD VIOLATIONS.—

(1) IN GENERAL.—Chapter 213 of title 18, United States Code, is amended by adding at the end the following:

"§ 3301. Securities fraud offenses

"(a) DEFINITION.—In this section, the term 'securities fraud offense' means a violation of, or a conspiracy or an attempt to violate—

"(1) section 1348;

"(2) section 32(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78ff(a));

"(3) section 24 of the Securities Act of 1933 (15 U.S.C. 77x);

"(4) section 217 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–17);

"(5) section 49 of the Investment Company Act of 1940 (15 U.S.C. 80a–48); or

"(6) section 325 of the Trust Indenture Act of 1939 (15 U.S.C. 77yyy).

"(b) LIMITATION.—No person shall be prosecuted, tried, or punished for a securities fraud offense, unless the indictment is found or the information is instituted within 6 years after the commission of the offense.".

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 213 of title 18, United States Code, is amended by adding at the end the following:

"3301. Securities fraud offenses.".

(c) AMENDMENTS TO THE FALSE CLAIMS ACT RELATING TO LIMITATIONS ON ACTIONS.—Section 3730(h) of title 31, United States Code, is amended—

(1) in paragraph (1), by striking "or agent on behalf of the employee, contractor, or agent or associated others in furtherance of other efforts to stop 1 or more violations of this subchapter" and inserting "agent or associated others in furtherance of an action under this section or other efforts to stop 1 or more violations of this subchapter"; and

(2) by adding at the end the following:

"(3) LIMITATION ON BRINGING CIVIL ACTION.—A civil action under this subsection may not be brought more than 3 years after the date when the retaliation occurred.".

Subtitle H—Conforming Amendments

SEC. 1081. AMENDMENTS TO THE INSPECTOR GENERAL ACT.

Effective on the date of enactment of this Act, the Inspector General Act of 1978 (5 U.S.C. App. 3) is amended—

(1) in section 8G(a)(2), by inserting "and the Bureau of Consumer Financial Protection" after "Board of Governors of the Federal Reserve System";

(2) in section 8G(c), by adding at the end the following: "For purposes of implementing this section, the Chairman of the Board of Governors of the Federal Reserve System shall appoint the Inspector General of the Board of Governors of the Federal Reserve System and the Bureau of Consumer Financial Protection. The Inspector General of the Board of Governors of the Federal Reserve System and the Bureau of Consumer Financial Protection shall have all of the authorities and responsibilities provided by this Act with respect to the Bureau of Consumer Financial Protection, as if the Bureau were part of the Board of Governors of the Federal Reserve System."; and

(3) in section 8G(g)(3), by inserting "and the Bureau of Consumer Financial Protection" after "Board of Governors of the Federal Reserve System" the first place that term appears.

SEC. 1082. AMENDMENTS TO THE PRIVACY ACT OF 1974.

Effective on the date of enactment of this Act, section 552a of title 5, United States Code, is amended by adding at the end the following:

"(w) APPLICABILITY TO BUREAU OF CONSUMER FINANCIAL PROTECTION.—Except as provided in the Consumer Financial Protection Act of 2010, this section shall apply with respect to the Bureau of Consumer Financial Protection.".

SEC. 1083. AMENDMENTS TO THE ALTERNATIVE MORTGAGE TRANSACTION PARITY ACT OF 1982.

(a) IN GENERAL.—The Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3801 et seq.) is amended—

(1) in section 803 (12 U.S.C. 3802(1)), by striking "1974" and all that follows through "described and defined" and inserting the following: "1974), in which the interest rate or finance charge may be adjusted or renegotiated, described and defined"; and

(2) in section 804 (12 U.S.C. 3803)—

(A) in subsection (a)—

(i) in each of paragraphs (1), (2), and (3), by inserting after "transactions made" each place that term appears "on or before the designated transfer date, as determined under section 1062 of the Consumer Financial Protection Act of 2010,";

(ii) in paragraph (2), by striking "and" at the end;

(iii) in paragraph (3), by striking the period at the end and inserting "; and"; and

(iv) by adding at the end the following new paragraph:

"(4) with respect to transactions made after the designated transfer date, only in accordance with regulations governing alternative mortgage transactions, as issued by the Bureau

of Consumer Financial Protection for federally chartered housing creditors, in accordance with the rulemaking authority granted to the Bureau of Consumer Financial Protection with regard to federally chartered housing creditors under provisions of law other than this section.";

(B) by striking subsection (c) and inserting the following:

"(c) PREEMPTION OF STATE LAW.—An alternative mortgage transaction may be made by a housing creditor in accordance with this section, notwithstanding any State constitution, law, or regulation that prohibits an alternative mortgage transaction. For purposes of this subsection, a State constitution, law, or regulation that prohibits an alternative mortgage transaction does not include any State constitution, law, or regulation that regulates mortgage transactions generally, including any restriction on prepayment penalties or late charges."; and

(C) by adding at the end the following:

"(d) BUREAU ACTIONS.—The Bureau of Consumer Financial Protection shall—

"(1) review the regulations identified by the Comptroller of the Currency and the National Credit Union Administration, (as those rules exist on the designated transfer date), as applicable under paragraphs (1) through (3) of subsection (a);

"(2) determine whether such regulations are fair and not deceptive and otherwise meet the objectives of the Consumer Financial Protection Act of 2010; and

"(3) promulgate regulations under subsection (a)(4) after the designated transfer date.

"(e) DESIGNATED TRANSFER DATE.—As used in this section, the term 'designated transfer date' means the date determined under section 1062 of the Consumer Financial Protection Act of 2010.".

(b) EFFECTIVE DATE.—This section and the amendments made by this section shall become effective on the designated transfer date.

(c) RULE OF CONSTRUCTION.—The amendments made by subsection (a) shall not affect any transaction covered by the Alternative Mortgage Transaction Parity Act of l982 (12 U.S.C. 3801 et seq.) and entered into on or before the designated transfer date.

SEC. 1084. AMENDMENTS TO THE ELECTRONIC FUND TRANSFER ACT.

The Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.) is amended—

(1) by striking "Board" each place that term appears and inserting "Bureau", except in subsections (a) and (e) of section 904 (as amended in paragraph (3) of this section) and in 918 (15 U.S.C. 1693o) (as so designated by the Credit Card Act of 2009) and section 920 (as added by section 1076);

(2) in section 903 (15 U.S.C. 1693a)—

(A) by redesignating paragraphs (3) through (11) as paragraphs (4) through (12), respectively; and

(B) by inserting after paragraph (3) the following:

"(4) the term 'Bureau' means the Bureau of Consumer Financial Protection;";

(3) in section 904 (15 U.S.C. 1693b)—

(A) in subsection (a), by striking "(a) PRESCRIPTION BY BOARD.—The Board shall prescribe regulations to carry out the purposes of this title." and inserting the following:

"(a) PRESCRIPTION BY THE BUREAU AND THE BOARD.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the Bureau shall prescribe rules to carry out the purposes of this title.

"(2) AUTHORITY OF THE BOARD.—The Board shall have sole authority to prescribe rules—

"(A) to carry out the purposes of this title with respect to a person described in section 1029(a) of the Consumer Financial Protection Act of 2010; and

"(B) to carry out the purposes of section 920."; and

(B) by adding at the end the following new subsection:

"(e) DEFERENCE.—No provision of this title may be construed as altering, limiting, or otherwise affecting the deference that a court affords to—

"(1) the Bureau in making determinations regarding the meaning or interpretation of any provision of this title for which the Bureau has authority to prescribe regulations; or

"(2) the Board in making determinations regarding the meaning or interpretation of section 920.".

(4) in section 916(d) (15 U.S.C. 1693m) (as so designated by the Credit CARD Act of 2009)—

(A) in the subsection heading, by striking "OF BOARD OR APPROVAL OF DULY AUTHORIZED OFFICIAL OR EMPLOYEE OF FEDERAL RESERVE SYSTEM";

(B) by inserting "Bureau or the" before "Board" each place that term appears; and

(C) by inserting "Bureau of Consumer Financial Protection or the" before "Federal Reserve System"; and

(5) in section 918 (15 U.S.C. 1693o) (as so designated by the Credit CARD Act of 2009)—

(A) in subsection (a)—

(i) by striking "Compliance" and inserting "Subject to subtitle B of the Consumer Financial Protection Act of 2010, compliance";

(ii) by striking paragraphs (1) and (2), and inserting the following:

"(1) section 8 of the Federal Deposit Insurance Act, by the appropriate Federal banking agency, as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), with respect to—

"(A) national banks, Federal savings associations, and Federal branches and Federal agencies of foreign banks;

"(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act; and

"(C) banks and State savings associations insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), and insured State branches of foreign banks;";

(iii) by redesignating paragraphs (3) through (5) as paragraphs (2) through (4), respectively;

(iv) in paragraph (2) (as so redesignated), by striking the period at the end and inserting a semicolon;

(v) in paragraph (3) (as so redesignated), by striking "and" at the end;

(vi) in paragraph (4) (as so redesignated), by striking the period at the end and inserting "and"; and

(vii) by adding at the end the following:

"(5) subtitle E of the Consumer Financial Protection Act of 2010, by the Bureau, with respect to any person subject to this title, except that the Bureau shall not have authority to enforce the requirements of section 920 or any regulations prescribed by the Board under section 920.";

(B) in subsection (b), by inserting "any of paragraphs (1) through (4) of" before "subsection (a)" each place that term appears; and

(C) by striking subsection (c) and inserting the following:

"(c) OVERALL ENFORCEMENT AUTHORITY OF THE FEDERAL TRADE COMMISSION.—Except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other Government agency under any of paragraphs (1) through (4) of subsection (a), and subject to subtitle B of the Consumer Financial Protection Act of 2010, the Federal Trade Commission shall be authorized to enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement imposed under this title shall be deemed a violation of a requirement imposed under that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Federal Trade Commission to enforce compliance by any person subject to the jurisdiction of the Federal Trade Commission with the requirements imposed under this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests under the Federal Trade Commission Act.".

SEC. 1085. AMENDMENTS TO THE EQUAL CREDIT OPPORTUNITY ACT.

The Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.) is amended—

(1) by striking "Board" each place that term appears, other than in section 703(f) (as added by this section) and section 704(a)(4) (15 U.S.C. 1691c(a)(4)), and inserting "Bureau";

(2) in section 702 (15 U.S.C. 1691a), by striking subsection (c) and inserting the following:

"(c) The term 'Bureau' means the Bureau of Consumer Financial Protection.";

(3) in section 703 (15 U.S.C. 1691b)—

(A) by striking the section heading and inserting the following:

"SEC. 703. PROMULGATION OF REGULATIONS BY THE BUREAU.";

(B) by striking "(a) REGULATIONS.—";

(C) by striking subsection (b);

(D) by redesignating paragraphs (1) through (5) as subsections (a) through (e), respectively;

(E) in subsection (c), as so redesignated, by striking "paragraph (2)" and inserting "subsection (b)"; and

(F) by adding at the end the following:

"(f) BOARD AUTHORITY.—Notwithstanding subsection (a), the Board shall prescribe regulations to carry out the purposes of this title with respect to a person described in section 1029(a) of the Consumer Financial Protection Act of 2010. These regulations may contain but are not limited to such classifications, differentiation, or other provision, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purposes of this title, to prevent circumvention or evasion thereof, or to facilitate or substantiate compliance therewith.

"(g) DEFERENCE.—Notwithstanding any power granted to any Federal agency under this title, the deference that a court affords to a Federal agency with respect to a determination made by such agency relating to the meaning or interpretation of any provision of this title that is subject to the jurisdiction of such agency shall be applied as if that agency were the only agency authorized to apply, enforce, interpret, or administer the provisions of this title";

(4) in section 704 (15 U.S.C. 1691c)—

(A) in subsection (a)—

(i) by striking "Compliance" and inserting "Subject to subtitle B of the Consumer Protection Financial Protection Act of 2010";

(ii) by striking paragraphs (1) and (2) and inserting the following:

"(1) section 8 of the Federal Deposit Insurance Act, by the appropriate Federal banking agency, as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), with respect to—

"(A) national banks, Federal savings associations, and Federal branches and Federal agencies of foreign banks;

"(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act; and

"(C) banks and State savings associations insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), and insured State branches of foreign banks;";

(iii) by redesignating paragraphs (3) through (9) as paragraphs (2) through (8), respectively;

(iv) in paragraph (7) (as so redesignated), by striking "and" at the end;

(v) in paragraph (8) (as so redesignated), by striking the period at the end, and inserting "; and"; and

(vi) by adding at the end the following:

"(9) Subtitle E of the Consumer Financial Protection Act of 2010, by the Bureau, with respect to any person subject to this title.";

(B) by striking subsection (c) and inserting the following:

"(c) OVERALL ENFORCEMENT AUTHORITY OF FEDERAL TRADE COMMISSION.—Except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other Government agency under any of paragraphs (1) through (8) of subsection (a), and subject to subtitle B of the Consumer Financial Protection Act of 2010, the Federal Trade Commission shall be authorized to enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act (15 U.S.C. 41 et seq.), a violation of any requirement imposed under this subchapter shall be deemed a violation of a requirement imposed under that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Federal Trade Commission to enforce compliance by any person with the requirements imposed under this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests under the Federal Trade Commission Act, including the power to enforce any rule prescribed by the Bureau under this title in the same manner as if the violation had been a violation of a Federal Trade Commission trade regulation rule."; and

(C) in subsection (d), by striking "Board" and inserting "Bureau";

(5) in section 706(e) (15 U.S.C. 1691e(e))—

(A) in the subsection heading—

(i) by striking "BOARD" each place that term appears and inserting "BUREAU"; and

(ii) by striking "FEDERAL RESERVE SYSTEM" and inserting "BUREAU OF CONSUMER FINANCIAL PROTECTION"; and

(B) by striking "Federal Reserve System" and inserting "Bureau of Consumer Financial Protection";

(6) in section 706(g) (15 U.S.C. 1691e(g)), by striking "(3)" and inserting "(9)"; and

(7) in section 706(f) (15 U.S.C. 1691e(f)), by striking "two years from" each place that term appears and inserting "5 years after".

SEC. 1086. AMENDMENTS TO THE EXPEDITED FUNDS AVAILABILITY ACT.

(a) AMENDMENT TO SECTION 603.—Section 603(d)(1) of the Expedited Funds Availability Act (12 U.S.C. 4002) is amended by inserting after "Board" the following ", jointly with the Director of the Bureau of Consumer Financial Protection,".

(b) AMENDMENTS TO SECTION 604.—Section 604 of the Expedited Funds Availability Act (12 U.S.C. 4003) is amended—

(1) by inserting after "Board" each place that term appears, other than in subsection (f), the following: ", jointly with the Director of the Bureau of Consumer Financial Protection,"; and

(2) in subsection (f), by striking "Board." each place that term appears and inserting the following: "Board, jointly with the Director of the Bureau of Consumer Financial Protection.".

(c) AMENDMENTS TO SECTION 605.—Section 605 of the Expedited Funds Availability Act (12 U.S.C. 4004) is amended—

(1) by inserting after "Board" each place that term appears, other than in the heading for section 605(f)(1), the following: ", jointly with the Director of the Bureau of Consumer Financial Protection,"; and

(2) in subsection (f)(1), in the paragraph heading, by inserting "AND BUREAU" after "BOARD".

(d) AMENDMENTS TO SECTION 609.—Section 609 of the Expedited Funds Availability Act (12 U.S.C. 4008) is amended:

(1) in subsection (a), by inserting after "Board" the following ", jointly with the Director of the Bureau of Consumer Financial Protection,"; and

(2) by striking subsection (e) and inserting the following:

"(e) CONSULTATIONS.—In prescribing regulations under subsections (a) and (b), the Board and the Director of the Bureau of Consumer Financial Protection, in the case of subsection (a), and the Board, in the case of subsection (b), shall consult with the Comptroller of the Currency, the Board of Directors of the Federal Deposit Insurance Corporation, and the National Credit Union Administration Board.".

(e) EXPEDITED FUNDS AVAILABILITY IMPROVEMENTS.—Section 603 of the Expedited Funds Availability Act (12 U.S.C. 4002) is amended—

(1) in subsection (a)(2)(D), by striking "$100" and inserting "$200"; and

(2) in subsection (b)(3)(C), in the subparagraph heading, by striking "$100" and inserting "$200"; and

(3) in subsection (c)(1)(B)(iii), in the clause heading, by striking "$100" and inserting "$200".

(f) REGULAR ADJUSTMENTS FOR INFLATION.—Section 607 of the Expedited Funds Availability Act (12 U.S.C. 4006) is amended by adding at the end the following:

"(f) ADJUSTMENTS TO DOLLAR AMOUNTS FOR INFLATION.—The dollar amounts under this title shall be adjusted every 5 years after December 31, 2011, by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers, as published by the Bureau of Labor Statistics, rounded to the nearest multiple of $25.".

SEC. 1087. AMENDMENTS TO THE FAIR CREDIT BILLING ACT.

The Fair Credit Billing Act (15 U.S.C. 1666–1666j) is amended by striking "Board" each place that term appears, other than in section 105(i) (as added by this subtitle) and inserting "Bureau".

SEC. 1088. AMENDMENTS TO THE FAIR CREDIT REPORTING ACT AND THE FAIR AND ACCURATE CREDIT TRANSACTIONS ACT OF 2003.

(a) FAIR CREDIT REPORTING ACT.—The Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) is amended—

(1) in section 603 (15 U.S.C. 1681a)—

(A) by redesignating subsections (w) and (x) as subsections (x) and (y), respectively; and

(B) by inserting after subsection (v) the following:

"(w) The term 'Bureau' means the Bureau of Consumer Financial Protection."; and

(2) except as otherwise specifically provided in this subsection—

(A) by striking "Federal Trade Commission" each place that term appears and inserting "Bureau";

(B) by striking "FTC" each place that term appears and inserting "Bureau";

(C) by striking "the Commission" each place that term appears, other than sections 615(e) (15 U.S.C. 1681m(e)) and 628(a)(1) (15 U.S.C. 1681w(a)(1)), and inserting "the Bureau"; and

(D) by striking "The Federal banking agencies, the National Credit Union Administration, and the Commission shall jointly" each place that term appears, other than section 615(e)(1) (15 U.S.C. 1681m(e)) and section 628(a)(1) (15 U.S.C. 1681w(a)(1)), and inserting "The Bureau shall";

(3) in section 603(k)(2) (15 U.S.C. 1681a(k)(2)), by striking "Board of Governors of the Federal Reserve System" and inserting "Bureau";

(4) in section 604(g) (15 U.S.C. 1681b(g))—

(A) in paragraph (3), by striking subparagraph (C) and inserting the following:

"(C) as otherwise determined to be necessary and appropriate, by regulation or order, by the Bureau or the applicable State insurance authority (with respect to any person engaged in providing insurance or annuities)."; and

(B) by striking paragraph (5) and inserting the following:

"(5) REGULATIONS AND EFFECTIVE DATE FOR PARAGRAPH (2).—

"(A) REGULATIONS REQUIRED.—The Bureau may, after notice and opportunity for comment, prescribe regulations that permit transactions under paragraph (2) that are determined to be necessary and appropriate to protect legitimate operational, transactional, risk, consumer, and other needs (and which shall include permitting actions necessary for administrative verification purposes), consistent with the intent of paragraph (2) to restrict the use of medical information for inappropriate purposes.";

(5) in section 605(h)(2)(A) (15 U.S.C. 1681c(h)(2)(A)), by striking "with respect to the entities that are subject to their respective enforcement authority under section 621" and inserting ", in consultation with the Federal banking agencies, the National Credit Union Administration, and the Federal Trade Commission,".

(6) in section 611(e)(2) (15 U.S.C. 1681i(e)), by striking paragraph (2) and inserting the following:

"(2) EXCLUSION.—Complaints received or obtained by the Bureau pursuant to its investigative authority under the Consumer Financial Protection Act of 2010 shall not be subject to paragraph (1).";

(7) in section 615(d)(2)(B) (15 U.S.C. 1681m(d)(2)(B)), by striking "the Federal banking agencies" and inserting "the Federal Trade Commission, the Federal banking agencies,";

(8) in section 615(e)(1) (15 U.S.C. 1681m(e)(1)), by striking "and the Commission" and inserting "the Federal Trade

Commission, the Commodity Futures Trading Commission, and the Securities and Exchange Commission";

(9) in section 615(h)(6) (15 U.S.C. 1681m(h)(6)), by striking subparagraph (A) and inserting the following:

"(A) RULES REQUIRED.—The Bureau shall prescribe rules to carry out this subsection.";

(10) in section 621 (15 U.S.C. 1681s)—

(A) by striking subsection (a) and inserting the following:

"(a) ENFORCEMENT BY FEDERAL TRADE COMMISSION.—

"(1) IN GENERAL.—The Federal Trade Commission shall be authorized to enforce compliance with the requirements imposed by this title under the Federal Trade Commission Act (15 U.S.C. 41 et seq.), with respect to consumer reporting agencies and all other persons subject thereto, except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other Government agency under any of subparagraphs (A) through (G) of subsection (b)(1), and subject to subtitle B of the Consumer Financial Protection Act of 2010, subsection (b). For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement or prohibition imposed under this title shall constitute an unfair or deceptive act or practice in commerce, in violation of section 5(a) of the Federal Trade Commission Act (15 U.S.C. 45(a)), and shall be subject to enforcement by the Federal Trade Commission under section 5(b) of that Act with respect to any consumer reporting agency or person that is subject to enforcement by the Federal Trade Commission pursuant to this subsection, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests under the Federal Trade Commission Act. The Federal Trade Commission shall have such procedural, investigative, and enforcement powers, including the power to issue procedural rules in enforcing compliance with the requirements imposed under this title and to require the filing of reports, the production of documents, and the appearance of witnesses, as though the applicable terms and conditions of the Federal Trade Commission Act were part of this title. Any person violating any of the provisions of this title shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act as though the applicable terms and provisions of such Act are part of this title.

"(2) PENALTIES.—

"(A) KNOWING VIOLATIONS.—Except as otherwise provided by subtitle B of the Consumer Financial Protection Act of 2010, in the event of a knowing violation, which constitutes a pattern or practice of violations of this title, the Federal Trade Commission may commence a civil action to recover a civil penalty in a district court of the United States against any person that violates this title. In such action, such person shall be liable for a civil penalty of not more than $2,500 per violation.

"(B) DETERMINING PENALTY AMOUNT.—In determining the amount of a civil penalty under subparagraph (A), the court shall take into account the degree of culpability, any history of such prior conduct, ability to pay, effect

on ability to continue to do business, and such other matters as justice may require.

"(C) LIMITATION.—Notwithstanding paragraph (2), a court may not impose any civil penalty on a person for a violation of section 623(a)(1), unless the person has been enjoined from committing the violation, or ordered not to commit the violation, in an action or proceeding brought by or on behalf of the Federal Trade Commission, and has violated the injunction or order, and the court may not impose any civil penalty for any violation occurring before the date of the violation of the injunction or order.";

(B) by striking subsection (b) and inserting the following:

"(b) ENFORCEMENT BY OTHER AGENCIES.—

"(1) IN GENERAL.—Subject to subtitle B of the Consumer Financial Protection Act of 2010, compliance with the requirements imposed under this title with respect to consumer reporting agencies, persons who use consumer reports from such agencies, persons who furnish information to such agencies, and users of information that are subject to section 615(d) shall be enforced under—

"(A) section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), by the appropriate Federal banking agency, as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), with respect to—

"(i) any national bank or State savings association, and any Federal branch or Federal agency of a foreign bank;

"(ii) any member bank of the Federal Reserve System (other than a national bank), a branch or agency of a foreign bank (other than a Federal branch, Federal agency, or insured State branch of a foreign bank), a commercial lending company owned or controlled by a foreign bank, and any organization operating under section 25 or 25A of the Federal Reserve Act; and

"(iii) any bank or Federal savings association insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System) and any insured State branch of a foreign bank;

"(B) the Federal Credit Union Act (12 U.S.C. 1751 et seq.), by the Administrator of the National Credit Union Administration with respect to any Federal credit union;

"(C) subtitle IV of title 49, United States Code, by the Secretary of Transportation, with respect to all carriers subject to the jurisdiction of the Surface Transportation Board;

"(D) the Federal Aviation Act of 1958 (49 U.S.C. App. 1301 et seq.), by the Secretary of Transportation, with respect to any air carrier or foreign air carrier subject to that Act;

"(E) the Packers and Stockyards Act, 1921 (7 U.S.C. 181 et seq.) (except as provided in section 406 of that Act), by the Secretary of Agriculture, with respect to any activities subject to that Act;

"(F) the Commodity Exchange Act, with respect to a person subject to the jurisdiction of the Commodity Futures Trading Commission;

"(G) the Federal securities laws, and any other laws that are subject to the jurisdiction of the Securities and Exchange Commission, with respect to a person that is subject to the jurisdiction of the Securities and Exchange Commission; and

"(H) subtitle E of the Consumer Financial Protection Act of 2010, by the Bureau, with respect to any person subject to this title.

"(2) INCORPORATED DEFINITIONS.—The terms used in paragraph (1) that are not defined in this title or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) have the same meanings as in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).";

(C) in subsection (c)(2)—

(i) by inserting "and the Federal Trade Commission" before "or the appropriate"; and

(ii) by inserting "and the Federal Trade Commission" before "or appropriate" each place that term appears;

(D) in subsection (c)(4), by inserting before "or the appropriate" each place that term appears the following: ", the Federal Trade Commission,";

(E) by striking subsection (e) and inserting the following:

"(e) REGULATORY AUTHORITY.—

"(1) IN GENERAL.—The Bureau shall prescribe such regulations as are necessary to carry out the purposes of this title, except with respect to sections 615(e) and 628. The Bureau may prescribe regulations as may be necessary or appropriate to administer and carry out the purposes and objectives of this title, and to prevent evasions thereof or to facilitate compliance therewith. Except as provided in section 1029(a) of the Consumer Financial Protection Act of 2010, the regulations prescribed by the Bureau under this title shall apply to any person that is subject to this title, notwithstanding the enforcement authorities granted to other agencies under this section.

"(2) DEFERENCE.—Notwithstanding any power granted to any Federal agency under this title, the deference that a court affords to a Federal agency with respect to a determination made by such agency relating to the meaning or interpretation of any provision of this title that is subject to the jurisdiction of such agency shall be applied as if that agency were the only agency authorized to apply, enforce, interpret, or administer the provisions of this title The regulations prescribed by the Bureau under this title shall apply to any person that is subject to this title, notwithstanding the enforcement authorities granted to other agencies under this section."; and

(F) in subsection (f)(2), by striking "the Federal banking agencies" and insert "the Federal Trade Commission, the Federal banking agencies,";

(11) in section 623 (15 U.S.C. 1681s–2)—

(A) in subsection (a)(7), by striking subparagraph (D) and inserting the following:

"(D) MODEL DISCLOSURE.—

"(i) DUTY OF BUREAU.—The Bureau shall prescribe a brief model disclosure that a financial institution may use to comply with subparagraph (A), which shall not exceed 30 words.

"(ii) USE OF MODEL NOT REQUIRED.—No provision of this paragraph may be construed to require a financial institution to use any such model form prescribed by the Bureau.

"(iii) COMPLIANCE USING MODEL.—A financial institution shall be deemed to be in compliance with subparagraph (A) if the financial institution uses any model form prescribed by the Bureau under this subparagraph, or the financial institution uses any such model form and rearranges its format.";

(B) in subsection (a)(8), by inserting ", in consultation with the Federal Trade Commission, the Federal banking agencies, and the National Credit Union Administration," before "shall jointly"; and

(C) by striking subsection (e) and inserting the following:

"(e) ACCURACY GUIDELINES AND REGULATIONS REQUIRED.—

"(1) GUIDELINES.—The Bureau shall, with respect to persons or entities that are subject to the enforcement authority of the Bureau under section 621—

"(A) establish and maintain guidelines for use by each person that furnishes information to a consumer reporting agency regarding the accuracy and integrity of the information relating to consumers that such entities furnish to consumer reporting agencies, and update such guidelines as often as necessary; and

"(B) prescribe regulations requiring each person that furnishes information to a consumer reporting agency to establish reasonable policies and procedures for implementing the guidelines established pursuant to subparagraph (A).

"(2) CRITERIA.—In developing the guidelines required by paragraph (1)(A), the Bureau shall—

"(A) identify patterns, practices, and specific forms of activity that can compromise the accuracy and integrity of information furnished to consumer reporting agencies;

"(B) review the methods (including technological means) used to furnish information relating to consumers to consumer reporting agencies;

"(C) determine whether persons that furnish information to consumer reporting agencies maintain and enforce policies to ensure the accuracy and integrity of information furnished to consumer reporting agencies; and

"(D) examine the policies and processes that persons that furnish information to consumer reporting agencies employ to conduct reinvestigations and correct inaccurate information relating to consumers that has been furnished to consumer reporting agencies.";

(12) in section 628(a)(1) (15 U.S.C. 1681w(a)(1)), by striking "Not later than" and all that follows through "Exchange Commission," and inserting "The Federal Trade Commission, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Federal banking agencies,

and the National Credit Union Administration, with respect to the entities that are subject to their respective enforcement authority under section 621,"; and

(13) in section 628(a)(3) (15 U.S.C. 1681w(a)(3)), by striking "the Federal banking agencies, the National Credit Union Administration, the Commission, and the Securities and Exchange Commission" and inserting "the agencies identified in paragraph (1)".

(b) FAIR AND ACCURATE CREDIT TRANSACTIONS ACT OF 2003.—The Fair and Accurate Credit Transactions Act of 2003 (Public Law 108–159) is amended—

(1) in section 112(b) (15 U.S.C. 1681c–1 note), by striking "Commission" and inserting "Bureau";

(2) in section 211(d) (15 U.S.C. 1681j note), by striking "Commission" each place that term appears and inserting "Bureau";

(3) in section 214(b) (15 U.S.C. 1681s–3 note), by striking paragraph (1) and inserting the following:

"(1) IN GENERAL.—Regulations to carry out section 624 of the Fair Credit Reporting Act (15 U.S.C. 1681s–3), shall be prescribed, as described in paragraph (2), by—

"(A) the Commodity Futures Trading Commission, with respect to entities subject to its enforcement authorities;

"(B) the Securities and Exchange Commission, with respect to entities subject to its enforcement authorities; and

"(C) the Bureau, with respect to other entities subject to this Act."; and

(4) in section 214(e)(1) (15 U.S.C. 1681s–3 note), by striking "Commission" and inserting "Bureau".

SEC. 1089. AMENDMENTS TO THE FAIR DEBT COLLECTION PRACTICES ACT.

The Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.) is amended—

(1) by striking "Commission" each place that term appears and inserting "Bureau";

(2) in section 803 (15 U.S.C. 1692a)—

(A) by striking paragraph (1) and inserting the following:

"(1) The term 'Bureau' means the Bureau of Consumer Financial Protection.";

(3) in section 814 (15 U.S.C. 1692l)—

(A) by striking subsection (a) and inserting the following:

"(a) FEDERAL TRADE COMMISSION.—The Federal Trade Commission shall be authorized to enforce compliance with this title, except to the extent that enforcement of the requirements imposed under this title is specifically committed to another Government agency under any of paragraphs (1) through (5) of subsection (b), subject to subtitle B of the Consumer Financial Protection Act of 2010. For purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act (15 U.S.C. 41 et seq.), a violation of this title shall be deemed an unfair or deceptive act or practice in violation of that Act. All of the functions and powers of the Federal Trade Commission

under the Federal Trade Commission Act are available to the Federal Trade Commission to enforce compliance by any person with this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests under the Federal Trade Commission Act, including the power to enforce the provisions of this title, in the same manner as if the violation had been a violation of a Federal Trade Commission trade regulation rule."; and

(B) in subsection (b)—

(i) by striking "Compliance" and inserting "Subject to subtitle B of the Consumer Financial Protection Act of 2010, compliance";

(ii) by striking paragraphs (1) and (2) and inserting the following:

"(1) section 8 of the Federal Deposit Insurance Act, by the appropriate Federal banking agency, as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), with respect to—

"(A) national banks, Federal savings associations, and Federal branches and Federal agencies of foreign banks;

"(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act; and

"(C) banks and State savings associations insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), and insured State branches of foreign banks;";

(iii) by redesignating paragraphs (3) through (6), as paragraphs (2) through (5), respectively;

(iv) in paragraph (4) (as so redesignated), by striking "and" at the end;

(v) in paragraph (5) (as so redesignated), by striking the period at the end and inserting "; and"; and

(vi) by inserting before the undesignated matter at the end the following:

"(6) subtitle E of the Consumer Financial Protection Act of 2010, by the Bureau, with respect to any person subject to this title.".

(4) in subsection (d), by striking "Neither the Commission" and all that follows through the end of the subsection and inserting the following: "Except as provided in section 1029(a) of the Consumer Financial Protection Act of 2010, the Bureau may prescribe rules with respect to the collection of debts by debt collectors, as defined in this title.".

SEC. 1090. AMENDMENTS TO THE FEDERAL DEPOSIT INSURANCE ACT.

The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended—

(1) in section 8(t) (12 U.S.C. 1818(t)), by adding at the end the following:

"(6) REFERRAL TO BUREAU OF CONSUMER FINANCIAL PROTECTION.—Subject to subtitle B of the Consumer Financial Protection Act of 2010, each appropriate Federal banking agency shall make a referral to the Bureau of Consumer Financial Protection when the Federal banking agency has a reasonable belief that a violation of an enumerated consumer law, as defined in the Consumer Financial Protection Act of 2010, has been committed by any insured depository institution or institution-affiliated party within the jurisdiction of that appropriate Federal banking agency."; and

(2) in section 43 (12 U.S.C. 1831t)—

(A) in subsection (c), by striking "Federal Trade Commission" and inserting "Bureau";

(B) in subsection (d), by striking "Federal Trade Commission" and inserting "Bureau";

(C) in subsection (e)—

(i) in paragraph (2), by striking "Federal Trade Commission" and inserting "Bureau"; and

(ii) by adding at the end the following new paragraph:

"(5) BUREAU.—The term 'Bureau' means the Bureau of Consumer Financial Protection."; and

(D) in subsection (f)—

(i) by striking paragraph (1) and inserting the following:

"(1) LIMITED ENFORCEMENT AUTHORITY.—Compliance with the requirements of subsections (b), (c), and (e), and any regulation prescribed or order issued under such subsection, shall be enforced under the Consumer Financial Protection Act of 2010, by the Bureau, subject to subtitle B of the Consumer Financial Protection Act of 2010, and under the Federal Trade Commission Act (15 U.S.C. 41 et seq.) by the Federal Trade Commission."; and

(ii) in paragraph (2), by striking subparagraph (C) and inserting the following:

"(C) LIMITATION ON STATE ACTION WHILE FEDERAL ACTION PENDING.—If the Bureau or Federal Trade Commission has instituted an enforcement action for a violation of this section, no appropriate State supervisory agency may, during the pendency of such action, bring an action under this section against any defendant named in the complaint of the Bureau or Federal Trade Commission for any violation of this section that is alleged in that complaint.".

SEC. 1091. AMENDMENT TO FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL ACT OF 1978.

Section 1004(a)(4) of the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3303(a)(4)) is amended by striking "Director, Office of Thrift Supervision" and inserting "Director of the Consumer Financial Protection Bureau".

SEC. 1092. AMENDMENTS TO THE FEDERAL TRADE COMMISSION ACT.

Section 18(f) of the Federal Trade Commission Act (15 U.S.C. 57a(f)) is amended—

(1) by striking the subsection heading and inserting the following:

"(f) DEFINITIONS OF BANKS, SAVINGS AND LOAN INSTITUTIONS, AND FEDERAL CREDIT UNIONS.—".

(2) by striking paragraph (1) and inserting the following: "(1) [Repealed.]";

(3) by striking paragraphs (5) through (7);

(4) in paragraph (2)—

(A) by striking "(2) ENFORCEMENT" and all that follows through "in the case of" and inserting the following:

"(2) DEFINITION.—For purposes of this Act, the term 'bank' means";

(B) in subparagraph (A), by striking ", by the division" and all that follows through "Currency";

(C) in subparagraph (B)—

(i) by striking ", by the division" and all that follows through "System"; and

(ii) by striking "25(a)" and inserting "25A"; and

(D) in subparagraph (C)—

(i) by striking "(other" and inserting "(other than"; and

(ii) by striking ", by the division" and all that follows through "Corporation";

(5) in paragraph (3), by striking "Compliance" and all that follows through "as defined in" and inserting the following: "For purposes of this Act, the term "savings and loan institution" has the same meaning as in"; and

(6) in paragraph (4), by striking "Compliance" and all that follows through "credit unions under" and inserting the following: "For purposes of this Act, the term "Federal credit union" has the same meaning as in".

SEC. 1093. AMENDMENTS TO THE GRAMM-LEACH-BLILEY ACT.

Title V of the Gramm-Leach-Bliley Act (15 U.S.C. 6801 et seq.) is amended—

(1) in section 501(b) (15 U.S.C. 6801(b)), by inserting ", other than the Bureau of Consumer Financial Protection," after "505(a)";

(2) in section 502(e)(5) (15 U.S.C. 6802(e)(5)), by inserting "the Bureau of Consumer Financial Protection" after "(including";

(3) in section 504(a) (15 U.S.C. 6804(a))—

(A) by striking paragraphs (1) and (2) and inserting the following:

"(1) RULEMAKING.—

"(A) IN GENERAL.—Except as provided in subparagraph (C), the Bureau of Consumer Financial Protection and the Securities and Exchange Commission shall have authority to prescribe such regulations as may be necessary to carry out the purposes of this subtitle with respect to financial institutions and other persons subject to their respective jurisdiction under section 505 (and notwithstanding subtitle B of the Consumer Financial Protection Act of 2010), except that the Bureau of Consumer Financial Protection shall not have authority to prescribe regulations with respect to the standards under section 501.

"(B) CFTC.—The Commodity Futures Trading Commission shall have authority to prescribe such regulations as may be necessary to carry out the purposes of

this subtitle with respect to financial institutions and other persons subject to the jurisdiction of the Commodity Futures Trading Commission under section 5g of the Commodity Exchange Act.

"(C) FEDERAL TRADE COMMISSION AUTHORITY.—Notwithstanding the authority of the Bureau of Consumer Financial Protection under subparagraph (A), the Federal Trade Commission shall have authority to prescribe such regulations as may be necessary to carry out the purposes of this subtitle with respect to any financial institution that is a person described in section 1029(a) of the Consumer Financial Protection Act of 2010.

"(D) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed to alter, affect, or otherwise limit the authority of a State insurance authority to adopt regulations to carry out this subtitle.

"(2) COORDINATION, CONSISTENCY, AND COMPARABILITY.—Each of the agencies authorized under paragraph (1) to prescribe regulations shall consult and coordinate with the other such agencies and, as appropriate, and with representatives of State insurance authorities designated by the National Association of Insurance Commissioners, for the purpose of assuring, to the extent possible, that the regulations prescribed by each such agency are consistent and comparable with the regulations prescribed by the other such agencies."; and

(B) in paragraph (3), by striking ", and shall be issued in final form not later than 6 months after the date of enactment of this Act";

(4) in section 505(a) (15 U.S.C. 6805(a))—

(A) by striking "This subtitle" and all that follows through "as follows:" and inserting "Subject to subtitle B of the Consumer Financial Protection Act of 2010, this subtitle and the regulations prescribed thereunder shall be enforced by the Bureau of Consumer Financial Protection, the Federal functional regulators, the State insurance authorities, and the Federal Trade Commission with respect to financial institutions and other persons subject to their jurisdiction under applicable law, as follows:";

(B) in paragraph (1)—

(i) in the matter preceding subparagraph (A), by inserting "by the appropriate Federal banking agency, as defined in section 3(q) of the Federal Deposit Insurance Act," after "Act,";

(ii) in subparagraph (A), by striking ", by the Office of the Comptroller of the Currency";

(iii) in subparagraph (B), by striking ", by the Board of Governors of the Federal Reserve System";

(iv) in subparagraph (C), by striking ", by the Board of Directors of the Federal Deposit Insurance Corporation"; and

(v) in subparagraph (D), by striking ", by the Director of the Office of Thrift Supervision"; and

(C) by adding at the end the following:

"(8) Under subtitle E of the Consumer Financial Protection Act of 2010, by the Bureau of Consumer Financial Protection, in the case of any financial institution and other covered person or service provider that is subject to the jurisdiction of the

Bureau and any person subject to this subtitle, but not with respect to the standards under section 501.";

(5) in section 505(b)(1) (15 U.S.C. 6805(b)(1)), by inserting ", other than the Bureau of Consumer Financial Protection," after "subsection (a)"; and

(6) in section 507(b) (15 U.S.C. 6807), by striking "Federal Trade Commission" and inserting "Bureau of Consumer Financial Protection".

SEC. 1094. AMENDMENTS TO THE HOME MORTGAGE DISCLOSURE ACT OF 1975.

The Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2801 et seq.) is amended—

(1) by striking "Board" each place that term appears, other than in sections 303, 304(h), 305(b) (as amended by this section), and 307(a) (as amended by this section) and inserting "Bureau".

(2) in section 303 (12 U.S.C. 2802)—

(A) by redesignating paragraphs (1) through (6) as paragraphs (2) through (7), respectively; and

(B) by inserting before paragraph (2) the following:

"(1) the term 'Bureau' means the Bureau of Consumer Financial Protection;";

(3) in section 304 (12 U.S.C. 2803)—

(A) in subsection (b)—

(i) in paragraph (4), by inserting "age," before "and gender";

(ii) in paragraph (3), by striking "and" at the end;

(iii) in paragraph (4), by striking the period at the end and inserting a semicolon; and

(iv) by adding at the end the following:

"(5) the number and dollar amount of mortgage loans grouped according to measurements of—

"(A) the total points and fees payable at origination in connection with the mortgage as determined by the Bureau, taking into account 15 U.S.C. 1602(aa)(4);

"(B) the difference between the annual percentage rate associated with the loan and a benchmark rate or rates for all loans;

"(C) the term in months of any prepayment penalty or other fee or charge payable on repayment of some portion of principal or the entire principal in advance of scheduled payments; and

"(D) such other information as the Bureau may require; and

"(6) the number and dollar amount of mortgage loans and completed applications grouped according to measurements of—

"(A) the value of the real property pledged or proposed to be pledged as collateral;

"(B) the actual or proposed term in months of any introductory period after which the rate of interest may change;

"(C) the presence of contractual terms or proposed contractual terms that would allow the mortgagor or applicant to make payments other than fully amortizing payments during any portion of the loan term;

"(D) the actual or proposed term in months of the mortgage loan;

"(E) the channel through which application was made, including retail, broker, and other relevant categories;

"(F) as the Bureau may determine to be appropriate, a unique identifier that identifies the loan originator as set forth in section 1503 of the S.A.F.E. Mortgage Licensing Act of 2008;

"(G) as the Bureau may determine to be appropriate, a universal loan identifier;

"(H) as the Bureau may determine to be appropriate, the parcel number that corresponds to the real property pledged or proposed to be pledged as collateral;

"(I) the credit score of mortgage applicants and mortgagors, in such form as the Bureau may prescribe; and

"(J) such other information as the Bureau may require.";

(B) by striking subsection (h) and inserting the following:

"(h) SUBMISSION TO AGENCIES.—

"(1) IN GENERAL.—The data required to be disclosed under subsection (b) shall be submitted to the Bureau or to the appropriate agency for the institution reporting under this title, in accordance with rules prescribed by the Bureau. Notwithstanding the requirement of subsection (a)(2)(A) for disclosure by census tract, the Bureau, in consultation with other appropriate agencies described in paragraph (2) and, after notice and comment, shall develop regulations that—

"(A) prescribe the format for such disclosures, the method for submission of the data to the appropriate agency, and the procedures for disclosing the information to the public;

"(B) require the collection of data required to be disclosed under subsection (b) with respect to loans sold by each institution reporting under this title;

"(C) require disclosure of the class of the purchaser of such loans;

"(D) permit any reporting institution to submit in writing to the Bureau or to the appropriate agency such additional data or explanations as it deems relevant to the decision to originate or purchase mortgage loans; and

"(E) modify or require modification of itemized information, for the purpose of protecting the privacy interests of the mortgage applicants or mortgagors, that is or will be available to the public.

"(2) OTHER APPROPRIATE AGENCIES.—The appropriate agencies described in this paragraph are—

"(A) the appropriate Federal banking agencies, as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), with respect to the entities that are subject to the jurisdiction of each such agency, respectively;

"(B) the Federal Deposit Insurance Corporation for banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), mutual savings banks, insured State branches of foreign banks, and any other depository institution described in

section 303(2)(A) which is not otherwise referred to in this paragraph;

"(C) the National Credit Union Administration Board with respect to credit unions; and

"(D) the Secretary of Housing and Urban Development with respect to other lending institutions not regulated by the agencies referred to in subparagraph (A) or (B).

"(3) RULES FOR MODIFICATIONS UNDER PARAGRAPH (1).—

"(A) APPLICATION.—A modification under paragraph (1)(E) shall apply to information concerning—

"(i) credit score data described in subsection (b)(6)(I), in a manner that is consistent with the purpose described in paragraph (1)(E); and

"(ii) age or any other category of data described in paragraph (5) or (6) of subsection (b), as the Bureau determines to be necessary to satisfy the purpose described in paragraph (1)(E), and in a manner consistent with that purpose.

"(B) STANDARDS.—The Bureau shall prescribe standards for any modification under paragraph (1)(E) to effectuate the purposes of this title, in light of the privacy interests of mortgage applicants or mortgagors. Where necessary to protect the privacy interests of mortgage applicants or mortgagors, the Bureau shall provide for the disclosure of information described in subparagraph (A) in aggregate or other reasonably modified form, in order to effectuate the purposes of this title.";

(C) in subsection (i), by striking "subsection (b)(4)" and inserting "subsections (b)(4), (b)(5), and (b)(6)";

(D) in subsection (j)—

(i) by striking paragraph (3) and inserting the following:

"(3) CHANGE OF FORM NOT REQUIRED.—A depository institution meets the disclosure requirement of paragraph (1) if the institution provides the information required under such paragraph in such formats as the Bureau may require"; and

(ii) in paragraph (2)(A), by striking "in the format in which such information is maintained by the institution" and inserting "in such formats as the Bureau may require";

(E) in subsection (m), by striking paragraph (2) and inserting the following:

"(2) FORM OF INFORMATION.—In complying with paragraph (1), a depository institution shall provide the person requesting the information with a copy of the information requested in such formats as the Bureau may require."; and

(F) by adding at the end the following:

"(n) TIMING OF CERTAIN DISCLOSURES.—The data required to be disclosed under subsection (b) shall be submitted to the Bureau or to the appropriate agency for any institution reporting under this title, in accordance with regulations prescribed by the Bureau. Institutions shall not be required to report new data under paragraph (5) or (6) of subsection (b) before the first January 1 that occurs after the end of the 9-month period beginning on the date on which regulations are issued by the Bureau in final form with respect to such disclosures.";

(4) in section 305 (12 U.S.C. 2804)—

(A) by striking subsection (b) and inserting the following:

"(b) POWERS OF CERTAIN OTHER AGENCIES.—

"(1) IN GENERAL.—Subject to subtitle B of the Consumer Financial Protection Act of 2010, compliance with the requirements of this title shall be enforced—

"(A) under section 8 of the Federal Deposit Insurance Act, the appropriate Federal banking agency, as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), with respect to—

"(i) any national bank or Federal savings association, and any Federal branch or Federal agency of a foreign bank;

"(ii) any member bank of the Federal Reserve System (other than a national bank), branch or agency of a foreign bank (other than a Federal branch, Federal agency, and insured State branch of a foreign bank), commercial lending company owned or controlled by a foreign bank, and any organization operating under section 25 or 25A of the Federal Reserve Act; and

"(iii) any bank or State savings association insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System), any mutual savings bank as, defined in section 3(f) of the Federal Deposit Insurance Act (12 U.S.C. 1813(f)), any insured State branch of a foreign bank, and any other depository institution not referred to in this paragraph or subparagraph (B) or (C);

"(B) under subtitle E of the Consumer Financial Protection Act of 2010, by the Bureau, with respect to any person subject to this subtitle;

"(C) under the Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any insured credit union; and

"(D) with respect to other lending institutions, by the Secretary of Housing and Urban Development.

"(2) INCORPORATED DEFINITIONS.—The terms used in paragraph (1) that are not defined in this title or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the same meanings as in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101)."; and

(B) by adding at the end the following:

"(d) OVERALL ENFORCEMENT AUTHORITY OF THE BUREAU OF CONSUMER FINANCIAL PROTECTION.—Subject to subtitle B of the Consumer Financial Protection Act of 2010, enforcement of the requirements imposed under this title is committed to each of the agencies under subsection (b). To facilitate research, examinations, and enforcement, all data collected pursuant to section 304 shall be available to the entities listed under subsection (b). The Bureau may exercise its authorities under the Consumer Financial Protection Act of 2010 to exercise principal authority to examine and enforce compliance by any person with the requirements of this title.";

(5) in section 306 (12 U.S.C. 2805(b)), by striking subsection (b) and inserting the following:

"(b) EXEMPTION AUTHORITY.—The Bureau may, by regulation, exempt from the requirements of this title any State-chartered

depository institution within any State or subdivision thereof, if the agency determines that, under the law of such State or subdivision, that institution is subject to requirements that are substantially similar to those imposed under this title, and that such law contains adequate provisions for enforcement. Notwithstanding any other provision of this subsection, compliance with the requirements imposed under this subsection shall be enforced by the Office of the Comptroller of the Currency under section 8 of the Federal Deposit Insurance Act, in the case of national banks and Federal savings associations, the deposits of which are insured by the Federal Deposit Insurance Corporation."; and

(6) by striking section 307 (12 U.S.C. 2806) and inserting the following:

"SEC. 307. COMPLIANCE IMPROVEMENT METHODS.

"(a) IN GENERAL.—

"(1) CONSULTATION REQUIRED.—The Director of the Bureau of Consumer Financial Protection, with the assistance of the Secretary, the Director of the Bureau of the Census, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and such other persons as the Bureau deems appropriate, shall develop or assist in the improvement of, methods of matching addresses and census tracts to facilitate compliance by depository institutions in as economical a manner as possible with the requirements of this title.

"(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated, such sums as may be necessary to carry out this subsection.

"(3) CONTRACTING AUTHORITY.—The Director of the Bureau of Consumer Financial Protection is authorized to utilize, contract with, act through, or compensate any person or agency in order to carry out this subsection.

"(b) RECOMMENDATIONS TO CONGRESS.—The Director of the Bureau of Consumer Financial Protection shall recommend to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, such additional legislation as the Director of the Bureau of Consumer Financial Protection deems appropriate to carry out the purpose of this title.".

SEC. 1095. AMENDMENTS TO THE HOMEOWNERS PROTECTION ACT OF 1998.

Section 10 of the Homeowners Protection Act of 1998 (12 U.S.C. 4909) is amended—

(1) in subsection (a)—

(A) by striking "Compliance" and all that follows through the end of paragraph (1) and inserting the following: "Subject to subtitle B of the Consumer Financial Protection Act of 2010, compliance with the requirements imposed under this Act shall be enforced under—

"(1) section 8 of the Federal Deposit Insurance Act, by the appropriate Federal banking agency (as defined in section 3(q) of that Act), with respect to—

"(A) insured depository institutions (as defined in section 3(c)(2) of that Act);

"(B) depository institutions described in clause (i), (ii), or (iii) of section 19(b)(1)(A) of the Federal Reserve Act

which are not insured depository institutions (as defined in section 3(c)(2) of the Federal Deposit Insurance Act); and

"(C) depository institutions described in clause (v) or (vi) of section 19(b)(1)(A) of the Federal Reserve Act which are not insured depository institutions (as defined in section 3(c)(2) of the Federal Deposit Insurance Act);";

(B) in paragraph (2), by striking "and" at the end;

(C) in paragraph (3), by striking the period at the end and inserting "; and"; and

(D) by adding at the end the following:

"(4) subtitle E of the Consumer Financial Protection Act of 2010, by the Bureau of Consumer Financial Protection, with respect to any person subject to this Act."; and

(2) in subsection (b)(2), by inserting before the period at the end the following: ", subject to subtitle B of the Consumer Financial Protection Act of 2010".

SEC. 1096. AMENDMENTS TO THE HOME OWNERSHIP AND EQUITY PROTECTION ACT OF 1994.

The Home Ownership and Equity Protection Act of 1994 (15 U.S.C. 1601 note) is amended—

(1) in section 158(a), by striking "Board of Governors of the Federal Reserve System, in consultation with the Consumer Advisory Council of the Board" and inserting "Bureau, in consultation with the Advisory Board to the Bureau"; and

(2) in section 158(b), by striking "Board of Governors of the Federal Reserve System" and inserting "Bureau".

SEC. 1097. AMENDMENTS TO THE OMNIBUS APPROPRIATIONS ACT, 2009.

Section 626 of the Omnibus Appropriations Act, 2009 (15 U.S.C. 1638 note) is amended—

(1) by striking subsection (a) and inserting the following:

"(a)(1) The Bureau of Consumer Financial Protection shall have authority to prescribe rules with respect to mortgage loans in accordance with section 553 of title 5, United States Code. Such rulemaking shall relate to unfair or deceptive acts or practices regarding mortgage loans, which may include unfair or deceptive acts or practices involving loan modification and foreclosure rescue services. Any violation of a rule prescribed under this paragraph shall be treated as a violation of a rule prohibiting unfair, deceptive, or abusive acts or practices under the Consumer Financial Protection Act of 2010 and a violation of a rule under section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) regarding unfair or deceptive acts or practices.

"(2) The Bureau of Consumer Financial Protection shall enforce the rules issued under paragraph (1) in the same manner, by the same means, and with the same jurisdiction, powers, and duties, as though all applicable terms and provisions of the Consumer Financial Protection Act of 2010 were incorporated into and made part of this subsection.

"(3) Subject to subtitle B of the Consumer Financial Protection Act of 2010, the Federal Trade Commission shall enforce the rules issued under paragraph (1), in the same manner, by the same means, and with the same jurisdiction, as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made part of this section."; and

(2) in subsection (b)—

(A) by striking paragraph (1) and inserting the following:

"(1) Except as provided in paragraph (6), in any case in which the attorney general of a State has reason to believe that an interest of the residents of the State has been or is threatened or adversely affected by the engagement of any person subject to a rule prescribed under subsection (a) in practices that violate such rule, the State, as parens patriae, may bring a civil action on behalf of its residents in an appropriate district court of the United States or other court of competent jurisdiction—

"(A) to enjoin that practice;

"(B) to enforce compliance with the rule;

"(C) to obtain damages, restitution, or other compensation on behalf of the residents of the State; or

"(D) to obtain penalties and relief provided under the Consumer Financial Protection Act of 2010, the Federal Trade Commission Act, and such other relief as the court deems appropriate.";

(B) in paragraphs (2) and (3), by striking "the primary Federal regulator" each time the term appears and inserting "the Bureau of Consumer Financial Protection or the Commission, as appropriate";

(C) in paragraph (3), by inserting "and subject to subtitle B of the Consumer Financial Protection Act of 2010," after "paragraph (2),"; and

(D) in paragraph (6), by striking "the primary Federal regulator" each place that term appears and inserting "the Bureau of Consumer Financial Protection or the Commission".

SEC. 1098. AMENDMENTS TO THE REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974.

The Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.) is amended—

(1) in section 3 (12 U.S.C. 2602)—

(A) in paragraph (7), by striking "and" at the end;

(B) in paragraph (8), by striking the period at the end and inserting "; and"; and

(C) by adding at the end the following:

"(9) the term 'Bureau' means the Bureau of Consumer Financial Protection.";

(2) in section 4 (12 U.S.C. 2603)—

(A) in subsection (a), by striking the first sentence and inserting the following: "The Bureau shall publish a single, integrated disclosure for mortgage loan transactions (including real estate settlement cost statements) which includes the disclosure requirements of this section and section 5, in conjunction with the disclosure requirements of the Truth in Lending Act that, taken together, may apply to a transaction that is subject to both or either provisions of law. The purpose of such model disclosure shall be to facilitate compliance with the disclosure requirements of this title and the Truth in Lending Act, and

to aid the borrower or lessee in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures.";

(B) by striking "Secretary" each place that term appears and inserting "Bureau"; and

(C) by striking "form" each place that term appears and inserting "forms";

(3) in section 5 (12 U.S.C. 2604)—

(A) by striking "Secretary" each place that term appears and inserting "Bureau"; and

(B) in subsection (a), by striking the first sentence and inserting the following: "The Bureau shall prepare and distribute booklets jointly addressing compliance with the requirements of the Truth in Lending Act and the provisions of this title, in order to help persons borrowing money to finance the purchase of residential real estate better to understand the nature and costs of real estate settlement services.";

(4) in section 6(j)(3) (12 U.S.C. 2605(j)(3))—

(A) by striking "Secretary" and inserting "Bureau"; and

(B) by striking ", by regulations that shall take effect not later than April 20, 1991,";

(5) in section 7(b) (12 U.S.C. 2606(b)) by striking "Secretary" and inserting "Bureau";

(6) in section 8(c)(5) (12 U.S.C. 2607(c)(5)), by striking "Secretary" and inserting "Bureau";

(7) in section 8(d) (12 U.S.C. 2607(d))—

(A) in the subsection heading, by inserting "BUREAU AND" before "SECRETARY"; and

(B) by striking paragraph (4), and inserting the following:

"(4) The Bureau, the Secretary, or the attorney general or the insurance commissioner of any State may bring an action to enjoin violations of this section. Except, to the extent that a person is subject to the jurisdiction of the Bureau, the Secretary, or the attorney general or the insurance commissioner of any State, the Bureau shall have primary authority to enforce or administer this section, subject to subtitle B of the Consumer Financial Protection Act of 2010.";

(8) in section 10(c) (12 U.S.C. 2609(c) and (d)), by striking "Secretary" and inserting "Bureau";

(9) in section 16 (12 U.S.C. 2614), by inserting "the Bureau," before "the Secretary";

(10) in section 18 (12 U.S.C. 2616), by striking "Secretary" each place that term appears and inserting "Bureau"; and

(11) in section 19 (12 U.S.C. 2617)—

(A) in the section heading by striking "**SECRETARY**" and inserting "**BUREAU**";

(B) in subsection (a), by striking "Secretary" each place that term appears and inserting "Bureau"; and

(C) in subsections (b) and (c), by striking "the Secretary" each place that term appears and inserting "the Bureau".

SEC. 1098A. AMENDMENTS TO THE INTERSTATE LAND SALES FULL DISCLOSURE ACT.

The Interstate Land Sales Full Disclosure Act (15 U.S.C. 1701 et seq.) is amended—

(1) by striking "Secretary" each place that term appears and inserting "Director";

(2) by striking "Department of Housing and Urban Development" each place that term appears and inserting "Bureau of Consumer Financial Protection";

(3) by striking "Department" each place that term appears and inserting "Bureau";

(4) in section 1402 (15 U.S.C. 1701)—

(A) by striking paragraph (1) and inserting the following:

"(1) 'Director' means the Director of the Bureau of Consumer Financial Protection;";

(B) in paragraph (10), by striking "and" at the end;

(C) in paragraph (11), by striking the period at the end and inserting "; and"; and

(D) by adding at the end the following:

"(12) 'Bureau' means the Bureau of Consumer Financial Protection."; and

(5) in section 1416(a) (15 U.S.C. 1715(a)), by striking "Secretary of Housing and Urban Development" and inserting "Director of the Bureau of Consumer Financial Protection".

SEC. 1099. AMENDMENTS TO THE RIGHT TO FINANCIAL PRIVACY ACT OF 1978.

The Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et seq.) is amended—

(1) in section 1101—

(A) in paragraph (6)—

(i) in subparagraph (A), by inserting "and" after the semicolon;

(ii) in subparagraph (B), by striking "and" at the end; and

(iii) by striking subparagraph (C); and

(B) in paragraph (7), by striking subparagraph (B), and inserting the following:

"(B) the Bureau of Consumer Financial Protection;";

(2) in section 1112(e) (12 U.S.C. 3412(e)), by striking "and the Commodity Futures Trading Commission is permitted" and inserting "the Commodity Futures Trading Commission, and the Bureau of Consumer Financial Protection is permitted"; and

(3) in section 1113 (12 U.S.C. 3413), by adding at the end the following new subsection:

"(r) DISCLOSURE TO THE BUREAU OF CONSUMER FINANCIAL PROTECTION.—Nothing in this title shall apply to the examination by or disclosure to the Bureau of Consumer Financial Protection of financial records or information in the exercise of its authority with respect to a financial institution.".

SEC. 1100. AMENDMENTS TO THE SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT OF 2008.

The S.A.F.E. Mortgage Licensing Act of 2008 (12 U.S.C. 5101 et seq.) is amended—

(1) by striking "a Federal banking agency" each place that term appears, other than in paragraphs (7) and (11) of section 1503 and section 1507(a)(1), and inserting "the Bureau";

(2) by striking "Federal banking agencies" each place that term appears and inserting "Bureau"; and

(3) by striking "Secretary" each place that term appears and inserting "Director";

(4) in section 1503 (12 U.S.C. 5102)—

(A) by redesignating paragraphs (2) through (12) as (3) through (13), respectively;

(B) by striking paragraph (1) and inserting the following:

"(1) BUREAU.—The term 'Bureau' means the Bureau of Consumer Financial Protection.

"(2) FEDERAL BANKING AGENCY.—The term 'Federal banking agency' means the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the National Credit Union Administration, and the Federal Deposit Insurance Corporation."; and

(C) by striking paragraph (10), as so designated by this section, and inserting the following:

"(10) DIRECTOR.—The term 'Director' means the Director of the Bureau of Consumer Financial Protection."; and

(5) in section 1507 (12 U.S.C. 5106)—

(A) in subsection (a)—

(i) by striking paragraph (1) and inserting the following:

"(1) IN GENERAL.—The Bureau shall develop and maintain a system for registering employees of a depository institution, employees of a subsidiary that is owned and controlled by a depository institution and regulated by a Federal banking agency, or employees of an institution regulated by the Farm Credit Administration, as registered loan originators with the Nationwide Mortgage Licensing System and Registry. The system shall be implemented before the end of the 1-year period beginning on the date of enactment of the Consumer Financial Protection Act of 2010."; and

(ii) in paragraph (2)—

(I) by striking "appropriate Federal banking agency and the Farm Credit Administration" and inserting "Bureau"; and

(II) by striking "employees's identity" and inserting "identity of the employee"; and

(B) in subsection (b), by striking "through the Financial Institutions Examination Council, and the Farm Credit Administration", and inserting "and the Bureau of Consumer Financial Protection";

(6) in section 1508 (12 U.S.C. 5107)—

(A) by striking the section heading and inserting the following: "**SEC. 1508. BUREAU OF CONSUMER FINANCIAL PROTECTION BACKUP AUTHORITY TO ESTABLISH LOAN ORIGINATOR LICENSING SYSTEM.**"; and

(B) by adding at the end the following:

"(f) REGULATION AUTHORITY.—

"(1) IN GENERAL.—The Bureau is authorized to promulgate regulations setting minimum net worth or surety bond requirements for residential mortgage loan originators and minimum requirements for recovery funds paid into by loan originators.

"(2) CONSIDERATIONS.—In issuing regulations under paragraph (1), the Bureau shall take into account the need to provide originators adequate incentives to originate affordable and sustainable mortgage loans, as well as the need to ensure a competitive origination market that maximizes consumer access to affordable and sustainable mortgage loans.";

(7) by striking section 1510 (12 U.S.C. 5109) and inserting the following:

"SEC. 1510. FEES.

"The Bureau, the Farm Credit Administration, and the Nationwide Mortgage Licensing System and Registry may charge reasonable fees to cover the costs of maintaining and providing access to information from the Nationwide Mortgage Licensing System and Registry, to the extent that such fees are not charged to consumers for access to such system and registry.";

(8) by striking section 1513 (12 U.S.C. 5112) and inserting the following:

"SEC. 1513. LIABILITY PROVISIONS.

"The Bureau, any State official or agency, or any organization serving as the administrator of the Nationwide Mortgage Licensing System and Registry or a system established by the Director under section 1509, or any officer or employee of any such entity, shall not be subject to any civil action or proceeding for monetary damages by reason of the good faith action or omission of any officer or employee of any such entity, while acting within the scope of office or employment, relating to the collection, furnishing, or dissemination of information concerning persons who are loan originators or are applying for licensing or registration as loan originators."; and

(9) in section 1514 (12 U.S.C. 5113) in the section heading, by striking "**UNDER HUD BACKUP LICENSING SYSTEM**" and inserting "**BY THE BUREAU**".

SEC. 1100A. AMENDMENTS TO THE TRUTH IN LENDING ACT.

The Truth in Lending Act (15 U.S.C. 1601 et seq.) is amended—

(1) in section 103 (15 U.S.C. 1602)—

(A) by redesignating subsections (b) through (bb) as subsections (c) through (cc), respectively; and

(B) by inserting after subsection (a) the following:

"(b) BUREAU.—The term 'Bureau' means the Bureau of Consumer Financial Protection.";

(2) by striking "Board" each place that term appears, other than in section 140(d) and sections 105(i) and 108(a), as amended by this section, and inserting "Bureau";

(3) by striking "Federal Trade Commission" each place that term appears, other than in section 108(c) and section 129(m), as amended by this Act, and other than in the context of a reference to the Federal Trade Commission Act, and inserting "Bureau";

(4) in section 105(a) (15 U.S.C. 1604(a)), in the second sentence—

(A) by striking "Except in the case of a mortgage referred to in section 103(aa), these regulations may contain such" and inserting "Except with respect to the provisions of section 129 that apply to a mortgage referred to in section 103(aa), such regulations may contain such additional requirements,"; and

(B) by inserting "all or" after "exceptions for";

(5) in section 105(b) (15 U.S.C. 1604(b)), by striking the first sentence and inserting the following: "The Bureau shall publish a single, integrated disclosure for mortgage loan transactions (including real estate settlement cost statements) which includes the disclosure requirements of this title in conjunction with the disclosure requirements of the Real Estate Settlement Procedures Act of 1974 that, taken together, may apply to a transaction that is subject to both or either provisions of law. The purpose of such model disclosure shall be to facilitate compliance with the disclosure requirements of this title and the Real Estate Settlement Procedures Act of 1974, and to aid the borrower or lessee in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures.";

(6) in section 105(f)(1) (15 U.S.C. 1604(f)(1)), by inserting "all or" after "from all or part of this title";

(7) in section 105 (15 U.S.C. 1604), by adding at the end the following:

"(i) AUTHORITY OF THE BOARD TO PRESCRIBE RULES.—Notwithstanding subsection (a), the Board shall have authority to prescribe rules under this title with respect to a person described in section 1029(a) of the Consumer Financial Protection Act of 2010. Regulations prescribed under this subsection may contain such classifications, differentiations, or other provisions, as in the judgment of the Board are necessary or proper to effectuate the purposes of this title, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.";

(8) in section 108 (15 U.S.C. 1604), by adding at the end the following:

(A) by striking subsection (a) and inserting the following:

"(a) ENFORCING AGENCIES.—Subject to subtitle B of the Consumer Financial Protection Act of 2010, compliance with the requirements imposed under this title shall be enforced under—

"(1) section 8 of the Federal Deposit Insurance Act, by the appropriate Federal banking agency, as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), with respect to—

"(A) national banks, Federal savings associations, and Federal branches and Federal agencies of foreign banks;

"(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act; and

"(C) banks and State savings associations insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), and insured State branches of foreign banks;

"(2) the Federal Credit Union Act, by the Director of the National Credit Union Administration, with respect to any Federal credit union;

"(3) the Federal Aviation Act of 1958, by the Secretary of Transportation, with respect to any air carrier or foreign air carrier subject to that Act;

"(4) the Packers and Stockyards Act, 1921 (except as provided in section 406 of that Act), by the Secretary of Agriculture, with respect to any activities subject to that Act;

"(5) the Farm Credit Act of 1971, by the Farm Credit Administration with respect to any Federal land bank, Federal land bank association, Federal intermediate credit bank, or production credit association; and

"(6) subtitle E of the Consumer Financial Protection Act of 2010, by the Bureau, with respect to any person subject to this title."; and

(B) by striking subsection (c) and inserting the following:

"(c) OVERALL ENFORCEMENT AUTHORITY OF THE FEDERAL TRADE COMMISSION.—Except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other Government agency under any of paragraphs (1) through (5) of subsection (a), and subject to subtitle B of the Consumer Financial Protection Act of 2010, the Federal Trade Commission shall be authorized to enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement imposed under this title shall be deemed a violation of a requirement imposed under that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Federal Trade Commission to enforce compliance by any person with the requirements under this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests under the Federal Trade Commission Act."; and

(9) in section 129 (15 U.S.C. 1639), by striking subsection (m) and inserting the following:

"(m) CIVIL PENALTIES IN FEDERAL TRADE COMMISSION ENFORCEMENT ACTIONS.—For purposes of enforcement by the Federal Trade Commission, any violation of a regulation issued by the Bureau pursuant to subsection (l)(2) shall be treated as a violation of a rule promulgated under section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) regarding unfair or deceptive acts or practices."; and

(10) in chapter 5 (15 U.S.C. 1667 et seq.)—

(A) by striking "the Board" each place that term appears and inserting "the Bureau"; and

(B) by striking "The Board" each place that term appears and inserting "The Bureau".

SEC. 1100B. AMENDMENTS TO THE TRUTH IN SAVINGS ACT.

The Truth in Savings Act (12 U.S.C. 4301 et seq.) is amended—

(1) by striking "Board" each place that term appears, other than in section 272(b) (12 U.S.C. 4311), and inserting "Bureau";

(2) in section 270(a) (12 U.S.C. 4309)—

(A) by striking "Compliance" and all that follows through the end of paragraph (1) and inserting: "Subject to subtitle B of the Consumer Financial Protection Act of 2010, compliance with the requirements imposed under this subtitle shall be enforced under—

"(1) section 8 of the Federal Deposit Insurance Act by the appropriate Federal banking agency (as defined in section 3(q) of that Act), with respect to—

"(A) insured depository institutions (as defined in section 3(c)(2) of that Act);

"(B) depository institutions described in clause (i), (ii), or (iii) of section 19(b)(1)(A) of the Federal Reserve Act which are not insured depository institutions (as defined in section 3(c)(2) of the Federal Deposit Insurance Act); and

"(C) depository institutions described in clause (v) or (vi) of section 19(b)(1)(A) of the Federal Reserve Act which are not insured depository institutions (as defined in section 3(c)(2) of the Federal Deposit Insurance Act);";

(B) in paragraph (2), by striking the period at the end and inserting "; and"; and

(C) by adding at the end the following:

"(3) subtitle E of the Consumer Financial Protection Act of 2010, by the Bureau, with respect to any person subject to this subtitle.";

(3) in section 272(b) (12 U.S.C. 4311(b)), by striking "regulation prescribed by the Board" each place that term appears and inserting "regulation prescribed by the Bureau"; and

(4) in section 274 (12 U.S.C. 4313), by striking paragraph (4) and inserting the following:

"(4) BUREAU.—The term 'Bureau' means the Bureau of Consumer Financial Protection.".

SEC. 1100C. AMENDMENTS TO THE TELEMARKETING AND CONSUMER FRAUD AND ABUSE PREVENTION ACT.

(a) AMENDMENTS TO SECTION 3.—Section 3 of the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6102) is amended by striking subsections (b) and (c) and inserting the following:

"(b) RULEMAKING AUTHORITY.—The Commission shall have authority to prescribe rules under subsection (a), in accordance with section 553 of title 5, United States Code. In prescribing a rule under this section that relates to the provision of a consumer financial product or service that is subject to the Consumer Financial Protection Act of 2010, including any enumerated consumer law thereunder, the Commission shall consult with the Bureau of Consumer Financial Protection regarding the consistency of a proposed rule with standards, purposes, or objectives administered by the Bureau of Consumer Financial Protection.

"(c) VIOLATIONS.—Any violation of any rule prescribed under subsection (a)—

"(1) shall be treated as a violation of a rule under section 18 of the Federal Trade Commission Act regarding unfair or deceptive acts or practices; and

"(2) that is committed by a person subject to the Consumer Financial Protection Act of 2010 shall be treated as a violation of a rule under section 1031 of that Act regarding unfair, deceptive, or abusive acts or practices.".

(b) AMENDMENTS TO SECTION 4.—Section 4(d) of the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6103(d)) is amended by inserting after "Commission" each place that term appears the following: "or the Bureau of Consumer Financial Protection".

(c) AMENDMENTS TO SECTION 5.—Section 5(c) of the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6104(c)) is amended by inserting after "Commission" each place that term appears the following: "or the Bureau of Consumer Financial Protection".

(d) AMENDMENT TO SECTION 6.—Section 6 of the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6105) is amended by adding at the end the following:

"(d) ENFORCEMENT BY BUREAU OF CONSUMER FINANCIAL PROTECTION.—Except as otherwise provided in sections 3(d), 3(e), 4, and 5, and subject to subtitle B of the Consumer Financial Protection Act of 2010, this Act shall be enforced by the Bureau of Consumer Financial Protection under subtitle E of the Consumer Financial Protection Act of 2010, with respect to the offering or provision of a consumer financial product or service subject to that Act.".

SEC. 1100D. AMENDMENTS TO THE PAPERWORK REDUCTION ACT.

(a) DESIGNATION AS AN INDEPENDENT AGENCY.—Section 2(5) of the Paperwork Reduction Act (44 U.S.C. 3502(5)) is amended by inserting "the Bureau of Consumer Financial Protection, the Office of Financial Research," after "the Securities and Exchange Commission,".

(b) COMPARABLE TREATMENT.—Section 3513 of title 44, United States Code, is amended by adding at the end the following:

"(c) COMPARABLE TREATMENT.—Notwithstanding any other provision of law, the Director shall treat or review a rule or order prescribed or proposed by the Director of the Bureau of Consumer Financial Protection on the same terms and conditions as apply to any rule or order prescribed or proposed by the Board of Governors of the Federal Reserve System.".

SEC. 1100E. ADJUSTMENTS FOR INFLATION IN THE TRUTH IN LENDING ACT.

(a) CAPS.—

(1) CREDIT TRANSACTIONS.—Section 104(3) of the Truth in Lending Act (15 U.S.C. 1603(3)) is amended by striking "$25,000" and inserting "$50,000".

(2) CONSUMER LEASES.—Section 181(1) of the Truth in Lending Act (15 U.S.C. 1667(1)) is amended by striking "$25,000" and inserting "$50,000".

(b) ADJUSTMENTS FOR INFLATION.—On and after December 31, 2011, the Bureau shall adjust annually the dollar amounts described in sections 104(3) and 181(1) of the Truth in Lending Act (as amended by this section), by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers, as published by the Bureau of Labor Statistics, rounded to the nearest multiple of $100, or $1,000, as applicable.

SEC. 1100F. USE OF CONSUMER REPORTS.

Section 615 of the Fair Credit Reporting Act (15 U.S.C. 1681m) is amended—

(1) in subsection (a)—

(A) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively;

(B) by inserting after paragraph (1) the following:

"(2) provide to the consumer written or electronic disclosure—

"(A) of a numerical credit score as defined in section 609(f)(2)(A) used by such person in taking any adverse action based in whole or in part on any information in a consumer report; and

"(B) of the information set forth in subparagraphs (B) through (E) of section 609(f)(1);"; and

(C) in paragraph (4) (as so redesignated), by striking "paragraph (2)" and inserting "paragraph (3)"; and

(2) in subsection (h)(5)—

(A) in subparagraph (C), by striking "; and" and inserting a semicolon;

(B) in subparagraph (D), by striking the period and inserting "; and"; and

(C) by inserting at the end the following:

"(E) include a statement informing the consumer of—

"(i) a numerical credit score as defined in section 609(f)(2)(A), used by such person in making the credit decision described in paragraph (1) based in whole or in part on any information in a consumer report; and

"(ii) the information set forth in subparagraphs (B) through (E) of section 609(f)(1).".

SEC. 1100G. SMALL BUSINESS FAIRNESS AND REGULATORY TRANSPARENCY.

(a) PANEL REQUIREMENT.—Section 609(d) of title 5, United States Code, is amended by striking "means the" and all that follows and inserting the following: "means—

"(1) the Environmental Protection Agency;

"(2) the Consumer Financial Protection Bureau of the Federal Reserve System; and

"(3) the Occupational Safety and Health Administration of the Department of Labor.".

(b) INITIAL REGULATORY FLEXIBILITY ANALYSIS.—Section 603 of title 5, United States Code, is amended by adding at the end the following:

"(d)(1) For a covered agency, as defined in section 609(d)(2), each initial regulatory flexibility analysis shall include a description of—

"(A) any projected increase in the cost of credit for small entities;

"(B) any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any increase in the cost of credit for small entities; and

"(C) advice and recommendations of representatives of small entities relating to issues described in subparagraphs (A) and (B) and subsection (b).

"(2) A covered agency, as defined in section 609(d)(2), shall, for purposes of complying with paragraph (1)(C)—

"(A) identify representatives of small entities in consultation with the Chief Counsel for Advocacy of the Small Business Administration; and

"(B) collect advice and recommendations from the representatives identified under subparagraph (A) relating to issues described in subparagraphs (A) and (B) of paragraph (1) and subsection (b).".

(c) FINAL REGULATORY FLEXIBILITY ANALYSIS.—Section 604(a) of title 5, United States Code, is amended—

(1) in paragraph (4), by striking "and" at the end;

(2) in paragraph (5), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following:

"(6) for a covered agency, as defined in section 609(d)(2), a description of the steps the agency has taken to minimize any additional cost of credit for small entities.".

SEC. 1100H. EFFECTIVE DATE.

Except as otherwise provided in this subtitle and the amendments made by this subtitle, this subtitle and the amendments made by this subtitle, other than sections 1081 and 1082, shall become effective on the designated transfer date.

TITLE XI—FEDERAL RESERVE SYSTEM PROVISIONS

SEC. 1101. FEDERAL RESERVE ACT AMENDMENTS ON EMERGENCY LENDING AUTHORITY.

(a) FEDERAL RESERVE ACT.—The third undesignated paragraph of section 13 of the Federal Reserve Act (12 U.S.C. 343) (relating to emergency lending authority) is amended—

(1) by inserting "(3)(A)" before "In unusual";

(2) by striking "individual, partnership, or corporation" the first place that term appears and inserting the following: "participant in any program or facility with broad-based eligibility";

(3) by striking "exchange for an individual or a partnership or corporation" and inserting "exchange,";

(4) by striking "such individual, partnership, or corporation" and inserting the following: "such participant in any program or facility with broad-based eligibility";

(5) by striking "for individuals, partnerships, corporations" and inserting "for any participant in any program or facility with broad-based eligibility"; and

(6) by striking "may prescribe." and inserting the following: "may prescribe.

"(B)(i) As soon as is practicable after the date of enactment of this subparagraph, the Board shall establish, by regulation, in consultation with the Secretary of the Treasury, the policies and procedures governing emergency lending under this paragraph. Such policies and procedures shall be designed to ensure that any emergency lending program or facility is for the purpose of providing liquidity to the financial system, and not to aid a failing financial

company, and that the security for emergency loans is sufficient to protect taxpayers from losses and that any such program is terminated in a timely and orderly fashion. The policies and procedures established by the Board shall require that a Federal reserve bank assign, consistent with sound risk management practices and to ensure protection for the taxpayer, a lendable value to all collateral for a loan executed by a Federal reserve bank under this paragraph in determining whether the loan is secured satisfactorily for purposes of this paragraph.

"(ii) The Board shall establish procedures to prohibit borrowing from programs and facilities by borrowers that are insolvent. Such procedures may include a certification from the chief executive officer (or other authorized officer) of the borrower, at the time the borrower initially borrows under the program or facility (with a duty by the borrower to update the certification if the information in the certification materially changes), that the borrower is not insolvent. A borrower shall be considered insolvent for purposes of this subparagraph, if the borrower is in bankruptcy, resolution under title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act, or any other Federal or State insolvency proceeding.

"(iii) A program or facility that is structured to remove assets from the balance sheet of a single and specific company, or that is established for the purpose of assisting a single and specific company avoid bankruptcy, resolution under title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act, or any other Federal or State insolvency proceeding, shall not be considered a program or facility with broad-based eligibility.

"(iv) The Board may not establish any program or facility under this paragraph without the prior approval of the Secretary of the Treasury.

"(C) The Board shall provide to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives—

"(i) not later than 7 days after the Board authorizes any loan or other financial assistance under this paragraph, a report that includes—

"(I) the justification for the exercise of authority to provide such assistance;

"(II) the identity of the recipients of such assistance;

"(III) the date and amount of the assistance, and form in which the assistance was provided; and

"(IV) the material terms of the assistance, including—

"(aa) duration;

"(bb) collateral pledged and the value thereof;

"(cc) all interest, fees, and other revenue or items of value to be received in exchange for the assistance;

"(dd) any requirements imposed on the recipient with respect to employee compensation, distribution of dividends, or any other corporate decision in exchange for the assistance; and

"(ee) the expected costs to the taxpayers of such assistance; and

"(ii) once every 30 days, with respect to any outstanding loan or other financial assistance under this paragraph, written updates on—

"(I) the value of collateral;

"(II) the amount of interest, fees, and other revenue or items of value received in exchange for the assistance; and

"(III) the expected or final cost to the taxpayers of such assistance.

"(D) The information required to be submitted to Congress under subparagraph (C) related to—

"(i) the identity of the participants in an emergency lending program or facility commenced under this paragraph;

"(ii) the amounts borrowed by each participant in any such program or facility;

"(iii) identifying details concerning the assets or collateral held by, under, or in connection with such a program or facility,

shall be kept confidential, upon the written request of the Chairman of the Board, in which case such information shall be made available only to the Chairpersons or Ranking Members of the Committees described in subparagraph (C).

"(E) If an entity to which a Federal reserve bank has provided a loan under this paragraph becomes a covered financial company, as defined in section 201 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, at any time while such loan is outstanding, and the Federal reserve bank incurs a realized net loss on the loan, then the Federal reserve bank shall have a claim equal to the amount of the net realized loss against the covered entity, with the same priority as an obligation to the Secretary of the Treasury under section 210(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act.".

(b) CONFORMING AMENDMENT.—Section 507(a)(2) of title 11, United States Code, is amended by inserting "unsecured claims of any Federal reserve bank related to loans made through programs or facilities authorized under section 13(3) of the Federal Reserve Act (12 U.S.C. 343)," after "this title,".

(c) REFERENCES.—On and after the date of enactment of this Act, any reference in any provision of Federal law to the third undesignated paragraph of section 13 of the Federal Reserve Act (12 U.S.C. 343) shall be deemed to be a reference to section 13(3) of the Federal Reserve Act, as so designated by this section.

SEC. 1102. AUDITS OF SPECIAL FEDERAL RESERVE CREDIT FACILITIES.

(a) AUDITS.—Section 714 of title 31, United States Code, is amended by adding at the end the following:

"(f) AUDITS OF CREDIT FACILITIES OF THE FEDERAL RESERVE SYSTEM.—

"(1) DEFINITIONS.—In this subsection, the following definitions shall apply:

"(A) CREDIT FACILITY.—The term 'credit facility' means a program or facility, including any special purpose vehicle or other entity established by or on behalf of the Board of Governors of the Federal Reserve System or a Federal reserve bank, authorized by the Board of Governors under section 13(3) of the Federal Reserve Act (12 U.S.C. 343), that is not subject to audit under subsection (e).

"(B) COVERED TRANSACTION.—The term 'covered transaction' means any open market transaction or discount window advance that meets the definition of 'covered transaction' in section 11(s) of the Federal Reserve Act.

"(2) AUTHORITY FOR AUDITS AND EXAMINATIONS.—Subject to paragraph (3), and notwithstanding any limitation in subsection (b) on the auditing and oversight of certain functions of the Board of Governors of the Federal Reserve System or any Federal reserve bank, the Comptroller General of the United States may conduct audits, including onsite examinations, of the Board of Governors, a Federal reserve bank, or a credit facility, if the Comptroller General determines that such audits are appropriate, solely for the purposes of assessing, with respect to a credit facility or a covered transaction—

"(A) the operational integrity, accounting, financial reporting, and internal controls governing the credit facility or covered transaction;

"(B) the effectiveness of the security and collateral policies established for the facility or covered transaction in mitigating risk to the relevant Federal reserve bank and taxpayers;

"(C) whether the credit facility or the conduct of a covered transaction inappropriately favors one or more specific participants over other institutions eligible to utilize the facility; and

"(D) the policies governing the use, selection, or payment of third-party contractors by or for any credit facility or to conduct any covered transaction.

"(3) REPORTS AND DELAYED DISCLOSURE.—

"(A) REPORTS REQUIRED.—A report on each audit conducted under paragraph (2) shall be submitted by the Comptroller General to the Congress before the end of the 90-day period beginning on the date on which such audit is completed.

"(B) CONTENTS.—The report under subparagraph (A) shall include a detailed description of the findings and conclusions of the Comptroller General with respect to the matters described in paragraph (2) that were audited and are the subject of the report, together with such recommendations for legislative or administrative action relating to such matters as the Comptroller General may determine to be appropriate.

"(C) DELAYED RELEASE OF CERTAIN INFORMATION.—

"(i) IN GENERAL.—The Comptroller General shall not disclose to any person or entity, including to Congress, the names or identifying details of specific

participants in any credit facility or covered transaction, the amounts borrowed by or transferred by or to specific participants in any credit facility or covered transaction, or identifying details regarding assets or collateral held or transferred by, under, or in connection with any credit facility or covered transaction, and any report provided under subparagraph (A) shall be redacted to ensure that such names and details are not disclosed.

"(ii) DELAYED RELEASE.—The nondisclosure obligation under clause (i) shall expire with respect to any participant on the date on which the Board of Governors, directly or through a Federal reserve bank, publicly discloses the identity of the subject participant or the identifying details of the subject assets, collateral, or transaction.

"(iii) GENERAL RELEASE.—The Comptroller General shall release a nonredacted version of any report on a credit facility 1 year after the effective date of the termination by the Board of Governors of the authorization for the credit facility. For purposes of this clause, a credit facility shall be deemed to have terminated 24 months after the date on which the credit facility ceases to make extensions of credit and loans, unless the credit facility is otherwise terminated by the Board of Governors.

"(iv) EXCEPTIONS.—The nondisclosure obligation under clause (i) shall not apply to the credit facilities Maiden Lane, Maiden Lane II, and Maiden Lane III.

"(v) RELEASE OF COVERED TRANSACTION INFORMATION.—The Comptroller General shall release a nonredacted version of any report regarding covered transactions upon the release of the information regarding such covered transactions by the Board of Governors of the Federal Reserve System, as provided in section 11(s) of the Federal Reserve Act.".

(b) ACCESS TO RECORDS.—Section 714(d) of title 31, United States Code, is amended—

(1) in paragraph (2), by inserting "or any person or entity described in paragraph (3)(A)" after "used by an agency";

(2) in paragraph (3), by inserting "or (f)" after "subsection (e)" each place that term appears;

(3) in clauses (i) and (ii) of paragraph (3)(A), by inserting "or the Federal Reserve banks" after "by the Board" each place that term appears;

(4) in paragraph (3)(A)(ii), by inserting "participating in or" after "any entity"; and

(5) in paragraph (3)(B), by adding at the end the following: "The Comptroller General may make and retain copies of books, accounts, and other records provided under subparagraph (A) as the Comptroller General deems appropriate. The Comptroller General shall provide to any person or entity described in subparagraph (A) a current list of officers and employees to whom, with proper identification, records and property may be made available, and who may make notes or copies necessary to carry out a audit or examination under this subsection.".

SEC. 1103. PUBLIC ACCESS TO INFORMATION.

(a) IN GENERAL.—Section 2B of the Federal Reserve Act (12 U.S.C. 225b) is amended by adding at the end the following:

"(c) PUBLIC ACCESS TO INFORMATION.—The Board shall place on its home Internet website, a link entitled 'Audit', which shall link to a webpage that shall serve as a repository of information made available to the public for a reasonable period of time, not less than 6 months following the date of release of the relevant information, including—

"(1) the reports prepared by the Comptroller General under section 714 of title 31, United States Code;

"(2) the annual financial statements prepared by an independent auditor for the Board in accordance with section 11B;

"(3) the reports to the Committee on Banking, Housing, and Urban Affairs of the Senate required under section 13(3) (relating to emergency lending authority); and

"(4) such other information as the Board reasonably believes is necessary or helpful to the public in understanding the accounting, financial reporting, and internal controls of the Board and the Federal reserve banks.".

(b) FEDERAL RESERVE TRANSPARENCY AND RELEASE OF INFORMATION.—Section 11 of the Federal Reserve Act (12 U.S.C. 248) is amended by adding at the end the following new subsection:

"(s) FEDERAL RESERVE TRANSPARENCY AND RELEASE OF INFORMATION.—

"(1) IN GENERAL.—In order to ensure the disclosure in a timely manner consistent with the purposes of this Act of information concerning the borrowers and counterparties participating in emergency credit facilities, discount window lending programs, and open market operations authorized or conducted by the Board or a Federal reserve bank, the Board of Governors shall disclose, as provided in paragraph (2)—

"(A) the names and identifying details of each borrower, participant, or counterparty in any credit facility or covered transaction;

"(B) the amount borrowed by or transferred by or to a specific borrower, participant, or counterparty in any credit facility or covered transaction;

"(C) the interest rate or discount paid by each borrower, participant, or counterparty in any credit facility or covered transaction; and

"(D) information identifying the types and amounts of collateral pledged or assets transferred in connection with participation in any credit facility or covered transaction.

"(2) MANDATORY RELEASE DATE.—In the case of—

"(A) a credit facility, the Board shall disclose the information described in paragraph (1) on the date that is 1 year after the effective date of the termination by the Board of the authorization of the credit facility; and

"(B) a covered transaction, the Board shall disclose the information described in paragraph (1) on the last day of the eighth calendar quarter following the calendar quarter in which the covered transaction was conducted.

"(3) EARLIER RELEASE DATE AUTHORIZED.—The Chairman of the Board may publicly release the information described in paragraph (1) before the relevant date specified in paragraph

(2), if the Chairman determines that such disclosure would be in the public interest and would not harm the effectiveness of the relevant credit facility or the purpose or conduct of covered transactions.

"(4) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

"(A) CREDIT FACILITY.—The term 'credit facility' has the same meaning as in section 714(f)(1)(A) of title 31, United States Code.

"(B) COVERED TRANSACTION.—The term 'covered transaction' means—

"(i) any open market transaction with a nongovernmental third party conducted under the first undesignated paragraph of section 14 or subparagraph (a), (b), or (c) of the 2nd undesignated paragraph of such section, after the date of enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act; and

"(ii) any advance made under section 10B after the date of enactment of that Act.

"(5) TERMINATION OF CREDIT FACILITY BY OPERATION OF LAW.—A credit facility shall be deemed to have terminated as of the end of the 24-month period beginning on the date on which the credit facility ceases to make extensions of credit and loans, unless the credit facility is otherwise terminated by the Board before such date.

"(6) CONSISTENT TREATMENT OF INFORMATION.—Except as provided in this subsection or section 13(3)(D), or in section 714(f)(3)(C) of title 31, United States Code, the information described in paragraph (1) and information concerning the transactions described in section 714(f) of such title, shall be confidential, including for purposes of section 552(b)(3) of title 5 of such Code, until the relevant mandatory release date described in paragraph (2), unless the Chairman of the Board determines that earlier disclosure of such information would be in the public interest and would not harm the effectiveness of the relevant credit facility or the purpose of conduct of the relevant transactions.

"(7) PROTECTION OF PERSONAL PRIVACY.—This subsection and section 13(3)(C), section 714(f)(3)(C) of title 31, United States Code, and subsection (a) or (c) of section 1109 of the Dodd-Frank Wall Street Reform and Consumer Protection Act shall not be construed as requiring any disclosure of nonpublic personal information (as defined for purposes of section 502 of the Gramm-Leach-Bliley Act (12 U.S.C. 6802)) concerning any individual who is referenced in collateral pledged or assets transferred in connection with a credit facility or covered transaction, unless the person is a borrower, participant, or counterparty under the credit facility or covered transaction.

"(8) STUDY OF FOIA EXEMPTION IMPACT.—

"(A) STUDY.—The Inspector General of the Board of Governors of the Federal Reserve System shall—

"(i) conduct a study on the impact that the exemption from section 552(b)(3) of title 5 (known as the Freedom of Information Act) established under paragraph (6) has had on the ability of the public to access information about the administration by the Board of Governors of emergency credit facilities, discount

window lending programs, and open market operations; and

"(ii) make any recommendations on whether the exemption described in clause (i) should remain in effect.

"(B) REPORT.—Not later than 30 months after the date of enactment of this section, the Inspector General of the Board of Governors of the Federal Reserve System shall submit a report on the findings of the study required under subparagraph (A) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, and publish the report on the website of the Board.

"(9) RULE OF CONSTRUCTION.—Nothing in this section is meant to affect any pending litigation or lawsuit filed under section 552 of title 5, United States Code (popularly known as the Freedom of Information Act), on or before the date of enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act.".

SEC. 1104. LIQUIDITY EVENT DETERMINATION.

(a) DETERMINATION AND WRITTEN RECOMMENDATION.—

(1) DETERMINATION REQUEST.—The Secretary may request the Corporation and the Board of Governors to determine whether a liquidity event exists that warrants use of the guarantee program authorized under section 1105.

(2) REQUIREMENTS OF DETERMINATION.—Any determination pursuant to paragraph (1) shall—

(A) be written; and

(B) contain an evaluation of the evidence that—

(i) a liquidity event exists;

(ii) failure to take action would have serious adverse effects on financial stability or economic conditions in the United States; and

(iii) actions authorized under section 1105 are needed to avoid or mitigate potential adverse effects on the United States financial system or economic conditions.

(b) PROCEDURES.—Notwithstanding any other provision of Federal or State law, upon the determination of both the Corporation (upon a vote of not fewer than ⅔ of the members of the Corporation then serving) and the Board of Governors (upon a vote of not fewer than ⅔ of the members of the Board of Governors then serving) under subsection (a) that a liquidity event exists that warrants use of the guarantee program authorized under section 1105, and with the written consent of the Secretary—

(1) the Corporation shall take action in accordance with section 1105(a); and

(2) the Secretary (in consultation with the President) shall take action in accordance with section 1105(c).

(c) DOCUMENTATION AND REVIEW.—

(1) DOCUMENTATION.—The Secretary shall—

(A) maintain the written documentation of each determination of the Corporation and the Board of Governors under this section; and

(B) provide the documentation for review under paragraph (2).

(2) GAO REVIEW.—The Comptroller General of the United States shall review and report to Congress on any determination of the Corporation and the Board of Governors under subsection (a), including—

(A) the basis for the determination; and

(B) the likely effect of the actions taken.

(d) REPORT TO CONGRESS.—On the earlier of the date of a submission made to Congress under section 1105(c), or within 30 days of the date of a determination under subsection (a), the Secretary shall provide written notice of the determination of the Corporation and the Board of Governors to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, including a description of the basis for the determination.

SEC. 1105. EMERGENCY FINANCIAL STABILIZATION.

(a) IN GENERAL.—Upon the written determination of the Corporation and the Board of Governors under section 1104, the Corporation shall create a widely available program to guarantee obligations of solvent insured depository institutions or solvent depository institution holding companies (including any affiliates thereof) during times of severe economic distress, except that a guarantee of obligations under this section may not include the provision of equity in any form.

(b) RULEMAKING AND TERMS AND CONDITIONS.—

(1) POLICIES AND PROCEDURES.—As soon as is practicable after the date of enactment of this Act, the Corporation shall establish, by regulation, and in consultation with the Secretary, policies and procedures governing the issuance of guarantees authorized by this section. Such policies and procedures may include a requirement of collateral as a condition of any such guarantee.

(2) TERMS AND CONDITIONS.—The terms and conditions of any guarantee program shall be established by the Corporation, with the concurrence of the Secretary.

(c) DETERMINATION OF GUARANTEED AMOUNT.—

(1) IN GENERAL.—In connection with any program established pursuant to subsection (a) and subject to paragraph (2) of this subsection, the Secretary (in consultation with the President) shall determine the maximum amount of debt outstanding that the Corporation may guarantee under this section, and the President may transmit to Congress a written report on the plan of the Corporation to exercise the authority under this section to issue guarantees up to that maximum amount and a request for approval of such plan. The Corporation shall exercise the authority under this section to issue guarantees up to that specified maximum amount upon passage of the joint resolution of approval, as provided in subsection (d). Absent such approval, the Corporation shall issue no such guarantees.

(2) ADDITIONAL DEBT GUARANTEE AUTHORITY.—If the Secretary (in consultation with the President) determines, after a submission to Congress under paragraph (1), that the maximum guarantee amount should be raised, and the Council concurs with that determination, the President may transmit to Congress a written report on the plan of the Corporation to exercise the authority under this section to issue guarantees

up to the increased maximum debt guarantee amount. The Corporation shall exercise the authority under this section to issue guarantees up to that specified maximum amount upon passage of the joint resolution of approval, as provided in subsection (d). Absent such approval, the Corporation shall issue no such guarantees.

(d) RESOLUTION OF APPROVAL.—

(1) ADDITIONAL DEBT GUARANTEE AUTHORITY.—A request by the President under this section shall be considered granted by Congress upon adoption of a joint resolution approving such request. Such joint resolution shall be considered in the Senate under expedited procedures.

(2) FAST TRACK CONSIDERATION IN SENATE.—

(A) RECONVENING.—Upon receipt of a request under subsection (c), if the Senate has adjourned or recessed for more than 2 days, the majority leader of the Senate, after consultation with the minority leader of the Senate, shall notify the Members of the Senate that, pursuant to this section, the Senate shall convene not later than the second calendar day after receipt of such message.

(B) PLACEMENT ON CALENDAR.—Upon introduction in the Senate, the joint resolution shall be placed immediately on the calendar.

(C) FLOOR CONSIDERATION.—

(i) IN GENERAL.—Notwithstanding Rule XXII of the Standing Rules of the Senate, it is in order at any time during the period beginning on the 4th day after the date on which Congress receives a request under subsection (c), and ending on the 7th day after that date (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the joint resolution, and all points of order against the joint resolution (and against consideration of the joint resolution) are waived. The motion to proceed is not debatable. The motion is not subject to a motion to postpone. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the joint resolution shall remain the unfinished business until disposed of.

(ii) DEBATE.—Debate on the joint resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between the majority and minority leaders or their designees. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the joint resolution is not in order.

(iii) VOTE ON PASSAGE.—The vote on passage shall occur immediately following the conclusion of the debate on the joint resolution, and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate.

(iv) RULINGS OF THE CHAIR ON PROCEDURE.—Appeals from the decisions of the Chair relating to the application of the rules of the Senate, as the case may be, to the procedure relating to a joint resolution shall be decided without debate.

(3) RULES.—

(A) COORDINATION WITH ACTION BY HOUSE OF REPRESENTATIVES.—If, before the passage by the Senate of a joint resolution of the Senate, the Senate receives a joint resolution, from the House of Representatives, then the following procedures shall apply:

(i) The joint resolution of the House of Representatives shall not be referred to a committee.

(ii) With respect to a joint resolution of the Senate—

(I) the procedure in the Senate shall be the same as if no joint resolution had been received from the other House; but

(II) the vote on passage shall be on the joint resolution of the House of Representatives.

(B) TREATMENT OF JOINT RESOLUTION OF HOUSE OF REPRESENTATIVES.—If the Senate fails to introduce or consider a joint resolution under this section, the joint resolution of the House of Representatives shall be entitled to expedited floor procedures under this subsection.

(C) TREATMENT OF COMPANION MEASURES.—If, following passage of the joint resolution in the Senate, the Senate then receives the companion measure from the House of Representatives, the companion measure shall not be debatable.

(D) RULES OF THE SENATE.—This subsection is enacted by Congress—

(i) as an exercise of the rulemaking power of the Senate, and as such it is deemed a part of the rules of the Senate, but applicable only with respect to the procedure to be followed in the Senate in the case of a joint resolution, and it supersedes other rules, only to the extent that it is inconsistent with such rules; and

(ii) with full recognition of the constitutional right of the Senate to change the rules (so far as relating to the procedure of the Senate) at any time, in the same manner, and to the same extent as in the case of any other rule of the Senate.

(4) DEFINITION.—As used in this subsection, the term "joint resolution" means only a joint resolution—

(A) that is introduced not later than 3 calendar days after the date on which the request referred to in subsection (c) is received by Congress;

(B) that does not have a preamble;

(C) the title of which is as follows: "Joint resolution relating to the approval of a plan to guarantee obligations under section 1105 of the Dodd-Frank Wall Street Reform and Consumer Protection Act"; and

(D) the matter after the resolving clause of which is as follows: "That Congress approves the obligation of

any amount described in section 1105(c) of the Dodd-Frank Wall Street Reform and Consumer Protection Act.".

(e) FUNDING.—

(1) FEES AND OTHER CHARGES.—The Corporation shall charge fees and other assessments to all participants in the program established pursuant to this section, in such amounts as are necessary to offset projected losses and administrative expenses, including amounts borrowed pursuant to paragraph (3), and such amounts shall be available to the Corporation.

(2) EXCESS FUNDS.—If, at the conclusion of the program established under this section, there are any excess funds collected from the fees associated with such program, the funds shall be deposited in the General Fund of the Treasury.

(3) AUTHORITY OF CORPORATION.—The Corporation—

(A) may borrow funds from the Secretary of the Treasury and issue obligations of the Corporation to the Secretary for amounts borrowed, and the amounts borrowed shall be available to the Corporation for purposes of carrying out a program established pursuant to this section, including the payment of reasonable costs of administering the program, and the obligations issued shall be repaid in full with interest through fees and charges paid by participants in accordance with paragraphs (1) and (4), as applicable; and

(B) may not borrow funds from the Deposit Insurance Fund established pursuant to section 11(a)(4) of the Federal Deposit Insurance Act.

(4) BACKUP SPECIAL ASSESSMENTS.—To the extent that the funds collected pursuant to paragraph (1) are insufficient to cover any losses or expenses, including amounts borrowed pursuant to paragraph (3), arising from a program established pursuant to this section, the Corporation shall impose a special assessment solely on participants in the program, in amounts necessary to address such insufficiency, and which shall be available to the Corporation to cover such losses or expenses.

(5) AUTHORITY OF THE SECRETARY.—The Secretary may purchase any obligations issued under paragraph (3)(A). For such purpose, the Secretary may use the proceeds of the sale of any securities issued under chapter 31 of title 31, United States Code, and the purposes for which securities may be issued under that chapter 31 are extended to include such purchases, and the amount of any securities issued under that chapter 31 for such purpose shall be treated in the same manner as securities issued under section 208(n)(5)(E).

(f) RULE OF CONSTRUCTION.—For purposes of this section, a guarantee of deposits held by insured depository institutions shall not be treated as a debt guarantee program.

(g) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

(1) COMPANY.—The term "company" means any entity other than a natural person that is incorporated or organized under Federal law or the laws of any State.

(2) DEPOSITORY INSTITUTION HOLDING COMPANY.—The term "depository institution holding company" has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(3) LIQUIDITY EVENT.—The term "liquidity event" means—

(A) an exceptional and broad reduction in the general ability of financial market participants—

(i) to sell financial assets without an unusual and significant discount; or

(ii) to borrow using financial assets as collateral without an unusual and significant increase in margin; or

(B) an unusual and significant reduction in the ability of financial market participants to obtain unsecured credit.

(4) SOLVENT.—The term "solvent" means that the value of the assets of an entity exceed its obligations to creditors.

SEC. 1106. ADDITIONAL RELATED AMENDMENTS.

(a) SUSPENSION OF PARALLEL FEDERAL DEPOSIT INSURANCE ACT AUTHORITY.—Effective upon the date of enactment of this section, the Corporation may not exercise its authority under section 13(c)(4)(G)(i) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(4)(G)(i)) to establish any widely available debt guarantee program for which section 1105 would provide authority.

(b) FEDERAL DEPOSIT INSURANCE ACT.—Section 13(c)(4)(G) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(4)(G)) is amended—

(1) in clause (i)—

(A) in subclause (I), by inserting "for which the Corporation has been appointed receiver" before "would have serious"; and

(B) in the undesignated matter following subclause (II), by inserting "for the purpose of winding up the insured depository institution for which the Corporation has been appointed receiver" after "provide assistance under this section"; and

(2) in clause (v)(I), by striking "The" and inserting "Not later than 3 days after making a determination under clause (i), the".

(c) EFFECT OF DEFAULT ON AN FDIC GUARANTEE.—If an insured depository institution or depository institution holding company (as those terms are defined in section 3 of the Federal Deposit Insurance Act) participating in a program under section 1105, or any participant in a debt guarantee program established pursuant to section 13(c)(4)(G)(i) of the Federal Deposit Insurance Act defaults on any obligation guaranteed by the Corporation after the date of enactment of this Act, the Corporation shall—

(1) appoint itself as receiver for the insured depository institution that defaults; and

(2) with respect to any other participating company that is not an insured depository institution that defaults—

(A) require—

(i) consideration of whether a determination shall be made, as provided in section 203 to resolve the company under section 202; and

(ii) the company to file a petition for bankruptcy under section 301 of title 11, United States Code, if the Corporation is not appointed receiver pursuant to section 202 within 30 days of the date of default; or

(B) file a petition for involuntary bankruptcy on behalf of the company under section 303 of title 11, United States Code.

SEC. 1107. FEDERAL RESERVE ACT AMENDMENTS ON FEDERAL RESERVE BANK GOVERNANCE.

The 5th subparagraph of the 4th undesignated paragraph of section 4 of the Federal Reserve Act (12 U.S.C. 341) is amended by striking the 2nd sentence and inserting the following: "The president shall be the chief executive officer of the bank and shall be appointed by the Class B and Class C directors of the bank, with the approval of the Board of Governors of the Federal Reserve System, for a term of 5 years; and all other executive officers and all employees of the bank shall be directly responsible to the president.".

SEC. 1108. FEDERAL RESERVE ACT AMENDMENTS ON SUPERVISION AND REGULATION POLICY.

(a) ESTABLISHMENT OF THE POSITION OF VICE CHAIRMAN FOR SUPERVISION.—

(1) POSITION ESTABLISHED.—The second undesignated paragraph of section 10 of the Federal Reserve Act (12 U.S.C. 242) (relating to the Chairman and Vice Chairman of the Board) is amended by striking the third sentence and inserting the following: "Of the persons thus appointed, 1 shall be designated by the President, by and with the advice and consent of the Senate, to serve as Chairman of the Board for a term of 4 years, and 2 shall be designated by the President, by and with the advice and consent of the Senate, to serve as Vice Chairmen of the Board, each for a term of 4 years, 1 of whom shall serve in the absence of the Chairman, as provided in the fourth undesignated paragraph of this section, and 1 of whom shall be designated Vice Chairman for Supervision. The Vice Chairman for Supervision shall develop policy recommendations for the Board regarding supervision and regulation of depository institution holding companies and other financial firms supervised by the Board, and shall oversee the supervision and regulation of such firms.".

(2) EFFECTIVE DATE.—The amendment made by subsection (a) takes effect on the date of enactment of this title and applies to individuals who are designated by the President on or after that date to serve as Vice Chairman of Supervision.

(b) APPEARANCES BEFORE CONGRESS.—Section 10 of the Federal Reserve Act (12 U.S.C. 241 et seq.) is amended by adding at the end the following:

"(12) APPEARANCES BEFORE CONGRESS.—The Vice Chairman for Supervision shall appear before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives and at semi-annual hearings regarding the efforts, activities, objectives, and plans of the Board with respect to the conduct of supervision and regulation of depository institution holding companies and other financial firms supervised by the Board.".

(c) BOARD RESPONSIBILITY TO SET SUPERVISION AND REGULATORY POLICY.—Section 11 of the Federal Reserve Act (12 U.S.C. 248) (relating to enumerated powers of the Board) is amended by adding at the end of subsection (k) (relating to delegation)

the following: "The Board of Governors may not delegate to a Federal reserve bank its functions for the establishment of policies for the supervision and regulation of depository institution holding companies and other financial firms supervised by the Board of Governors.".

(d) EXERCISE OF FEDERAL RESERVE AUTHORITY.—

(1) NO DECISIONS BY FEDERAL RESERVE BANK PRESIDENTS.—No provision of title I relating to the authority of the Board of Governors shall be construed as conferring any decision-making authority on presidents of Federal reserve banks.

(2) VOTING DECISIONS BY BOARD.—The Board of Governors shall not delegate the authority to make any voting decision that the Board of Governors is authorized or required to make under title I of this Act in contravention of section 11(k) of the Federal Reserve Act.

SEC. 1109. GAO AUDIT OF THE FEDERAL RESERVE FACILITIES; PUBLICATION OF BOARD ACTIONS.

(a) GAO AUDIT.—

(1) IN GENERAL.—Notwithstanding section 714(b) of title 31, United States Code, or any other provision of law, the Comptroller General of the United States (in this subsection referred to as the "Comptroller General") shall conduct a one-time audit of all loans and other financial assistance provided during the period beginning on December 1, 2007 and ending on the date of enactment of this Act by the Board of Governors or a Federal reserve bank under the Asset-Backed Commercial Paper Money Market Mutual Fund Liquidity Facility, the Term Asset-Backed Securities Loan Facility, the Primary Dealer Credit Facility, the Commercial Paper Funding Facility, the Term Securities Lending Facility, the Term Auction Facility, Maiden Lane, Maiden Lane II, Maiden Lane III, the agency Mortgage-Backed Securities program, foreign currency liquidity swap lines, and any other program created as a result of section 13(3) of the Federal Reserve Act (as so designated by this title).

(2) ASSESSMENTS.—In conducting the audit under paragraph (1), the Comptroller General shall assess—

(A) the operational integrity, accounting, financial reporting, and internal controls of the credit facility;

(B) the effectiveness of the security and collateral policies established for the facility in mitigating risk to the relevant Federal reserve bank and taxpayers;

(C) whether the credit facility inappropriately favors one or more specific participants over other institutions eligible to utilize the facility;

(D) the policies governing the use, selection, or payment of third-party contractors by or for any credit facility; and

(E) whether there were conflicts of interest with respect to the manner in which such facility was established or operated.

(3) TIMING.—The audit required by this subsection shall be commenced not later than 30 days after the date of enactment of this Act, and shall be completed not later than 12 months after that date of enactment.

(4) REPORT REQUIRED.—The Comptroller General shall submit a report on the audit conducted under paragraph (1) to the Congress not later than 12 months after the date of enactment of this Act, and such report shall be made available to—

(A) the Speaker of the House of Representatives;

(B) the majority and minority leaders of the House of Representatives;

(C) the majority and minority leaders of the Senate;

(D) the Chairman and Ranking Member of the Committee on Banking, Housing, and Urban Affairs of the Senate and of the Committee on Financial Services of the House of Representatives; and

(E) any member of Congress who requests it.

(b) AUDIT OF FEDERAL RESERVE BANK GOVERNANCE.—

(1) AUDIT.—

(A) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall complete an audit of the governance of the Federal reserve bank system.

(B) REQUIRED EXAMINATIONS.—The audit required under subparagraph (A) shall—

(i) examine the extent to which the current system of appointing Federal reserve bank directors effectively represents "the public, without discrimination on the basis of race, creed, color, sex or national origin, and with due but not exclusive consideration to the interests of agriculture, commerce, industry, services, labor, and consumers" in the selection of bank directors, as such requirement is set forth under section 4 of the Federal Reserve Act;

(ii) examine whether there are actual or potential conflicts of interest created when the directors of Federal reserve banks, which execute the supervisory functions of the Board of Governors of the Federal Reserve System, are elected by member banks;

(iii) examine the establishment and operations of each facility described in subsection (a)(1) and each Federal reserve bank involved in the establishment and operations thereof; and

(iv) identify changes to selection procedures for Federal reserve bank directors, or to other aspects of Federal reserve bank governance, that would—

(I) improve how the public is represented;

(II) eliminate actual or potential conflicts of interest in bank supervision;

(III) increase the availability of information useful for the formation and execution of monetary policy; or

(IV) in other ways increase the effectiveness or efficiency of reserve banks.

(2) REPORT REQUIRED.—A report on the audit conducted under paragraph (1) shall be submitted by the Comptroller General to the Congress before the end of the 90-day period beginning on the date on which such audit is completed, and such report shall be made available to—

(A) the Speaker of the House of Representatives;

(B) the majority and minority leaders of the House of Representatives;

(C) the majority and minority leaders of the Senate;

(D) the Chairman and Ranking Member of the Committee on Banking, Housing, and Urban Affairs of the Senate and of the Committee on Financial Services of the House of Representatives; and

(E) any member of Congress who requests it.

(c) PUBLICATION OF BOARD ACTIONS.—Notwithstanding any other provision of law, the Board of Governors shall publish on its website, not later than December 1, 2010, with respect to all loans and other financial assistance provided during the period beginning on December 1, 2007 and ending on the date of enactment of this Act under the Asset-Backed Commercial Paper Money Market Mutual Fund Liquidity Facility, the Term Asset-Backed Securities Loan Facility, the Primary Dealer Credit Facility, the Commercial Paper Funding Facility, the Term Securities Lending Facility, the Term Auction Facility, Maiden Lane, Maiden Lane II, Maiden Lane III, the agency Mortgage-Backed Securities program, foreign currency liquidity swap lines, and any other program created as a result of section 13(3) of the Federal Reserve Act (as so designated by this title)—

(1) the identity of each business, individual, entity, or foreign central bank to which the Board of Governors or a Federal reserve bank has provided such assistance;

(2) the type of financial assistance provided to that business, individual, entity, or foreign central bank;

(3) the value or amount of that financial assistance;

(4) the date on which the financial assistance was provided;

(5) the specific terms of any repayment expected, including the repayment time period, interest charges, collateral, limitations on executive compensation or dividends, and other material terms; and

(6) the specific rationale for each such facility or program.

TITLE XII—IMPROVING ACCESS TO MAINSTREAM FINANCIAL INSTITUTIONS

SEC. 1201. SHORT TITLE.

This title may be cited as the "Improving Access to Mainstream Financial Institutions Act of 2010".

SEC. 1202. PURPOSE.

The purpose of this title is to encourage initiatives for financial products and services that are appropriate and accessible for millions of Americans who are not fully incorporated into the financial mainstream.

SEC. 1203. DEFINITIONS.

In this title, the following definitions shall apply:

(1) ACCOUNT.—The term "account" means an agreement between an individual and an eligible entity under which the individual obtains from or through the entity 1 or more banking products and services, and includes a deposit account, a savings

account (including a money market savings account), an account for a closed-end loan, and other products or services, as the Secretary deems appropriate.

(2) COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION.—The term "community development financial institution" has the same meaning as in section 103(5) of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4702(5)).

(3) ELIGIBLE ENTITY.—The term "eligible entity" means—

(A) an organization described in section 501(c)(3) of the Internal Revenue Code of 1986, and exempt from tax under section 501(a) of such Code;

(B) a federally insured depository institution;

(C) a community development financial institution;

(D) a State, local, or tribal government entity; or

(E) a partnership or other joint venture comprised of 1 or more of the entities described in subparagraphs (A) through (D), in accordance with regulations prescribed by the Secretary under this title.

(4) FEDERALLY INSURED DEPOSITORY INSTITUTION.—The term "federally insured depository institution" means any insured depository institution (as that term is defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)) and any insured credit union (as that term is defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752)).

SEC. 1204. EXPANDED ACCESS TO MAINSTREAM FINANCIAL INSTITUTIONS.

(a) IN GENERAL.—The Secretary is authorized to establish a multiyear program of grants, cooperative agreements, financial agency agreements, and similar contracts or undertakings to promote initiatives designed—

(1) to enable low- and moderate-income individuals to establish one or more accounts in a federally insured depository institution that are appropriate to meet the financial needs of such individuals; and

(2) to improve access to the provision of accounts, on reasonable terms, for low- and moderate-income individuals.

(b) PROGRAM ELIGIBILITY AND ACTIVITIES.—

(1) IN GENERAL.—The Secretary shall restrict participation in any program established under subsection (a) to an eligible entity. Subject to regulations prescribed by the Secretary under this title, 1 or more eligible entities may participate in 1 or several programs established under subsection (a).

(2) ACCOUNT ACTIVITIES.—Subject to regulations prescribed by the Secretary, an eligible entity may, in participating in a program established under subsection (a), offer or provide to low- and moderate-income individuals products and services relating to accounts, including—

(A) small-dollar value loans; and

(B) financial education and counseling relating to conducting transactions in and managing accounts.

SEC. 1205. LOW-COST ALTERNATIVES TO SMALL DOLLAR LOANS.

(a) GRANTS AUTHORIZED.—The Secretary is authorized to establish multiyear demonstration programs by means of grants, cooperative agreements, financial agency agreements, and similar contracts or undertakings, with eligible entities to provide low-cost, small

loans to consumers that will provide alternatives to more costly small dollar loans.

(b) TERMS AND CONDITIONS.—

(1) IN GENERAL.—Loans under this section shall be made on terms and conditions, and pursuant to lending practices, that are reasonable for consumers.

(2) FINANCIAL LITERACY AND EDUCATION OPPORTUNITIES.—

(A) IN GENERAL.—Each eligible entity awarded a grant under this section shall promote and take appropriate steps to ensure the provision of financial literacy and education opportunities, such as relevant counseling services, educational courses, or wealth building programs, to each consumer provided with a loan pursuant to this section.

(B) AUTHORITY TO EXPAND ACCESS.—As part of the grants, agreements, and undertakings established under this section, the Secretary may implement reasonable measures or programs designed to expand access to financial literacy and education opportunities, including relevant counseling services, educational courses, or wealth building programs to be provided to individuals who obtain loans from eligible entities under this section.

SEC. 1206. GRANTS TO ESTABLISH LOAN-LOSS RESERVE FUNDS.

The Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4701 et seq.) is amended by adding at the end the following:

"SEC. 122. GRANTS TO ESTABLISH LOAN-LOSS RESERVE FUNDS.

"(a) PURPOSES.—The purposes of this section are—

"(1) to make financial assistance available from the Fund in order to help community development financial institutions defray the costs of operating small dollar loan programs, by providing the amounts necessary for such institutions to establish their own loan loss reserve funds to mitigate some of the losses on such small dollar loan programs; and

"(2) to encourage community development financial institutions to establish and maintain small dollar loan programs that would help give consumers access to mainstream financial institutions and combat high cost small dollar lending.

"(b) GRANTS.—

"(1) LOAN-LOSS RESERVE FUND GRANTS.—The Fund shall make grants to community development financial institutions or to any partnership between such community development financial institutions and any other federally insured depository institution with a primary mission to serve targeted investment areas, as such areas are defined under section 103(16), to enable such institutions or any partnership of such institutions to establish a loan-loss reserve fund in order to defray the costs of a small dollar loan program established or maintained by such institution.

"(2) MATCHING REQUIREMENT.—A community development financial institution or any partnership of institutions established pursuant to paragraph (1) shall provide non-Federal matching funds in an amount equal to 50 percent of the amount of any grant received under this section.

"(3) USE OF FUNDS.—Any grant amounts received by a community development financial institution or any partnership between or among such institutions under paragraph (1)—

"(A) may not be used by such institution to provide direct loans to consumers;

"(B) may be used by such institution to help recapture a portion or all of a defaulted loan made under the small dollar loan program of such institution; and

"(C) may be used to designate and utilize a fiscal agent for services normally provided by such an agent.

"(4) TECHNICAL ASSISTANCE GRANTS.—The Fund shall make technical assistance grants to community development financial institutions or any partnership between or among such institutions to support and maintain a small dollar loan program. Any grant amounts received under this paragraph may be used for technology, staff support, and other costs associated with establishing a small dollar loan program.

"(c) DEFINITIONS.—For purposes of this section—

"(1) the term 'consumer reporting agency that compiles and maintains files on consumers on a nationwide basis' has the same meaning given such term in section 603(p) of the Fair Credit Reporting Act (15 U.S.C. 1681a(p)); and

"(2) the term 'small dollar loan program' means a loan program wherein a community development financial institution or any partnership between or among such institutions offers loans to consumers that—

"(A) are made in amounts not exceeding $2,500;

"(B) must be repaid in installments;

"(C) have no pre-payment penalty;

"(D) the institution has to report payments regarding the loan to at least 1 of the consumer reporting agencies that compiles and maintains files on consumers on a nationwide basis; and

"(E) meet any other affordability requirements as may be established by the Administrator.".

SEC. 1207. PROCEDURAL PROVISIONS.

An eligible entity desiring to participate in a program or obtain a grant under this title shall submit an application to the Secretary, in such form and containing such information as the Secretary may require.

SEC. 1208. AUTHORIZATION OF APPROPRIATIONS.

(a) AUTHORIZATION TO THE SECRETARY.—There are authorized to be appropriated to the Secretary, such sums as are necessary to both administer and fund the programs and projects authorized by this title, to remain available until expended.

(b) AUTHORIZATION TO THE FUND.—There is authorized to be appropriated to the Fund for each fiscal year beginning in fiscal year 2010, an amount equal to the amount of the administrative costs of the Fund for the operation of the grant program established under this title.

SEC. 1209. REGULATIONS.

(a) IN GENERAL.—The Secretary is authorized to promulgate regulations to implement and administer the grant programs and undertakings authorized by this title.

(b) REGULATORY AUTHORITY.—Regulations prescribed under this section may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of grant programs, undertakings, or eligible

entities, as, in the judgment of the Secretary, are necessary or proper to effectuate the purposes of this title, to prevent circumvention or evasion of this title, or to facilitate compliance with this title.

SEC. 1210. EVALUATION AND REPORTS TO CONGRESS.

For each fiscal year in which a program or project is carried out under this title, the Secretary shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives containing a description of the activities funded, amounts distributed, and measurable results, as appropriate and available.

TITLE XIII—PAY IT BACK ACT

SEC. 1301. SHORT TITLE.

This title may be cited as the "Pay It Back Act".

SEC. 1302. AMENDMENT TO REDUCE TARP AUTHORIZATION.

Section 115(a) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5225(a)) is amended—

(1) in paragraph (3)—

(A) by striking ", $700,000,000,000, as such amount is reduced by $1,259,000,000, as such amount is reduced by $1,244,000,000" and inserting "$475,000,000,000"; and

(B) by striking "outstanding at any one time"; and

(2) by adding at the end the following:

"(4) For purposes of this subsection, the amount of authority considered to be exercised by the Secretary shall not be reduced by—

"(A) any amounts received by the Secretary before, on, or after the date of enactment of the Pay It Back Act from repayment of the principal of financial assistance by an entity that has received financial assistance under the TARP or any other program enacted by the Secretary under the authorities granted to the Secretary under this Act;

"(B) any amounts committed for any guarantees pursuant to the TARP that became or become uncommitted; or

"(C) any losses realized by the Secretary.

"(5) No authority under this Act may be used to incur any obligation for a program or initiative that was not initiated prior to June 25, 2010.".

SEC. 1303. REPORT.

Section 106 of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5216) is amended by inserting at the end the following:

"(f) REPORT.—The Secretary of the Treasury shall report to Congress every 6 months on amounts received and transferred to the general fund under subsection (d).".

SEC. 1304. AMENDMENTS TO HOUSING AND ECONOMIC RECOVERY ACT OF 2008.

(a) SALE OF FANNIE MAE OBLIGATIONS AND SECURITIES BY THE TREASURY; DEFICIT REDUCTION.—Section 304(g)(2) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1719(g)(2)) is amended—

(1) by redesignating subparagraph (C) as subparagraph (D); and

(2) by inserting after subparagraph (B) the following:

"(C) DEFICIT REDUCTION.—The Secretary of the Treasury shall deposit in the General Fund of the Treasury any amounts received by the Secretary from the sale of any obligation acquired by the Secretary under this subsection, where such amounts shall be—

"(i) dedicated for the sole purpose of deficit reduction; and

"(ii) prohibited from use as an offset for other spending increases or revenue reductions.".

(b) SALE OF FREDDIE MAC OBLIGATIONS AND SECURITIES BY THE TREASURY; DEFICIT REDUCTION.—Section 306(l)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1455(l)(2)) is amended—

(1) by redesignating subparagraph (C) as subparagraph (D); and

(2) by inserting after subparagraph (B) the following:

"(C) DEFICIT REDUCTION.—The Secretary of the Treasury shall deposit in the General Fund of the Treasury any amounts received by the Secretary from the sale of any obligation acquired by the Secretary under this subsection, where such amounts shall be—

"(i) dedicated for the sole purpose of deficit reduction; and

"(ii) prohibited from use as an offset for other spending increases or revenue reductions.".

(c) SALE OF FEDERAL HOME LOAN BANKS OBLIGATIONS BY THE TREASURY; DEFICIT REDUCTION.—Section 11(l)(2) of the Federal Home Loan Bank Act (12 U.S.C. 1431(l)(2)) is amended—

(1) by redesignating subparagraph (C) as subparagraph (D); and

(2) by inserting after subparagraph (B) the following:

"(C) DEFICIT REDUCTION.—The Secretary of the Treasury shall deposit in the General Fund of the Treasury any amounts received by the Secretary from the sale of any obligation acquired by the Secretary under this subsection, where such amounts shall be—

"(i) dedicated for the sole purpose of deficit reduction; and

"(ii) prohibited from use as an offset for other spending increases or revenue reductions.".

(d) REPAYMENT OF FEES.—Any periodic commitment fee or any other fee or assessment paid by the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation to the Secretary of the Treasury as a result of any preferred stock purchase agreement, mortgage-backed security purchase program, or any other program or activity authorized or carried out pursuant to the authorities granted to the Secretary of the Treasury under section 1117 of the Housing and Economic Recovery Act of 2008

(Public Law 110–289; 122 Stat. 2683), including any fee agreed to by contract between the Secretary and the Association or Corporation, shall be deposited in the General Fund of the Treasury where such amounts shall be—

(1) dedicated for the sole purpose of deficit reduction; and

(2) prohibited from use as an offset for other spending increases or revenue reductions.

SEC. 1305. FEDERAL HOUSING FINANCE AGENCY REPORT.

The Director of the Federal Housing Finance Agency shall submit to Congress a report on the plans of the Agency to continue to support and maintain the Nation's vital housing industry, while at the same time guaranteeing that the American taxpayer will not suffer unnecessary losses.

SEC. 1306. REPAYMENT OF UNOBLIGATED ARRA FUNDS.

(a) REJECTION OF ARRA FUNDS BY STATE.—Section 1607 of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5; 123 Stat. 305) is amended by adding at the end the following:

"(d) STATEWIDE REJECTION OF FUNDS.—If funds provided to any State in any division of this Act are not accepted for use by the Governor of the State pursuant to subsection (a) or by the State legislature pursuant to subsection (b), then all such funds shall be—

"(1) rescinded; and

"(2) deposited in the General Fund of the Treasury where such amounts shall be—

"(A) dedicated for the sole purpose of deficit reduction; and

"(B) prohibited from use as an offset for other spending increases or revenue reductions.".

(b) WITHDRAWAL OR RECAPTURE OF UNOBLIGATED FUNDS.—Title XVI of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5; 123 Stat. 302) is amended by adding at the end the following:

"SEC. 1613. WITHDRAWAL OR RECAPTURE OF UNOBLIGATED FUNDS.

"Notwithstanding any other provision of this Act, if the head of any executive agency withdraws or recaptures for any reason funds appropriated or otherwise made available under this division, and such funds have not been obligated by a State to a local government or for a specific project, such recaptured funds shall be—

"(1) rescinded; and

"(2) deposited in the General Fund of the Treasury where such amounts shall be—

"(A) dedicated for the sole purpose of deficit reduction; and

"(B) prohibited from use as an offset for other spending increases or revenue reductions.".

(c) RETURN OF UNOBLIGATED FUNDS BY END OF 2012.—Section 1603 of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5; 123 Stat. 302) is amended by—

(1) striking "All funds" and inserting "(a) IN GENERAL.—All funds"; and

(2) adding at the end the following:

"(b) REPAYMENT OF UNOBLIGATED FUNDS.—Any discretionary appropriations made available in this division that have not been

obligated as of December 31, 2012, are hereby rescinded, and such amounts shall be deposited in the General Fund of the Treasury where such amounts shall be—

"(1) dedicated for the sole purpose of deficit reduction; and

"(2) prohibited from use as an offset for other spending increases or revenue reductions.

"(c) PRESIDENTIAL WAIVER AUTHORITY.—

"(1) IN GENERAL.—The President may waive the requirements under subsection (b), if the President determines that it is not in the best interest of the Nation to rescind a specific unobligated amount after December 31, 2012.

"(2) REQUESTS.—The head of an executive agency may also apply to the President for a waiver from the requirements under subsection (b).".

TITLE XIV—MORTGAGE REFORM AND ANTI-PREDATORY LENDING ACT

SEC. 1400. SHORT TITLE; DESIGNATION AS ENUMERATED CONSUMER LAW.

(a) SHORT TITLE.—This title may be cited as the "Mortgage Reform and Anti-Predatory Lending Act".

(b) DESIGNATION AS ENUMERATED CONSUMER LAW UNDER THE PURVIEW OF THE BUREAU OF CONSUMER FINANCIAL PROTECTION.—Subtitles A, B, C, and E and sections 1471, 1472, 1475, and 1476, and the amendments made by such subtitles and sections, shall be enumerated consumer laws, as defined in section 1002, and come under the purview of the Bureau of Consumer Financial Protection for purposes of title X, including the transfer of functions and personnel under subtitle F of title X and the savings provisions of such subtitle.

(c) REGULATIONS; EFFECTIVE DATE.—

(1) REGULATIONS.—The regulations required to be prescribed under this title or the amendments made by this title shall—

(A) be prescribed in final form before the end of the 18-month period beginning on the designated transfer date; and

(B) take effect not later than 12 months after the date of issuance of the regulations in final form.

(2) EFFECTIVE DATE ESTABLISHED BY RULE.—Except as provided in paragraph (3), a section, or provision thereof, of this title shall take effect on the date on which the final regulations implementing such section, or provision, take effect.

(3) EFFECTIVE DATE.—A section of this title for which regulations have not been issued on the date that is 18 months after the designated transfer date shall take effect on such date.

Subtitle A—Residential Mortgage Loan Origination Standards

SEC. 1401. DEFINITIONS.

Section 103 of the Truth in Lending Act (15 U.S.C. 1602) is amended by adding at the end the following new subsection:

"(cc) DEFINITIONS RELATING TO MORTGAGE ORIGINATION AND RESIDENTIAL MORTGAGE LOANS.—

"(1) COMMISSION.—Unless otherwise specified, the term 'Commission' means the Federal Trade Commission.

"(2) MORTGAGE ORIGINATOR.—The term 'mortgage originator'—

"(A) means any person who, for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain—

"(i) takes a residential mortgage loan application;

"(ii) assists a consumer in obtaining or applying to obtain a residential mortgage loan; or

"(iii) offers or negotiates terms of a residential mortgage loan;

"(B) includes any person who represents to the public, through advertising or other means of communicating or providing information (including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items), that such person can or will provide any of the services or perform any of the activities described in subparagraph (A);

"(C) does not include any person who is (i) not otherwise described in subparagraph (A) or (B) and who performs purely administrative or clerical tasks on behalf of a person who is described in any such subparagraph, or (ii) an employee of a retailer of manufactured homes who is not described in clause (i) or (iii) of subparagraph (A) and who does not advise a consumer on loan terms (including rates, fees, and other costs);

"(D) does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable State law, unless such person or entity is compensated by a lender, a mortgage broker, or other mortgage originator or by any agent of such lender, mortgage broker, or other mortgage originator;

"(E) does not include, with respect to a residential mortgage loan, a person, estate, or trust that provides mortgage financing for the sale of 3 properties in any 12-month period to purchasers of such properties, each of which is owned by such person, estate, or trust and serves as security for the loan, provided that such loan—

"(i) is not made by a person, estate, or trust that has constructed, or acted as a contractor for the construction of, a residence on the property in the ordinary course of business of such person, estate, or trust;

"(ii) is fully amortizing;

"(iii) is with respect to a sale for which the seller determines in good faith and documents that the buyer has a reasonable ability to repay the loan;

"(iv) has a fixed rate or an adjustable rate that is adjustable after 5 or more years, subject to reasonable annual and lifetime limitations on interest rate increases; and

"(v) meets any other criteria the Board may prescribe;

"(F) does not include the creditor (except the creditor in a table-funded transaction) under paragraph (1), (2), or (4) of section 129B(c); and

"(G) does not include a servicer or servicer employees, agents and contractors, including but not limited to those who offer or negotiate terms of a residential mortgage loan for purposes of renegotiating, modifying, replacing and subordinating principal of existing mortgages where borrowers are behind in their payments, in default or have a reasonable likelihood of being in default or falling behind.

"(3) NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY.—The term 'Nationwide Mortgage Licensing System and Registry' has the same meaning as in the Secure and Fair Enforcement for Mortgage Licensing Act of 2008.

"(4) OTHER DEFINITIONS RELATING TO MORTGAGE ORIGINATOR.—For purposes of this subsection, a person 'assists a consumer in obtaining or applying to obtain a residential mortgage loan' by, among other things, advising on residential mortgage loan terms (including rates, fees, and other costs), preparing residential mortgage loan packages, or collecting information on behalf of the consumer with regard to a residential mortgage loan.

"(5) RESIDENTIAL MORTGAGE LOAN.—The term 'residential mortgage loan' means any consumer credit transaction that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or on residential real property that includes a dwelling, other than a consumer credit transaction under an open end credit plan or, for purposes of sections 129B and 129C and section 128(a) (16), (17), (18), and (19), and sections 128(f) and 130(k), and any regulations promulgated thereunder, an extension of credit relating to a plan described in section 101(53D) of title 11, United States Code.

"(6) SECRETARY.—The term 'Secretary', when used in connection with any transaction or person involved with a residential mortgage loan, means the Secretary of Housing and Urban Development.

"(7) SERVICER.—The term 'servicer' has the same meaning as in section 6(i)(2) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605(i)(2)).".

SEC. 1402. RESIDENTIAL MORTGAGE LOAN ORIGINATION.

(a) IN GENERAL.—Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended—

(1) by redesignating the 2nd of the 2 sections designated as section 129 (15 U.S.C. 1639a) (relating to duty of servicers of residential mortgages) as section 129A; and

(2) by inserting after section 129A (as so redesignated) the following new section:

"§ 129B. Residential mortgage loan origination

"(a) FINDING AND PURPOSE.—

"(1) FINDING.—The Congress finds that economic stabilization would be enhanced by the protection, limitation, and regulation of the terms of residential mortgage credit and the practices related to such credit, while ensuring that responsible, affordable mortgage credit remains available to consumers.

"(2) PURPOSE.—It is the purpose of this section and section 129C to assure that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans and that are understandable and not unfair, deceptive or abusive.

"(b) DUTY OF CARE.—

"(1) STANDARD.—Subject to regulations prescribed under this subsection, each mortgage originator shall, in addition to the duties imposed by otherwise applicable provisions of State or Federal law—

"(A) be qualified and, when required, registered and licensed as a mortgage originator in accordance with applicable State or Federal law, including the Secure and Fair Enforcement for Mortgage Licensing Act of 2008; and

"(B) include on all loan documents any unique identifier of the mortgage originator provided by the Nationwide Mortgage Licensing System and Registry.

"(2) COMPLIANCE PROCEDURES REQUIRED.—The Board shall prescribe regulations requiring depository institutions to establish and maintain procedures reasonably designed to assure and monitor the compliance of such depository institutions, the subsidiaries of such institutions, and the employees of such institutions or subsidiaries with the requirements of this section and the registration procedures established under section 1507 of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008.".

(b) CLERICAL AMENDMENT.—The table of sections for chapter 2 of the Truth in Lending Act is amended by inserting after the item relating to section 129 the following new items:

"129A. Fiduciary duty of servicers of pooled residential mortgages.
"129B. Residential mortgage loan origination.".

SEC. 1403. PROHIBITION ON STEERING INCENTIVES.

Section 129B of the Truth in Lending Act (as added by section 1402(a)) is amended by inserting after subsection (b) the following new subsection:

"(c) PROHIBITION ON STEERING INCENTIVES.—

"(1) IN GENERAL.—For any residential mortgage loan, no mortgage originator shall receive from any person and no person shall pay to a mortgage originator, directly or indirectly, compensation that varies based on the terms of the loan (other than the amount of the principal).

"(2) RESTRUCTURING OF FINANCING ORIGINATION FEE.—

"(A) IN GENERAL.—For any mortgage loan, a mortgage originator may not receive from any person other than the consumer and no person, other than the consumer, who knows or has reason to know that a consumer has

directly compensated or will directly compensate a mortgage originator may pay a mortgage originator any origination fee or charge except bona fide third party charges not retained by the creditor, mortgage originator, or an affiliate of the creditor or mortgage originator .

"(B) EXCEPTION.—Notwithstanding subparagraph (A), a mortgage originator may receive from a person other than the consumer an origination fee or charge, and a person other than the consumer may pay a mortgage originator an origination fee or charge, if—

"(i) the mortgage originator does not receive any compensation directly from the consumer; and

"(ii) the consumer does not make an upfront payment of discount points, origination points, or fees, however denominated (other than bona fide third party charges not retained by the mortgage originator, creditor, or an affiliate of the creditor or originator), except that the Board may, by rule, waive or provide exemptions to this clause if the Board determines that such waiver or exemption is in the interest of consumers and in the public interest.

"(3) REGULATIONS.—The Board shall prescribe regulations to prohibit—

"(A) mortgage originators from steering any consumer to a residential mortgage loan that—

"(i) the consumer lacks a reasonable ability to repay (in accordance with regulations prescribed under section 129C(a)); or

"(ii) has predatory characteristics or effects (such as equity stripping, excessive fees, or abusive terms);

"(B) mortgage originators from steering any consumer from a residential mortgage loan for which the consumer is qualified that is a qualified mortgage (as defined in section 129C(b)(2)) to a residential mortgage loan that is not a qualified mortgage;

"(C) abusive or unfair lending practices that promote disparities among consumers of equal credit worthiness but of different race, ethnicity, gender, or age; and

"(D) mortgage originators from—

"(i) mischaracterizing the credit history of a consumer or the residential mortgage loans available to a consumer;

"(ii) mischaracterizing or suborning the mischaracterization of the appraised value of the property securing the extension of credit; or

"(iii) if unable to suggest, offer, or recommend to a consumer a loan that is not more expensive than a loan for which the consumer qualifies, discouraging a consumer from seeking a residential mortgage loan secured by a consumer's principal dwelling from another mortgage originator.

"(4) RULES OF CONSTRUCTION.—No provision of this subsection shall be construed as—

"(A) permitting any yield spread premium or other similar compensation that would, for any residential mortgage loan, permit the total amount of direct and indirect compensation from all sources permitted to a mortgage

originator to vary based on the terms of the loan (other than the amount of the principal);

"(B) limiting or affecting the amount of compensation received by a creditor upon the sale of a consummated loan to a subsequent purchaser;

"(C) restricting a consumer's ability to finance, at the option of the consumer, including through principal or rate, any origination fees or costs permitted under this subsection, or the mortgage originator's right to receive such fees or costs (including compensation) from any person, subject to paragraph (2)(B), so long as such fees or costs do not vary based on the terms of the loan (other than the amount of the principal) or the consumer's decision about whether to finance such fees or costs; or

"(D) prohibiting incentive payments to a mortgage originator based on the number of residential mortgage loans originated within a specified period of time.".

SEC. 1404. LIABILITY.

Section 129B of the Truth in Lending Act is amended by inserting after subsection (c) (as added by section 1403) the following new subsection:

"(d) LIABILITY FOR VIOLATIONS.—

"(1) IN GENERAL.—For purposes of providing a cause of action for any failure by a mortgage originator, other than a creditor, to comply with any requirement imposed under this section and any regulation prescribed under this section, section 130 shall be applied with respect to any such failure by substituting 'mortgage originator' for 'creditor' each place such term appears in each such subsection.

"(2) MAXIMUM.—The maximum amount of any liability of a mortgage originator under paragraph (1) to a consumer for any violation of this section shall not exceed the greater of actual damages or an amount equal to 3 times the total amount of direct and indirect compensation or gain accruing to the mortgage originator in connection with the residential mortgage loan involved in the violation, plus the costs to the consumer of the action, including a reasonable attorney's fee.".

SEC. 1405. REGULATIONS.

(a) DISCRETIONARY REGULATORY AUTHORITY.—Section 129B of the Truth in Lending Act is amended by inserting after subsection (d) (as added by section 1404) the following new subsection:

"(e) DISCRETIONARY REGULATORY AUTHORITY.—

"(1) IN GENERAL.—The Board shall, by regulations, prohibit or condition terms, acts or practices relating to residential mortgage loans that the Board finds to be abusive, unfair, deceptive, predatory, necessary or proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of this section and section 129C, necessary or proper to effectuate the purposes of this section and section 129C, to prevent circumvention or evasion thereof, or to facilitate compliance with such sections, or are not in the interest of the borrower.

"(2) APPLICATION.—The regulations prescribed under paragraph (1) shall be applicable to all residential mortgage loans and shall be applied in the same manner as regulations prescribed under section 105.

"(f) Section 129B and any regulations promulgated thereunder do not apply to an extension of credit relating to a plan described in section 101(53D) of title 11, United States Code.".

(b) DISCLOSURES.—Notwithstanding any other provision of this title, in order to improve consumer awareness and understanding of transactions involving residential mortgage loans through the use of disclosures, the Board may, by rule, exempt from or modify disclosure requirements, in whole or in part, for any class of residential mortgage loans if the Board determines that such exemption or modification is in the interest of consumers and in the public interest.

SEC. 1406. STUDY OF SHARED APPRECIATION MORTGAGES.

(a) STUDY.—The Secretary of Housing and Urban Development, in consultation with the Secretary of the Treasury and other relevant agencies, shall conduct a comprehensive study to determine prudent statutory and regulatory requirements sufficient to provide for the widespread use of shared appreciation mortgages to strengthen local housing markets, provide new opportunities for affordable homeownership, and enable homeowners at risk of foreclosure to refinance or modify their mortgages.

(b) REPORT.—Not later than the expiration of the 6-month period beginning on the date of the enactment of this Act, the Secretary of Housing and Urban Development shall submit a report to the Congress on the results of the study, which shall include recommendations for the regulatory and legislative requirements referred to in subsection (a).

Subtitle B—Minimum Standards For Mortgages

SEC. 1411. ABILITY TO REPAY.

(a) IN GENERAL.—

(1) RULE OF CONSTRUCTION.—No regulation, order, or guidance issued by the Bureau under this title shall be construed as requiring a depository institution to apply mortgage underwriting standards that do not meet the minimum underwriting standards required by the appropriate prudential regulator of the depository institution.

(2) AMENDMENT TO TRUTH IN LENDING ACT.—Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by inserting after section 129B (as added by section 1402(a)) the following new section:

"§ 129C. Minimum standards for residential mortgage loans

"(a) ABILITY TO REPAY.—

"(1) IN GENERAL.—In accordance with regulations prescribed by the Board, no creditor may make a residential mortgage loan unless the creditor makes a reasonable and good faith determination based on verified and documented information that, at the time the loan is consummated, the consumer has a reasonable ability to repay the loan, according to its terms, and all applicable taxes, insurance (including mortgage guarantee insurance), and assessments.

"(2) MULTIPLE LOANS.—If the creditor knows, or has reason to know, that 1 or more residential mortgage loans secured

by the same dwelling will be made to the same consumer, the creditor shall make a reasonable and good faith determination, based on verified and documented information, that the consumer has a reasonable ability to repay the combined payments of all loans on the same dwelling according to the terms of those loans and all applicable taxes, insurance (including mortgage guarantee insurance), and assessments.

"(3) BASIS FOR DETERMINATION.—A determination under this subsection of a consumer's ability to repay a residential mortgage loan shall include consideration of the consumer's credit history, current income, expected income the consumer is reasonably assured of receiving, current obligations, debt-to-income ratio or the residual income the consumer will have after paying non-mortgage debt and mortgage-related obligations, employment status, and other financial resources other than the consumer's equity in the dwelling or real property that secures repayment of the loan. A creditor shall determine the ability of the consumer to repay using a payment schedule that fully amortizes the loan over the term of the loan.

"(4) INCOME VERIFICATION.—A creditor making a residential mortgage loan shall verify amounts of income or assets that such creditor relies on to determine repayment ability, including expected income or assets, by reviewing the consumer's Internal Revenue Service Form W–2, tax returns, payroll receipts, financial institution records, or other third-party documents that provide reasonably reliable evidence of the consumer's income or assets. In order to safeguard against fraudulent reporting, any consideration of a consumer's income history in making a determination under this subsection shall include the verification of such income by the use of—

"(A) Internal Revenue Service transcripts of tax returns; or

"(B) a method that quickly and effectively verifies income documentation by a third party subject to rules prescribed by the Board.

"(5) EXEMPTION.—With respect to loans made, guaranteed, or insured by Federal departments or agencies identified in subsection (b)(3)(B)(ii), such departments or agencies may exempt refinancings under a streamlined refinancing from this income verification requirement as long as the following conditions are met:

"(A) The consumer is not 30 days or more past due on the prior existing residential mortgage loan.

"(B) The refinancing does not increase the principal balance outstanding on the prior existing residential mortgage loan, except to the extent of fees and charges allowed by the department or agency making, guaranteeing, or insuring the refinancing.

"(C) Total points and fees (as defined in section 103(aa)(4), other than bona fide third party charges not retained by the mortgage originator, creditor, or an affiliate of the creditor or mortgage originator) payable in connection with the refinancing do not exceed 3 percent of the total new loan amount.

"(D) The interest rate on the refinanced loan is lower than the interest rate of the original loan, unless the borrower is refinancing from an adjustable rate to a fixed-

rate loan, under guidelines that the department or agency shall establish for loans they make, guarantee, or issue.

"(E) The refinancing is subject to a payment schedule that will fully amortize the refinancing in accordance with the regulations prescribed by the department or agency making, guaranteeing, or insuring the refinancing.

"(F) The terms of the refinancing do not result in a balloon payment, as defined in subsection (b)(2)(A)(ii).

"(G) Both the residential mortgage loan being refinanced and the refinancing satisfy all requirements of the department or agency making, guaranteeing, or insuring the refinancing.

"(6) NONSTANDARD LOANS.—

"(A) VARIABLE RATE LOANS THAT DEFER REPAYMENT OF ANY PRINCIPAL OR INTEREST.—For purposes of determining, under this subsection, a consumer's ability to repay a variable rate residential mortgage loan that allows or requires the consumer to defer the repayment of any principal or interest, the creditor shall use a fully amortizing repayment schedule.

"(B) INTEREST-ONLY LOANS.—For purposes of determining, under this subsection, a consumer's ability to repay a residential mortgage loan that permits or requires the payment of interest only, the creditor shall use the payment amount required to amortize the loan by its final maturity.

"(C) CALCULATION FOR NEGATIVE AMORTIZATION.—In making any determination under this subsection, a creditor shall also take into consideration any balance increase that may accrue from any negative amortization provision.

"(D) CALCULATION PROCESS.—For purposes of making any determination under this subsection, a creditor shall calculate the monthly payment amount for principal and interest on any residential mortgage loan by assuming—

"(i) the loan proceeds are fully disbursed on the date of the consummation of the loan;

"(ii) the loan is to be repaid in substantially equal monthly amortizing payments for principal and interest over the entire term of the loan with no balloon payment, unless the loan contract requires more rapid repayment (including balloon payment), in which case the calculation shall be made (I) in accordance with regulations prescribed by the Board, with respect to any loan which has an annual percentage rate that does not exceed the average prime offer rate for a comparable transaction, as of the date the interest rate is set, by 1.5 or more percentage points for a first lien residential mortgage loan; and by 3.5 or more percentage points for a subordinate lien residential mortgage loan; or (II) using the contract's repayment schedule, with respect to a loan which has an annual percentage rate, as of the date the interest rate is set, that is at least 1.5 percentage points above the average prime offer rate for a first lien residential mortgage loan; and 3.5 percentage points above the average prime offer rate for a subordinate lien residential mortgage loan; and

"(iii) the interest rate over the entire term of the loan is a fixed rate equal to the fully indexed rate at the time of the loan closing, without considering the introductory rate.

"(E) REFINANCE OF HYBRID LOANS WITH CURRENT LENDER.—In considering any application for refinancing an existing hybrid loan by the creditor into a standard loan to be made by the same creditor in any case in which there would be a reduction in monthly payment and the mortgagor has not been delinquent on any payment on the existing hybrid loan, the creditor may—

"(i) consider the mortgagor's good standing on the existing mortgage;

"(ii) consider if the extension of new credit would prevent a likely default should the original mortgage reset and give such concerns a higher priority as an acceptable underwriting practice; and

"(iii) offer rate discounts and other favorable terms to such mortgagor that would be available to new customers with high credit ratings based on such underwriting practice.

"(7) FULLY-INDEXED RATE DEFINED.—For purposes of this subsection, the term 'fully indexed rate' means the index rate prevailing on a residential mortgage loan at the time the loan is made plus the margin that will apply after the expiration of any introductory interest rates.

"(8) REVERSE MORTGAGES AND BRIDGE LOANS.—This subsection shall not apply with respect to any reverse mortgage or temporary or bridge loan with a term of 12 months or less, including to any loan to purchase a new dwelling where the consumer plans to sell a different dwelling within 12 months.

"(9) SEASONAL INCOME.—If documented income, including income from a small business, is a repayment source for a residential mortgage loan, a creditor may consider the seasonality and irregularity of such income in the underwriting of and scheduling of payments for such credit.".

(b) CLERICAL AMENDMENT.—The table of sections for chapter 2 of the Truth in Lending Act is amended by inserting after the item relating to section 129B (as added by section 1402(b)) the following new item:

"129C. Minimum standards for residential mortgage loans.".

SEC. 1412. SAFE HARBOR AND REBUTTABLE PRESUMPTION.

Section 129C of the Truth in Lending Act is amended by inserting after subsection (a) (as added by section 1411) the following new subsection:

"(b) PRESUMPTION OF ABILITY TO REPAY.—

"(1) IN GENERAL.—Any creditor with respect to any residential mortgage loan, and any assignee of such loan subject to liability under this title, may presume that the loan has met the requirements of subsection (a), if the loan is a qualified mortgage.

"(2) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

"(A) QUALIFIED MORTGAGE.—The term 'qualified mortgage' means any residential mortgage loan—

"(i) for which the regular periodic payments for the loan may not—

"(I) result in an increase of the principal balance; or

"(II) except as provided in subparagraph (E), allow the consumer to defer repayment of principal;

"(ii) except as provided in subparagraph (E), the terms of which do not result in a balloon payment, where a 'balloon payment' is a scheduled payment that is more than twice as large as the average of earlier scheduled payments;

"(iii) for which the income and financial resources relied upon to qualify the obligors on the loan are verified and documented;

"(iv) in the case of a fixed rate loan, for which the underwriting process is based on a payment schedule that fully amortizes the loan over the loan term and takes into account all applicable taxes, insurance, and assessments;

"(v) in the case of an adjustable rate loan, for which the underwriting is based on the maximum rate permitted under the loan during the first 5 years, and a payment schedule that fully amortizes the loan over the loan term and takes into account all applicable taxes, insurance, and assessments;

"(vi) that complies with any guidelines or regulations established by the Board relating to ratios of total monthly debt to monthly income or alternative measures of ability to pay regular expenses after payment of total monthly debt, taking into account the income levels of the borrower and such other factors as the Board may determine relevant and consistent with the purposes described in paragraph (3)(B)(i);

"(vii) for which the total points and fees (as defined in subparagraph (C)) payable in connection with the loan do not exceed 3 percent of the total loan amount;

"(viii) for which the term of the loan does not exceed 30 years, except as such term may be extended under paragraph (3), such as in high-cost areas; and

"(ix) in the case of a reverse mortgage (except for the purposes of subsection (a) of section 129C, to the extent that such mortgages are exempt altogether from those requirements), a reverse mortgage which meets the standards for a qualified mortgage, as set by the Board in rules that are consistent with the purposes of this subsection.

"(B) AVERAGE PRIME OFFER RATE.—The term 'average prime offer rate' means the average prime offer rate for a comparable transaction as of the date on which the interest rate for the transaction is set, as published by the Board..

"(C) POINTS AND FEES.—

"(i) IN GENERAL.—For purposes of subparagraph (A), the term 'points and fees' means points and fees as defined by section 103(aa)(4) (other than bona fide

third party charges not retained by the mortgage originator, creditor, or an affiliate of the creditor or mortgage originator).

"(ii) COMPUTATION.—For purposes of computing the total points and fees under this subparagraph, the total points and fees shall exclude either of the amounts described in the following subclauses, but not both:

"(I) Up to and including 2 bona fide discount points payable by the consumer in connection with the mortgage, but only if the interest rate from which the mortgage's interest rate will be discounted does not exceed by more than 1 percentage point the average prime offer rate.

"(II) Unless 2 bona fide discount points have been excluded under subclause (I), up to and including 1 bona fide discount point payable by the consumer in connection with the mortgage, but only if the interest rate from which the mortgage's interest rate will be discounted does not exceed by more than 2 percentage points the average prime offer rate.

"(iii) BONA FIDE DISCOUNT POINTS DEFINED.—For purposes of clause (ii), the term 'bona fide discount points' means loan discount points which are knowingly paid by the consumer for the purpose of reducing, and which in fact result in a bona fide reduction of, the interest rate or time-price differential applicable to the mortgage.

"(iv) INTEREST RATE REDUCTION.—Subclauses (I) and (II) of clause (ii) shall not apply to discount points used to purchase an interest rate reduction unless the amount of the interest rate reduction purchased is reasonably consistent with established industry norms and practices for secondary mortgage market transactions.

"(D) SMALLER LOANS.—The Board shall prescribe rules adjusting the criteria under subparagraph (A)(vii) in order to permit lenders that extend smaller loans to meet the requirements of the presumption of compliance under paragraph (1). In prescribing such rules, the Board shall consider the potential impact of such rules on rural areas and other areas where home values are lower.

"(E) BALLOON LOANS.—The Board may, by regulation, provide that the term 'qualified mortgage' includes a balloon loan—

"(i) that meets all of the criteria for a qualified mortgage under subparagraph (A) (except clauses (i)(II), (ii), (iv), and (v) of such subparagraph);

"(ii) for which the creditor makes a determination that the consumer is able to make all scheduled payments, except the balloon payment, out of income or assets other than the collateral;

"(iii) for which the underwriting is based on a payment schedule that fully amortizes the loan over a period of not more than 30 years and takes into

account all applicable taxes, insurance, and assessments; and

"(iv) that is extended by a creditor that—

"(I) operates predominantly in rural or underserved areas;

"(II) together with all affiliates, has total annual residential mortgage loan originations that do not exceed a limit set by the Board;

"(III) retains the balloon loans in portfolio; and

"(IV) meets any asset size threshold and any other criteria as the Board may establish, consistent with the purposes of this subtitle.

"(3) REGULATIONS.—

"(A) IN GENERAL.—The Board shall prescribe regulations to carry out the purposes of this subsection.

"(B) REVISION OF SAFE HARBOR CRITERIA.—

"(i) IN GENERAL.—The Board may prescribe regulations that revise, add to, or subtract from the criteria that define a qualified mortgage upon a finding that such regulations are necessary or proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of this section, necessary and appropriate to effectuate the purposes of this section and section 129B, to prevent circumvention or evasion thereof, or to facilitate compliance with such sections.

"(ii) LOAN DEFINITION.—The following agencies shall, in consultation with the Board, prescribe rules defining the types of loans they insure, guarantee, or administer, as the case may be, that are qualified mortgages for purposes of paragraph (2)(A), and such rules may revise, add to, or subtract from the criteria used to define a qualified mortgage under paragraph (2)(A), upon a finding that such rules are consistent with the purposes of this section and section 129B, to prevent circumvention or evasion thereof, or to facilitate compliance with such sections:

"(I) The Department of Housing and Urban Development, with regard to mortgages insured under the National Housing Act (12 U.S.C. 1707 et seq.).

"(II) The Department of Veterans Affairs, with regard to a loan made or guaranteed by the Secretary of Veterans Affairs.

"(III) The Department of Agriculture, with regard loans guaranteed by the Secretary of Agriculture pursuant to 42 U.S.C. 1472(h).

"(IV) The Rural Housing Service, with regard to loans insured by the Rural Housing Service.".

SEC. 1413. DEFENSE TO FORECLOSURE.

Section 130 of the Truth in Lending Act (15 U.S.C. 1640) is amended by adding at the end the following new subsection:

"(k) DEFENSE TO FORECLOSURE.—

"(1) IN GENERAL.—Notwithstanding any other provision of law, when a creditor, assignee, or other holder of a residential

mortgage loan or anyone acting on behalf of such creditor, assignee, or holder, initiates a judicial or nonjudicial foreclosure of the residential mortgage loan, or any other action to collect the debt in connection with such loan, a consumer may assert a violation by a creditor of paragraph (1) or (2) of section 129B(c), or of section 129C(a), as a matter of defense by recoupment or set off without regard for the time limit on a private action for damages under subsection (e).

"(2) AMOUNT OF RECOUPMENT OR SETOFF.—

"(A) IN GENERAL.—The amount of recoupment or set-off under paragraph (1) shall equal the amount to which the consumer would be entitled under subsection (a) for damages for a valid claim brought in an original action against the creditor, plus the costs to the consumer of the action, including a reasonable attorney's fee.

"(B) SPECIAL RULE.—Where such judgment is rendered after the expiration of the applicable time limit on a private action for damages under subsection (e), the amount of recoupment or set-off under paragraph (1) derived from damages under subsection (a)(4) shall not exceed the amount to which the consumer would have been entitled under subsection (a)(4) for damages computed up to the day preceding the expiration of the applicable time limit.".

SEC. 1414. ADDITIONAL STANDARDS AND REQUIREMENTS.

(a) IN GENERAL.—Section 129C of the Truth in Lending Act is amended by inserting after subsection (b) (as added by this title) the following new subsections:

"(c) PROHIBITION ON CERTAIN PREPAYMENT PENALTIES.—

"(1) PROHIBITED ON CERTAIN LOANS.—

"(A) IN GENERAL.—A residential mortgage loan that is not a 'qualified mortgage', as defined under subsection (b)(2), may not contain terms under which a consumer must pay a prepayment penalty for paying all or part of the principal after the loan is consummated.

"(B) EXCLUSIONS.—For purposes of this subsection, a 'qualified mortgage' may not include a residential mortgage loan that—

"(i) has an adjustable rate; or

"(ii) has an annual percentage rate that exceeds the average prime offer rate for a comparable transaction, as of the date the interest rate is set—

"(I) by 1.5 or more percentage points, in the case of a first lien residential mortgage loan having a original principal obligation amount that is equal to or less than the amount of the maximum limitation on the original principal obligation of mortgage in effect for a residence of the applicable size, as of the date of such interest rate set, pursuant to the 6th sentence of section 305(a)(2) the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2));

"(II) by 2.5 or more percentage points, in the case of a first lien residential mortgage loan having a original principal obligation amount that is more than the amount of the maximum limitation on the original principal obligation of mortgage in

effect for a residence of the applicable size, as of the date of such interest rate set, pursuant to the 6th sentence of section 305(a)(2) the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)); and

"(III) by 3.5 or more percentage points, in the case of a subordinate lien residential mortgage loan.

"(2) PUBLICATION OF AVERAGE PRIME OFFER RATE AND APR THRESHOLDS.—The Board—

"(A) shall publish, and update at least weekly, average prime offer rates;

"(B) may publish multiple rates based on varying types of mortgage transactions; and

"(C) shall adjust the thresholds established under subclause (I), (II), and (III) of paragraph (1)(B)(ii) as necessary to reflect significant changes in market conditions and to effectuate the purposes of the Mortgage Reform and Anti-Predatory Lending Act.

"(3) PHASED-OUT PENALTIES ON QUALIFIED MORTGAGES.—A qualified mortgage (as defined in subsection (b)(2)) may not contain terms under which a consumer must pay a prepayment penalty for paying all or part of the principal after the loan is consummated in excess of the following limitations:

"(A) During the 1-year period beginning on the date the loan is consummated, the prepayment penalty shall not exceed an amount equal to 3 percent of the outstanding balance on the loan.

"(B) During the 1-year period beginning after the period described in subparagraph (A), the prepayment penalty shall not exceed an amount equal to 2 percent of the outstanding balance on the loan.

"(C) During the 1-year period beginning after the 1-year period described in subparagraph (B), the prepayment penalty shall not exceed an amount equal to 1 percent of the outstanding balance on the loan.

"(D) After the end of the 3-year period beginning on the date the loan is consummated, no prepayment penalty may be imposed on a qualified mortgage.

"(4) OPTION FOR NO PREPAYMENT PENALTY REQUIRED.—A creditor may not offer a consumer a residential mortgage loan product that has a prepayment penalty for paying all or part of the principal after the loan is consummated as a term of the loan without offering the consumer a residential mortgage loan product that does not have a prepayment penalty as a term of the loan.

"(d) SINGLE PREMIUM CREDIT INSURANCE PROHIBITED.—No creditor may finance, directly or indirectly, in connection with any residential mortgage loan or with any extension of credit under an open end consumer credit plan secured by the principal dwelling of the consumer, any credit life, credit disability, credit unemployment, or credit property insurance, or any other accident, loss-of-income, life, or health insurance, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract, except that—

"(1) insurance premiums or debt cancellation or suspension fees calculated and paid in full on a monthly basis shall not be considered financed by the creditor; and

"(2) this subsection shall not apply to credit unemployment insurance for which the unemployment insurance premiums are reasonable, the creditor receives no direct or indirect compensation in connection with the unemployment insurance premiums, and the unemployment insurance premiums are paid pursuant to another insurance contract and not paid to an affiliate of the creditor.

"(e) ARBITRATION.—

"(1) IN GENERAL.—No residential mortgage loan and no extension of credit under an open end consumer credit plan secured by the principal dwelling of the consumer may include terms which require arbitration or any other nonjudicial procedure as the method for resolving any controversy or settling any claims arising out of the transaction.

"(2) POST-CONTROVERSY AGREEMENTS.—Subject to paragraph (3), paragraph (1) shall not be construed as limiting the right of the consumer and the creditor or any assignee to agree to arbitration or any other nonjudicial procedure as the method for resolving any controversy at any time after a dispute or claim under the transaction arises.

"(3) NO WAIVER OF STATUTORY CAUSE OF ACTION.—No provision of any residential mortgage loan or of any extension of credit under an open end consumer credit plan secured by the principal dwelling of the consumer, and no other agreement between the consumer and the creditor relating to the residential mortgage loan or extension of credit referred to in paragraph (1), shall be applied or interpreted so as to bar a consumer from bringing an action in an appropriate district court of the United States, or any other court of competent jurisdiction, pursuant to section 130 or any other provision of law, for damages or other relief in connection with any alleged violation of this section, any other provision of this title, or any other Federal law.

"(f) MORTGAGES WITH NEGATIVE AMORTIZATION.—No creditor may extend credit to a borrower in connection with a consumer credit transaction under an open or closed end consumer credit plan secured by a dwelling or residential real property that includes a dwelling, other than a reverse mortgage, that provides or permits a payment plan that may, at any time over the term of the extension of credit, result in negative amortization unless, before such transaction is consummated—

"(1) the creditor provides the consumer with a statement that—

"(A) the pending transaction will or may, as the case may be, result in negative amortization;

"(B) describes negative amortization in such manner as the Board shall prescribe;

"(C) negative amortization increases the outstanding principal balance of the account; and

"(D) negative amortization reduces the consumer's equity in the dwelling or real property; and

"(2) in the case of a first-time borrower with respect to a residential mortgage loan that is not a qualified mortgage, the first-time borrower provides the creditor with sufficient

documentation to demonstrate that the consumer received homeownership counseling from organizations or counselors certified by the Secretary of Housing and Urban Development as competent to provide such counseling.".

(b) CONFORMING AMENDMENT RELATING TO ENFORCEMENT.—Section 108(a) of the Truth in Lending Act (15 U.S.C. 1607(a)) is amended by inserting after paragraph (6) the following new paragraph:

"(7) sections 21B and 21C of the Securities Exchange Act of 1934, in the case of a broker or dealer, other than a depository institution, by the Securities and Exchange Commission.".

(c) PROTECTION AGAINST LOSS OF ANTI-DEFICIENCY PROTECTION.—Section 129C of the Truth in Lending Act is amended by inserting after subsection (f) (as added by subsection (a)) the following new subsection:

"(g) PROTECTION AGAINST LOSS OF ANTI-DEFICIENCY PROTECTION.—

"(1) DEFINITION.—For purposes of this subsection, the term 'anti-deficiency law' means the law of any State which provides that, in the event of foreclosure on the residential property of a consumer securing a mortgage, the consumer is not liable, in accordance with the terms and limitations of such State law, for any deficiency between the sale price obtained on such property through foreclosure and the outstanding balance of the mortgage.

"(2) NOTICE AT TIME OF CONSUMMATION.—In the case of any residential mortgage loan that is, or upon consummation will be, subject to protection under an anti-deficiency law, the creditor or mortgage originator shall provide a written notice to the consumer describing the protection provided by the anti-deficiency law and the significance for the consumer of the loss of such protection before such loan is consummated.

"(3) NOTICE BEFORE REFINANCING THAT WOULD CAUSE LOSS OF PROTECTION.—In the case of any residential mortgage loan that is subject to protection under an anti-deficiency law, if a creditor or mortgage originator provides an application to a consumer, or receives an application from a consumer, for any type of refinancing for such loan that would cause the loan to lose the protection of such anti-deficiency law, the creditor or mortgage originator shall provide a written notice to the consumer describing the protection provided by the anti-deficiency law and the significance for the consumer of the loss of such protection before any agreement for any such refinancing is consummated.".

(d) POLICY REGARDING ACCEPTANCE OF PARTIAL PAYMENT.—Section 129C of the Truth in Lending Act is amended by inserting after subsection (g) (as added by subsection (c)) the following new subsection:

"(h) POLICY REGARDING ACCEPTANCE OF PARTIAL PAYMENT.—In the case of any residential mortgage loan, a creditor shall disclose prior to settlement or, in the case of a person becoming a creditor with respect to an existing residential mortgage loan, at the time such person becomes a creditor—

"(1) the creditor's policy regarding the acceptance of partial payments; and

"(2) if partial payments are accepted, how such payments will be applied to such mortgage and if such payments will be placed in escrow.

"(i) TIMESHARE PLANS.—This section and any regulations promulgated under this section do not apply to an extension of credit relating to a plan described in section 101(53D) of title 11, United States Code.".

SEC. 1415. RULE OF CONSTRUCTION.

Except as otherwise expressly provided in section 129B or 129C of the Truth in Lending Act (as added by this title), no provision of such section 129B or 129C shall be construed as superseding, repealing, or affecting any duty, right, obligation, privilege, or remedy of any person under any other provision of the Truth in Lending Act or any other provision of Federal or State law.

SEC. 1416. AMENDMENTS TO CIVIL LIABILITY PROVISIONS.

(a) INCREASE IN AMOUNT OF CIVIL MONEY PENALTIES FOR CERTAIN VIOLATIONS.—Section 130(a) of the Truth in Lending Act (15 U.S.C. 1640(a)) is amended—

(1) in paragraph (2)(A)(ii)—

(A) by striking "$100" and inserting "$200"; and

(B) by striking "$1,000" and inserting "$2,000";

(2) in paragraph (2)(B), by striking "$500,000" and inserting "$1,000,000"; and

(3) in paragraph (4), by inserting ", paragraph (1) or (2) of section 129B(c), or section 129C(a)" after "section 129".

(b) STATUTE OF LIMITATIONS EXTENDED FOR SECTION 129 VIOLATIONS.—Section 130(e) of the Truth in Lending Act (15 U.S.C. 1640(e)) is amended—

(1) in the first sentence, by striking "Any action" and inserting "Except as provided in the subsequent sentence, any action"; and

(2) by inserting after the first sentence the following new sentence: "Any action under this section with respect to any violation of section 129, 129B, or 129C may be brought in any United States district court, or in any other court of competent jurisdiction, before the end of the 3-year period beginning on the date of the occurrence of the violation.".

SEC. 1417. LENDER RIGHTS IN THE CONTEXT OF BORROWER DECEPTION.

Section 130 of the Truth in Lending Act (15 U.S.C. 1640) is amended by adding after subsection (k) (as added by this title) the following new subsection:

"(l) EXEMPTION FROM LIABILITY AND RESCISSION IN CASE OF BORROWER FRAUD OR DECEPTION.—In addition to any other remedy available by law or contract, no creditor or assignee shall be liable to an obligor under this section, if such obligor, or co-obligor has been convicted of obtaining by actual fraud such residential mortgage loan.".

SEC. 1418. SIX-MONTH NOTICE REQUIRED BEFORE RESET OF HYBRID ADJUSTABLE RATE MORTGAGES.

(a) IN GENERAL.—Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by inserting after section 128 the following new section:

"§ 128A. Reset of hybrid adjustable rate mortgages

"(a) HYBRID ADJUSTABLE RATE MORTGAGES DEFINED.—For purposes of this section, the term 'hybrid adjustable rate mortgage' means a consumer credit transaction secured by the consumer's principal residence with a fixed interest rate for an introductory period that adjusts or resets to a variable interest rate after such period.

"(b) NOTICE OF RESET AND ALTERNATIVES.—During the 1-month period that ends 6 months before the date on which the interest rate in effect during the introductory period of a hybrid adjustable rate mortgage adjusts or resets to a variable interest rate or, in the case of such an adjustment or resetting that occurs within the first 6 months after consummation of such loan, at consummation, the creditor or servicer of such loan shall provide a written notice, separate and distinct from all other correspondence to the consumer, that includes the following:

"(1) Any index or formula used in making adjustments to or resetting the interest rate and a source of information about the index or formula.

"(2) An explanation of how the new interest rate and payment would be determined, including an explanation of how the index was adjusted, such as by the addition of a margin.

"(3) A good faith estimate, based on accepted industry standards, of the creditor or servicer of the amount of the monthly payment that will apply after the date of the adjustment or reset, and the assumptions on which this estimate is based.

"(4) A list of alternatives consumers may pursue before the date of adjustment or reset, and descriptions of the actions consumers must take to pursue these alternatives, including—

"(A) refinancing;

"(B) renegotiation of loan terms;

"(C) payment forbearances; and

"(D) pre-foreclosure sales.

"(5) The names, addresses, telephone numbers, and Internet addresses of counseling agencies or programs reasonably available to the consumer that have been certified or approved and made publicly available by the Secretary of Housing and Urban Development or a State housing finance authority (as defined in section 1301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989).

"(6) The address, telephone number, and Internet address for the State housing finance authority (as so defined) for the State in which the consumer resides.

"(c) SAVINGS CLAUSE.—The Board may require the notice in paragraph (b) or other notice consistent with this Act for adjustable rate mortgage loans that are not hybrid adjustable rate mortgage loans.".

(b) CLERICAL AMENDMENT.—The table of sections for chapter 2 of the Truth in Lending Act is amended by inserting after the item relating to section 128 the following new item:

"128A. Reset of hybrid adjustable rate mortgages.".

SEC. 1419. REQUIRED DISCLOSURES.

Section 128(a) of Truth in Lending Act (15 U.S.C. 1638(a)) is amended by adding at the end the following new paragraphs:

"(16) In the case of a variable rate residential mortgage loan for which an escrow or impound account will be established for the payment of all applicable taxes, insurance, and assessments—

"(A) the amount of initial monthly payment due under the loan for the payment of principal and interest, and the amount of such initial monthly payment including the monthly payment deposited in the account for the payment of all applicable taxes, insurance, and assessments; and

"(B) the amount of the fully indexed monthly payment due under the loan for the payment of principal and interest, and the amount of such fully indexed monthly payment including the monthly payment deposited in the account for the payment of all applicable taxes, insurance, and assessments.

"(17) In the case of a residential mortgage loan, the aggregate amount of settlement charges for all settlement services provided in connection with the loan, the amount of charges that are included in the loan and the amount of such charges the borrower must pay at closing, the approximate amount of the wholesale rate of funds in connection with the loan, and the aggregate amount of other fees or required payments in connection with the loan.

"(18) In the case of a residential mortgage loan, the aggregate amount of fees paid to the mortgage originator in connection with the loan, the amount of such fees paid directly by the consumer, and any additional amount received by the originator from the creditor.

"(19) In the case of a residential mortgage loan, the total amount of interest that the consumer will pay over the life of the loan as a percentage of the principal of the loan. Such amount shall be computed assuming the consumer makes each monthly payment in full and on-time, and does not make any over-payments.".

SEC. 1420. DISCLOSURES REQUIRED IN MONTHLY STATEMENTS FOR RESIDENTIAL MORTGAGE LOANS.

Section 128 of the Truth in Lending Act (15 U.S.C. 1638) is amended by adding at the end the following new subsection:

"(f) PERIODIC STATEMENTS FOR RESIDENTIAL MORTGAGE LOANS.—

"(1) IN GENERAL.—The creditor, assignee, or servicer with respect to any residential mortgage loan shall transmit to the obligor, for each billing cycle, a statement setting forth each of the following items, to the extent applicable, in a conspicuous and prominent manner:

"(A) The amount of the principal obligation under the mortgage.

"(B) The current interest rate in effect for the loan.

"(C) The date on which the interest rate may next reset or adjust.

"(D) The amount of any prepayment fee to be charged, if any.

"(E) A description of any late payment fees.

"(F) A telephone number and electronic mail address that may be used by the obligor to obtain information regarding the mortgage.

"(G) The names, addresses, telephone numbers, and Internet addresses of counseling agencies or programs reasonably available to the consumer that have been certified or approved and made publicly available by the Secretary of Housing and Urban Development or a State housing finance authority (as defined in section 1301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989).

"(H) Such other information as the Board may prescribe in regulations.

"(2) DEVELOPMENT AND USE OF STANDARD FORM.—The Board shall develop and prescribe a standard form for the disclosure required under this subsection, taking into account that the statements required may be transmitted in writing or electronically.

"(3) EXCEPTION.—Paragraph (1) shall not apply to any fixed rate residential mortgage loan where the creditor, assignee, or servicer provides the obligor with a coupon book that provides the obligor with substantially the same information as required in paragraph (1).".

SEC. 1421. REPORT BY THE GAO.

(a) REPORT REQUIRED.—The Comptroller General of the United States shall conduct a study to determine the effects the enactment of this Act will have on the availability and affordability of credit for consumers, small businesses, homebuyers, and mortgage lending, including the effect—

(1) on the mortgage market for mortgages that are not within the safe harbor provided in the amendments made by this subtitle;

(2) on the ability of prospective homebuyers to obtain financing;

(3) on the ability of homeowners facing resets or adjustments to refinance—for example, do they have fewer refinancing options due to the unavailability of certain loan products that were available before the enactment of this Act;

(4) on minorities' ability to access affordable credit compared with other prospective borrowers;

(5) on home sales and construction;

(6) of extending the rescission right, if any, on adjustable rate loans and its impact on litigation;

(7) of State foreclosure laws and, if any, an investor's ability to transfer a property after foreclosure;

(8) of expanding the existing provisions of the Home Ownership and Equity Protection Act of 1994;

(9) of prohibiting prepayment penalties on high-cost mortgages; and

(10) of establishing counseling services under the Department of Housing and Urban Development and offered through the Office of Housing Counseling.

(b) REPORT.—Before the end of the 1-year period beginning on the date of the enactment of this Act, the Comptroller General shall submit a report to the Congress containing the findings and conclusions of the Comptroller General with respect to the study conducted pursuant to subsection (a).

(c) EXAMINATION RELATED TO CERTAIN CREDIT RISK RETENTION PROVISIONS.—The report required by subsection (b) shall also

include an analysis by the Comptroller General of the effect on the capital reserves and funding of lenders of credit risk retention provisions for non-qualified mortgages, including an analysis of the exceptions and adjustments authorized in section 129C(b)(3) of the Truth in Lending Act and a recommendation on whether a uniform standard is needed.

(d) ANALYSIS OF CREDIT RISK RETENTION PROVISIONS.—The report required by subsection (b) shall also include—

(1) an analysis by the Comptroller General of whether the credit risk retention provisions have significantly reduced risks to the larger credit market of the repackaging and selling of securitized loans on a secondary market; and

(2) recommendations to the Congress on adjustments that should be made, or additional measures that should be undertaken.

SEC. 1422. STATE ATTORNEY GENERAL ENFORCEMENT AUTHORITY.

Section 130(e) of the Truth in Lending Act (15 U.S.C. 1640(e)) is amended by striking "section 129 may also" and inserting "section 129, 129B, 129C, 129D, 129E, 129F, 129G, or 129H of this Act may also".

Subtitle C—High-Cost Mortgages

SEC. 1431. DEFINITIONS RELATING TO HIGH-COST MORTGAGES.

(a) HIGH-COST MORTGAGE DEFINED.—Section 103(aa) of the Truth in Lending Act (15 U.S.C. 1602(aa)) is amended by striking all that precedes paragraph (2) and inserting the following:

"(aa) HIGH-COST MORTGAGE.—

"(1) DEFINITION.—

"(A) IN GENERAL.—The term 'high-cost mortgage', and a mortgage referred to in this subsection, means a consumer credit transaction that is secured by the consumer's principal dwelling, other than a reverse mortgage transaction, if—

"(i) in the case of a credit transaction secured—

"(I) by a first mortgage on the consumer's principal dwelling, the annual percentage rate at consummation of the transaction will exceed by more than 6.5 percentage points (8.5 percentage points, if the dwelling is personal property and the transaction is for less than $50,000) the average prime offer rate, as defined in section 129C(b)(2)(B), for a comparable transaction; or

"(II) by a subordinate or junior mortgage on the consumer's principal dwelling, the annual percentage rate at consummation of the transaction will exceed by more than 8.5 percentage points the average prime offer rate, as defined in section 129C(b)(2)(B), for a comparable transaction;

"(ii) the total points and fees payable in connection with the transaction, other than bona fide third party charges not retained by the mortgage originator, creditor, or an affiliate of the creditor or mortgage originator, exceed—

"(I) in the case of a transaction for $20,000 or more, 5 percent of the total transaction amount; or

"(II) in the case of a transaction for less than $20,000, the lesser of 8 percent of the total transaction amount or $1,000 (or such other dollar amount as the Board shall prescribe by regulation); or

"(iii) the credit transaction documents permit the creditor to charge or collect prepayment fees or penalties more than 36 months after the transaction closing or such fees or penalties exceed, in the aggregate, more than 2 percent of the amount prepaid.

"(B) INTRODUCTORY RATES TAKEN INTO ACCOUNT.—For purposes of subparagraph (A)(i), the annual percentage rate of interest shall be determined based on the following interest rate:

"(i) In the case of a fixed-rate transaction in which the annual percentage rate will not vary during the term of the loan, the interest rate in effect on the date of consummation of the transaction.

"(ii) In the case of a transaction in which the rate of interest varies solely in accordance with an index, the interest rate determined by adding the index rate in effect on the date of consummation of the transaction to the maximum margin permitted at any time during the loan agreement.

"(iii) In the case of any other transaction in which the rate may vary at any time during the term of the loan for any reason, the interest charged on the transaction at the maximum rate that may be charged during the term of the loan.

"(C) MORTGAGE INSURANCE.—For the purposes of computing the total points and fees under paragraph (4), the total points and fees shall exclude—

"(i) any premium provided by an agency of the Federal Government or an agency of a State;

"(ii) any amount that is not in excess of the amount payable under policies in effect at the time of origination under section 203(c)(2)(A) of the National Housing Act (12 U.S.C. 1709(c)(2)(A)), provided that the premium, charge, or fee is required to be refundable on a pro-rated basis and the refund is automatically issued upon notification of the satisfaction of the underlying mortgage loan; and

"(iii) any premium paid by the consumer after closing.".

(b) ADJUSTMENT OF PERCENTAGE POINTS.—Section 103(aa)(2) of the Truth in Lending Act (15 U.S.C. 1602(aa)(2)) is amended by striking subparagraph (B) and inserting the following new subparagraph:

"(B) An increase or decrease under subparagraph (A)—

"(i) may not result in the number of percentage points referred to in paragraph (1)(A)(i)(I) being less than 6 percentage points or greater than 10 percentage points; and

"(ii) may not result in the number of percentage points referred to in paragraph (1)(A)(i)(II) being less than 8 percentage points or greater than 12 percentage points.".

(c) POINTS AND FEES DEFINED.—

(1) IN GENERAL.—Section 103(aa)(4) of the Truth in Lending Act (15 U.S.C. 1602(aa)(4)) is amended—

(A) by striking subparagraph (B) and inserting the following:

"(B) all compensation paid directly or indirectly by a consumer or creditor to a mortgage originator from any source, including a mortgage originator that is also the creditor in a table-funded transaction;";

(B) by redesignating subparagraph (D) as subparagraph (G); and

(C) by inserting after subparagraph (C) the following new subparagraphs:

"(D) premiums or other charges payable at or before closing for any credit life, credit disability, credit unemployment, or credit property insurance, or any other accident, loss-of-income, life or health insurance, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract, except that insurance premiums or debt cancellation or suspension fees calculated and paid in full on a monthly basis shall not be considered financed by the creditor;

"(E) the maximum prepayment fees and penalties which may be charged or collected under the terms of the credit transaction;

"(F) all prepayment fees or penalties that are incurred by the consumer if the loan refinances a previous loan made or currently held by the same creditor or an affiliate of the creditor; and".

(2) CALCULATION OF POINTS AND FEES FOR OPEN-END CONSUMER CREDIT PLANS.—Section 103(aa) of the Truth in Lending Act (15 U.S.C. 1602(aa)) is amended—

(A) by redesignating paragraph (5) as paragraph (6); and

(B) by inserting after paragraph (4) the following new paragraph:

"(5) CALCULATION OF POINTS AND FEES FOR OPEN-END CONSUMER CREDIT PLANS.—In the case of open-end consumer credit plans, points and fees shall be calculated, for purposes of this section and section 129, by adding the total points and fees known at or before closing, including the maximum prepayment penalties which may be charged or collected under the terms of the credit transaction, plus the minimum additional fees the consumer would be required to pay to draw down an amount equal to the total credit line.".

(d) BONA FIDE DISCOUNT LOAN DISCOUNT POINTS.—Section 103 of the Truth in Lending Act (15 U.S.C. 1602) is amended by inserting after subsection (cc) (as added by section 1401) the following new subsection:

"(dd) BONA FIDE DISCOUNT POINTS AND PREPAYMENT PENALTIES.—For the purposes of determining the amount of points and fees for purposes of subsection (aa), either the amounts

described in paragraph (1) or (2) of the following paragraphs, but not both, shall be excluded:

"(1) Up to and including 2 bona fide discount points payable by the consumer in connection with the mortgage, but only if the interest rate from which the mortgage's interest rate will be discounted does not exceed by more than 1 percentage point—

"(A) the average prime offer rate, as defined in section 129C; or

"(B) if secured by a personal property loan, the average rate on a loan in connection with which insurance is provided under title I of the National Housing Act (12 U.S.C. 1702 et seq.).

"(2) Unless 2 bona fide discount points have been excluded under paragraph (1), up to and including 1 bona fide discount point payable by the consumer in connection with the mortgage, but only if the interest rate from which the mortgage's interest rate will be discounted does not exceed by more than 2 percentage points—

"(A) the average prime offer rate, as defined in section 129C; or

"(B) if secured by a personal property loan, the average rate on a loan in connection with which insurance is provided under title I of the National Housing Act (12 U.S.C. 1702 et seq.).

"(3) For purposes of paragraph (1), the term 'bona fide discount points' means loan discount points which are knowingly paid by the consumer for the purpose of reducing, and which in fact result in a bona fide reduction of, the interest rate or time-price differential applicable to the mortgage.

"(4) Paragraphs (1) and (2) shall not apply to discount points used to purchase an interest rate reduction unless the amount of the interest rate reduction purchased is reasonably consistent with established industry norms and practices for secondary mortgage market transactions.".

SEC. 1432. AMENDMENTS TO EXISTING REQUIREMENTS FOR CERTAIN MORTGAGES.

(a) PREPAYMENT PENALTY PROVISIONS.—Section 129(c)(2) of the Truth in Lending Act (15 U.S.C. 1639(c)(2)) is hereby repealed.

(b) NO BALLOON PAYMENTS.—Section 129(e) of the Truth in Lending Act (15 U.S.C. 1639(e)) is amended to read as follows:

"(e) NO BALLOON PAYMENTS.—No high-cost mortgage may contain a scheduled payment that is more than twice as large as the average of earlier scheduled payments. This subsection shall not apply when the payment schedule is adjusted to the seasonal or irregular income of the consumer.".

SEC. 1433. ADDITIONAL REQUIREMENTS FOR CERTAIN MORTGAGES.

(a) ADDITIONAL REQUIREMENTS FOR CERTAIN MORTGAGES.—Section 129 of the Truth in Lending Act (15 U.S.C. 1639) is amended—

(1) by redesignating subsections (j), (k), (l) and (m) as subsections (n), (o), (p), and (q) respectively; and

(2) by inserting after subsection (i) the following new subsections:

"(j) RECOMMENDED DEFAULT.—No creditor shall recommend or encourage default on an existing loan or other debt prior to and in connection with the closing or planned closing of a high-cost

mortgage that refinances all or any portion of such existing loan or debt.

"(k) LATE FEES.—

"(1) IN GENERAL.—No creditor may impose a late payment charge or fee in connection with a high-cost mortgage—

"(A) in an amount in excess of 4 percent of the amount of the payment past due;

"(B) unless the loan documents specifically authorize the charge or fee;

"(C) before the end of the 15-day period beginning on the date the payment is due, or in the case of a loan on which interest on each installment is paid in advance, before the end of the 30-day period beginning on the date the payment is due; or

"(D) more than once with respect to a single late payment.

"(2) COORDINATION WITH SUBSEQUENT LATE FEES.—If a payment is otherwise a full payment for the applicable period and is paid on its due date or within an applicable grace period, and the only delinquency or insufficiency of payment is attributable to any late fee or delinquency charge assessed on any earlier payment, no late fee or delinquency charge may be imposed on such payment.

"(3) FAILURE TO MAKE INSTALLMENT PAYMENT.—If, in the case of a loan agreement the terms of which provide that any payment shall first be applied to any past due principal balance, the consumer fails to make an installment payment and the consumer subsequently resumes making installment payments but has not paid all past due installments, the creditor may impose a separate late payment charge or fee for any principal due (without deduction due to late fees or related fees) until the default is cured.

"(l) ACCELERATION OF DEBT.—No high-cost mortgage may contain a provision which permits the creditor to accelerate the indebtedness, except when repayment of the loan has been accelerated by default in payment, or pursuant to a due-on-sale provision, or pursuant to a material violation of some other provision of the loan document unrelated to payment schedule.

"(m) RESTRICTION ON FINANCING POINTS AND FEES.—No creditor may directly or indirectly finance, in connection with any high-cost mortgage, any of the following:

"(1) Any prepayment fee or penalty payable by the consumer in a refinancing transaction if the creditor or an affiliate of the creditor is the noteholder of the note being refinanced.

"(2) Any points or fees.".

(b) PROHIBITIONS ON EVASIONS.—Section 129 of the Truth in Lending Act (15 U.S.C. 1639) is amended by inserting after subsection (q) (as so redesignated by subsection (a)(1)) the following new subsection:

"(r) PROHIBITIONS ON EVASIONS, STRUCTURING OF TRANSACTIONS, AND RECIPROCAL ARRANGEMENTS.—A creditor may not take any action in connection with a high-cost mortgage—

"(1) to structure a loan transaction as an open-end credit plan or another form of loan for the purpose and with the intent of evading the provisions of this title; or

"(2) to divide any loan transaction into separate parts for the purpose and with the intent of evading provisions of this title.".

(c) MODIFICATION OR DEFERRAL FEES.—Section 129 of the Truth in Lending Act (15 U.S.C. 1639) is amended by inserting after subsection (r) (as added by subsection (b) of this section) the following new subsection:

"(s) MODIFICATION AND DEFERRAL FEES PROHIBITED.—A creditor, successor in interest, assignee, or any agent of any of the above, may not charge a consumer any fee to modify, renew, extend, or amend a high-cost mortgage, or to defer any payment due under the terms of such mortgage.".

(d) PAYOFF STATEMENT.—Section 129 of the Truth in Lending Act (15 U.S.C. 1639) is amended by inserting after subsection (s) (as added by subsection (c) of this section) the following new subsection:

"(t) PAYOFF STATEMENT.—

"(1) FEES.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), no creditor or servicer may charge a fee for informing or transmitting to any person the balance due to pay off the outstanding balance on a high-cost mortgage.

"(B) TRANSACTION FEE.—When payoff information referred to in subparagraph (A) is provided by facsimile transmission or by a courier service, a creditor or servicer may charge a processing fee to cover the cost of such transmission or service in an amount not to exceed an amount that is comparable to fees imposed for similar services provided in connection with consumer credit transactions that are secured by the consumer's principal dwelling and are not high-cost mortgages.

"(C) FEE DISCLOSURE.—Prior to charging a transaction fee as provided in subparagraph (B), a creditor or servicer shall disclose that payoff balances are available for free pursuant to subparagraph (A).

"(D) MULTIPLE REQUESTS.—If a creditor or servicer has provided payoff information referred to in subparagraph (A) without charge, other than the transaction fee allowed by subparagraph (B), on 4 occasions during a calendar year, the creditor or servicer may thereafter charge a reasonable fee for providing such information during the remainder of the calendar year.

"(2) PROMPT DELIVERY.—Payoff balances shall be provided within 5 business days after receiving a request by a consumer or a person authorized by the consumer to obtain such information.".

(e) PRE-LOAN COUNSELING REQUIRED.—Section 129 of the Truth in Lending Act (15 U.S.C. 1639) is amended by inserting after subsection t) (as added by subsection (d) of this section) the following new subsection:

"(u) PRE-LOAN COUNSELING.—

"(1) IN GENERAL.—A creditor may not extend credit to a consumer under a high-cost mortgage without first receiving certification from a counselor that is approved by the Secretary of Housing and Urban Development, or at the discretion of

the Secretary, a State housing finance authority, that the consumer has received counseling on the advisability of the mortgage. Such counselor shall not be employed by the creditor or an affiliate of the creditor or be affiliated with the creditor.

"(2) DISCLOSURES REQUIRED PRIOR TO COUNSELING.—No counselor may certify that a consumer has received counseling on the advisability of the high-cost mortgage unless the counselor can verify that the consumer has received each statement required (in connection with such loan) by this section or the Real Estate Settlement Procedures Act of 1974 with respect to the transaction.

"(3) REGULATIONS.—The Board may prescribe such regulations as the Board determines to be appropriate to carry out the requirements of paragraph (1).".

(f) CORRECTIONS AND UNINTENTIONAL VIOLATIONS.—Section 129 of the Truth in Lending Act (15 U.S.C. 1639) is amended by inserting after subsection (u) (as added by subsection (e)) the following new subsection:

"(v) CORRECTIONS AND UNINTENTIONAL VIOLATIONS.—A creditor or assignee in a high-cost mortgage who, when acting in good faith, fails to comply with any requirement under this section will not be deemed to have violated such requirement if the creditor or assignee establishes that either—

"(1) within 30 days of the loan closing and prior to the institution of any action, the consumer is notified of or discovers the violation, appropriate restitution is made, and whatever adjustments are necessary are made to the loan to either, at the choice of the consumer—

"(A) make the loan satisfy the requirements of this chapter; or

"(B) in the case of a high-cost mortgage, change the terms of the loan in a manner beneficial to the consumer so that the loan will no longer be a high-cost mortgage; or

"(2) within 60 days of the creditor's discovery or receipt of notification of an unintentional violation or bona fide error and prior to the institution of any action, the consumer is notified of the compliance failure, appropriate restitution is made, and whatever adjustments are necessary are made to the loan to either, at the choice of the consumer—

"(A) make the loan satisfy the requirements of this chapter; or

"(B) in the case of a high-cost mortgage, change the terms of the loan in a manner beneficial so that the loan will no longer be a high-cost mortgage.".

Subtitle D—Office of Housing Counseling

SEC. 1441. SHORT TITLE.

This subtitle may be cited as the "Expand and Preserve Home Ownership Through Counseling Act".

SEC. 1442. ESTABLISHMENT OF OFFICE OF HOUSING COUNSELING.

Section 4 of the Department of Housing and Urban Development Act (42 U.S.C. 3533) is amended by adding at the end the following new subsection:

"(g) OFFICE OF HOUSING COUNSELING.—

"(1) ESTABLISHMENT.—There is established, in the Department, the Office of Housing Counseling.

"(2) DIRECTOR.—There is established the position of Director of Housing Counseling. The Director shall be the head of the Office of Housing Counseling and shall be appointed by, and shall report to, the Secretary. Such position shall be a career-reserved position in the Senior Executive Service.

"(3) FUNCTIONS.—

"(A) IN GENERAL.—The Director shall have primary responsibility within the Department for all activities and matters relating to homeownership counseling and rental housing counseling, including—

"(i) research, grant administration, public outreach, and policy development relating to such counseling; and

"(ii) establishment, coordination, and administration of all regulations, requirements, standards, and performance measures under programs and laws administered by the Department that relate to housing counseling, homeownership counseling (including maintenance of homes), mortgage-related counseling (including home equity conversion mortgages and credit protection options to avoid foreclosure), and rental housing counseling, including the requirements, standards, and performance measures relating to housing counseling.

"(B) SPECIFIC FUNCTIONS.—The Director shall carry out the functions assigned to the Director and the Office under this section and any other provisions of law. Such functions shall include establishing rules necessary for—

"(i) the counseling procedures under section 106(g)(1) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(h)(1));

"(ii) carrying out all other functions of the Secretary under section 106(g) of the Housing and Urban Development Act of 1968, including the establishment, operation, and publication of the availability of the toll-free telephone number under paragraph (2) of such section;

"(iii) contributing to the distribution of home buying information booklets pursuant to section 5 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2604);

"(iv) carrying out the certification program under section 106(e) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(e));

"(v) carrying out the assistance program under section 106(a)(4) of the Housing and Urban Development Act of 1968, including criteria for selection of applications to receive assistance;

"(vi) carrying out any functions regarding abusive, deceptive, or unscrupulous lending practices relating to residential mortgage loans that the Secretary considers appropriate, which shall include conducting the study under section 6 of the Expand and Preserve Home Ownership Through Counseling Act;

"(vii) providing for operation of the advisory committee established under paragraph (4) of this subsection;

"(viii) collaborating with community-based organizations with expertise in the field of housing counseling; and

"(ix) providing for the building of capacity to provide housing counseling services in areas that lack sufficient services, including underdeveloped areas that lack basic water and sewer systems, electricity services, and safe, sanitary housing.

"(4) ADVISORY COMMITTEE.—

"(A) IN GENERAL.—The Secretary shall appoint an advisory committee to provide advice regarding the carrying out of the functions of the Director.

"(B) MEMBERS.—Such advisory committee shall consist of not more than 12 individuals, and the membership of the committee shall equally represent the mortgage and real estate industry, including consumers and housing counseling agencies certified by the Secretary.

"(C) TERMS.—Except as provided in subparagraph (D), each member of the advisory committee shall be appointed for a term of 3 years. Members may be reappointed at the discretion of the Secretary.

"(D) TERMS OF INITIAL APPOINTEES.—As designated by the Secretary at the time of appointment, of the members first appointed to the advisory committee, 4 shall be appointed for a term of 1 year and 4 shall be appointed for a term of 2 years.

"(E) PROHIBITION OF PAY; TRAVEL EXPENSES.—Members of the advisory committee shall serve without pay, but shall receive travel expenses, including per diem in lieu of subsistence, in accordance with applicable provisions under subchapter I of chapter 57 of title 5, United States Code.

"(F) ADVISORY ROLE ONLY.—The advisory committee shall have no role in reviewing or awarding housing counseling grants.

"(5) SCOPE OF HOMEOWNERSHIP COUNSELING.—In carrying out the responsibilities of the Director, the Director shall ensure that homeownership counseling provided by, in connection with, or pursuant to any function, activity, or program of the Department addresses the entire process of homeownership, including the decision to purchase a home, the selection and purchase of a home, issues arising during or affecting the period of ownership of a home (including refinancing, default and foreclosure, and other financial decisions), and the sale or other disposition of a home.".

SEC. 1443. COUNSELING PROCEDURES.

(a) IN GENERAL.—Section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x) is amended by adding at the end the following new subsection:

"(g) PROCEDURES AND ACTIVITIES.—

"(1) COUNSELING PROCEDURES.—

"(A) IN GENERAL.—The Secretary shall establish, coordinate, and monitor the administration by the Department of Housing and Urban Development of the counseling procedures for homeownership counseling and rental housing counseling provided in connection with any program of the Department, including all requirements, standards, and performance measures that relate to homeownership and rental housing counseling.

"(B) HOMEOWNERSHIP COUNSELING.—For purposes of this subsection and as used in the provisions referred to in this subparagraph, the term 'homeownership counseling' means counseling related to homeownership and residential mortgage loans. Such term includes counseling related to homeownership and residential mortgage loans that is provided pursuant to—

"(i) section 105(a)(20) of the Housing and Community Development Act of 1974 (42 U.S.C. 5305(a)(20));

"(ii) in the United States Housing Act of 1937—

"(I) section 9(e) (42 U.S.C. 1437g(e));

"(II) section 8(y)(1)(D) (42 U.S.C. 1437f(y)(1)(D));

"(III) section 18(a)(4)(D) (42 U.S.C. 1437p(a)(4)(D));

"(IV) section 23(c)(4) (42 U.S.C. 1437u(c)(4));

"(V) section 32(e)(4) (42 U.S.C. 1437z–4(e)(4));

"(VI) section 33(d)(2)(B) (42 U.S.C. 1437z–5(d)(2)(B));

"(VII) sections 302(b)(6) and 303(b)(7) (42 U.S.C. 1437aaa–1(b)(6), 1437aaa–2(b)(7)); and

"(VIII) section 304(c)(4) (42 U.S.C. 1437aaa–3(c)(4));

"(iii) section 302(a)(4) of the American Homeownership and Economic Opportunity Act of 2000 (42 U.S.C. 1437f note);

"(iv) sections 233(b)(2) and 258(b) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12773(b)(2), 12808(b));

"(v) this section and section 101(e) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x, 1701w(e));

"(vi) section 220(d)(2)(G) of the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (12 U.S.C. 4110(d)(2)(G));

"(vii) sections 422(b)(6), 423(b)(7), 424(c)(4), 442(b)(6), and 443(b)(6) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12872(b)(6), 12873(b)(7), 12874(c)(4), 12892(b)(6), and 12893(b)(6));

"(viii) section 491(b)(1)(F)(iii) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11408(b)(1)(F)(iii));

"(ix) sections 202(3) and 810(b)(2)(A) of the Native American Housing and Self-Determination Act of 1996 (25 U.S.C. 4132(3), 4229(b)(2)(A));

"(x) in the National Housing Act—

"(I) in section 203 (12 U.S.C. 1709), the penultimate undesignated paragraph of paragraph (2)

of subsection (b), subsection (c)(2)(A), and subsection (r)(4);

"(II) subsections (a) and (c)(3) of section 237 (12 U.S.C. 1715z–2); and

"(III) subsections (d)(2)(B) and (m)(1) of section 255 (12 U.S.C. 1715z–20);

"(xi) section 502(h)(4)(B) of the Housing Act of 1949 (42 U.S.C. 1472(h)(4)(B));

"(xii) section 508 of the Housing and Urban Development Act of 1970 (12 U.S.C. 1701z–7); and

"(xiii) section 106 of the Energy Policy Act of 1992 (42 U.S.C. 12712 note).

"(C) RENTAL HOUSING COUNSELING.—For purposes of this subsection, the term 'rental housing counseling' means counseling related to rental of residential property, which may include counseling regarding future homeownership opportunities and providing referrals for renters and prospective renters to entities providing counseling and shall include counseling related to such topics that is provided pursuant to—

"(i) section 105(a)(20) of the Housing and Community Development Act of 1974 (42 U.S.C. 5305(a)(20));

"(ii) in the United States Housing Act of 1937—

"(I) section 9(e) (42 U.S.C. 1437g(e));

"(II) section 18(a)(4)(D) (42 U.S.C. 1437p(a)(4)(D));

"(III) section 23(c)(4) (42 U.S.C. 1437u(c)(4));

"(IV) section 32(e)(4) (42 U.S.C. 1437z–4(e)(4));

"(V) section 33(d)(2)(B) (42 U.S.C. 1437z–5(d)(2)(B)); and

"(VI) section 302(b)(6) (42 U.S.C. 1437aaa–1(b)(6));

"(iii) section 233(b)(2) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12773(b)(2));

"(iv) section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x);

"(v) section 422(b)(6) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12872(b)(6));

"(vi) section 491(b)(1)(F)(iii) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11408(b)(1)(F)(iii));

"(vii) sections 202(3) and 810(b)(2)(A) of the Native American Housing and Self-Determination Act of 1996 (25 U.S.C. 4132(3), 4229(b)(2)(A)); and

"(viii) the rental assistance program under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).

"(2) STANDARDS FOR MATERIALS.—The Secretary, in consultation with the advisory committee established under subsection (g)(4) of the Department of Housing and Urban Development Act, shall establish standards for materials and forms to be used, as appropriate, by organizations providing homeownership counseling services, including any recipients of assistance pursuant to subsection (a)(4).

"(3) MORTGAGE SOFTWARE SYSTEMS.—

"(A) CERTIFICATION.—The Secretary shall provide for the certification of various computer software programs for consumers to use in evaluating different residential mortgage loan proposals. The Secretary shall require, for such certification, that the mortgage software systems take into account—

"(i) the consumer's financial situation and the cost of maintaining a home, including insurance, taxes, and utilities;

"(ii) the amount of time the consumer expects to remain in the home or expected time to maturity of the loan; and

"(iii) such other factors as the Secretary considers appropriate to assist the consumer in evaluating whether to pay points, to lock in an interest rate, to select an adjustable or fixed rate loan, to select a conventional or government-insured or guaranteed loan and to make other choices during the loan application process.

If the Secretary determines that available existing software is inadequate to assist consumers during the residential mortgage loan application process, the Secretary shall arrange for the development by private sector software companies of new mortgage software systems that meet the Secretary's specifications.

"(B) USE AND INITIAL AVAILABILITY.—Such certified computer software programs shall be used to supplement, not replace, housing counseling. The Secretary shall provide that such programs are initially used only in connection with the assistance of housing counselors certified pursuant to subsection (e).

"(C) AVAILABILITY.—After a period of initial availability under subparagraph (B) as the Secretary considers appropriate, the Secretary shall take reasonable steps to make mortgage software systems certified pursuant to this paragraph widely available through the Internet and at public locations, including public libraries, senior-citizen centers, public housing sites, offices of public housing agencies that administer rental housing assistance vouchers, and housing counseling centers.

"(D) BUDGET COMPLIANCE.—This paragraph shall be effective only to the extent that amounts to carry out this paragraph are made available in advance in appropriations Acts.

"(4) NATIONAL PUBLIC SERVICE MULTIMEDIA CAMPAIGNS TO PROMOTE HOUSING COUNSELING.—

"(A) IN GENERAL.—The Director of Housing Counseling shall develop, implement, and conduct national public service multimedia campaigns designed to make persons facing mortgage foreclosure, persons considering a subprime mortgage loan to purchase a home, elderly persons, persons who face language barriers, low-income persons, minorities, and other potentially vulnerable consumers aware that it is advisable, before seeking or maintaining a residential mortgage loan, to obtain homeownership counseling from an unbiased and reliable

sources and that such homeownership counseling is available, including through programs sponsored by the Secretary of Housing and Urban Development.

"(B) CONTACT INFORMATION.—Each segment of the multimedia campaign under subparagraph (A) shall publicize the toll-free telephone number and website of the Department of Housing and Urban Development through which persons seeking housing counseling can locate a housing counseling agency in their State that is certified by the Secretary of Housing and Urban Development and can provide advice on buying a home, renting, defaults, foreclosures, credit issues, and reverse mortgages.

"(C) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary, not to exceed $3,000,000 for fiscal years 2009, 2010, and 2011, for the development, implementation, and conduct of national public service multimedia campaigns under this paragraph.

"(D) FORECLOSURE RESCUE EDUCATION PROGRAMS.—

"(i) IN GENERAL.—Ten percent of any funds appropriated pursuant to the authorization under subparagraph (C) shall be used by the Director of Housing Counseling to conduct an education program in areas that have a high density of foreclosure. Such program shall involve direct mailings to persons living in such areas describing—

"(I) tips on avoiding foreclosure rescue scams;

"(II) tips on avoiding predatory lending mortgage agreements;

"(III) tips on avoiding for-profit foreclosure counseling services; and

"(IV) local counseling resources that are approved by the Department of Housing and Urban Development.

"(ii) PROGRAM EMPHASIS.—In conducting the education program described under clause (i), the Director of Housing Counseling shall also place an emphasis on serving communities that have a high percentage of retirement communities or a high percentage of low-income minority communities.

"(iii) TERMS DEFINED.—For purposes of this subparagraph:

"(I) HIGH DENSITY OF FORECLOSURES.—An area has a 'high density of foreclosures' if such area is one of the metropolitan statistical areas (as that term is defined by the Director of the Office of Management and Budget) with the highest home foreclosure rates.

"(II) HIGH PERCENTAGE OF RETIREMENT COMMUNITIES.—An area has a 'high percentage of retirement communities' if such area is one of the metropolitan statistical areas (as that term is defined by the Director of the Office of Management and Budget) with the highest percentage of residents aged 65 or older.

"(III) HIGH PERCENTAGE OF LOW-INCOME MINORITY COMMUNITIES.—An area has a 'high

percentage of low-income minority communities' if such area contains a higher-than-normal percentage of residents who are both minorities and low-income, as defined by the Director of Housing Counseling.

"(5) EDUCATION PROGRAMS.—The Secretary shall provide advice and technical assistance to States, units of general local government, and nonprofit organizations regarding the establishment and operation of, including assistance with the development of content and materials for, educational programs to inform and educate consumers, particularly those most vulnerable with respect to residential mortgage loans (such as elderly persons, persons facing language barriers, low-income persons, minorities, and other potentially vulnerable consumers), regarding home mortgages, mortgage refinancing, home equity loans, home repair loans, and where appropriate by region, any requirements and costs associated with obtaining flood or other disaster-specific insurance coverage.".

(b) CONFORMING AMENDMENTS TO GRANT PROGRAM FOR HOMEOWNERSHIP COUNSELING ORGANIZATIONS.—Section 106(c)(5)(A)(ii) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(c)(5)(A)(ii)) is amended—

(1) in subclause (III), by striking "and" at the end;

(2) in subclause (IV) by striking the period at the end and inserting "; and"; and

(3) by inserting after subclause (IV) the following new subclause:

"(V) notify the housing or mortgage applicant of the availability of mortgage software systems provided pursuant to subsection (g)(3).".

SEC. 1444. GRANTS FOR HOUSING COUNSELING ASSISTANCE.

Section 106(a) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(a)) is amended by adding at the end the following new paragraph:

"(4) HOMEOWNERSHIP AND RENTAL COUNSELING ASSISTANCE.—

"(A) IN GENERAL.—The Secretary shall make financial assistance available under this paragraph to HUD-approved housing counseling agencies and State housing finance agencies.

"(B) QUALIFIED ENTITIES.—The Secretary shall establish standards and guidelines for eligibility of organizations (including governmental and nonprofit organizations) to receive assistance under this paragraph, in accordance with subparagraph (D).

"(C) DISTRIBUTION.—Assistance made available under this paragraph shall be distributed in a manner that encourages efficient and successful counseling programs and that ensures adequate distribution of amounts for rural areas having traditionally low levels of access to such counseling services, including areas with insufficient access to the Internet. In distributing such assistance, the Secretary may give priority consideration to entities serving areas with the highest home foreclosure rates.

"(D) LIMITATION ON DISTRIBUTION OF ASSISTANCE.—

"(i) IN GENERAL.—None of the amounts made available under this paragraph shall be distributed to—

"(I) any organization which has been convicted for a violation under Federal law relating to an election for Federal office; or

"(II) any organization which employs applicable individuals.

"(ii) DEFINITION OF APPLICABLE INDIVIDUALS.—In this subparagraph, the term 'applicable individual' means an individual who—

"(I) is—

"(aa) employed by the organization in a permanent or temporary capacity;

"(bb) contracted or retained by the organization; or

"(cc) acting on behalf of, or with the express or apparent authority of, the organization; and

"(II) has been convicted for a violation under Federal law relating to an election for Federal office.

"(E) GRANTMAKING PROCESS.—In making assistance available under this paragraph, the Secretary shall consider appropriate ways of streamlining and improving the processes for grant application, review, approval, and award.

"(F) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $45,000,000 for each of fiscal years 2009 through 2012 for—

"(i) the operations of the Office of Housing Counseling of the Department of Housing and Urban Development;

"(ii) the responsibilities of the Director of Housing Counseling under paragraphs (2) through (5) of subsection (g); and

"(iii) assistance pursuant to this paragraph for entities providing homeownership and rental counseling.".

SEC. 1445. REQUIREMENTS TO USE HUD-CERTIFIED COUNSELORS UNDER HUD PROGRAMS.

Section 106(e) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(e)) is amended—

(1) by striking paragraph (1) and inserting the following new paragraph:

"(1) REQUIREMENT FOR ASSISTANCE.—An organization may not receive assistance for counseling activities under subsection (a)(1)(iii), (a)(2), (a)(4), (c), or (d) of this section, or under section 101(e), unless the organization, or the individuals through which the organization provides such counseling, has been certified by the Secretary under this subsection as competent to provide such counseling.";

(2) in paragraph (2)—

(A) by inserting "and for certifying organizations" before the period at the end of the first sentence; and

(B) in the second sentence by striking "for certification" and inserting ", for certification of an organization, that each individual through which the organization provides counseling shall demonstrate, and, for certification of an individual,";

(3) in paragraph (3), by inserting "organizations and" before "individuals";

(4) by redesignating paragraph (3) as paragraph (5); and

(5) by inserting after paragraph (2) the following new paragraphs:

"(3) REQUIREMENT UNDER HUD PROGRAMS.—Any homeownership counseling or rental housing counseling (as such terms are defined in subsection (g)(1)) required under, or provided in connection with, any program administered by the Department of Housing and Urban Development shall be provided only by organizations or counselors certified by the Secretary under this subsection as competent to provide such counseling.

"(4) OUTREACH.—The Secretary shall take such actions as the Secretary considers appropriate to ensure that individuals and organizations providing homeownership or rental housing counseling are aware of the certification requirements and standards of this subsection and of the training and certification programs under subsection (f).".

SEC. 1446. STUDY OF DEFAULTS AND FORECLOSURES.

The Secretary of Housing and Urban Development shall conduct an extensive study of the root causes of default and foreclosure of home loans, using as much empirical data as are available. The study shall also examine the role of escrow accounts in helping prime and nonprime borrowers to avoid defaults and foreclosures, and the role of computer registries of mortgages, including those used for trading mortgage loans. Not later than 12 months after the date of the enactment of this Act, the Secretary shall submit to the Congress a preliminary report regarding the study. Not later than 24 months after such date of enactment, the Secretary shall submit a final report regarding the results of the study, which shall include any recommended legislation relating to the study, and recommendations for best practices and for a process to identify populations that need counseling the most.

SEC. 1447. DEFAULT AND FORECLOSURE DATABASE.

(a) ESTABLISHMENT.—The Secretary of Housing and Urban Development and the Director of the Bureau, in consultation with the Federal agencies responsible for regulation of banking and financial institutions involved in residential mortgage lending and servicing, shall establish and maintain a database of information on foreclosures and defaults on mortgage loans for one- to four-unit residential properties and shall make such information publicly available, subject to subsection (e).

(b) CENSUS TRACT DATA.—Information in the database may be collected, aggregated, and made available on a census tract basis.

(c) REQUIREMENTS.—Information collected and made available through the database shall include—

(1) the number and percentage of such mortgage loans that are delinquent by more than 30 days;

(2) the number and percentage of such mortgage loans that are delinquent by more than 90 days;

(3) the number and percentage of such properties that are real estate-owned;

(4) number and percentage of such mortgage loans that are in the foreclosure process;

(5) the number and percentage of such mortgage loans that have an outstanding principal obligation amount that is greater than the value of the property for which the loan was made; and

(6) such other information as the Secretary of Housing and Urban Development and the Director of the Bureau consider appropriate.

(d) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to encourage discriminatory or unsound allocation of credit or lending policies or practices.

(e) PRIVACY AND CONFIDENTIALITY.—In establishing and maintaining the database described in subsection (a), the Secretary of Housing and Urban Development and the Director of the Bureau shall—

(1) be subject to the standards applicable to Federal agencies for the protection of the confidentiality of personally identifiable information and for data security and integrity;

(2) implement the necessary measures to conform to the standards for data integrity and security described in paragraph (1); and

(3) collect and make available information under this section, in accordance with paragraphs (5) and (6) of section 1022(c) and the rules prescribed under such paragraphs, in order to protect privacy and confidentiality.

SEC. 1448. DEFINITIONS FOR COUNSELING-RELATED PROGRAMS.

Section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x), as amended by the preceding provisions of this subtitle, is amended by adding at the end the following new subsection:

"(h) DEFINITIONS.—For purposes of this section:

"(1) NONPROFIT ORGANIZATION.—The term 'nonprofit organization' has the meaning given such term in section 104(5) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12704(5)), except that subparagraph (D) of such section shall not apply for purposes of this section.

"(2) STATE.—The term 'State' means each of the several States, the Commonwealth of Puerto Rico, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, the Trust Territories of the Pacific, or any other possession of the United States.

"(3) UNIT OF GENERAL LOCAL GOVERNMENT.—The term 'unit of general local government' means any city, county, parish, town, township, borough, village, or other general purpose political subdivision of a State.

"(4) HUD-APPROVED COUNSELING AGENCY.—The term 'HUD-approved counseling agency' means a private or public nonprofit organization that is—

"(A) exempt from taxation under section 501(c) of the Internal Revenue Code of 1986; and

"(B) certified by the Secretary to provide housing counseling services.

"(5) STATE HOUSING FINANCE AGENCY.—The term 'State housing finance agency' means any public body, agency, or instrumentality specifically created under State statute that is authorised to finance activities designed to provide housing and related facilities throughout an entire State through land acquisition, construction, or rehabilitation.".

SEC. 1449. ACCOUNTABILITY AND TRANSPARENCY FOR GRANT RECIPIENTS.

Section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x), as amended by the preceding provisions of this subtitle, is amended by adding at the end the following:

"(i) ACCOUNTABILITY FOR RECIPIENTS OF COVERED ASSISTANCE.—

"(1) TRACKING OF FUNDS.—The Secretary shall—

"(A) develop and maintain a system to ensure that any organization or entity that receives any covered assistance uses all amounts of covered assistance in accordance with this section, the regulations issued under this section, and any requirements or conditions under which such amounts were provided; and

"(B) require any organization or entity, as a condition of receipt of any covered assistance, to agree to comply with such requirements regarding covered assistance as the Secretary shall establish, which shall include—

"(i) appropriate periodic financial and grant activity reporting, record retention, and audit requirements for the duration of the covered assistance to the organization or entity to ensure compliance with the limitations and requirements of this section, the regulations under this section, and any requirements or conditions under which such amounts were provided; and

"(ii) any other requirements that the Secretary determines are necessary to ensure appropriate administration and compliance.

"(2) MISUSE OF FUNDS.—If any organization or entity that receives any covered assistance is determined by the Secretary to have used any covered assistance in a manner that is materially in violation of this section, the regulations issued under this section, or any requirements or conditions under which such assistance was provided—

"(A) the Secretary shall require that, within 12 months after the determination of such misuse, the organization or entity shall reimburse the Secretary for such misused amounts and return to the Secretary any such amounts that remain unused or uncommitted for use; and

"(B) such organization or entity shall be ineligible, at any time after such determination, to apply for or receive any further covered assistance.

The remedies under this paragraph are in addition to any other remedies that may be available under law.

"(3) COVERED ASSISTANCE.—For purposes of this subsection, the term 'covered assistance' means any grant or other financial assistance provided under this section.".

SEC. 1450. UPDATING AND SIMPLIFICATION OF MORTGAGE INFORMATION BOOKLET.

Section 5 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2604) is amended—

(1) in the section heading, by striking "SPECIAL" and inserting "HOME BUYING";

(2) by striking subsections (a) and (b) and inserting the following new subsections:

"(a) PREPARATION AND DISTRIBUTION.—The Director of the Bureau of Consumer Financial Protection (hereafter in this section referred to as the 'Director') shall prepare, at least once every 5 years, a booklet to help consumers applying for federally related mortgage loans to understand the nature and costs of real estate settlement services. The Director shall prepare the booklet in various languages and cultural styles, as the Director determines to be appropriate, so that the booklet is understandable and accessible to homebuyers of different ethnic and cultural backgrounds. The Director shall distribute such booklets to all lenders that make federally related mortgage loans. The Director shall also distribute to such lenders lists, organized by location, of homeownership counselors certified under section 106(e) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(e)) for use in complying with the requirement under subsection (c) of this section.

"(b) CONTENTS.—Each booklet shall be in such form and detail as the Director shall prescribe and, in addition to such other information as the Director may provide, shall include in plain and understandable language the following information:

"(1) A description and explanation of the nature and purpose of the costs incident to a real estate settlement or a federally related mortgage loan. The description and explanation shall provide general information about the mortgage process as well as specific information concerning, at a minimum—

"(A) balloon payments;

"(B) prepayment penalties;

"(C) the advantages of prepayment; and

"(D) the trade-off between closing costs and the interest rate over the life of the loan.

"(2) An explanation and sample of the uniform settlement statement required by section 4.

"(3) A list and explanation of lending practices, including those prohibited by the Truth in Lending Act or other applicable Federal law, and of other unfair practices and unreasonable or unnecessary charges to be avoided by the prospective buyer with respect to a real estate settlement.

"(4) A list and explanation of questions a consumer obtaining a federally related mortgage loan should ask regarding the loan, including whether the consumer will have the ability to repay the loan, whether the consumer sufficiently shopped for the loan, whether the loan terms include prepayment penalties or balloon payments, and whether the loan will benefit the borrower.

"(5) An explanation of the right of rescission as to certain transactions provided by sections 125 and 129 of the Truth in Lending Act.

"(6) A brief explanation of the nature of a variable rate mortgage and a reference to the booklet entitled 'Consumer Handbook on Adjustable Rate Mortgages', published by the Director, or to any suitable substitute of such booklet that the Director may subsequently adopt pursuant to such section.

"(7) A brief explanation of the nature of a home equity line of credit and a reference to the pamphlet required to be provided under section 127A of the Truth in Lending Act.

"(8) Information about homeownership counseling services made available pursuant to section 106(a)(4) of the Housing

and Urban Development Act of 1968 (12 U.S.C. 1701x(a)(4)), a recommendation that the consumer use such services, and notification that a list of certified providers of homeownership counseling in the area, and their contact information, is available.

"(9) An explanation of the nature and purpose of escrow accounts when used in connection with loans secured by residential real estate and the requirements under section 10 of this Act regarding such accounts.

"(10) An explanation of the choices available to buyers of residential real estate in selecting persons to provide necessary services incidental to a real estate settlement.

"(11) An explanation of a consumer's responsibilities, liabilities, and obligations in a mortgage transaction.

"(12) An explanation of the nature and purpose of real estate appraisals, including the difference between an appraisal and a home inspection.

"(13) Notice that the Office of Housing of the Department of Housing and Urban Development has made publicly available a brochure regarding loan fraud and a World Wide Web address and toll-free telephone number for obtaining the brochure.

The booklet prepared pursuant to this section shall take into consideration differences in real estate settlement procedures that may exist among the several States and territories of the United States and among separate political subdivisions within the same State and territory.";

(3) in subsection (c), by inserting at the end the following new sentence: "Each lender shall also include with the booklet a reasonably complete or updated list of homeownership counselors who are certified pursuant to section 106(e) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(e)) and located in the area of the lender."; and

(4) in subsection (d), by inserting after the period at the end of the first sentence the following: "The lender shall provide the booklet in the version that is most appropriate for the person receiving it.".

SEC. 1451. HOME INSPECTION COUNSELING.

(a) PUBLIC OUTREACH.—

(1) IN GENERAL.—The Secretary of Housing and Urban Development (in this section referred to as the "Secretary") shall take such actions as may be necessary to inform potential homebuyers of the availability and importance of obtaining an independent home inspection. Such actions shall include—

(A) publication of the HUD/FHA form HUD 92564–CN entitled "For Your Protection: Get a Home Inspection", in both English and Spanish languages;

(B) publication of the HUD/FHA booklet entitled "For Your Protection: Get a Home Inspection", in both English and Spanish languages;

(C) development and publication of a HUD booklet entitled "For Your Protection—Get a Home Inspection" that does not reference FHA-insured homes, in both English and Spanish languages; and

(D) publication of the HUD document entitled "Ten Important Questions To Ask Your Home Inspector", in both English and Spanish languages.

(2) AVAILABILITY.—The Secretary shall make the materials specified in paragraph (1) available for electronic access and, where appropriate, inform potential homebuyers of such availability through home purchase counseling public service announcements and toll-free telephone hotlines of the Department of Housing and Urban Development. The Secretary shall give special emphasis to reaching first-time and low-income homebuyers with these materials and efforts.

(3) UPDATING.—The Secretary may periodically update and revise such materials, as the Secretary determines to be appropriate.

(b) REQUIREMENT FOR FHA-APPROVED LENDERS.—Each mortgagee approved for participation in the mortgage insurance programs under title II of the National Housing Act shall provide prospective homebuyers, at first contact, whether upon pre-qualification, pre-approval, or initial application, the materials specified in subparagraphs (A), (B), and (D) of subsection (a)(1).

(c) REQUIREMENTS FOR HUD-APPROVED COUNSELING AGENCIES.—Each counseling agency certified pursuant by the Secretary to provide housing counseling services shall provide each of their clients, as part of the home purchase counseling process, the materials specified in subparagraphs (C) and (D) of subsection (a)(1).

(d) TRAINING.—Training provided the Department of Housing and Urban Development for housing counseling agencies, whether such training is provided directly by the Department or otherwise, shall include—

(1) providing information on counseling potential homebuyers of the availability and importance of getting an independent home inspection;

(2) providing information about the home inspection process, including the reasons for specific inspections such as radon and lead-based paint testing;

(3) providing information about advising potential homebuyers on how to locate and select a qualified home inspector; and

(4) review of home inspection public outreach materials of the Department.

SEC. 1452. WARNINGS TO HOMEOWNERS OF FORECLOSURE RESCUE SCAMS.

(a) ASSISTANCE TO NRC.—Notwithstanding any other provision of law, of any amounts made available for any fiscal year pursuant to section 106(a)(4)(F) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(a)(4)(F)) (as added by section 1444), 10 percent shall be used only for assistance to the Neighborhood Reinvestment Corporation for activities, in consultation with servicers of residential mortgage loans, to provide notice to borrowers under such loans who are delinquent with respect to payments due under such loans that makes such borrowers aware of the dangers of fraudulent activities associated with foreclosure.

(b) NOTICE.—The Neighborhood Reinvestment Corporation, in consultation with servicers of residential mortgage loans, shall use the amounts provided pursuant to subsection (a) to carry out activities to inform borrowers under residential mortgage loans—

(1) that the foreclosure process is complex and can be confusing;

(2) that the borrower may be approached during the foreclosure process by persons regarding saving their home and they should use caution in any such dealings;

(3) that there are Federal Government and nonprofit agencies that may provide information about the foreclosure process, including the Department of Housing and Urban Development;

(4) that they should contact their lender immediately, contact the Department of Housing and Urban Development to find a housing counseling agency certified by the Department to assist in avoiding foreclosure, or visit the Department's website regarding tips for avoiding foreclosure; and

(5) of the telephone number of the loan servicer or successor, the telephone number of the Department of Housing and Urban Development housing counseling line, and the Uniform Resource Locators (URLs) for the Department of Housing and Urban Development Web sites for housing counseling and for tips for avoiding foreclosure.

Subtitle E—Mortgage Servicing

SEC. 1461. ESCROW AND IMPOUND ACCOUNTS RELATING TO CERTAIN CONSUMER CREDIT TRANSACTIONS.

(a) IN GENERAL.—Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by inserting after section 129C (as added by section 1411) the following new section:

"§ 129D. Escrow or impound accounts relating to certain consumer credit transactions

"(a) IN GENERAL.—Except as provided in subsection (b), (c), (d), or (e), a creditor, in connection with the consummation of a consumer credit transaction secured by a first lien on the principal dwelling of the consumer, other than a consumer credit transaction under an open end credit plan or a reverse mortgage, shall establish, before the consummation of such transaction, an escrow or impound account for the payment of taxes and hazard insurance, and, if applicable, flood insurance, mortgage insurance, ground rents, and any other required periodic payments or premiums with respect to the property or the loan terms, as provided in, and in accordance with, this section.

"(b) WHEN REQUIRED.—No impound, trust, or other type of account for the payment of property taxes, insurance premiums, or other purposes relating to the property may be required as a condition of a real property sale contract or a loan secured by a first deed of trust or mortgage on the principal dwelling of the consumer, other than a consumer credit transaction under an open end credit plan or a reverse mortgage, except when—

"(1) any such impound, trust, or other type of escrow or impound account for such purposes is required by Federal or State law;

"(2) a loan is made, guaranteed, or insured by a State or Federal governmental lending or insuring agency;

"(3) the transaction is secured by a first mortgage or lien on the consumer's principal dwelling having an original principal obligation amount that—

"(A) does not exceed the amount of the maximum limitation on the original principal obligation of mortgage

in effect for a residence of the applicable size, as of the date such interest rate set, pursuant to the sixth sentence of section 305(a)(2) the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)), and the annual percentage rate will exceed the average prime offer rate as defined in section 129C by 1.5 or more percentage points; or

"(B) exceeds the amount of the maximum limitation on the original principal obligation of mortgage in effect for a residence of the applicable size, as of the date such interest rate set, pursuant to the sixth sentence of section 305(a)(2) the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)), and the annual percentage rate will exceed the average prime offer rate as defined in section 129C by 2.5 or more percentage points; or

"(4) so required pursuant to regulation.

"(c) EXEMPTIONS.—The Board may, by regulation, exempt from the requirements of subsection (a) a creditor that—

"(1) operates predominantly in rural or underserved areas;

"(2) together with all affiliates, has total annual mortgage loan originations that do not exceed a limit set by the Board;

"(3) retains its mortgage loan originations in portfolio; and

"(4) meets any asset size threshold and any other criteria the Board may establish, consistent with the purposes of this subtitle.

"(d) DURATION OF MANDATORY ESCROW OR IMPOUND ACCOUNT.—An escrow or impound account established pursuant to subsection (b) shall remain in existence for a minimum period of 5 years, beginning with the date of the consummation of the loan, unless and until—

"(1) such borrower has sufficient equity in the dwelling securing the consumer credit transaction so as to no longer be required to maintain private mortgage insurance;

"(2) such borrower is delinquent;

"(3) such borrower otherwise has not complied with the legal obligation, as established by rule; or

"(4) the underlying mortgage establishing the account is terminated.

"(e) LIMITED EXEMPTIONS FOR LOANS SECURED BY SHARES IN A COOPERATIVE OR IN WHICH AN ASSOCIATION MUST MAINTAIN A MASTER INSURANCE POLICY.—Escrow accounts need not be established for loans secured by shares in a cooperative. Insurance premiums need not be included in escrow accounts for loans secured by dwellings or units, where the borrower must join an association as a condition of ownership, and that association has an obligation to the dwelling or unit owners to maintain a master policy insuring the dwellings or units.

"(f) CLARIFICATION ON ESCROW ACCOUNTS FOR LOANS NOT MEETING STATUTORY TEST.—For mortgages not covered by the requirements of subsection (b), no provision of this section shall be construed as precluding the establishment of an impound, trust, or other type of account for the payment of property taxes, insurance premiums, or other purposes relating to the property—

"(1) on terms mutually agreeable to the parties to the loan;

"(2) at the discretion of the lender or servicer, as provided by the contract between the lender or servicer and the borrower; or

"(3) pursuant to the requirements for the escrowing of flood insurance payments for regulated lending institutions in section 102(d) of the Flood Disaster Protection Act of 1973.

"(g) ADMINISTRATION OF MANDATORY ESCROW OR IMPOUND ACCOUNTS.—

"(1) IN GENERAL.—Except as may otherwise be provided for in this title or in regulations prescribed by the Board, escrow or impound accounts established pursuant to subsection (b) shall be established in a federally insured depository institution or credit union.

"(2) ADMINISTRATION.—Except as provided in this section or regulations prescribed under this section, an escrow or impound account subject to this section shall be administered in accordance with—

"(A) the Real Estate Settlement Procedures Act of 1974 and regulations prescribed under such Act;

"(B) the Flood Disaster Protection Act of 1973 and regulations prescribed under such Act; and

"(C) the law of the State, if applicable, where the real property securing the consumer credit transaction is located.

"(3) APPLICABILITY OF PAYMENT OF INTEREST.—If prescribed by applicable State or Federal law, each creditor shall pay interest to the consumer on the amount held in any impound, trust, or escrow account that is subject to this section in the manner as prescribed by that applicable State or Federal law.

"(4) PENALTY COORDINATION WITH RESPA.—Any action or omission on the part of any person which constitutes a violation of the Real Estate Settlement Procedures Act of 1974 or any regulation prescribed under such Act for which the person has paid any fine, civil money penalty, or other damages shall not give rise to any additional fine, civil money penalty, or other damages under this section, unless the action or omission also constitutes a direct violation of this section.

"(h) DISCLOSURES RELATING TO MANDATORY ESCROW OR IMPOUND ACCOUNT.—In the case of any impound, trust, or escrow account that is required under subsection (b), the creditor shall disclose by written notice to the consumer at least 3 business days before the consummation of the consumer credit transaction giving rise to such account or in accordance with timeframes established in prescribed regulations the following information:

"(1) The fact that an escrow or impound account will be established at consummation of the transaction.

"(2) The amount required at closing to initially fund the escrow or impound account.

"(3) The amount, in the initial year after the consummation of the transaction, of the estimated taxes and hazard insurance, including flood insurance, if applicable, and any other required periodic payments or premiums that reflects, as appropriate, either the taxable assessed value of the real property securing the transaction, including the value of any improvements on the property or to be constructed on the property (whether or not such construction will be financed from the proceeds of the transaction) or the replacement costs of the property.

"(4) The estimated monthly amount payable to be escrowed for taxes, hazard insurance (including flood insurance, if

applicable) and any other required periodic payments or premiums.

"(5) The fact that, if the consumer chooses to terminate the account in the future, the consumer will become responsible for the payment of all taxes, hazard insurance, and flood insurance, if applicable, as well as any other required periodic payments or premiums on the property unless a new escrow or impound account is established.

"(6) Such other information as the Board determines necessary for the protection of the consumer.

"(i) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

"(1) FLOOD INSURANCE.—The term 'flood insurance' means flood insurance coverage provided under the national flood insurance program pursuant to the National Flood Insurance Act of 1968.

"(2) HAZARD INSURANCE.—The term 'hazard insurance' shall have the same meaning as provided for 'hazard insurance', 'casualty insurance', 'homeowner's insurance', or other similar term under the law of the State where the real property securing the consumer credit transaction is located.".

(b) EXEMPTIONS AND MODIFICATIONS.—The Board may prescribe rules that revise, add to, or subtract from the criteria of section 129D(b) of the Truth in Lending Act if the Board determines that such rules are in the interest of consumers and in the public interest.

(c) CLERICAL AMENDMENT.—The table of sections for chapter 2 of the Truth in Lending Act is amended by inserting after the item relating to section 129C (as added by section 1411) the following new item:

"129D. Escrow or impound accounts relating to certain consumer credit transactions.".

SEC. 1462. DISCLOSURE NOTICE REQUIRED FOR CONSUMERS WHO WAIVE ESCROW SERVICES.

Section 129D of the Truth in Lending Act (as added by section 1461) is amended by adding at the end the following new subsection:

"(j) DISCLOSURE NOTICE REQUIRED FOR CONSUMERS WHO WAIVE ESCROW SERVICES.—

"(1) IN GENERAL.—If—

"(A) an impound, trust, or other type of account for the payment of property taxes, insurance premiums, or other purposes relating to real property securing a consumer credit transaction is not established in connection with the transaction; or

"(B) a consumer chooses, and provides written notice to the creditor or servicer of such choice, at any time after such an account is established in connection with any such transaction and in accordance with any statute, regulation, or contractual agreement, to close such account,

the creditor or servicer shall provide a timely and clearly written disclosure to the consumer that advises the consumer of the responsibilities of the consumer and implications for the consumer in the absence of any such account.

"(2) DISCLOSURE REQUIREMENTS.—Any disclosure provided to a consumer under paragraph (1) shall include the following:

"(A) Information concerning any applicable fees or costs associated with either the non-establishment of any such account at the time of the transaction, or any subsequent closure of any such account.

"(B) A clear and prominent statement that the consumer is responsible for personally and directly paying the non-escrowed items, in addition to paying the mortgage loan payment, in the absence of any such account, and the fact that the costs for taxes, insurance, and related fees can be substantial.

"(C) A clear explanation of the consequences of any failure to pay non-escrowed items, including the possible requirement for the forced placement of insurance by the creditor or servicer and the potentially higher cost (including any potential commission payments to the servicer) or reduced coverage for the consumer in the event of any such creditor-placed insurance.

"(D) Such other information as the Board determines necessary for the protection of the consumer.".

SEC. 1463. REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974 AMENDMENTS.

(a) SERVICER PROHIBITIONS.—Section 6 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605) is amended by adding at the end the following new subsections:

"(k) SERVICER PROHIBITIONS.—

"(1) IN GENERAL.—A servicer of a federally related mortgage shall not—

"(A) obtain force-placed hazard insurance unless there is a reasonable basis to believe the borrower has failed to comply with the loan contract's requirements to maintain property insurance;

"(B) charge fees for responding to valid qualified written requests (as defined in regulations which the Bureau of Consumer Financial Protection shall prescribe) under this section;

"(C) fail to take timely action to respond to a borrower's requests to correct errors relating to allocation of payments, final balances for purposes of paying off the loan, or avoiding foreclosure, or other standard servicer's duties;

"(D) fail to respond within 10 business days to a request from a borrower to provide the identity, address, and other relevant contact information about the owner or assignee of the loan; or

"(E) fail to comply with any other obligation found by the Bureau of Consumer Financial Protection, by regulation, to be appropriate to carry out the consumer protection purposes of this Act.

"(2) FORCE-PLACED INSURANCE DEFINED.—For purposes of this subsection and subsections (l) and (m), the term 'force-placed insurance' means hazard insurance coverage obtained by a servicer of a federally related mortgage when the borrower has failed to maintain or renew hazard insurance on such property as required of the borrower under the terms of the mortgage.

"(l) REQUIREMENTS FOR FORCE-PLACED INSURANCE.—A servicer of a federally related mortgage shall not be construed as having

a reasonable basis for obtaining force-placed insurance unless the requirements of this subsection have been met.

"(1) WRITTEN NOTICES TO BORROWER.—A servicer may not impose any charge on any borrower for force-placed insurance with respect to any property securing a federally related mortgage unless—

"(A) the servicer has sent, by first-class mail, a written notice to the borrower containing—

"(i) a reminder of the borrower's obligation to maintain hazard insurance on the property securing the federally related mortgage;

"(ii) a statement that the servicer does not have evidence of insurance coverage of such property;

"(iii) a clear and conspicuous statement of the procedures by which the borrower may demonstrate that the borrower already has insurance coverage; and

"(iv) a statement that the servicer may obtain such coverage at the borrower's expense if the borrower does not provide such demonstration of the borrower's existing coverage in a timely manner;

"(B) the servicer has sent, by first-class mail, a second written notice, at least 30 days after the mailing of the notice under subparagraph (A) that contains all the information described in each clause of such subparagraph; and

"(C) the servicer has not received from the borrower any demonstration of hazard insurance coverage for the property securing the mortgage by the end of the 15-day period beginning on the date the notice under subparagraph (B) was sent by the servicer.

"(2) SUFFICIENCY OF DEMONSTRATION.—A servicer of a federally related mortgage shall accept any reasonable form of written confirmation from a borrower of existing insurance coverage, which shall include the existing insurance policy number along with the identity of, and contact information for, the insurance company or agent, or as otherwise required by the Bureau of Consumer Financial Protection.

"(3) TERMINATION OF FORCE-PLACED INSURANCE.—Within 15 days of the receipt by a servicer of confirmation of a borrower's existing insurance coverage, the servicer shall—

"(A) terminate the force-placed insurance; and

"(B) refund to the consumer all force-placed insurance premiums paid by the borrower during any period during which the borrower's insurance coverage and the force-placed insurance coverage were each in effect, and any related fees charged to the consumer's account with respect to the force-placed insurance during such period.

"(4) CLARIFICATION WITH RESPECT TO FLOOD DISASTER PROTECTION ACT.—No provision of this section shall be construed as prohibiting a servicer from providing simultaneous or concurrent notice of a lack of flood insurance pursuant to section 102(e) of the Flood Disaster Protection Act of 1973.

"(m) LIMITATIONS ON FORCE-PLACED INSURANCE CHARGES.—All charges, apart from charges subject to State regulation as the business of insurance, related to force-placed insurance imposed on the borrower by or through the servicer shall be bona fide and reasonable.".

(b) INCREASE IN PENALTY AMOUNTS.—Section 6(f) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605(f)) is amended—

(1) in paragraphs (1)(B) and (2)(B), by striking "$1,000" each place such term appears and inserting "$2,000"; and

(2) in paragraph (2)(B)(i), by striking "$500,000" and inserting "$1,000,000".

(c) DECREASE IN RESPONSE TIMES.—Section 6(e) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605(e)) is amended—

(1) in paragraph (1)(A), by striking "20 days" and inserting "5 days";

(2) in paragraph (2), by striking "60 days" and inserting "30 days"; and

(3) by adding at the end the following new paragraph:

"(4) LIMITED EXTENSION OF RESPONSE TIME.—The 30-day period described in paragraph (2) may be extended for not more than 15 days if, before the end of such 30-day period, the servicer notifies the borrower of the extension and the reasons for the delay in responding.".

(d) PROMPT REFUND OF ESCROW ACCOUNTS UPON PAYOFF.—Section 6(g) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605(g)) is amended by adding at the end the following new sentence: "Any balance in any such account that is within the servicer's control at the time the loan is paid off shall be promptly returned to the borrower within 20 business days or credited to a similar account for a new mortgage loan to the borrower with the same lender.".

SEC. 1464. TRUTH IN LENDING ACT AMENDMENTS.

(a) REQUIREMENTS FOR PROMPT CREDITING OF HOME LOAN PAYMENTS.—Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by inserting after section 129E (as added by section 1472) the following new section:

"§ 129F. Requirements for prompt crediting of home loan payments

"(a) IN GENERAL.—In connection with a consumer credit transaction secured by a consumer's principal dwelling, no servicer shall fail to credit a payment to the consumer's loan account as of the date of receipt, except when a delay in crediting does not result in any charge to the consumer or in the reporting of negative information to a consumer reporting agency, except as required in subsection (b).

"(b) EXCEPTION.—If a servicer specifies in writing requirements for the consumer to follow in making payments, but accepts a payment that does not conform to the requirements, the servicer shall credit the payment as of 5 days after receipt.".

(b) REQUESTS FOR PAYOFF AMOUNTS.—Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.), as amended by this title, is amended by inserting after section 129F (as added by subsection (a)) the following new section:

"§ 129G. Requests for payoff amounts of home loan

"A creditor or servicer of a home loan shall send an accurate payoff balance within a reasonable time, but in no case more

than 7 business days, after the receipt of a written request for such balance from or on behalf of the borrower.".

SEC. 1465. ESCROWS INCLUDED IN REPAYMENT ANALYSIS.

Section 128(b) of the Truth in Lending Act (15 U.S.C. 1638(b)) is amended by adding at the end the following new paragraph:

"(4) REPAYMENT ANALYSIS REQUIRED TO INCLUDE ESCROW PAYMENTS.—

"(A) IN GENERAL.—In the case of any consumer credit transaction secured by a first mortgage or lien on the principal dwelling of the consumer, other than a consumer credit transaction under an open end credit plan or a reverse mortgage, for which an impound, trust, or other type of account has been or will be established in connection with the transaction for the payment of property taxes, hazard and flood (if any) insurance premiums, or other periodic payments or premiums with respect to the property, the information required to be provided under subsection (a) with respect to the number, amount, and due dates or period of payments scheduled to repay the total of payments shall take into account the amount of any monthly payment to such account for each such repayment in accordance with section 10(a)(2) of the Real Estate Settlement Procedures Act of 1974.

"(B) ASSESSMENT VALUE.—The amount taken into account under subparagraph (A) for the payment of property taxes, hazard and flood (if any) insurance premiums, or other periodic payments or premiums with respect to the property shall reflect the taxable assessed value of the real property securing the transaction after the consummation of the transaction, including the value of any improvements on the property or to be constructed on the property (whether or not such construction will be financed from the proceeds of the transaction), if known, and the replacement costs of the property for hazard insurance, in the initial year after the transaction.".

Subtitle F—Appraisal Activities

SEC. 1471. PROPERTY APPRAISAL REQUIREMENTS.

Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by inserting after 129G (as added by section 1464(b)) the following new section:

"§ 129H. Property appraisal requirements

"(a) IN GENERAL.—A creditor may not extend credit in the form of a higher-risk mortgage to any consumer without first obtaining a written appraisal of the property to be mortgaged prepared in accordance with the requirements of this section.

"(b) APPRAISAL REQUIREMENTS.—

"(1) PHYSICAL PROPERTY VISIT.—Subject to the rules prescribed under paragraph (4), an appraisal of property to be secured by a higher-risk mortgage does not meet the requirement of this section unless it is performed by a certified or licensed appraiser who conducts a physical property visit of the interior of the mortgaged property.

"(2) SECOND APPRAISAL UNDER CERTAIN CIRCUMSTANCES.—

"(A) IN GENERAL.—If the purpose of a higher-risk mortgage is to finance the purchase or acquisition of the mortgaged property from a person within 180 days of the purchase or acquisition of such property by that person at a price that was lower than the current sale price of the property, the creditor shall obtain a second appraisal from a different certified or licensed appraiser. The second appraisal shall include an analysis of the difference in sale prices, changes in market conditions, and any improvements made to the property between the date of the previous sale and the current sale.

"(B) NO COST TO APPLICANT.—The cost of any second appraisal required under subparagraph (A) may not be charged to the applicant.

"(3) CERTIFIED OR LICENSED APPRAISER DEFINED.—For purposes of this section, the term 'certified or licensed appraiser' means a person who—

"(A) is, at a minimum, certified or licensed by the State in which the property to be appraised is located; and

"(B) performs each appraisal in conformity with the Uniform Standards of Professional Appraisal Practice and title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, and the regulations prescribed under such title, as in effect on the date of the appraisal.

"(4) REGULATIONS.—

"(A) IN GENERAL.—The Board, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, the Federal Housing Finance Agency, and the Bureau shall jointly prescribe regulations to implement this section.

"(B) EXEMPTION.—The agencies listed in subparagraph (A) may jointly exempt, by rule, a class of loans from the requirements of this subsection or subsection (a) if the agencies determine that the exemption is in the public interest and promotes the safety and soundness of creditors.

"(c) FREE COPY OF APPRAISAL.—A creditor shall provide 1 copy of each appraisal conducted in accordance with this section in connection with a higher-risk mortgage to the applicant without charge, and at least 3 days prior to the transaction closing date.

"(d) CONSUMER NOTIFICATION.—At the time of the initial mortgage application, the applicant shall be provided with a statement by the creditor that any appraisal prepared for the mortgage is for the sole use of the creditor, and that the applicant may choose to have a separate appraisal conducted at the expense of the applicant.

"(e) VIOLATIONS.—In addition to any other liability to any person under this title, a creditor found to have willfully failed to obtain an appraisal as required in this section shall be liable to the applicant or borrower for the sum of $2,000.

"(f) HIGHER-RISK MORTGAGE DEFINED.—For purposes of this section, the term 'higher-risk mortgage' means a residential mortgage loan, other than a reverse mortgage loan that is a qualified mortgage, as defined in section 129C, secured by a principal dwelling—

"(1) that is not a qualified mortgage, as defined in section 129C; and

"(2) with an annual percentage rate that exceeds the average prime offer rate for a comparable transaction, as defined in section 129C, as of the date the interest rate is set—

"(A) by 1.5 or more percentage points, in the case of a first lien residential mortgage loan having an original principal obligation amount that does not exceed the amount of the maximum limitation on the original principal obligation of mortgage in effect for a residence of the applicable size, as of the date of such interest rate set, pursuant to the sixth sentence of section 305(a)(2) the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2));

"(B) by 2.5 or more percentage points, in the case of a first lien residential mortgage loan having an original principal obligation amount that exceeds the amount of the maximum limitation on the original principal obligation of mortgage in effect for a residence of the applicable size, as of the date of such interest rate set, pursuant to the sixth sentence of section 305(a)(2) the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)); and

"(C) by 3.5 or more percentage points for a subordinate lien residential mortgage loan.".

SEC. 1472. APPRAISAL INDEPENDENCE REQUIREMENTS.

(a) IN GENERAL.—Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by inserting after section 129D (as added by section 1461(a)) the following new section:

"§ 129E. Appraisal independence requirements

"(a) IN GENERAL.—It shall be unlawful, in extending credit or in providing any services for a consumer credit transaction secured by the principal dwelling of the consumer, to engage in any act or practice that violates appraisal independence as described in or pursuant to regulations prescribed under this section.

"(b) APPRAISAL INDEPENDENCE.—For purposes of subsection (a), acts or practices that violate appraisal independence shall include—

"(1) any appraisal of a property offered as security for repayment of the consumer credit transaction that is conducted in connection with such transaction in which a person with an interest in the underlying transaction compensates, coerces, extorts, colludes, instructs, induces, bribes, or intimidates a person, appraisal management company, firm, or other entity conducting or involved in an appraisal, or attempts, to compensate, coerce, extort, collude, instruct, induce, bribe, or intimidate such a person, for the purpose of causing the appraised value assigned, under the appraisal, to the property to be based on any factor other than the independent judgment of the appraiser;

"(2) mischaracterizing, or suborning any mischaracterization of, the appraised value of the property securing the extension of the credit;

"(3) seeking to influence an appraiser or otherwise to encourage a targeted value in order to facilitate the making or pricing of the transaction; and

"(4) withholding or threatening to withhold timely payment for an appraisal report or for appraisal services rendered when the appraisal report or services are provided for in accordance with the contract between the parties.

"(c) EXCEPTIONS.—The requirements of subsection (b) shall not be construed as prohibiting a mortgage lender, mortgage broker, mortgage banker, real estate broker, appraisal management company, employee of an appraisal management company, consumer, or any other person with an interest in a real estate transaction from asking an appraiser to undertake 1 or more of the following:

"(1) Consider additional, appropriate property information, including the consideration of additional comparable properties to make or support an appraisal.

"(2) Provide further detail, substantiation, or explanation for the appraiser's value conclusion.

"(3) Correct errors in the appraisal report.

"(d) PROHIBITIONS ON CONFLICTS OF INTEREST.—No certified or licensed appraiser conducting, and no appraisal management company procuring or facilitating, an appraisal in connection with a consumer credit transaction secured by the principal dwelling of a consumer may have a direct or indirect interest, financial or otherwise, in the property or transaction involving the appraisal.

"(e) MANDATORY REPORTING.—Any mortgage lender, mortgage broker, mortgage banker, real estate broker, appraisal management company, employee of an appraisal management company, or any other person involved in a real estate transaction involving an appraisal in connection with a consumer credit transaction secured by the principal dwelling of a consumer who has a reasonable basis to believe an appraiser is failing to comply with the Uniform Standards of Professional Appraisal Practice, is violating applicable laws, or is otherwise engaging in unethical or unprofessional conduct, shall refer the matter to the applicable State appraiser certifying and licensing agency.

"(f) NO EXTENSION OF CREDIT.—In connection with a consumer credit transaction secured by a consumer's principal dwelling, a creditor who knows, at or before loan consummation, of a violation of the appraisal independence standards established in subsections (b) or (d) shall not extend credit based on such appraisal unless the creditor documents that the creditor has acted with reasonable diligence to determine that the appraisal does not materially misstate or misrepresent the value of such dwelling.

"(g) RULES AND INTERPRETIVE GUIDELINES.—

"(1) IN GENERAL.—Except as provided under paragraph (2), the Board, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, the Federal Housing Finance Agency, and the Bureau may jointly issue rules, interpretive guidelines, and general statements of policy with respect to acts or practices that violate appraisal independence in the provision of mortgage lending services for a consumer credit transaction secured by the principal dwelling of the consumer and mortgage brokerage services for such a transaction, within the meaning of subsections (a), (b), (c), (d), (e), (f), (h), and (i).

"(2) INTERIM FINAL REGULATIONS.—The Board shall, for purposes of this section, prescribe interim final regulations no later than 90 days after the date of enactment of this section defining with specificity acts or practices that violate

appraisal independence in the provision of mortgage lending services for a consumer credit transaction secured by the principal dwelling of the consumer or mortgage brokerage services for such a transaction and defining any terms in this section or such regulations. Rules prescribed by the Board under this paragraph shall be deemed to be rules prescribed by the agencies jointly under paragraph (1).

"(h) APPRAISAL REPORT PORTABILITY.—Consistent with the requirements of this section, the Board, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, the Federal Housing Finance Agency, and the Bureau may jointly issue regulations that address the issue of appraisal report portability, including regulations that ensure the portability of the appraisal report between lenders for a consumer credit transaction secured by a 1-4 unit single family residence that is the principal dwelling of the consumer, or mortgage brokerage services for such a transaction.

"(i) CUSTOMARY AND REASONABLE FEE.—

"(1) IN GENERAL.—Lenders and their agents shall compensate fee appraisers at a rate that is customary and reasonable for appraisal services performed in the market area of the property being appraised. Evidence for such fees may be established by objective third-party information, such as government agency fee schedules, academic studies, and independent private sector surveys. Fee studies shall exclude assignments ordered by known appraisal management companies.

"(2) FEE APPRAISER DEFINITION.—For purposes of this section, the term 'fee appraiser' means a person who is not an employee of the mortgage loan originator or appraisal management company engaging the appraiser and is—

"(A) a State licensed or certified appraiser who receives a fee for performing an appraisal and certifies that the appraisal has been prepared in accordance with the Uniform Standards of Professional Appraisal Practice; or

"(B) a company not subject to the requirements of section 1124 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3331 et seq.) that utilizes the services of State licensed or certified appraisers and receives a fee for performing appraisals in accordance with the Uniform Standards of Professional Appraisal Practice.

"(3) EXCEPTION FOR COMPLEX ASSIGNMENTS.—In the case of an appraisal involving a complex assignment, the customary and reasonable fee may reflect the increased time, difficulty, and scope of the work required for such an appraisal and include an amount over and above the customary and reasonable fee for non-complex assignments.

"(j) SUNSET.—Effective on the date the interim final regulations are promulgated pursuant to subsection (g), the Home Valuation Code of Conduct announced by the Federal Housing Finance Agency on December 23, 2008, shall have no force or effect.

"(k) PENALTIES.—

"(1) FIRST VIOLATION.—In addition to the enforcement provisions referred to in section 130, each person who violates this section shall forfeit and pay a civil penalty of not more than $10,000 for each day any such violation continues.

"(2) SUBSEQUENT VIOLATIONS.—In the case of any person on whom a civil penalty has been imposed under paragraph (1), paragraph (1) shall be applied by substituting '$20,000' for '$10,000' with respect to all subsequent violations.

"(3) ASSESSMENT.—The agency referred to in subsection (a) or (c) of section 108 with respect to any person described in paragraph (1) shall assess any penalty under this subsection to which such person is subject.".

(b) CLERICAL AMENDMENT.—The table of sections for chapter 2 of the Truth in Lending Act is amended by inserting after the item relating to section 129D (as added by section 1461(c)) the following new items:

"129E. Appraisal independence requirements.
"129F. Requirements for prompt crediting of home loan payments.
"129G. Requests for payoff amounts of home loan.
"129H. Property appraisal requirements.".

(c) DEFERENCE.—Section 105 of the Truth in Lending Act (15 U.S.C. 1604) is amended by adding at the end the following:

"(h) DEFERENCE.—Notwithstanding any power granted to any Federal agency under this title, the deference that a court affords to the Bureau with respect to a determination made by the Bureau relating to the meaning or interpretation of any provision of this title, other than section 129E or 129H, shall be applied as if the Bureau were the only agency authorized to apply, enforce, interpret, or administer the provisions of this title.".

(d) CONFORMING AMENDMENTS IN TITLE X NOT APPLICABLE TO SECTIONS 129E AND 129H.—Notwithstanding section 1099A, the term "Board" in sections 129E and 129H, as added by this subtitle, shall not be substituted by the term "Bureau".

SEC. 1473. AMENDMENTS RELATING TO APPRAISAL SUBCOMMITTEE OF FFIEC, APPRAISER INDEPENDENCE MONITORING, APPROVED APPRAISER EDUCATION, APPRAISAL MANAGEMENT COMPANIES, APPRAISER COMPLAINT HOTLINE, AUTOMATED VALUATION MODELS, AND BROKER PRICE OPINIONS.

(a) THRESHOLD LEVELS.—Section 1112(b) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3341(b)) is amended by inserting before the period the following: ", and receives concurrence from the Bureau of Consumer Financial Protection that such threshold level provides reasonable protection for consumers who purchase 1–4 unit single-family residences".

(b) ANNUAL REPORT OF APPRAISAL SUBCOMMITTEE.—Section 1103(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3332(a)) is amended at the end by inserting the following new paragraph:

"(5) transmit an annual report to the Congress not later than June 15 of each year that describes the manner in which each function assigned to the Appraisal Subcommittee has been carried out during the preceding year. The report shall also detail the activities of the Appraisal Subcommittee, including the results of all audits of State appraiser regulatory agencies, and provide an accounting of disapproved actions and warnings taken in the previous year, including a description of the conditions causing the disapproval and actions taken to achieve compliance.".

(c) OPEN MEETINGS.—Section 1104(b) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3333(b)) is amended—

(1) by inserting "in public session after notice in the Federal Register, but may close certain portions of these meetings related to personnel and review of preliminary State audit reports," after "shall meet"; and

(2) by adding after the final period the following: "The subject matter discussed in any closed or executive session shall be described in the Federal Register notice of the meeting.".

(d) REGULATIONS.—Section 1106 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3335) is amended—

(1) by inserting "prescribe regulations in accordance with chapter 5 of title 5, United States Code (commonly referred to as the Administrative Procedures Act) after notice and opportunity for comment," after "hold hearings"; and

(2) at the end by inserting "Any regulations prescribed by the Appraisal Subcommittee shall (unless otherwise provided in this title) be limited to the following functions: temporary practice, national registry, information sharing, and enforcement. For purposes of prescribing regulations, the Appraisal Subcommittee shall establish an advisory committee of industry participants, including appraisers, lenders, consumer advocates, real estate agents, and government agencies, and hold meetings as necessary to support the development of regulations.".

(e) APPRAISAL REVIEWS AND COMPLEX APPRAISALS.—

(1) SECTION 1110.—Section 1110 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3339) is amended—

(A) in paragraph (1), by striking "and";

(B) in paragraph (2), by striking the period at the end and inserting "; and"; and

(C) by inserting after paragraph (2) the following:

"(3) that such appraisals shall be subject to appropriate review for compliance with the Uniform Standards of Professional Appraisal Practice.".

(2) SECTION 1113.—Section 1113 of the Financial Institutions and Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3342) is amended by inserting before the period the following: ", where a complex 1-to-4 unit single family residential appraisal means an appraisal for which the property to be appraised, the form of ownership, the property characteristics, or the market conditions are atypical".

(f) APPRAISAL MANAGEMENT SERVICES.—

(1) SUPERVISION OF THIRD PARTY PROVIDERS OF APPRAISAL MANAGEMENT SERVICES.—Section 1103(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3332(a)) (as previously amended by this section) is amended—

(A) by amending paragraph (1) to read as follows:

"(1) monitor the requirements established by States—

"(A) for the certification and licensing of individuals who are qualified to perform appraisals in connection with federally related transactions, including a code of professional responsibility; and

"(B) for the registration and supervision of the operations and activities of an appraisal management company;"; and

(B) by adding at the end the following new paragraph:

"(6) maintain a national registry of appraisal management companies that either are registered with and subject to supervision of a State appraiser certifying and licensing agency or are operating subsidiaries of a Federally regulated financial institution.".

(2) APPRAISAL MANAGEMENT COMPANY MINIMUM REQUIREMENTS.—Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3331 et seq.) is amended by adding at the end the following new section (and amending the table of contents accordingly):

"SEC. 1124. APPRAISAL MANAGEMENT COMPANY MINIMUM REQUIREMENTS.

"(a) IN GENERAL.—The Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, the Federal Housing Finance Agency, and the Bureau of Consumer Financial Protection shall jointly, by rule, establish minimum requirements to be applied by a State in the registration of appraisal management companies. Such requirements shall include a requirement that such companies—

"(1) register with and be subject to supervision by a State appraiser certifying and licensing agency in each State in which such company operates;

"(2) verify that only licensed or certified appraisers are used for federally related transactions;

"(3) require that appraisals coordinated by an appraisal management company comply with the Uniform Standards of Professional Appraisal Practice; and

"(4) require that appraisals are conducted independently and free from inappropriate influence and coercion pursuant to the appraisal independence standards established under section 129E of the Truth in Lending Act.

"(b) RELATION TO STATE LAW.—Nothing in this section shall be construed to prevent States from establishing requirements in addition to any rules promulgated under subsection (a).

"(c) FEDERALLY REGULATED FINANCIAL INSTITUTIONS.—The requirements of subsection (a) shall apply to an appraisal management company that is a subsidiary owned and controlled by a financial institution and regulated by a Federal financial institution regulatory agency. An appraisal management company that is a subsidiary owned and controlled by a financial institution regulated by a Federal financial institution regulatory agency shall not be required to register with a State.

"(d) REGISTRATION LIMITATIONS.—An appraisal management company shall not be registered by a State or included on the national registry if such company, in whole or in part, directly or indirectly, is owned by any person who has had an appraiser license or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked in any State. Additionally, each person that owns more than 10 percent of an appraisal management company shall be of good moral character, as determined by the State appraiser certifying and licensing agency, and shall submit to a

background investigation carried out by the State appraiser certifying and licensing agency.

"(e) REPORTING.—The Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, the Federal Housing Finance Agency, and the Bureau of Consumer Financial Protection shall jointly promulgate regulations for the reporting of the activities of appraisal management companies to the Appraisal Subcommittee in determining the payment of the annual registry fee.

"(f) EFFECTIVE DATE.—

"(1) IN GENERAL.—No appraisal management company may perform services related to a federally related transaction in a State after the date that is 36 months after the date on which the regulations required to be prescribed under subsection (a) are prescribed in final form unless such company is registered with such State or subject to oversight by a Federal financial institutions regulatory agency.

"(2) EXTENSION OF EFFECTIVE DATE.—Subject to the approval of the Council, the Appraisal Subcommittee may extend by an additional 12 months the requirements for the registration and supervision of appraisal management companies if it makes a written finding that a State has made substantial progress in establishing a State appraisal management company registration and supervision system that appears to conform with the provisions of this title.".

(3) STATE APPRAISER CERTIFYING AND LICENSING AGENCY AUTHORITY.—Section 1117 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3346) is amended by adding at the end the following: "The duties of such agency may additionally include the registration and supervision of appraisal management companies and the addition of information about the appraisal management company to the national registry.".

(4) APPRAISAL MANAGEMENT COMPANY DEFINITION.—Section 1121 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3350) is amended by adding at the end the following:

"(11) APPRAISAL MANAGEMENT COMPANY.—The term 'appraisal management company' means, in connection with valuing properties collateralizing mortgage loans or mortgages incorporated into a securitization, any external third party authorized either by a creditor of a consumer credit transaction secured by a consumer's principal dwelling or by an underwriter of or other principal in the secondary mortgage markets, that oversees a network or panel of more than 15 certified or licensed appraisers in a State or 25 or more nationally within a given year—

"(A) to recruit, select, and retain appraisers;

"(B) to contract with licensed and certified appraisers to perform appraisal assignments;

"(C) to manage the process of having an appraisal performed, including providing administrative duties such as receiving appraisal orders and appraisal reports, submitting completed appraisal reports to creditors and underwriters, collecting fees from creditors and underwriters for

services provided, and reimbursing appraisers for services performed; or

"(D) to review and verify the work of appraisers.".

(g) STATE AGENCY REPORTING REQUIREMENT.—Section 1109(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3338(a)) is amended—

(1) by striking "and" after the semicolon in paragraph (1);

(2) by redesignating paragraph (2) as paragraph (4); and

(3) by inserting after paragraph (1) the following new paragraphs:

"(2) transmit reports on the issuance and renewal of licenses and certifications, sanctions, disciplinary actions, license and certification revocations, and license and certification suspensions on a timely basis to the national registry of the Appraisal Subcommittee;

"(3) transmit reports on a timely basis of supervisory activities involving appraisal management companies or other third-party providers of appraisals and appraisal management services, including investigations initiated and disciplinary actions taken; and".

(h) REGISTRY FEES MODIFIED.—

(1) IN GENERAL.—Section 1109(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3338(a)) is amended—

(A) by amending paragraph (4) (as modified by section 1473(g)) to read as follows:

"(4) collect—

"(A) from such individuals who perform or seek to perform appraisals in federally related transactions, an annual registry fee of not more than $40, such fees to be transmitted by the State agencies to the Council on an annual basis; and

"(B) from an appraisal management company that either has registered with a State appraiser certifying and licensing agency in accordance with this title or operates as a subsidiary of a federally regulated financial institution, an annual registry fee of—

"(i) in the case of such a company that has been in existence for more than a year, $25 multiplied by the number of appraisers working for or contracting with such company in such State during the previous year, but where such $25 amount may be adjusted, up to a maximum of $50, at the discretion of the Appraisal Subcommittee, if necessary to carry out the Subcommittee's functions under this title; and

"(ii) in the case of such a company that has not been in existence for more than a year, $25 multiplied by an appropriate number to be determined by the Appraisal Subcommittee, and where such number will be used for determining the fee of all such companies that were not in existence for more than a year, but where such $25 amount may be adjusted, up to a maximum of $50, at the discretion of the Appraisal Subcommittee, if necessary to carry out the Subcommittee's functions under this title."; and

(B) by amending the matter following paragraph (4), as redesignated, to read as follows:

"Subject to the approval of the Council, the Appraisal Subcommittee may adjust the dollar amount of registry fees under paragraph (4)(A), up to a maximum of $80 per annum, as necessary to carry out its functions under this title. The Appraisal Subcommittee shall consider at least once every 5 years whether to adjust the dollar amount of the registry fees to account for inflation. In implementing any change in registry fees, the Appraisal Subcommittee shall provide flexibility to the States for multi-year certifications and licenses already in place, as well as a transition period to implement the changes in registry fees. In establishing the amount of the annual registry fee for an appraisal management company, the Appraisal Subcommittee shall have the discretion to impose a minimum annual registry fee for an appraisal management company to protect against the under reporting of the number of appraisers working for or contracted by the appraisal management company.".

(2) INCREMENTAL REVENUES.—Incremental revenues collected pursuant to the increases required by this subsection shall be placed in a separate account at the United States Treasury, entitled the "Appraisal Subcommittee Account".

(i) GRANTS AND REPORTS.—Section 1109(b) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3338(b)) is amended—

(1) by striking "and" after the semicolon in paragraph (3);

(2) by striking the period at the end of paragraph (4) and inserting a semicolon;

(3) by adding at the end the following new paragraphs:

"(5) to make grants to State appraiser certifying and licensing agencies, in accordance with policies to be developed by the Appraisal Subcommittee, to support the efforts of such agencies to comply with this title, including—

"(A) the complaint process, complaint investigations, and appraiser enforcement activities of such agencies; and

"(B) the submission of data on State licensed and certified appraisers and appraisal management companies to the National appraisal registry, including information affirming that the appraiser or appraisal management company meets the required qualification criteria and formal and informal disciplinary actions; and

"(6) to report to all State appraiser certifying and licensing agencies when a license or certification is surrendered, revoked, or suspended.".

Obligations authorized under this subsection may not exceed 75 percent of the fiscal year total of incremental increase in fees collected and deposited in the "Appraisal Subcommittee Account" pursuant to subsection (h).

(j) CRITERIA.—Section 1116 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3345) is amended—

(1) in subsection (c), by inserting "whose criteria for the licensing of a real estate appraiser currently meet or exceed the minimum criteria issued by the Appraisal Qualifications Board of The Appraisal Foundation for the licensing of real estate appraisers" before the period at the end; and

(2) by striking subsection (e) and inserting the following new subsection:

"(e) MINIMUM QUALIFICATION REQUIREMENTS.—Any requirements established for individuals in the position of 'Trainee Appraiser' and 'Supervisory Appraiser' shall meet or exceed the minimum qualification requirements of the Appraiser Qualifications Board of The Appraisal Foundation. The Appraisal Subcommittee shall have the authority to enforce these requirements.".

(k) MONITORING OF STATE APPRAISER CERTIFYING AND LICENSING AGENCIES.—Section 1118 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3347) is amended—

(1) by amending subsection (a) to read as follows:

"(a) IN GENERAL.—The Appraisal Subcommittee shall monitor each State appraiser certifying and licensing agency for the purposes of determining whether such agency—

"(1) has policies, practices, funding, staffing, and procedures that are consistent with this title;

"(2) processes complaints and completes investigations in a reasonable time period;

"(3) appropriately disciplines sanctioned appraisers and appraisal management companies;

"(4) maintains an effective regulatory program; and

"(5) reports complaints and disciplinary actions on a timely basis to the national registries on appraisers and appraisal management companies maintained by the Appraisal Subcommittee.

The Appraisal Subcommittee shall have the authority to remove a State licensed or certified appraiser or a registered appraisal management company from a national registry on an interim basis, not to exceed 90 days, pending State agency action on licensing, certification, registration, and disciplinary proceedings. The Appraisal Subcommittee and all agencies, instrumentalities, and Federally recognized entities under this title shall not recognize appraiser certifications and licenses from States whose appraisal policies, practices, funding, staffing, or procedures are found to be inconsistent with this title. The Appraisal Subcommittee shall have the authority to impose sanctions, as described in this section, against a State agency that fails to have an effective appraiser regulatory program. In determining whether such a program is effective, the Appraisal Subcommittee shall include an analysis of the licensing and certification of appraisers, the registration of appraisal management companies, the issuance of temporary licenses and certifications for appraisers, the receiving and tracking of submitted complaints against appraisers and appraisal management companies, the investigation of complaints, and enforcement actions against appraisers and appraisal management companies. The Appraisal Subcommittee shall have the authority to impose interim actions and suspensions against a State agency as an alternative to, or in advance of, the derecognition of a State agency.".

(2) in subsection (b)(2), by inserting after "authority" the following: "or sufficient funding".

(l) RECIPROCITY.—Subsection (b) of section 1122 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3351(b)) is amended to read as follows:

"(b) RECIPROCITY.—Notwithstanding any other provisions of this title, a federally related transaction shall not be appraised

by a certified or licensed appraiser unless the State appraiser certifying or licensing agency of the State certifying or licensing such appraiser has in place a policy of issuing a reciprocal certification or license for an individual from another State when—

"(1) the appraiser licensing and certification program of such other State is in compliance with the provisions of this title; and

"(2) the appraiser holds a valid certification from a State whose requirements for certification or licensing meet or exceed the licensure standards established by the State where an individual seeks appraisal licensure.".

(m) CONSIDERATION OF PROFESSIONAL APPRAISAL DESIGNATIONS.—Section 1122(d) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3351(d)) is amended by striking "shall not exclude" and all that follows through the end of the subsection and inserting the following: "may include education achieved, experience, sample appraisals, and references from prior clients. Membership in a nationally recognized professional appraisal organization may be a criteria considered, though lack of membership therein shall not be the sole bar against consideration for an assignment under these criteria.".

(n) APPRAISER INDEPENDENCE.—Section 1122 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3351) is amended by adding at the end the following new subsection:

"(g) APPRAISER INDEPENDENCE MONITORING.—The Appraisal Subcommittee shall monitor each State appraiser certifying and licensing agency for the purpose of determining whether such agency's policies, practices, and procedures are consistent with the purposes of maintaining appraiser independence and whether such State has adopted and maintains effective laws, regulations, and policies aimed at maintaining appraiser independence.".

(o) APPRAISER EDUCATION.—Section 1122 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3351) is amended by inserting after subsection (g) (as added by subsection (l) of this section) the following new subsection:

"(h) APPROVED EDUCATION.—The Appraisal Subcommittee shall encourage the States to accept courses approved by the Appraiser Qualification Board's Course Approval Program.".

(p) APPRAISAL COMPLAINT HOTLINE.—Section 1122 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3351), as amended by this section, is amended by adding at the end the following new subsection:

"(i) APPRAISAL COMPLAINT NATIONAL HOTLINE.—If, 6 months after the date of the enactment of this subsection, the Appraisal Subcommittee determines that no national hotline exists to receive complaints of non-compliance with appraisal independence standards and Uniform Standards of Professional Appraisal Practice, including complaints from appraisers, individuals, or other entities concerning the improper influencing or attempted improper influencing of appraisers or the appraisal process, the Appraisal Subcommittee shall establish and operate such a national hotline, which shall include a toll-free telephone number and an email address. If the Appraisal Subcommittee operates such a national hotline, the Appraisal Subcommittee shall refer complaints for further action to appropriate governmental bodies, including a State appraiser certifying and licensing agency, a financial institution regulator,

or other appropriate legal authorities. For complaints referred to State appraiser certifying and licensing agencies or to Federal regulators, the Appraisal Subcommittee shall have the authority to follow up such complaint referrals in order to determine the status of the resolution of the complaint.".

(q) AUTOMATED VALUATION MODELS.—Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3331 et seq.), as amended by this section, is amended by adding at the end the following new section (and amending the table of contents accordingly):

"SEC. 1125. AUTOMATED VALUATION MODELS USED TO ESTIMATE COLLATERAL VALUE FOR MORTGAGE LENDING PURPOSES.

"(a) IN GENERAL.—Automated valuation models shall adhere to quality control standards designed to—

"(1) ensure a high level of confidence in the estimates produced by automated valuation models;

"(2) protect against the manipulation of data;

"(3) seek to avoid conflicts of interest;

"(4) require random sample testing and reviews; and

"(5) account for any other such factor that the agencies listed in subsection (b) determine to be appropriate.

"(b) ADOPTION OF REGULATIONS.—The Board, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, the Federal Housing Finance Agency, and the Bureau of Consumer Financial Protection, in consultation with the staff of the Appraisal Subcommittee and the Appraisal Standards Board of the Appraisal Foundation, shall promulgate regulations to implement the quality control standards required under this section.

"(c) ENFORCEMENT.—Compliance with regulations issued under this subsection shall be enforced by—

"(1) with respect to a financial institution, or subsidiary owned and controlled by a financial institution and regulated by a Federal financial institution regulatory agency, the Federal financial institution regulatory agency that acts as the primary Federal supervisor of such financial institution or subsidiary; and

"(2) with respect to other participants in the market for appraisals of 1-to-4 unit single family residential real estate, the Federal Trade Commission, the Bureau of Consumer Financial Protection, and a State attorney general.

"(d) AUTOMATED VALUATION MODEL DEFINED.—For purposes of this section, the term 'automated valuation model' means any computerized model used by mortgage originators and secondary market issuers to determine the collateral worth of a mortgage secured by a consumer's principal dwelling.".

(r) BROKER PRICE OPINIONS.—Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3331 et seq.), as amended by this section, is amended by adding at the end the following new section (and amending the table of contents accordingly):

"SEC. 1126. BROKER PRICE OPINIONS.

"(a) GENERAL PROHIBITION.—In conjunction with the purchase of a consumer's principal dwelling, broker price opinions may not be used as the primary basis to determine the value of a piece

of property for the purpose of a loan origination of a residential mortgage loan secured by such piece of property.

"(b) BROKER PRICE OPINION DEFINED.—For purposes of this section, the term 'broker price opinion' means an estimate prepared by a real estate broker, agent, or sales person that details the probable selling price of a particular piece of real estate property and provides a varying level of detail about the property's condition, market, and neighborhood, and information on comparable sales, but does not include an automated valuation model, as defined in section 1125(c).".

(s) AMENDMENTS TO APPRAISAL SUBCOMMITTEE.—Section 1011 of the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3310) is amended—

(1) in the first sentence, by adding before the period the following: ", the Bureau of Consumer Financial Protection, and the Federal Housing Finance Agency"; and

(2) by inserting at the end the following: "At all times at least one member of the Appraisal Subcommittee shall have demonstrated knowledge and competence through licensure, certification, or professional designation within the appraisal profession.".

(t) TECHNICAL CORRECTIONS.—

(1) Section 1119(a)(2) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3348(a)(2)) is amended by striking "council," and inserting "Council,".

(2) Section 1121(6) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3350(6)) is amended by striking "Corporations," and inserting "Corporation,".

(3) Section 1121(8) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3350(8)) is amended by striking "council" and inserting "Council".

(4) Section 1122 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3351) is amended—

(A) in subsection (a)(1) by moving the left margin of subparagraphs (A), (B), and (C) 2 ems to the right; and

(B) in subsection (c)—

(i) by striking "Federal Financial Institutions Examination Council" and inserting "Financial Institutions Examination Council"; and

(ii) by striking "the council's functions" and inserting "the Council's functions".

SEC. 1474. EQUAL CREDIT OPPORTUNITY ACT AMENDMENT.

Subsection (e) of section 701 of the Equal Credit Opportunity Act (15 U.S.C. 1691) is amended to read as follows:

"(e) COPIES FURNISHED TO APPLICANTS.—

"(1) IN GENERAL.—Each creditor shall furnish to an applicant a copy of any and all written appraisals and valuations developed in connection with the applicant's application for a loan that is secured or would have been secured by a first lien on a dwelling promptly upon completion, but in no case later than 3 days prior to the closing of the loan, whether the creditor grants or denies the applicant's request for credit or the application is incomplete or withdrawn.

"(2) WAIVER.—The applicant may waive the 3 day requirement provided for in paragraph (1), except where otherwise required in law.

"(3) REIMBURSEMENT.—The applicant may be required to pay a reasonable fee to reimburse the creditor for the cost of the appraisal, except where otherwise required in law.

"(4) FREE COPY.—Notwithstanding paragraph (3), the creditor shall provide a copy of each written appraisal or valuation at no additional cost to the applicant.

"(5) NOTIFICATION TO APPLICANTS.—At the time of application, the creditor shall notify an applicant in writing of the right to receive a copy of each written appraisal and valuation under this subsection.

"(6) VALUATION DEFINED.—For purposes of this subsection, the term 'valuation' shall include any estimate of the value of a dwelling developed in connection with a creditor's decision to provide credit, including those values developed pursuant to a policy of a government sponsored enterprise or by an automated valuation model, a broker price opinion, or other methodology or mechanism.".

SEC. 1475. REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974 AMENDMENT RELATING TO CERTAIN APPRAISAL FEES.

Section 4 of the Real Estate Settlement Procedures Act of 1974 is amended by adding at the end the following new subsection:

"(c) The standard form described in subsection (a) may include, in the case of an appraisal coordinated by an appraisal management company (as such term is defined in section 1121(11) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3350(11))), a clear disclosure of—

"(1) the fee paid directly to the appraiser by such company; and

"(2) the administration fee charged by such company.".

SEC. 1476. GAO STUDY ON THE EFFECTIVENESS AND IMPACT OF VARIOUS APPRAISAL METHODS, VALUATION MODELS AND DISTRIBUTIONS CHANNELS, AND ON THE HOME VALUATION CODE OF CONDUCT AND THE APPRAISAL SUBCOMMITTEE.

(a) IN GENERAL.—The Government Accountability Office shall conduct a study on—

(1) the effectiveness and impact of—

(A) appraisal methods, including the cost approach, the comparative sales approach, the income approach, and others that may be available;

(B) appraisal valuation models, including licensed and certified appraisals, broker-priced opinions, and automated valuation models; and

(C) appraisal distribution channels, including appraisal management companies, independent appraisal operations within mortgage originators, and fee-for-service appraisers;

(2) the Home Valuation Code of Conduct; and

(3) the Appraisal Subcommittee's functions pursuant to title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

(b) STUDY.—Not later than—

(1) 12 months after the date of enactment of this Act, the Government Accountability Office shall submit a study

to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives; and

(2) 90 days after the date of enactment of this Act, the Government Accountability Office shall provide a report on the status of the study and any preliminary findings to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

(c) CONTENT OF STUDY.—The study required by this section shall include an examination of the following:

(1) APPRAISAL APPROACHES, VALUATION MODELS, AND DISTRIBUTION CHANNELS.—

(A) The prevalence, alone or in combination, of certain appraisal approaches, models, and channels in purchase-money and refinance mortgage transactions.

(B) The accuracy of these approaches, models, and channels in assessing the property as collateral.

(C) Whether and how these approaches, models, and channels contributed to price speculation during the previous cycle.

(D) The costs to consumers of these approaches, models, and channels.

(E) The disclosure of fees to consumers in the appraisal process.

(F) To what extent the usage of these approaches, models, and channels may be influenced by a conflict of interest between the mortgage lender and the appraiser and the mechanism by which the lender selects and compensates the appraiser.

(G) The suitability of these approaches, models, and channels in rural versus urban areas.

(2) HOME VALUATION CODE OF CONDUCT (HVCC).—

(A) How the HVCC affects mortgage lenders' selection of appraisers.

(B) How the HVCC affects State regulation of appraisers and appraisal distribution channels.

(C) How the HVCC affects the quality and cost of appraisals and the length of time to obtain an appraisal.

(D) How the HVCC affects mortgage brokers, small businesses, and consumers.

(d) ADDITIONAL STUDY REQUIRED.—

(1) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, the Government Accountability Office shall submit a study to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

(2) CONTENT OF ADDITIONAL STUDY.—The study required under paragraph (1) shall include—

(A) an examination of—

(i) the Appraisal Subcommittee's ability to monitor and enforce State and Federal certification requirements and standards, including by providing a summary with a statistical breakdown of enforcement actions taken during the last 10 years;

(ii) whether existing Federal financial institutions regulatory agency exemptions on appraisals for federally related transactions needs to be revised; and

(iii) whether new means of data collection, such as the establishment of a national repository, would benefit the Appraisal Subcommittee's ability to perform its functions; and

(B) recommendations from this examination for administrative and legislative action at the Federal and State level.

Subtitle G—Mortgage Resolution and Modification

SEC. 1481. MULTIFAMILY MORTGAGE RESOLUTION PROGRAM.

(a) ESTABLISHMENT.—The Secretary of Housing and Urban Development shall develop a program under this subsection to ensure the protection of current and future tenants and at-risk multifamily properties, where feasible, based on criteria that may include—

(1) creating sustainable financing of such properties, that may take into consideration such factors as—

(A) the rental income generated by such properties; and

(B) the preservation of adequate operating reserves;

(2) maintaining the level of Federal, State, and city subsidies in effect as of the date of the enactment of this Act;

(3) providing funds for rehabilitation; and

(4) facilitating the transfer of such properties, when appropriate and with the agreement of owners, to responsible new owners and ensuring affordability of such properties.

(b) COORDINATION.—The Secretary of Housing and Urban Development may, in carrying out the program developed under this section, coordinate with the Secretary of the Treasury, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Federal Housing Finance Agency, and any other Federal Government agency that the Secretary considers appropriate.

(c) DEFINITION.—For purposes of this section, the term "multifamily properties" means a residential structure that consists of 5 or more dwelling units.

(d) PREVENTION OF QUALIFICATION FOR CRIMINAL APPLICANTS.—

(1) IN GENERAL.—No person shall be eligible to begin receiving assistance from the Making Home Affordable Program authorized under the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5201 et seq.), or any other mortgage assistance program authorized or funded by that Act, on or after 60 days after the date of the enactment of this Act, if such person, in connection with a mortgage or real estate transaction, has been convicted, within the last 10 years, of any one of the following:

(A) Felony larceny, theft, fraud, or forgery.

(B) Money laundering.

(C) Tax evasion.

(2) PROCEDURES.—The Secretary shall establish procedures to ensure compliance with this subsection.

(3) REPORT.—The Secretary shall report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate regarding the implementation of this provision. The report shall also describe the steps taken to implement this subsection.

SEC. 1482. HOME AFFORDABLE MODIFICATION PROGRAM GUIDELINES.

(a) NET PRESENT VALUE INPUT DATA.—The Secretary of the Treasury (in this section referred to as the "Secretary") shall revise the supplemental directives and other guidelines for the Home Affordable Modification Program of the Making Home Affordable initiative of the Secretary of the Treasury, authorized under the Emergency Economic Stabilization Act of 2008 (Public Law 110–343), to require each mortgage servicer participating in such program to provide each borrower under a mortgage whose request for a mortgage modification under the Program is denied with all borrower-related and mortgage-related input data used in any net present value (NPV) analyses performed in connection with the subject mortgage. Such input data shall be provided to the borrower at the time of such denial.

(b) WEB-BASED SITE FOR NPV CALCULATOR AND APPLICATION.—

(1) NPV CALCULATOR.—In carrying out the Home Affordable Modification Program, the Secretary shall establish and maintain a site on the World Wide Web that provides a calculator for net present value analyses of a mortgage, based on the Secretary's methodology for calculating such value, that mortgagors can use to enter information regarding their own mortgages and that provides a determination after entering such information regarding a mortgage of whether such mortgage would be accepted or rejected for modification under the Program, using such methodology.

(2) DISCLOSURE.—Such Web site shall also prominently disclose that each mortgage servicer participating in such Program may use a method for calculating net present value of a mortgage that is different than the method used by such calculator.

(3) APPLICATION.—The Secretary shall make a reasonable effort to include on such World Wide Web site a method for homeowners to apply for a mortgage modification under the Home Affordable Modification Program.

(c) PUBLIC AVAILABILITY OF NPV METHODOLOGY, COMPUTER MODEL, AND VARIABLES.—The Secretary shall make publicly available, including by posting on a World Wide Web site of the Secretary—

(1) the Secretary's methodology and computer model, including all formulae used in such computer model, used for calculating net present value of a mortgage that is used by the calculator established pursuant to subsection (b); and

(2) all non-proprietary variables used in such net present value analysis.

SEC. 1483. PUBLIC AVAILABILITY OF INFORMATION OF MAKING HOME AFFORDABLE PROGRAM.

(a) REVISIONS TO PROGRAM GUIDELINES.—The Secretary of the Treasury (in this section referred to as the "Secretary") shall revise the guidelines for the Home Affordable Modification Program of the Making Home Affordable initiative of the Secretary of the

Treasury, authorized under the Emergency Economic Stabilization Act of 2008 (Public Law 110–343), to provide that the data being collected by the Secretary from each mortgage servicer and lender participating in the Program is made public in accordance with subsection (b).

(b) PUBLIC AVAILABILITY.—Data shall be made available according to the following guidelines:

(1) Not more than 14 days after each monthly deadline for submission of data by mortgage servicers and lenders participating in the Program, reports shall be made publicly available by means of a World Wide Web site of the Secretary, and by submitting a report to the Congress, that shall includes the following information:

(A) The number of requests for mortgage modifications under the Program that the servicer or lender has received.

(B) The number of requests for mortgage modifications under the Program that the servicer or lender has processed.

(C) The number of requests for mortgage modifications under the Program that the servicer or lender has approved.

(D) The number of requests for mortgage modifications under the Program that the servicer or lender has denied.

(2) Not more than 60 days after each monthly deadline for submission of data by mortgage servicers and lenders participating in the Program, the Secretary shall make data tables available to the public at the individual record level. The Secretary shall issue regulations prescribing—

(A) the procedures for disclosing such data to the public; and

(B) such deletions as the Secretary may determine to be appropriate to protect any privacy interest of any mortgage modification applicant, including the deletion or alteration of the applicant's name and identification number.

SEC. 1484. PROTECTING TENANTS AT FORECLOSURE EXTENSION AND CLARIFICATION.

The Protecting Tenants at Foreclosure Act is amended—

(1) in section 702 (12 U.S.C. 5220 note)—

(A) in subsection (a)(2), by striking ", as of the date of such notice of foreclosure"; and

(B) in subsection (c), by inserting after the period the following: "For purposes of this section, the date of a notice of foreclosure shall be deemed to be the date on which complete title to a property is transferred to a successor entity or person as a result of an order of a court or pursuant to provisions in a mortgage, deed of trust, or security deed."; and

(2) in section 704 (12 U.S.C. 5201 note), by striking "2012" and inserting "2014".

Subtitle H—Miscellaneous Provisions

SEC. 1491. SENSE OF CONGRESS REGARDING THE IMPORTANCE OF GOVERNMENT-SPONSORED ENTERPRISES REFORM TO ENHANCE THE PROTECTION, LIMITATION, AND REGULATION OF THE TERMS OF RESIDENTIAL MORTGAGE CREDIT.

(a) FINDINGS.—The Congress finds as follows:

(1) The Government-sponsored enterprises, Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac), were chartered by Congress to ensure a reliable and affordable supply of mortgage funding, but enjoy a dual legal status as privately owned corporations with Government mandated affordable housing goals.

(2) In 1996, the Department of Housing and Urban Development required that 42 percent of Fannie Mae's and Freddie Mac's mortgage financing should go to borrowers with income levels below the median for a given area.

(3) In 2004, the Department of Housing and Urban Development revised those goals, increasing them to 56 percent of their overall mortgage purchases by 2008, and additionally mandated that 12 percent of all mortgage purchases by Fannie Mae and Freddie Mac be "special affordable" loans made to borrowers with incomes less than 60 percent of an area's median income, a target that ultimately increased to 28 percent for 2008.

(4) To help fulfill those mandated affordable housing goals, in 1995 the Department of Housing and Urban Development authorized Fannie Mae and Freddie Mac to purchase subprime securities that included loans made to low-income borrowers.

(5) After this authorization to purchase subprime securities, subprime and near-prime loans increased from 9 percent of securitized mortgages in 2001 to 40 percent in 2006, while the market share of conventional mortgages dropped from 78.8 percent in 2003 to 50.1 percent by 2007 with a corresponding increase in subprime and Alt-A loans from 10.1 percent to 32.7 percent over the same period.

(6) In 2004 alone, Fannie Mae and Freddie Mac purchased $175,000,000,000 in subprime mortgage securities, which accounted for 44 percent of the market that year, and from 2005 through 2007, Fannie Mae and Freddie Mac purchased approximately $1,000,000,000,000 in subprime and Alt-A loans, while Fannie Mae's acquisitions of mortgages with less than 10 percent down payments almost tripled.

(7) According to data from the Federal Housing Finance Agency (FHFA) for the fourth quarter of 2008, Fannie Mae and Freddie Mac own or guarantee 75 percent of all newly originated mortgages, and Fannie Mae and Freddie Mac currently own 13.3 percent of outstanding mortgage debt in the United States and have issued mortgage-backed securities for 31.0 percent of the residential debt market, a combined total of 44.3 percent of outstanding mortgage debt in the United States.

(8) On September 7, 2008, the FHFA placed Fannie Mae and Freddie Mac into conservatorship, with the Treasury

Department subsequently agreeing to purchase at least $200,000,000,000 of preferred stock from each enterprise in exchange for warrants for the purchase of 79.9 percent of each enterprise's common stock.

(9) The conservatorship for Fannie Mae and Freddie Mac has potentially exposed taxpayers to upwards of $5,300,000,000,000 worth of risk.

(10) The hybrid public-private status of Fannie Mae and Freddie Mac is untenable and must be resolved to assure that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans and that are understandable and not unfair, deceptive, or abusive.

(b) SENSE OF THE CONGRESS.—It is the sense of the Congress that efforts to enhance by the protection, limitation, and regulation of the terms of residential mortgage credit and the practices related to such credit would be incomplete without enactment of meaningful structural reforms of Fannie Mae and Freddie Mac.

SEC. 1492. GAO STUDY REPORT ON GOVERNMENT EFFORTS TO COMBAT MORTGAGE FORECLOSURE RESCUE SCAMS AND LOAN MODIFICATION FRAUD.

(a) STUDY.—The Comptroller General of the United States shall conduct a study of the current inter-agency efforts of the Secretary of the Treasury, the Secretary of Housing and Urban Development, the Attorney General, and the Federal Trade Commission to crackdown on mortgage foreclosure rescue scams and loan modification fraud in order to advise the Congress to the risks and vulnerabilities of emerging schemes in the loan modification arena.

(b) REPORT.—

(1) IN GENERAL.—The Comptroller General shall submit a report to the Congress on the study conducted under subsection (a) containing such recommendations for legislative and administrative actions as the Comptroller General may determine to be appropriate in addition to the recommendations required under paragraph (2).

(2) SPECIFIC TOPICS.—The report made under paragraph (1) shall include—

(A) an evaluation of the effectiveness of the inter-agency task force current efforts to combat mortgage foreclosure rescue scams and loan modification fraud scams;

(B) specific recommendations on agency or legislative action that are essential to properly protect homeowners from mortgage foreclosure rescue scams and loan modification fraud scams; and

(C) the adequacy of financial resources that the Federal Government is allocating to—

(i) crackdown on loan modification and foreclosure rescue scams; and

(ii) the education of homeowners about fraudulent scams relating to loan modification and foreclosure rescues.

SEC. 1493. REPORTING OF MORTGAGE DATA BY STATE.

(a) IN GENERAL.—Section 104(a) of the Helping Families Save Their Homes Act of 2009 (division A of Public Law 111–22) is amended—

(1) in paragraph (2), by striking "resulting" and inserting "in each State that result";

(2) in paragraph (3), by inserting "each State for" after "modifications in"; and

(3) in paragraph (4), by inserting "in each State" after "total number of loans".

(b) CONFORMING AMENDMENT.—Section 104(b)(1)(A) of such Act is amended by adding at the end the following sentence: "Not later than 60 days after the date of the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Comptroller of the Currency and the Director of the Office of Thrift Supervision shall update such requirements to reflect amendments made to this section by such Act.".

SEC. 1494. STUDY OF EFFECT OF DRYWALL PRESENCE ON FORECLOSURES.

(a) STUDY.—The Secretary of Housing and Urban Development, in consultation with the Secretary of the Treasury, shall conduct a study of the effect on residential mortgage loan foreclosures of—

(1) the presence in residential structures subject to such mortgage loans of drywall that was imported from China during the period beginning with 2004 and ending at the end of 2007; and

(2) the availability of property insurance for residential structures in which such drywall is present.

(b) REPORT.—Not later than the expiration of the 120-day period beginning on the date of the enactment of this Act, the Secretary of Housing and Urban Development shall submit to the Congress a report on the study conducted under subsection (a) containing its findings, conclusions, and recommendations.

SEC. 1495. DEFINITION.

For purposes of this title, the term "designated transfer date" means the date established under section 1062 of this Act.

SEC. 1496. EMERGENCY MORTGAGE RELIEF.

(a) EMERGENCY HOMEOWNERS' RELIEF FUND.—Effective October 1, 2010, and notwithstanding any other provision of law, there is hereby made available to the Secretary of Housing and Urban Development such sums as are necessary to provide $1,000,000,000 in assistance through the Emergency Homeowners' Relief Fund, which such Secretary shall establish pursuant to section 107 of the Emergency Housing Act of 1975 (12 U.S.C. 2706), as such Act is amended by this section, for use for emergency mortgage assistance in accordance with title I of such Act.

(b) REAUTHORIZATION OF EMERGENCY MORTGAGE RELIEF PROGRAM.—Title I of the Emergency Housing Act of 1975 is amended—

(1) in section 103 (12 U.S.C. 2702)—

(A) in paragraph (2)—

(i) by striking "have indicated" and all that follows through "regulation of the holder" and insert "have certified";

(ii) by striking "(such as the volume of delinquent loans in its portfolio)"; and

(iii) by striking ", except that such statement" and all that follows through "purposes of this title"; and

(B) in paragraph (4), by inserting "or medical conditions" after "adverse economic conditions";

(2) in section 104 (12 U.S.C. 2703)—

(A) in subsection (b), by striking ", but such assistance" and all that follows through the period at the end and inserting the following: ". The amount of assistance provided to a homeowner under this title shall be an amount that the Secretary determines is reasonably necessary to supplement such amount as the homeowner is capable of contributing toward such mortgage payment, except that the aggregate amount of such assistance provided for any homeowner shall not exceed $50,000.";

(B) in subsection (d), by striking "interest on a loan or advance" and all that follows through the end of the subsection and inserting the following: "(1) the rate of interest on any loan or advance of credit insured under this title shall be fixed for the life of the loan or advance of credit and shall not exceed the rate of interest that is generally charged for mortgages on single-family housing insured by the Secretary of Housing and Urban Development under title II of the National Housing Act at the time such loan or advance of credit is made, and (2) no interest shall be charged on interest which is deferred on a loan or advance of credit made under this title. In establishing rates, terms and conditions for loans or advances of credit made under this title, the Secretary shall take into account a homeowner's ability to repay such loan or advance of credit."; and

(C) in subsection (e), by inserting after the period at the end of the first sentence the following: "Any eligible homeowner who receives a grant or an advance of credit under this title may repay the loan in full, without penalty, by lump sum or by installment payments at any time before the loan becomes due and payable.";

(3) in section 105 (12 U.S.C. 2704)—

(A) by striking subsection (b);

(B) in subsection (e)—

(i) by inserting "and emergency mortgage relief payments made under section 106" after "insured under this section"; and

(ii) by striking "$1,500,000,000 at any one time" and inserting "$3,000,000,000";

(C) by redesignating subsections (c), (d), and (e) as subsections (b), (c), and (d), respectively; and

(D) by adding at the end the following new subsection:

"(e) The Secretary shall establish underwriting guidelines or procedures to allocate amounts made available for loans and advances insured under this section and for emergency relief payments made under section 106 based on the likelihood that a mortgagor will be able to resume mortgage payments, pursuant to the requirement under section 103(5).";

(4) in section 107—

(A) by striking "(a)"; and

(B) by striking subsection (b);

(5) in section 108 (12 U.S.C. 2707), by adding at the end the following new subsection:

"(d) COVERAGE OF EXISTING PROGRAMS.—The Secretary shall allow funds to be administered by a State that has an existing program that is determined by the Secretary to provide substantially similar assistance to homeowners. After such determination is made such State shall not be required to modify such program to comply with the provisions of this title.";

(6) in section 109 (12 U.S.C. 2708)—

(A) in the section heading, by striking "AUTHORIZATION AND";

(B) by striking subsection (a);

(C) by striking "(b)"; and

(D) by striking "1977" and inserting "2011";

(7) by striking sections 110, 111, and 113 (12 U.S.C. 2709, 2710, 2712); and

(8) by redesignating section 112 (12 U.S.C. 2711) as section 110.

SEC. 1497. ADDITIONAL ASSISTANCE FOR NEIGHBORHOOD STABILIZATION PROGRAM.

(a) IN GENERAL.—Effective October 1, 2010, out of funds in the Treasury not otherwise appropriated, there is hereby made available to the Secretary of Housing and Urban Development $1,000,000,000, and the Secretary of Housing and Urban Development shall use such amounts for assistance to States and units of general local government for the redevelopment of abandoned and foreclosed homes, in accordance with the same provisions applicable under the second undesignated paragraph under the heading "Community Planning and Development—Community Development Fund" in title XII of division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5; 123 Stat. 217) to amounts made available under such second undesignated paragraph, except as follows:

(1) Notwithstanding the matter of such second undesignated paragraph that precedes the first proviso, amounts made available by this section shall remain available until expended.

(2) The 3rd, 4th, 5th, 6th, 7th, and 15th provisos of such second undesignated paragraph shall not apply to amounts made available by this section.

(3) Amounts made available by this section shall be allocated based on a funding formula for such amounts established by the Secretary in accordance with section 2301(b) of the Housing and Economic Recovery Act of 2008 (42 U.S.C. 5301 note), except that—

(A) notwithstanding paragraph (2) of such section 2301(b), the formula shall be established not later than 30 days after the date of the enactment of this Act;

(B) notwithstanding such section 2301(b), each State shall receive, at a minimum, not less than 0.5 percent of funds made available under this section;

(C) the Secretary may establish a minimum grant amount for direct allocations to units of general local government located within a State, which shall not exceed $1,000,000;

(D) each State and local government receiving grant amounts shall establish procedures to create preferences

for the development of affordable rental housing for properties assisted with amounts made available by this section; and

(E) the Secretary may use not more than 2 percent of the funds made available under this section for technical assistance to grantees.

(4) Paragraph (1) of section 2301(c) of the Housing and Economic Recovery Act of 2008 shall not apply to amounts made available by this section.

(5) The fourth proviso from the end of such second undesignated paragraph shall be applied to amounts made available by this section by substituting "2013" for "2012".

(6) Notwithstanding section 2301(a) of the Housing and Economic Recovery Act of 2008, the term "State" means any State, as defined in section 102 of the Housing and Community Development Act of 1974 (42 U.S.C. 5302), and the District of Columbia, for purposes of this section and this title, as applied to amounts made available by this section.

(7)(A) None of the amounts made available by this section shall be distributed to—

(i) any organization which has been convicted for a violation under Federal law relating to an election for Federal office; or

(ii) any organization which employs applicable individuals.

(B) In this paragraph, the term "applicable individual" means an individual who—

(i) is—

(I) employed by the organization in a permanent or temporary capacity;

(II) contracted or retained by the organization; or

(III) acting on behalf of, or with the express or apparent authority of, the organization; and

(ii) has been convicted for a violation under Federal law relating to an election for Federal office.

(8) An eligible entity receiving a grant under this section shall, to the maximum extent feasible, provide for the hiring of employees who reside in the vicinity, as such term is defined by the Secretary, of projects funded under this section or contract with small businesses that are owned and operated by persons residing in the vicinity of such projects.

(b) ADDITIONAL AMENDMENTS.—

(1) SECTION 2301.—Section 2301(f)(3)(A)(ii) of the Housing and Economic Recovery Act of 2008 (42 U.S.C. 5301(f)(3)(A)(ii))—

(A) is amended by striking "for the purchase and redevelopment of abandoned and foreclosed upon homes or residential properties that will be used"; and

(B) shall apply with respect to any unexpended or unobligated balances, including recaptured and reallocated funds made available under this Act, section 2301 of the Housing and Economic Recovery Act of 2008 (42 U.S.C. 5301), and the heading "Community Planning and Development—Community Development Fund" in title XII of division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5; 123 Stat. 217).

(2) NOTICE OF FORECLOSURE.—For any amounts made available under this section, under division B, title III of the Housing and Economic Recovery Act of 2008 (42 U.S.C. 5301), or under the heading "Community Planning and Development—Community Development Fund" in title XII of division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5; 123 Stat. 217), the date of a notice of foreclosure shall be deemed to be the date on which complete title to a property is transferred to a successor entity or person as a result of an order of a court or pursuant to provisions in a mortgage, deed of trust, or security deed.

SEC. 1498. LEGAL ASSISTANCE FOR FORECLOSURE-RELATED ISSUES.

(a) ESTABLISHMENT.—The Secretary of Housing and Urban Development (hereafter in this section referred to as the "Secretary") shall establish a program for making grants for providing a full range of foreclosure legal assistance to low- and moderate-income homeowners and tenants related to home ownership preservation, home foreclosure prevention, and tenancy associated with home foreclosure.

(b) COMPETITIVE ALLOCATION.—The Secretary shall allocate amounts made available for grants under this section to State and local legal organizations on the basis of a competitive process. For purposes of this subsection "State and local legal organizations" are those State and local organizations whose primary business or mission is to provide legal assistance.

(c) PRIORITY TO CERTAIN AREAS.—In allocating amounts in accordance with subsection (b), the Secretary shall give priority consideration to State and local legal organizations that are operating in the 125 metropolitan statistical areas (as that term is defined by the Director of the Office of Management and Budget) with the highest home foreclosure rates.

(d) LEGAL ASSISTANCE.—

(1) IN GENERAL.—Any State or local legal organization that receives financial assistance pursuant to this section may use such amounts only to assist—

(A) homeowners of owner-occupied homes with mortgages in default, in danger of default, or subject to or at risk of foreclosure; and

(B) tenants at risk of or subject to eviction as a result of foreclosure of the property in which such tenant resides.

(2) COMMENCE USE WITHIN 90 DAYS.—Any State or local legal organization that receives financial assistance pursuant to this section shall begin using any financial assistance received under this section within 90 days after receipt of the assistance.

(3) PROHIBITION ON CLASS ACTIONS.—No funds provided to a State or local legal organization under this section may be used to support any class action litigation.

(4) LIMITATION ON LEGAL ASSISTANCE.—Legal assistance funded with amounts provided under this section shall be limited to mortgage-related default, eviction, or foreclosure proceedings, without regard to whether such foreclosure is judicial or nonjudicial.

(5) EFFECTIVE DATE.—Notwithstanding any other provision of this Act, this subsection shall take effect on the date of the enactment of this Act.

(e) LIMITATION ON DISTRIBUTION OF ASSISTANCE.—

(1) IN GENERAL.—None of the amounts made available under this section shall be distributed to—

(A) any organization which has been convicted for a violation under Federal law relating to an election for Federal office; or

(B) any organization which employs applicable individuals.

(2) DEFINITION OF APPLICABLE INDIVIDUALS.—In this subsection, the term "applicable individual" means an individual who—

(A) is—

(i) employed by the organization in a permanent or temporary capacity;

(ii) contracted or retained by the organization; or

(iii) acting on behalf of, or with the express or apparent authority of, the organization; and

(B) has been convicted for a violation under Federal law relating to an election for Federal office.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary $35,000,000 for each of fiscal years 2011 through 2012 for grants under this section.

TITLE XV—MISCELLANEOUS PROVISIONS

SEC. 1501. RESTRICTIONS ON USE OF UNITED STATES FUNDS FOR FOREIGN GOVERNMENTS; PROTECTION OF AMERICAN TAXPAYERS.

The Bretton Woods Agreements Act (22 U.S.C. 286 et seq.) is amended by adding at the end the following:

"SEC. 68. RESTRICTIONS ON USE OF UNITED STATES FUNDS FOR FOREIGN GOVERNMENTS; PROTECTION OF AMERICAN TAXPAYERS.

"(a) IN GENERAL.—The Secretary of the Treasury shall instruct the United States Executive Director at the International Monetary Fund—

"(1) to evaluate, prior to consideration by the Board of Executive Directors of the Fund , any proposal submitted to the Board for the Fund to make a loan to a country if—

"(A) the amount of the public debt of the country exceeds the gross domestic product of the country as of the most recent year for which such information is available; and

"(B) the country is not eligible for assistance from the International Development Association.

"(2) OPPOSITION TO LOANS UNLIKELY TO BE REPAID IN FULL.—If any such evaluation indicates that the proposed loan is not likely to be repaid in full, the Secretary of the Treasury shall instruct the United States Executive Director at the Fund to use the voice and vote of the United States to oppose the proposal.

"(b) REPORTS TO CONGRESS.—Within 30 days after the Board of Executive Directors of the Fund approves a proposal described in subsection (a), and annually thereafter by June 30, for the

duration of any program approved under such proposals, the Secretary of the Treasury shall report in writing to the Committee on Financial Services of the House of Representatives and the Committee on Foreign Relations and the Committee on Banking, Housing, and Urban Affairs of the Senate assessing the likelihood that loans made pursuant to such proposals will be repaid in full, including—

"(1) the borrowing country's current debt status, including, to the extent possible, its maturity structure, whether it has fixed or floating rates, whether it is indexed, and by whom it is held;

"(2) the borrowing country's external and internal vulnerabilities that could potentially affect its ability to repay; and

"(3) the borrowing country's debt management strategy.".

SEC. 1502. CONFLICT MINERALS.

(a) SENSE OF CONGRESS ON EXPLOITATION AND TRADE OF CONFLICT MINERALS ORIGINATING IN THE DEMOCRATIC REPUBLIC OF THE CONGO.—It is the sense of Congress that the exploitation and trade of conflict minerals originating in the Democratic Republic of the Congo is helping to finance conflict characterized by extreme levels of violence in the eastern Democratic Republic of the Congo, particularly sexual- and gender-based violence, and contributing to an emergency humanitarian situation therein, warranting the provisions of section 13(p) of the Securities Exchange Act of 1934, as added by subsection (b).

(b) DISCLOSURE RELATING TO CONFLICT MINERALS ORIGINATING IN THE DEMOCRATIC REPUBLIC OF THE CONGO.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), as amended by this Act, is amended by adding at the end the following new subsection:

"(p) DISCLOSURES RELATING TO CONFLICT MINERALS ORIGINATING IN THE DEMOCRATIC REPUBLIC OF THE CONGO.—

"(1) REGULATIONS.—

"(A) IN GENERAL.—Not later than 270 days after the date of the enactment of this subsection, the Commission shall promulgate regulations requiring any person described in paragraph (2) to disclose annually, beginning with the person's first full fiscal year that begins after the date of promulgation of such regulations, whether conflict minerals that are necessary as described in paragraph (2)(B), in the year for which such reporting is required, did originate in the Democratic Republic of the Congo or an adjoining country and, in cases in which such conflict minerals did originate in any such country, submit to the Commission a report that includes, with respect to the period covered by the report—

"(i) a description of the measures taken by the person to exercise due diligence on the source and chain of custody of such minerals, which measures shall include an independent private sector audit of such report submitted through the Commission that is conducted in accordance with standards established by the Comptroller General of the United States, in accordance with rules promulgated by the Commission, in consultation with the Secretary of State; and

"(ii) a description of the products manufactured or contracted to be manufactured that are not DRC conflict free ('DRC conflict free' is defined to mean the products that do not contain minerals that directly or indirectly finance or benefit armed groups in the Democratic Republic of the Congo or an adjoining country), the entity that conducted the independent private sector audit in accordance with clause (i), the facilities used to process the conflict minerals, the country of origin of the conflict minerals, and the efforts to determine the mine or location of origin with the greatest possible specificity.

"(B) CERTIFICATION.—The person submitting a report under subparagraph (A) shall certify the audit described in clause (i) of such subparagraph that is included in such report. Such a certified audit shall constitute a critical component of due diligence in establishing the source and chain of custody of such minerals.

"(C) UNRELIABLE DETERMINATION.—If a report required to be submitted by a person under subparagraph (A) relies on a determination of an independent private sector audit, as described under subparagraph (A)(i), or other due diligence processes previously determined by the Commission to be unreliable, the report shall not satisfy the requirements of the regulations promulgated under subparagraph (A)(i).

"(D) DRC CONFLICT FREE.—For purposes of this paragraph, a product may be labeled as 'DRC conflict free' if the product does not contain conflict minerals that directly or indirectly finance or benefit armed groups in the Democratic Republic of the Congo or an adjoining country.

"(E) INFORMATION AVAILABLE TO THE PUBLIC.—Each person described under paragraph (2) shall make available to the public on the Internet website of such person the information disclosed by such person under subparagraph (A).

"(2) PERSON DESCRIBED.—A person is described in this paragraph if—

"(A) the person is required to file reports with the Commission pursuant to paragraph (1)(A); and

"(B) conflict minerals are necessary to the functionality or production of a product manufactured by such person.

"(3) REVISIONS AND WAIVERS.—The Commission shall revise or temporarily waive the requirements described in paragraph (1) if the President transmits to the Commission a determination that—

"(A) such revision or waiver is in the national security interest of the United States and the President includes the reasons therefor; and

"(B) establishes a date, not later than 2 years after the initial publication of such exemption, on which such exemption shall expire.

"(4) TERMINATION OF DISCLOSURE REQUIREMENTS.—The requirements of paragraph (1) shall terminate on the date on which the President determines and certifies to the appropriate congressional committees, but in no case earlier than

the date that is one day after the end of the 5-year period beginning on the date of the enactment of this subsection, that no armed groups continue to be directly involved and benefitting from commercial activity involving conflict minerals.

"(5) DEFINITIONS.—For purposes of this subsection, the terms 'adjoining country', 'appropriate congressional committees', 'armed group', and 'conflict mineral' have the meaning given those terms under section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.".

(c) STRATEGY AND MAP TO ADDRESS LINKAGES BETWEEN CONFLICT MINERALS AND ARMED GROUPS.—

(1) STRATEGY.—

(A) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Secretary of State, in consultation with the Administrator of the United States Agency for International Development, shall submit to the appropriate congressional committees a strategy to address the linkages between human rights abuses, armed groups, mining of conflict minerals, and commercial products.

(B) CONTENTS.—The strategy required by subparagraph (A) shall include the following:

(i) A plan to promote peace and security in the Democratic Republic of the Congo by supporting efforts of the Government of the Democratic Republic of the Congo, including the Ministry of Mines and other relevant agencies, adjoining countries, and the international community, in particular the United Nations Group of Experts on the Democratic Republic of Congo, to—

(I) monitor and stop commercial activities involving the natural resources of the Democratic Republic of the Congo that contribute to the activities of armed groups and human rights violations in the Democratic Republic of the Congo; and

(II) develop stronger governance and economic institutions that can facilitate and improve transparency in the cross-border trade involving the natural resources of the Democratic Republic of the Congo to reduce exploitation by armed groups and promote local and regional development.

(ii) A plan to provide guidance to commercial entities seeking to exercise due diligence on and formalize the origin and chain of custody of conflict minerals used in their products and on their suppliers to ensure that conflict minerals used in the products of such suppliers do not directly or indirectly finance armed conflict or result in labor or human rights violations.

(iii) A description of punitive measures that could be taken against individuals or entities whose commercial activities are supporting armed groups and human rights violations in the Democratic Republic of the Congo.

(2) MAP.—

(A) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Secretary of State shall, in accordance with the recommendation of the United

Nations Group of Experts on the Democratic Republic of the Congo in their December 2008 report—

(i) produce a map of mineral-rich zones, trade routes, and areas under the control of armed groups in the Democratic Republic of the Congo and adjoining countries based on data from multiple sources, including—

(I) the United Nations Group of Experts on the Democratic Republic of the Congo;

(II) the Government of the Democratic Republic of the Congo, the governments of adjoining countries, and the governments of other Member States of the United Nations; and

(III) local and international nongovernmental organizations;

(ii) make such map available to the public; and

(iii) provide to the appropriate congressional committees an explanatory note describing the sources of information from which such map is based and the identification, where possible, of the armed groups or other forces in control of the mines depicted.

(B) DESIGNATION.—The map required under subparagraph (A) shall be known as the "Conflict Minerals Map", and mines located in areas under the control of armed groups in the Democratic Republic of the Congo and adjoining countries, as depicted on such Conflict Minerals Map, shall be known as "Conflict Zone Mines".

(C) UPDATES.—The Secretary of State shall update the map required under subparagraph (A) not less frequently than once every 180 days until the date on which the disclosure requirements under paragraph (1) of section 13(p) of the Securities Exchange Act of 1934, as added by subsection (b), terminate in accordance with the provisions of paragraph (4) of such section 13(p).

(D) PUBLICATION IN FEDERAL REGISTER.—The Secretary of State shall add minerals to the list of minerals in the definition of conflict minerals under section 1502, as appropriate. The Secretary shall publish in the Federal Register notice of intent to declare a mineral as a conflict mineral included in such definition not later than one year before such declaration.

(d) REPORTS.—

(1) BASELINE REPORT.—Not later than 1 year after the date of the enactment of this Act and annually thereafter until the termination of the disclosure requirements under section 13(p) of the Securities Exchange Act of 1934, the Comptroller General of the United States shall submit to appropriate congressional committees a report that includes an assessment of the rate of sexual- and gender-based violence in war-torn areas of the Democratic Republic of the Congo and adjoining countries.

(2) REGULAR REPORT ON EFFECTIVENESS.—Not later than 2 years after the date of the enactment of this Act and annually thereafter, the Comptroller General of the United States shall submit to the appropriate congressional committees a report that includes the following:

(A) An assessment of the effectiveness of section 13(p) of the Securities Exchange Act of 1934, as added by subsection (b), in promoting peace and security in the Democratic Republic of the Congo and adjoining countries.

(B) A description of issues encountered by the Securities and Exchange Commission in carrying out the provisions of such section 13(p).

(C)(i) A general review of persons described in clause (ii) and whether information is publicly available about—

(I) the use of conflict minerals by such persons; and

(II) whether such conflict minerals originate from the Democratic Republic of the Congo or an adjoining country.

(ii) A person is described in this clause if—

(I) the person is not required to file reports with the Securities and Exchange Commission pursuant to section 13(p)(1)(A) of the Securities Exchange Act of 1934, as added by subsection (b); and

(II) conflict minerals are necessary to the functionality or production of a product manufactured by such person.

(3) REPORT ON PRIVATE SECTOR AUDITING.—Not later than 30 months after the date of the enactment of this Act, and annually thereafter, the Secretary of Commerce shall submit to the appropriate congressional committees a report that includes the following:

(A) An assessment of the accuracy of the independent private sector audits and other due diligence processes described under section 13(p) of the Securities Exchange Act of 1934.

(B) Recommendations for the processes used to carry out such audits, including ways to—

(i) improve the accuracy of such audits; and

(ii) establish standards of best practices.

(C) A listing of all known conflict mineral processing facilities worldwide.

(e) DEFINITIONS.—For purposes of this section:

(1) ADJOINING COUNTRY.—The term "adjoining country", with respect to the Democratic Republic of the Congo, means a country that shares an internationally recognized border with the Democratic Republic of the Congo.

(2) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term "appropriate congressional committees" means—

(A) the Committee on Appropriations, the Committee on Foreign Affairs, the Committee on Ways and Means, and the Committee on Financial Services of the House of Representatives; and

(B) the Committee on Appropriations, the Committee on Foreign Relations, the Committee on Finance, and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(3) ARMED GROUP.—The term "armed group" means an armed group that is identified as perpetrators of serious human rights abuses in the annual Country Reports on Human Rights Practices under sections 116(d) and 502B(b) of the Foreign Assistance Act of 1961 (22 U.S.C. 2151n(d) and 2304(b)) relating

to the Democratic Republic of the Congo or an adjoining country.

(4) CONFLICT MINERAL.—The term "conflict mineral" means—

(A) columbite-tantalite (coltan), cassiterite, gold, wolframite, or their derivatives; or

(B) any other mineral or its derivatives determined by the Secretary of State to be financing conflict in the Democratic Republic of the Congo or an adjoining country.

(5) UNDER THE CONTROL OF ARMED GROUPS.—The term "under the control of armed groups" means areas within the Democratic Republic of the Congo or adjoining countries in which armed groups—

(A) physically control mines or force labor of civilians to mine, transport, or sell conflict minerals;

(B) tax, extort, or control any part of trade routes for conflict minerals, including the entire trade route from a Conflict Zone Mine to the point of export from the Democratic Republic of the Congo or an adjoining country; or

(C) tax, extort, or control trading facilities, in whole or in part, including the point of export from the Democratic Republic of the Congo or an adjoining country.

SEC. 1503. REPORTING REQUIREMENTS REGARDING COAL OR OTHER MINE SAFETY.

(a) REPORTING MINE SAFETY INFORMATION.—Each issuer that is required to file reports pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m, 78o) and that is an operator, or that has a subsidiary that is an operator, of a coal or other mine shall include, in each periodic report filed with the Commission under the securities laws on or after the date of enactment of this Act, the following information for the time period covered by such report:

(1) For each coal or other mine of which the issuer or a subsidiary of the issuer is an operator—

(A) the total number of violations of mandatory health or safety standards that could significantly and substantially contribute to the cause and effect of a coal or other mine safety or health hazard under section 104 of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 814) for which the operator received a citation from the Mine Safety and Health Administration;

(B) the total number of orders issued under section 104(b) of such Act (30 U.S.C. 814(b));

(C) the total number of citations and orders for unwarrantable failure of the mine operator to comply with mandatory health or safety standards under section 104(d) of such Act (30 U.S.C. 814(d));

(D) the total number of flagrant violations under section 110(b)(2) of such Act (30 U.S.C. 820(b)(2));

(E) the total number of imminent danger orders issued under section 107(a) of such Act (30 U.S.C. 817(a));

(F) the total dollar value of proposed assessments from the Mine Safety and Health Administration under such Act (30 U.S.C. 801 et seq.); and

(G) the total number of mining-related fatalities.

(2) A list of such coal or other mines, of which the issuer or a subsidiary of the issuer is an operator, that receive written notice from the Mine Safety and Health Administration of—

(A) a pattern of violations of mandatory health or safety standards that are of such nature as could have significantly and substantially contributed to the cause and effect of coal or other mine health or safety hazards under section 104(e) of such Act (30 U.S.C. 814(e)); or

(B) the potential to have such a pattern.

(3) Any pending legal action before the Federal Mine Safety and Health Review Commission involving such coal or other mine.

(b) REPORTING SHUTDOWNS AND PATTERNS OF VIOLATIONS.—Beginning on and after the date of enactment of this Act, each issuer that is an operator, or that has a subsidiary that is an operator, of a coal or other mine shall file a current report with the Commission on Form 8–K (or any successor form) disclosing the following regarding each coal or other mine of which the issuer or subsidiary is an operator:

(1) The receipt of an imminent danger order issued under section 107(a) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 817(a)).

(2) The receipt of written notice from the Mine Safety and Health Administration that the coal or other mine has—

(A) a pattern of violations of mandatory health or safety standards that are of such nature as could have significantly and substantially contributed to the cause and effect of coal or other mine health or safety hazards under section 104(e) of such Act (30 U.S.C. 814(e)); or

(B) the potential to have such a pattern.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to affect any obligation of a person to make a disclosure under any other applicable law in effect before, on, or after the date of enactment of this Act.

(d) COMMISSION AUTHORITY.—

(1) ENFORCEMENT.—A violation by any person of this section, or any rule or regulation of the Commission issued under this section, shall be treated for all purposes in the same manner as a violation of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) or the rules and regulations issued thereunder, consistent with the provisions of this section, and any such person shall be subject to the same penalties, and to the same extent, as for a violation of such Act or the rules or regulations issued thereunder.

(2) RULES AND REGULATIONS.—The Commission is authorized to issue such rules or regulations as are necessary or appropriate for the protection of investors and to carry out the purposes of this section.

(e) DEFINITIONS.—In this section—

(1) the terms "issuer" and "securities laws" have the meaning given the terms in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c);

(2) the term "coal or other mine" means a coal or other mine, as defined in section 3 of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 802), that is subject to the provisions of such Act (30 U.S.C. 801 et seq.); and

(3) the term "operator" has the meaning given the term in section 3 of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 802).

(f) EFFECTIVE DATE.—This section shall take effect on the day that is 30 days after the date of enactment of this Act.

SEC. 1504. DISCLOSURE OF PAYMENTS BY RESOURCE EXTRACTION ISSUERS.

Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), as amended by this Act, is amended by adding at the end the following:

"(q) DISCLOSURE OF PAYMENTS BY RESOURCE EXTRACTION ISSUERS.—

"(1) DEFINITIONS.—In this subsection—

"(A) the term 'commercial development of oil, natural gas, or minerals' includes exploration, extraction, processing, export, and other significant actions relating to oil, natural gas, or minerals, or the acquisition of a license for any such activity, as determined by the Commission;

"(B) the term 'foreign government' means a foreign government, a department, agency, or instrumentality of a foreign government, or a company owned by a foreign government, as determined by the Commission;

"(C) the term 'payment'—

"(i) means a payment that is—

"(I) made to further the commercial development of oil, natural gas, or minerals; and

"(II) not de minimis; and

"(ii) includes taxes, royalties, fees (including license fees), production entitlements, bonuses, and other material benefits, that the Commission, consistent with the guidelines of the Extractive Industries Transparency Initiative (to the extent practicable), determines are part of the commonly recognized revenue stream for the commercial development of oil, natural gas, or minerals;

"(D) the term 'resource extraction issuer' means an issuer that—

"(i) is required to file an annual report with the Commission; and

"(ii) engages in the commercial development of oil, natural gas, or minerals;

"(E) the term 'interactive data format' means an electronic data format in which pieces of information are identified using an interactive data standard; and

"(F) the term 'interactive data standard' means standardized list of electronic tags that mark information included in the annual report of a resource extraction issuer.

"(2) DISCLOSURE.—

"(A) INFORMATION REQUIRED.—Not later than 270 days after the date of enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Commission shall issue final rules that require each resource extraction issuer to include in an annual report of the resource extraction issuer information relating to any payment made by the resource extraction issuer, a subsidiary of the resource

extraction issuer, or an entity under the control of the resource extraction issuer to a foreign government or the Federal Government for the purpose of the commercial development of oil, natural gas, or minerals, including—

"(i) the type and total amount of such payments made for each project of the resource extraction issuer relating to the commercial development of oil, natural gas, or minerals; and

"(ii) the type and total amount of such payments made to each government.

"(B) CONSULTATION IN RULEMAKING.—In issuing rules under subparagraph (A), the Commission may consult with any agency or entity that the Commission determines is relevant.

"(C) INTERACTIVE DATA FORMAT.—The rules issued under subparagraph (A) shall require that the information included in the annual report of a resource extraction issuer be submitted in an interactive data format.

"(D) INTERACTIVE DATA STANDARD.—

"(i) IN GENERAL.—The rules issued under subparagraph (A) shall establish an interactive data standard for the information included in the annual report of a resource extraction issuer.

"(ii) ELECTRONIC TAGS.—The interactive data standard shall include electronic tags that identify, for any payments made by a resource extraction issuer to a foreign government or the Federal Government—

"(I) the total amounts of the payments, by category;

"(II) the currency used to make the payments;

"(III) the financial period in which the payments were made;

"(IV) the business segment of the resource extraction issuer that made the payments;

"(V) the government that received the payments, and the country in which the government is located;

"(VI) the project of the resource extraction issuer to which the payments relate; and

"(VII) such other information as the Commission may determine is necessary or appropriate in the public interest or for the protection of investors.

"(E) INTERNATIONAL TRANSPARENCY EFFORTS.—To the extent practicable, the rules issued under subparagraph (A) shall support the commitment of the Federal Government to international transparency promotion efforts relating to the commercial development of oil, natural gas, or minerals.

"(F) EFFECTIVE DATE.—With respect to each resource extraction issuer, the final rules issued under subparagraph (A) shall take effect on the date on which the resource extraction issuer is required to submit an annual report relating to the fiscal year of the resource extraction issuer that ends not earlier than 1 year after the date on which the Commission issues final rules under subparagraph (A).

"(3) PUBLIC AVAILABILITY OF INFORMATION.—

"(A) IN GENERAL.—To the extent practicable, the Commission shall make available online, to the public, a compilation of the information required to be submitted under the rules issued under paragraph (2)(A).

"(B) OTHER INFORMATION.—Nothing in this paragraph shall require the Commission to make available online information other than the information required to be submitted under the rules issued under paragraph (2)(A).

"(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Commission such sums as may be necessary to carry out this subsection.".

SEC. 1505. STUDY BY THE COMPTROLLER GENERAL.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States shall issue a report assessing the relative independence, effectiveness, and expertise of presidentially appointed inspectors general and inspectors general of designated Federal entities, as such term is defined under section 8G of the Inspector General Act of 1978, and the effects on independence of the amendments to the Inspector General Act of 1978 made by this Act.

(b) REPORT.—The report required by subsection (a) shall be issued to the Committees on Financial Services and Oversight and Government Reform of the House of Representatives and the Committees on Banking, Housing, and Urban Affairs and Homeland Security and Governmental Affairs of the Senate.

SEC. 1506. STUDY ON CORE DEPOSITS AND BROKERED DEPOSITS.

(a) STUDY.—The Corporation shall conduct a study to evaluate—

(1) the definition of core deposits for the purpose of calculating the insurance premiums of banks;

(2) the potential impact on the Deposit Insurance Fund of revising the definitions of brokered deposits and core deposits to better distinguish between them;

(3) an assessment of the differences between core deposits and brokered deposits and their role in the economy and banking sector of the United States;

(4) the potential stimulative effect on local economies of redefining core deposits; and

(5) the competitive parity between large institutions and community banks that could result from redefining core deposits.

(b) REPORT TO CONGRESS.—Not later than 1 year after the date of enactment of this Act, the Corporation shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the results of the study under subsection (a) that includes legislative recommendations, if any, to address concerns arising in connection with the definitions of core deposits and brokered deposits.

TITLE XVI—SECTION 1256 CONTRACTS

SEC. 1601. CERTAIN SWAPS, ETC., NOT TREATED AS SECTION 1256 CONTRACTS.

(a) IN GENERAL.—Subsection (b) of section 1256 of the Internal Revenue Code of 1986 is amended—

(1) by redesignating paragraphs (1) through (5) as subparagraphs (A) through (E), respectively, and by indenting such subparagraphs (as so redesignated) accordingly,

(2) by striking "For purposes of" and inserting the following: "(1) IN GENERAL.—For purposes of", and

(3) by striking the last sentence and inserting the following new paragraph:

"(2) EXCEPTIONS.—The term 'section 1256 contract' shall not include—

"(A) any securities futures contract or option on such a contract unless such contract or option is a dealer securities futures contract, or

"(B) any interest rate swap, currency swap, basis swap, interest rate cap, interest rate floor, commodity swap, equity swap, equity index swap, credit default swap, or similar agreement.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

Speaker of the House of Representatives.

Vice President of the United States and
President of the Senate.

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

PART 40—PROVISIONS COMMON TO REGISTERED ENTITIES

Sec.

AUTHORITY: 7 U.S.C. 1a, 2, 5, 6, 7, 7a, 8 and 12, as amended by Titles VII and VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Pub. L. 111–203, 124 Stat. 1376 (2010).

SOURCE: 76 FR 44790, July 27, 2011, unless otherwise noted.

§ 40.1 Definitions.

As used in this part:

(a) *Business day* means the intraday period of time starting at the business hour of 8:15 a.m. and ending at the business hour of 4:45 p.m.; *business hour* means any hour between 8:15 a.m. and 4:45 p.m. Business day and business hour are Eastern Standard Time or Eastern Daylight Savings Time, whichever is currently in effect in Washington, DC, on all days except Saturdays, Sundays, and Federal holidays in Washington, DC.

(b) *Dormant contract or dormant product* means:

(1) Any agreement, contract, transaction, instrument, swap or any such commodity futures or option contract with respect to all future or option expiries, listed on a designated contract market, a swap execution facility or cleared by a registered derivatives clearing organization, that has no open interest and in which no trading has occurred for a period of twelve complete calendar months following a certification to, or approval by, the Commission; *provided*, *however*, that no contract or instrument under this paragraph (b)(1) initially and originally certified to, or approved by, the Commission within the preceding 36 complete calendar months shall be considered to be dormant; or

(2) Any commodity futures or option contract, swap or other agreement, contract, transaction or instrument of a dormant designated contract market, dormant swap execution facility or a dormant derivatives clearing organization; or

(3) Any commodity futures or option contract or other agreement, contract, swap, transaction or instrument not otherwise dormant that a designated contract market, a swap execution facility or a derivatives clearing organization self-declares through certification to be dormant.

(c) *Dormant designated contract market* means any designated contract market on which no trading has occurred during the period of twelve consecutive calendar months, preceding the first day of the most recent calendar month; *provided*, *however*, no designated contract market shall be considered to be dormant if its initial and original Commission order of designation was issued within the preceding 36 consecutive calendar months.

(d) *Dormant derivatives clearing organization* means any derivatives clearing organization registered pursuant to Section 5b of the Act that has not accepted for clearing any agreement, contract or transaction that is required or permitted to be cleared by a derivatives clearing organization under Sections 5b(a) and 5b(b) of the Act, respectively, for a period of twelve complete calendar months; *provided*, *however*, no derivatives clearing organization shall be considered to be dormant if its initial and original Commission order of registration was issued within the preceding 36 complete calendar months.

(e) *Dormant swap data repository* means any registered swap data repository on which no data has resided for a period of twelve consecutive calendar

第1120页

months, preceding the most recent calendar month.

(f) *Dormant swap execution facility* means any swap execution facility on which no trading has occurred for a period of twelve consecutive calendar months, preceding the first day of the most recent calendar month; provided, however, no swap execution facility shall be considered to be dormant if its initial and original Commission order of registration was issued within the preceding 36 consecutive calendar months.

(g) *Dormant rule* means:

(1) Any registered entity rule which remains unimplemented for twelve consecutive calendar months following a certification with, or an approval by, the Commission; or

(2) Any rule or rule amendment of a dormant designated contract market, dormant swap execution facility, dormant swap data repository or dormant derivatives clearing organization.

(h) *Emergency* means any occurrence or circumstance that, in the opinion of the governing board of a registered entity, or a person or persons duly authorized to issue such an opinion on behalf of the governing board of a registered entity under circumstances and pursuant to procedures that are specified by rule, requires immediate action and threatens or may threaten such things as the fair and orderly trading in, or the liquidation of or delivery pursuant to, any agreements, contracts, swaps or transactions or the timely collection and payment of funds in connection with clearing and settlement by a derivatives clearing organization, including:

(1) Any manipulative or attempted manipulative activity;

(2) Any actual, attempted, or threatened corner, squeeze, congestion, or undue concentration of positions;

(3) Any circumstances which may materially affect the performance of agreements, contracts, swaps or transactions, including failure of the payment system or the bankruptcy or insolvency of any participant;

(4) Any action taken by any governmental body, or any other registered entity, board of trade, market or facility which may have a direct impact on trading or clearing and settlement; and

(5) Any other circumstance which may have a severe, adverse effect upon the functioning of a registered entity.

(i) *Rule* means any constitutional provision, article of incorporation, bylaw, rule, regulation, resolution, interpretation, stated policy, advisory, terms and conditions, trading protocol, agreement or instrument corresponding thereto, including those that authorize a response or establish standards for responding to a specific emergency, and any amendment or addition thereto or repeal thereof, made or issued by a registered entity or by the governing board thereof or any committee thereof, in whatever form adopted.

(j) *Terms and conditions* means any definition of the trading unit or the specific commodity underlying a contract for the future delivery of a commodity or commodity option contract, description of the payments to be exchanged under a swap, specification of cash settlement or delivery standards and procedures, and establishment of buyers' and sellers' rights and obligations under the swap or contract. Terms and conditions include provisions relating to the following:

(1) For a contract for the purchase or sale of a commodity for future delivery or an option on such a contract or an option on a commodity (other than a swap):

(i) Quality and other standards that define the commodity or instrument underlying the contract;

(ii) Quantity standards or other provisions related to contract size;

(iii) Any applicable premiums or discounts for delivery of nonpar products;

(iv) Trading hours, trading months and the listing of contracts;

(v) The pricing basis, minimum price fluctuations, and maximum price fluctuations;

(vi) Any price limits, no cancellation ranges, trading halts, or circuit breaker provisions, and procedures for the establishment of daily settlement prices;

(vii) Speculative position limits, position accountability standards, and position reporting requirements, including an indication as to whether the contract meets the definition of a referenced contract as defined in §150.1 of

this chapter, and, if so, the name of either the core referenced futures contract or other referenced contract upon which the new referenced contract submitted under this part 40 is based.

(viii) Delivery points and locational price differentials;

(ix) Delivery standards and procedures, including fees related to delivery or the delivery process; alternatives to delivery and applicable penalties or sanctions for failure to perform;

(x) If cash settled; the definition, composition, calculation and revision of the cash settlement price or index;

(xi) Payment or collection of commodity option premiums or margins;

(xii) Option exercise price, if it is constant, and method for calculating the exercise price, if it is variable;

(xiii) Threshold prices for an option contract, the existence of which is contingent upon those prices; and

(xiv) Any restrictions or requirements for exercising an option; and

(2) For a swap:

(i) Identification of the major group, category, type or class in which the swap falls (such as an interest rate, commodity, credit or equity swap) and of any further sub-group, category, type or class that further describes the swap;

(ii) Notional amounts, quantity standards, or other unit size characteristics;

(iii) Any applicable premiums or discounts for delivery of nonpar products;

(iv) Trading hours and the listing of swaps;

(v) Pricing basis for establishing the payment obligations under, and mark-to-market value of, the swap including, as applicable, the accrual start dates, termination or maturity dates, and, for each leg of the swap, the initial cash flow components, spreads, and points, and the relevant indexes, prices, rates, coupons, or other price reference measures;

(vi) Any price limits, trading halts, or circuit breaker provisions, and procedures for the establishment of daily settlement prices;

(vii) Speculative position limits, position accountability standards, and position reporting requirements, including an indication as to whether the contract meets the definition of economically equivalent swap as defined in § 150.1 of this chapter, and, if so, the name of either the core referenced futures contract or referenced contract, as applicable, to which the swap submitted under this part 40 is economically equivalent.

(viii) Payment and reset frequency, day count conventions, business calendars, and accrual features;

(ix) If physical delivery applies, delivery standards and procedures, including fees related to delivery or the delivery process, alternatives to delivery and applicable penalties or sanctions for failure to perform;

(x) If cash settled, the definition, composition, calculation and revision of the cash settlement price, and the settlement currency;

(xi) Payment or collection of option premiums or margins;

(xii) Option exercise price, if it is constant, and method for calculating the exercise price, if it is variable;

(xiii) Threshold prices for an option, the existence of which is contingent upon those prices;

(xiv) Any restrictions or requirements for exercising an option; and

(xv) Life cycle events.

[76 FR 44790, July 27, 2011, as amended at 86 FR 3463, Jan. 14, 2021]

§ 40.2 Listing products for trading by certification.

(a) A designated contract market or a swap execution facility must comply with the submission requirements of this section prior to listing a product for trading that has not been approved under § 40.3 of this part or that remains dormant subsequent to being submitted under this section or approved under § 40.3 of this part. A submission shall comply with the following conditions:

(1) The designated contract market or the swap execution facility has filed its submission electronically in a format and manner specified by the Secretary of the Commission with the Secretary of the Commission;

(2) The Commission has received the submission by the open of business on the business day preceding the product's listing; and

(3) The submission includes:

(i) A copy of the submission cover sheet in accordance with the instructions in appendix D to this part;

(ii) A copy of the product's rules, including all rules related to its terms and conditions;

(iii) The intended listing date;

(iv) A certification by the designated contract market or the swap execution facility that the product to be listed complies with the Act and Commission regulations thereunder;

(v) A concise explanation and analysis of the product and its compliance with applicable provisions of the Act, including core principles, and the Commission's regulations thereunder. This explanation and analysis shall either be accompanied by the documentation relied upon to establish the basis for compliance with applicable law, or incorporate information contained in such documentation, with appropriate citations to data sources;

(vi) A certification that the registered entity posted a notice of pending product certification with the Commission and a copy of the submission, concurrent with the filing of a submission with the Commission, on the registered entity's Web site. Information that the registered entity seeks to keep confidential may be redacted from the documents published on the registered entity's Web site but must be republished consistent with any determination made pursuant to § 40.8(c)(4);

(vii) A request for confidential treatment, if appropriate, as permitted under § 40.8.

(b) *Additional information.* If requested by Commission staff, a registered entity shall provide any additional evidence, information or data that demonstrates that the contract meets, initially or on a continuing basis, the requirements of the Act or the Commission's regulations or policies thereunder.

(c) *Stay.* The Commission may stay the listing of a contract pursuant to paragraph (a) of this section during the pendency of Commission proceedings for filing a false certification or during the pendency of a petition to alter or amend the contract terms and conditions pursuant to Section 8a(7) of the Act. The decision to stay the listing of a contract in such circumstances shall not be delegable to any employee of the Commission.

(d) *Class certification of swaps.* (1) A designated contract market or swap execution facility may list or facilitate trading in any swap or number of swaps based upon an ''excluded commodity,'' as defined in Section 1a(19)(i) of the Act, not including any security, security index, and currency other than the United States Dollar and a ''major foreign currency,'' as defined in § 15.03(a), or an ''excluded commodity,'' as defined in Section 1a(19)(ii)–(iv) of the Act, provided the designated contract market or swap execution facility certifies, under § 40.2(a)(1)–(2), § 40.2(a)(3)(i), § 40.2(a)(3)(iv), and § 40.2(a)(3)(vi), each of the following:

(i) That each particular swap within the certified class of swaps is based upon an excluded commodity specified in § 40.2(d)(1); and

(ii) That each particular swap within the certified class of swaps is based upon an excluded commodity with an identical pricing source, formula, procedure, and methodology for calculating reference prices and payment obligations; and

(iii) That the pricing source, formula, procedure, and methodology for calculating reference prices and payment obligations in each particular swap within the certified class of swaps is identical to a pricing source, formula, procedure, and methodology for calculating reference prices and payment obligations in a product previously submitted to the Commission and certified or approved pursuant to § 40.2 or § 40.3;

(iv) That each particular swap within the certified class of swaps is based upon an excluded commodity involving an identical currency or identical currencies.

(2) The Commission may in its discretion require a registered entity to withdraw its certification under § 40.2(d)(1) and to submit each individual swap or certain individual swaps within the submission for Commission review pursuant to § 40.2 or § 40.3

§ 40.3 Voluntary submission of new products for Commission review and approval.

(a) *Request for approval.* Pursuant to Section 5c(c) of the Act, a designated contract market, a swap execution facility, or a derivatives clearing organization may request that the Commission approve a new or dormant product prior to listing the product for trading or accepting the product for clearing, or if a product was initially submitted under § 40.2 of this part or § 39.5 of this chapter, subsequent to listing the product for trading or accepting the product for clearing. A submission requesting approval shall:

(1) Be filed electronically in a format and manner specified by the Secretary of the Commission with the Secretary of the Commission;

(2) Include a copy of the submission cover sheet in accordance with the instructions in appendix D to this part;

(3) Include a copy of the rules that set forth the contract's terms and conditions;

(4) Include an explanation and analysis of the product and its compliance with applicable provisions of the Act, including core principles, and the Commission's regulations thereunder. This explanation and analysis shall either be accompanied by the documentation relied upon to establish the basis for compliance with the applicable law, or incorporate information contained in such documentation, with appropriate citations to data sources;

(5) Describe any agreements or contracts entered into with other parties that enable the registered entity to carry out its responsibilities;

(6) Include the certifications required in § 41.22 for product approval of a commodity that is a security future or a security futures product as defined in Sections 1a(44) or 1a(45) of the Act, respectively;

(7) Include, if appropriate, a request for confidential treatment as permitted under § 40.8;

(8) Include the filing fee required under appendix A to this part;

(9) Certify that the registered entity posted a notice of its request for Commission approval of the new product and a copy of the submission, concurrent with the filing of a submission with the Commission, on the registered entity's Web site. Information that the registered entity seeks to keep confidential may be redacted from the documents published on the registered entity's Web site but must be republished consistent with any determination made pursuant to § 40.8(c)(4);

(10) Include, if requested by Commission staff, additional evidence, information or data demonstrating that the contract meets, initially or on a continuing basis, the requirements of the Act, or other requirement for designation or registration under the Act, or the Commission's regulations or policies thereunder. The registered entity shall submit the requested information by the open of business on the date that is two business days from the date of request by Commission staff, or at the conclusion of such extended period agreed to by Commission staff after timely receipt of a written request from the registered entity.

(b) *Standard for review and approval.* The Commission shall approve a new product unless the terms and conditions of the product violate the Act or the Commission's regulations.

(c) *Forty-five day review.* All products submitted for Commission approval under this paragraph shall be deemed approved by the Commission 45 days after receipt by the Commission, or at the conclusion of an extended period as provided under paragraph (d) of this section, unless notified otherwise within the applicable period, if:

(1) The submission complies with the requirements of paragraph (a) of this section; and

(2) The submitting entity does not amend the terms or conditions of the product or supplement the request for approval, except as requested by the Commission or for correction of typographical errors, renumbering or other non-substantive revisions, during that period. Any voluntary, substantive amendment by the submitting entity will be treated as a new submission under this section.

(d) *Extension of time.* The Commission may extend the 45 day review period in paragraph (c) of this section for:

(1) An additional 45 days, if the product raises novel or complex issues that require additional time to analyze, in

which case the Commission shall notify the registered entity within the initial 45 day review period and shall briefly describe the nature of the specific issues for which additional time for review is required; or

(2) Any extended review period to which the registered entity agrees in writing.

(e) *Notice of non-approval.* The Commission at any time during its review under this section may notify the registered entity that it will not, or is unable to, approve the product. This notification will briefly specify the nature of the issues raised and the specific provision of the Act or the Commission's regulations, including the form or content requirements of paragraph (a) of this section, that the product violates, appears to violate or potentially violates but which cannot be ascertained from the submission.

(f) *Effect of non-approval.* (1) Notification to a registered entity under paragraph (e) of this section of the Commission's determination not to approve a product does not prejudice the entity from subsequently submitting a revised version of the product for Commission approval or from submitting the product as initially proposed pursuant to a supplemented submission.

(2) Notification to a registered entity under paragraph (e) of this section of the Commission's refusal to approve a product shall be presumptive evidence that the entity may not truthfully certify under § 40.2 that the same, or substantially the same, product does not violate the Act or the Commission's regulations thereunder.

§ 40.4 Amendments to terms or conditions of enumerated agricultural products.

(a) Notwithstanding the provisions of this part, a designated contract market must submit for Commission approval under the procedures of § 40.5, prior to its implementation, any rule or dormant rule that, for a delivery month having open interest, would materially change a term or condition, as defined in § 40.1(j), of a contract for future delivery in an agricultural commodity enumerated in Section 1a(9) of the Act, or of an option on such a contract or commodity.

(b) The following rules or rule amendments are not material and should not be submitted under this section:

(1) Changes that are enumerated in § 40.6(d)(2) may be implemented without prior approval or certification if implemented pursuant to the notification procedures of § 40.6(d);

(2) Changes that are enumerated in § 40.6(d)(3)(ii) may be implemented without prior approval or certification or notification as permitted pursuant to § 40.6(d)(3);

(3) Changes in no cancellation ranges and trading hours may be implemented without prior approval if implemented pursuant to the procedures of § 40.6(a);

(4) Changes required to comply with a binding order of a court of competent jurisdiction, or a rule, regulation or order of the Commission or of another Federal regulatory authority, may be implemented without prior approval if implemented pursuant to the procedures of § 40.6(a);or

(5) Any other rule:

(i) The text of which has been submitted for review at least ten business days prior to its implementation and that has been labeled ''Non-Material Agricultural Rule Change;''

(ii) For which the designated contract market has provided an explanation as to why it considers the rule ''non-material,'' and any other information that may be beneficial to the Commission in analyzing the merits of the entity's claim of non-materiality; and

(iii) With respect to which the Commission has not notified the contract market during the review period that the rule appears to require or does require prior approval under this section, may be implemented without prior approval if implemented under the procedures of § 40.6(a).

§ 40.5 Voluntary submission of rules for Commission review and approval.

(a) *Request for approval of rules.* Pursuant to Section 5c(c) of the Act, a registered entity may request that the Commission approve a new rule, rule amendment or dormant rule prior to implementation of the rule, or if the request was initially submitted under

§§40.2 or 40.6 of this part, subsequent to implementation of the rule. A request for approval shall:

(1) Be filed electronically in a format and manner specified by the Secretary of the Commission with the Secretary of the Commission;

(2) Include a copy of the submission cover sheet in accordance with the instructions in appendix D to this part;

(3) Set forth the text of the rule or rule amendment (in the case of a rule amendment, deletions and additions must be indicated);

(4) Describe the proposed effective date of the rule or rule amendment and any action taken or anticipated to be taken to adopt the proposed rule by the registered entity or by its governing board or by any committee thereof, and cite the rules of the entity that authorize the adoption of the proposed rule;

(5) Provide an explanation and analysis of the operation, purpose, and effect of the proposed rule or rule amendment and its compliance with applicable provisions of the Act, including core principles, and the Commission's regulations thereunder, including, as applicable, a description of the anticipated benefits to market participants or others, any potential anticompetitive effects on market participants or others, and how the rule fits into the registered entity's framework of self-regulation;

(6) Certify that the registered entity posted a notice of pending rule with the Commission and a copy of the submission, concurrent with the filing of a submission with the Commission, on the registered entity's Web site. Information which the registered entity seeks to keep confidential may be redacted from the documents published on the registered entity's Web site but must be republished consistent with any determination made pursuant to §40.8(c)(4);

(7) Provide additional information which may be beneficial to the Commission in analyzing the new rule or rule amendment. If a proposed rule affects, directly or indirectly, the application of any other rule of the registered entity, the pertinent text of any such rule must be set forth and the anticipated effect described;

(8) Provide a brief explanation of any substantive opposing views expressed to the registered entity by governing board or committee members, members of the entity or market participants that were not incorporated into the rule, or a statement that no such opposing views were expressed;

(9) Identify any Commission regulation that the Commission may need to amend, or sections of the Act or the Commission's regulations that the Commission may need to interpret, in order to approve the new rule or rule amendment. To the extent that such an amendment or interpretation is necessary to accommodate a new rule or rule amendment, the submission should include a reasoned analysis supporting the amendment to the Commission's regulation or the interpretation;

(10) As appropriate, include a request for confidential treatment as permitted under the procedures of §40.8.

(b) *Standard for review and approval.* The Commission shall approve a new rule or rule amendment unless the rule or rule amendment is inconsistent with the Act or the Commission's regulations.

(c) *Forty-five day review.* (1) All rules submitted for Commission approval under paragraph (a) of this section shall be deemed approved by the Commission under section 5c(c) of the Act 45 days after receipt by the Commission, or at the conclusion of such extended period as provided under paragraph (d) of this section, unless the registered entity is notified otherwise within the applicable period, if:

(i) The submission complies with the requirements of paragraph (a) of this section;

(ii) The registered entity does not amend the proposed rule or supplement the submission, except as requested by the Commission, during the pendency of the review period other than for correction of typographical errors, renumbering or other non-substantive revisions. Any amendment or supplementation not requested by the Commission will be treated as the submission of a new filing under this section.

(2) The Commission shall commence the review period in paragraph (c) of this section for a compliant submission

under § 40.4(b)(5) ten business days after its receipt.

(d) *Commencement and extension of time for review.* The Commission may further extend the review period in paragraph (c) of this section for any approval request for:

(1) An additional 45 days, if the proposed rule raises novel or complex issues that require additional time for review or is of major economic significance, the submission is incomplete or the requestor does not respond completely to Commission questions in a timely manner, in which case the Commission shall notify the submitting registered entity within the initial forty-five day review period and shall briefly describe the nature of the specific issues for which additional time for review shall be required; or

(2) Any period, beyond the additional 45 days provided in § 40.5(d)(1), to which the registered entity agrees in writing.

(e) *Notice of non-approval.* Any time during its review under this section, the Commission may notify the registered entity that it will not, or is unable to, approve the new rule or rule amendment. This notification will briefly specify the nature of the issues raised and the specific provision of the Act or the Commission's regulations, including the form or content requirements of this section, with which the new rule or rule amendment is inconsistent or appears to be inconsistent with the Act or the Commission's regulations.

(f) *Effect of non-approval.* (1) Notification to a registered entity under paragraph (e) of this section does not prevent the registered entity from subsequently submitting a revised version of the proposed rule or rule amendment for Commission review and approval or from submitting the new rule or rule amendment as initially proposed in a supplemented submission; the revised submission will be reviewed without prejudice.

(2) Notification to a registered entity under paragraph (e) of this section of the Commission's determination not to approve a proposed rule or rule amendment of a registered entity shall be presumptive evidence that the entity may not truthfully certify that the same, or substantially the same, proposed rule or rule amendment under § 40.6(a) of this section.

(g) *Expedited approval.* Notwithstanding the provisions of paragraph (c) of this section, changes to a proposed rule or a rule amendment, including changes to terms and conditions of a product that are consistent with the Act and Commission regulations and with standards approved or established by the Commission may be approved by the Commission at such time and under such conditions as the Commission shall specify in the written notification, provided, however, that the Commission may, at any time, alter or revoke the applicability of such a notice to any particular product or rule amendment.

§ 40.6 Self-certification of rules.

(a) *Required certification.* A registered entity shall comply with the following conditions prior to implementing any rule, other than a rule delisting or withdrawing the certification of a product with no open interest and submitted in compliance with §§ 40.6(a)(1)–(2) and § 40.6(a)(7), that has not obtained Commission approval under § 40.5 of this part, that remains dormant subsequent to being submitted under this section or approved under § 40.5 of this part, or that is submitted under § 40.10 of this part, except as otherwise provided by § 40.10(a):

(1) The registered entity has filed its submission electronically in a format and manner specified by the Secretary of the Commission with the Secretary of the Commission.

(2) The registered entity has provided a certification that the registered entity posted a notice of pending certification with the Commission and a copy of the submission, concurrent with the filing of a submission with the Commission, on the registered entity's Web site. Information that the registered entity seeks to keep confidential may be redacted from the documents published on the registered entity's Web site but it must be republished consistent with any determination made pursuant to § 40.8(c)(4).

(3) The Commission has received the submission not later than the open of business on the business day that is 10 business days prior to the registered

entity's implementation of the rule or rule amendment.

(4) The Commission has not stayed the submission pursuant to § 40.6(c).

(5) The rule or rule amendment is not a rule or rule amendment of a designated contract market that materially changes a term or condition of a contract for future delivery of an agricultural commodity enumerated in section 1a(4) of the Act or an option on such a contract or commodity in a delivery month having open interest.

(6) *Emergency rule certifications.* (i) New rules or rule amendments that establish standards for responding to an emergency must be submitted pursuant to § 40.6(a);

(ii) Rules or rule amendments implemented under procedures of the governing board to respond to an emergency as defined in § 40.1, shall, if practicable, be filed with the Commission prior to the implementation or, if not practicable, be filed with the Commission at the earliest possible time after implementation, but in no event more than twenty-four hours after implementation. Such rules shall be subject to the certification and stay provisions of paragraphs (b) and (c) of this section.

(7). The rule submission shall include:

(i) A copy of the submission cover sheet in accordance with the instructions in appendix D to this part (in the case of a rule or rule amendment that responds to an emergency, ''Emergency Rule Certification'' should be noted in the Description section of the submission coversheet);

(ii) The text of the rule (in the case of a rule amendment, deletions and additions must be indicated);

(iii) The date of intended implementation;

(iv) A certification by the registered entity that the rule complies with the Act and the Commission's regulations thereunder;

(v) A concise explanation and analysis of the operation, purpose, and effect of the proposed rule or rule amendment and its compliance with applicable provisions of the Act, including core principles, and the Commission's regulations thereunder;

(vi) A brief explanation of any substantive opposing views expressed to the registered entity by governing board or committee members, members of the entity or market participants, that were not incorporated into the rule, or a statement that no such opposing views were expressed;

(vii) As appropriate, a request for confidential treatment pursuant to the procedures provided in § 40.8; and

(8) The registered entity shall provide, if requested by Commission staff, additional evidence, information or data that may be beneficial to the Commission in conducting a due diligence assessment of the filing and the registered entity's compliance with any of the requirements of the Act or the Commission's regulations or policies thereunder.

(b) *Review by the Commission.* The Commission shall have 10 business days to review the new rule or rule amendment before the new rule or rule amendment is deemed certified and can be made effective, unless the Commission notifies the registered entity during the 10-business day review period that it intends to issue a stay of the certification under paragraph (c) of this section.

(c) *Stay*—(1) *Stay of certification of new rule or rule amendment.* The Commission may stay the certification of a new rule or rule amendment submitted pursuant to paragraph (a) of this section by issuing a notification informing the registered entity that the Commission is staying the certification of the rule or rule amendment on the grounds that the rule or rule amendment presents novel or complex issues that require additional time to analyze, the rule or rule amendment is accompanied by an inadequate explanation or the rule or rule amendment is potentially inconsistent with the Act or the Commission's regulations thereunder. The Commission will have an additional 90 days from the date of the notification to conduct the review. The decision to stay the certification of a rule in such circumstances shall be delegable pursuant to § 40.7 of this part.

(2) *Public comment.* The Commission shall provide a 30-day comment period within the 90-day period in which the

stay is in effect as described in paragraph (c)(1) of this section. The Commission shall publish a notice of the 30-day comment period on the Commission Web site. Comments from the public shall be submitted as specified in that notice.

(3) *Expiration of a stay of certification of new rule or rule amendment.* A new rule or rule amendment subject to a stay pursuant to this paragraph shall become effective, pursuant to the certification, at the expiration of the 90-day review period described in paragraph (c)(1) of this section unless the Commission withdraws the stay prior to that time, or the Commission notifies the registered entity during the 90-day time period that it objects to the proposed certification on the grounds that the proposed rule or rule amendment is inconsistent with the Act or the Commission's regulations.

(4) *Stay of effectiveness of rules or rule amendments already implemented.* The Commission may stay the effectiveness of an implemented rule during the pendency of Commission proceedings for filing a false certification or during the pendency of a petition to alter or amend the rule pursuant to section 8a(7) of the Act. The decision to stay the effectiveness of a rule in such circumstances shall not be delegable to any employee of the Commission.

(d) *Notification of rule amendments.* Notwithstanding the rule certification requirement of Section 5c(c)(1) of the Act and paragraph (a) of this section, a registered entity may place the following rules or rule amendments into effect without certification to the Commission if the following conditions are met:

(1) The registered entity provides to the Commission at least weekly a summary notice of all rule amendments made effective pursuant to this paragraph during the preceding week. Such notice must be labeled ''Weekly Notification of Rule Amendments'' and need not be filed for weeks during which no such actions have been taken. One copy of each such submission shall be furnished electronically in a format and manner specified by the Secretary of the Commission; and

(2) The rule governs:

(i) *Non-substantive revisions.* Corrections of typographical errors, renumbering, periodic routine updates to identifying information about registered entities and other such non-substantive revisions of a product's terms and conditions that have no effect on the economic characteristics of the product;

(ii) *Delivery standards set by third parties.* Changes to grades or standards of commodities deliverable on a product that are established by an independent third party and that are incorporated by reference as product terms, provided that the grade or standard is not established, selected or calculated solely for use in connection with futures or option trading and such changes do not affect deliverable supplies or the pricing basis for the product;

(iii) *Index products.* Routine changes in the composition, computation, or method of selection of component entities of an index (other than routine changes to securities indexes to the extent that such changes are not described in paragraph (d)(3)(ii)(F) of this section) referenced and defined in the product's terms, that do not affect the pricing basis of the index, which are made by an independent third party whose business relates to the collection or dissemination of price information and which was not formed solely for the purpose of compiling an index for use in connection with a futures or option product;

(iv) *Option contract terms.* Changes to option contract rules, which may qualify for implementation without notice pursuant to paragraph (d)(3)(ii)(G) of this section, relating to the strike price listing procedures, strike price intervals, and the listing of strike prices on a discretionary basis;

(v) *Fees.* Fees or fee changes, other than fees or fee changes associated with market making or trading incentive programs, that:

(A) Total $1.00 or more per contract, and

(B) Are established by an independent third party or are unrelated to delivery, trading, clearing or dispute resolution.

(vi) *Survey lists.* Changes to lists of banks, brokers, dealers, or other entities that provide price or cash market

information to an independent third party and that are incorporated by reference as product terms;

(vii) *Approved brands.* Changes in lists of approved brands or markings pursuant to previously certified or Commission approved standards or criteria;

(viii) *Delivery facilities and delivery service providers.* Changes in lists of approved delivery facilities and delivery service providers (including weigh masters, assayers, and inspectors) at a delivery location, pursuant to previously certified or Commission approved standards or criteria;

(ix) *Trading months.* The initial listing of trading months, which may qualify for implementation without notice pursuant to (d)(3)(ii)(H) of this section, within the currently established cycle of trading months; or

(x) *Minimum tick.* Reductions in the minimum price fluctuation (or ''tick'').

(3) *Notification of rule amendments not required.* Notwithstanding the rule certification requirements of section 5c(c)(1) of the Act and paragraph (a) of this section, a registered entity may place the following rules or rule amendments into effect without certification or notice to the Commission if the following conditions are met:

(i) The registered entity maintains documentation regarding all changes to rules; and

(ii) The rule governs:

(A) *Transfer of membership or ownership.* Procedures and forms for the purchase, sale or transfer of membership or ownership, but not including qualifications for membership or ownership, any right or obligation of membership or ownership or dues or assessments;

(B) *Administrative procedures.* The organization and administrative procedures of a registered entity governing bodies such as a Board of Directors, Officers and Committees, but not voting requirements, Board of Directors or Committee composition requirements or procedures, decision making procedures, use or disclosure of material non-public information gained through the performance of official duties, or requirements relating to conflicts of interest;

(C*) Administration.* The routine, daily administration, direction and control of employees, requirements relating to gratuity and similar funds, but not guaranty, reserves, or similar funds; declaration of holidays, and changes to facilities housing the market, trading floor or trading area;

(D) *Standards of decorum.* Standards of decorum or attire or similar provisions relating to admission to the floor, badges, or visitors, but not the establishment of penalties for violations of such rules; and

(E) *Fees.* Fees or fee changes, other than fees or fee changes associated with market making or trading incentive programs, that:

(*1*) Are less than $1.00; or

(*2*) Relate to matters such as dues, badges, telecommunication services, booth space, real time quotations, historical information, publications, software licenses or other matters that are administrative in nature.

(F) *Securities indexes.* Routine changes to the composition, computation or method of security selection of an index that is referenced and defined in the product's rules, and which is made by an independent third party.

(G) *Option contract terms.* For registered entities that are in compliance with the daily reporting requirements of § 16.01 of this chapter, changes to option contract rules relating to the strike price listing procedures, strike price intervals, and the listing of strike prices on a discretionary basis.

(H) *Trading months.* For registered entities that are in compliance with the daily reporting requirements of § 16.01 of this chapter, the initial listing of trading months which are within the currently established cycle of trading months.

[76 FR 44790, July 27, 2011, as amended at 76 FR 45666, Aug. 1, 2011]

§ 40.7 Delegations.

(a) *Procedural matters.* (1) The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Clearing and Risk and, separately, to the Director of the Division of Market Oversight, to be exercised by either Director, as appropriate, or by such employees of the Commission that either Director may designate from time to time, the following authorities, with the concurrence of the General

Counsel or the General Counsel's delegate:

(i) To request, pursuant to § 40.3(c)(2) or § 40.5(c)(1)(ii) of this part, that the registered entity requesting approval amend the proposed product, rule or rule amendment, or supplement the submission to the Commission;

(ii) To notify the registered entity, pursuant to § 40.3(e) or § 40.5(e) of this part, that the Commission is not approving, or is unable to approve, the proposed product, rule or rule amendment;

(iii) To make all determinations reserved to the Commission in § 40.10.

(2) The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Clearing and Risk and, separately, to the Director of the Division of Market Oversight, to be exercised by either Director, as appropriate, or by such employees of the Commission that either Director may designate from time to time, the following authorities, after consultation with the Office of General Counsel or the General Counsel's delegate to notify a registered entity:

(i) Pursuant to § 40.3(d) of this part, that the time for review of the submission has been extended because the product raises novel or complex issues that require additional time for review;

(ii) Pursuant to § 40.5(d) of this part, that the time for review of the submission has been extended because the proposed rule or rule amendment raises novel or complex issues that require additional time for review or is of major economic significance;

(iii) Pursuant to § 40.6(c) of this part, that the proposed rule or rule amendment has been stayed because there exist novel or complex issues that require additional time to analyze, or there is potential inconsistency with the Act or the Commission's regulations.

(3) The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Clearing and Risk and, separately, to the Director of the Division of Market Oversight, to be exercised by either Director, as appropriate, or by such employees of the Commission that either Director may designate from time to time, the authority to notify a registered entity, pursuant to § 40.3(d) or § 40.5(d) of this part, that the time for review of the submission has been extended, or that a rule certified pursuant to § 40.6(c) has been stayed, because the submission is incomplete or provides an inadequate explanation.

(4) *Emergency rules.* The Commission hereby delegates to the Director of the Division of Market Oversight and, separately, to the Director of the Division of Clearing and Risk, to be exercised by either Director, as appropriate, or by such other employee or employees of the Commission that either Director may designate from time to time, authority to receive notification of emergency rules under § 40.6(a)(6)(ii) of this part.

(5) The Commission hereby delegates to the Director of the Division of Market Oversight, to be exercised by the Director or by such employees of the Commission that the Director may designate from time to time, with the concurrence of the General Counsel or the General Counsel's delegate, the authority to determine whether a rule change submitted by a designated contract market for a materiality determination under § 40.4(b)(5) of this part is not material (in which case it may be reported pursuant to the provisions of § 40.6(d) of this part), or is material, in which case he or she shall notify the registered entity that the rule change must be submitted for the Commission's prior approval.

(b) *Approval authority.* The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Clearing and Risk and, separately, to the Director of the Division of Market Oversight, to be exercised by either Director, as appropriate, or by such employees of the Commission that either Director may designate from time to time, with the concurrence of the General Counsel or the General Counsel's delegate, the authority to approve, pursuant to section 5c(c)(3) of the Act and § 40.5 of this part, rules or rule amendments of a registered entity that:

(1) Relate to, but do not substantially change, the quantity, quality, or other delivery specifications, procedures, or obligations for delivery, cash

settlement, or exercise under an agreement, contract or transaction approved for trading by the Commission; daily settlement prices; clearing position limits; requirements or procedures for governance of a registered entity; procedures for transfer trades; trading hours; minimum price fluctuations; and maximum price limit and trading suspension provisions;

(2) Reflect routine modifications that are required or anticipated by the terms of the rule of a registered entity;

(3) Establish or amend speculative limits or position accountability provisions that are in compliance with the requirements of the Act and the Commission's regulations;

(4) Are in substance the same as a rule of the same or another registered entity which has been approved previously by the Commission pursuant to section 5c(c)(3) of the Act;

(5) Are consistent with a specific, stated policy or interpretation of the Commission; or

(6) Relate to the listing of additional trading months of approved contracts.

(c) Notwithstanding the provisions of this section, the Director of the Division of Clearing and Risk and, separately, the Director of the Division of Market Oversight may submit to the Commission for its consideration any matter that has been delegated pursuant to this section.

(d) Nothing in this section shall be deemed to prohibit the Commission, at its election, from exercising any of the authority delegated pursuant to this section.

[76 FR 44790, July 27, 2011, as amended at 78 FR 22419, Apr. 16, 2013]

§ 40.8 Availability of public information.

(a) The following sections of all applications to become a designated contract market, swap execution facility, derivatives clearing organization, or swap data repository shall be made publicly available: Transmittal letter and first page of the application cover sheet, proposed rules, narrative summary of the applicant's proposed activities and regulatory compliance chart, documents establishing the applicant's legal status, documents setting forth the applicant's corporate and governance structure and any other part of the application not covered by a request for confidential treatment.

(b) [Reserved]

(c) A registered entity's filing of new products pursuant to the self-certification procedures of § 40.2 of this part, new products for Commission review and approval pursuant to § 40.3 of this part, new rules and rule amendments for Commission review and approval pursuant to § 40.4 or § 40.5 of this part, and new rules and rule amendments pursuant to the self-certification procedures of § 40.6 and § 40.10 of this part shall be treated as public information unless accompanied by a request for confidential treatment. If a registered entity files a request for confidential treatment, the following procedures shall apply:

(1) A detailed written justification of the confidential treatment request must be filed simultaneously with the request for confidential treatment. The form and content of the detailed written justification shall be governed by § 145.9 of this chapter;

(2) All material for which confidential treatment is requested must be segregated in an appendix to the submission;

(3) The submission itself must indicate that material has been segregated and, as appropriate, an additional redacted version provided;

(4) Commission staff may make an initial determination with respect to the request for confidential treatment without regard to whether a request for the information has been sought under the Freedom of Information Act;

(5) All requests for confidential treatment shall be subject to the process provided by § 145.9 of this chapter.

(6) A submitter of information under this part may appeal an adverse decision by staff to the Commission's Office of General Counsel. The form and content of such appeal shall be governed by § 145.9(g) of this chapter.

(7) The grant of any part of a request for confidential treatment under this section may be reconsidered if a subsequent request under the Freedom of Information Act is made for the information.

(d) Commission staff will not consider confidential treatment requests for information that is required to be made public under the Act. The terms and conditions of a product submitted to the Commission pursuant to §§ 40.2, 40.3, 40.5 and 40.6 of this part shall be made publicly available at the time of submission.

[76 FR 44790, July 27, 2011, as amended at 80 FR 59578, Oct. 2, 2015]

§ 40.9 [Reserved]

§ 40.10 Special certification procedures for submission of rules by systemically important derivatives clearing organizations.

(a) *Advance notice.* A registered derivatives clearing organization that has been designated by the Financial Stability Oversight Council as a systemically important derivatives clearing organization shall provide notice to the Commission not less than 60 days in advance of any proposed change to its rules, procedures, or operations that could materially affect the nature or level of risks presented by the systemically important derivatives clearing organization. A notice submitted under this section shall be subject to the filing requirements of § 40.6(a)(1) and the Web site publication requirements of § 40.6(a)(2).

(1) The notice of a proposed change shall provide the information required to be submitted under § 40.6(a)(7) and shall specifically describe:

(i) The nature of the change and expected effects on risks to the systemically important derivatives clearing organization, its clearing members, or the market; and

(ii) How the systemically important derivatives clearing organization plans to manage any identified risks.

(2) Concurrent with providing the Commission with the advance notice or any request or other information related to the advance notice, the systemically important derivatives clearing organization shall provide the Board of Governors of the Federal Reserve System with a copy of such notice, request or other information in the same format and manner as required by the Board of Governors for those designated financial market utilities for which it is the Supervisory Agency pursuant to section 803(8) of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

(3) The systemically important derivatives clearing organization may request that the Commission expedite the review on the grounds that the change would materially decrease risk. The Commission, in its discretion, may expedite the review and, pursuant to paragraph (g) of this section, notify the systemically important derivatives clearing organization in less than 60 days from the date the Commission receives the notice of proposed change in writing that it does not object to the proposed change and authorizes implementation of the change on an earlier date.

(b) *Materiality.* The term ''materially affect the nature or level of risks presented,'' when used to qualify determinations on a change to rules, procedures, or operations of a systemically important derivatives clearing organization, means matters as to which there is a reasonable possibility that the change could affect the performance of essential clearing and settlement functions or the overall nature or level of risk presented by the systemically important derivatives clearing organization. Such changes may include, but are not limited to, changes that materially affect financial resources, participant and product eligibility, risk management (including matters relating to margin and stress testing), daily or intraday settlement procedures, default procedures, system safeguards (business continuity and disaster recovery), and governance. If a systemically important derivatives clearing organization determines that a proposed change is not material and therefore does not file an advance notice under this § 40.10, but the Commission determines that the change is material, the Commission may require the systemically important derivatives clearing organization to withdraw the proposed change and provide notice pursuant to this section.

(c) *Further information.* The Commission may require the systemically important derivatives clearing organization to provide any further information

necessary to assess the effect the proposed change would have on the nature or level of risks associated with the systemically important derivatives clearing organization's payment, clearing, or settlement activities and the sufficiency of any proposed risk management techniques.

(d) *Notice of objection.* A systemically important derivatives clearing organization shall not implement a change to which the Commission has an objection on the grounds that the proposed change is not consistent with the Act or the Commission's regulations, or the purposes of the Dodd-Frank Act or any applicable rules, orders, or standards prescribed under Section 805(a) of the Dodd-Frank Act. The Commission will notify the systemically important derivatives clearing organization in writing of any objection regarding the proposed change within 60 days from the later of:

(1) The date that the notice of the proposed change was received; or

(2) The date the Commission received any further information it had requested for consideration of the notice.

(e) *Implementation of change absent Commission objection.* A systemically important derivatives clearing organization may implement a change if it has not received an objection to the proposed change within 60 days from the later of:

(1) The date that the Commission received the notice of proposed change; or

(2) The date the Commission received any further information it had requested for consideration of the notice.

(f) *Extended review.* The Commission may, during the 60-day review period, extend the review period if the proposed change raises novel or complex issues. A notification by the Commission pursuant to this paragraph will extend the review for an additional 60 days. Any extension under this paragraph will extend the time periods under paragraphs (d) and (e) of this section for an additional 60 days.

(g) *Change allowed earlier if notified of no objection.* A systemically important derivatives clearing organization may implement a change in less than 60 days from the date the Commission receives the notice of proposed change or the date the Commission receives any further information it has requested, if the Commission notifies the systemically important derivatives clearing organization in writing that it does not object to the proposed change and authorizes implementation of the change on an earlier date, subject to any conditions imposed by the Commission.

(h) *Emergency changes.* A systemically important derivatives clearing organization may implement a change that would otherwise require advance notice under this section if it determines that an emergency exists and immediate implementation of the change is necessary for the systemically important derivatives clearing organization to continue to provide its services in a safe and sound manner.

(1) The systemically important derivatives clearing organization shall provide notice of any such emergency change to the Commission as soon as practicable, which shall be no later than 24 hours after implementation of the change.

(2) The notice of an emergency change shall:

(i) Provide the information required for advance notice as set forth in paragraph (a) of this section;

(ii) Describe the nature of the emergency; and

(iii) Describe the reason the change was necessary for the systemically important derivatives clearing organization to continue to provide its services in a safe and sound manner.

(3) The Commission may require modification or rescission of the emergency change if it finds that the change is not consistent with the Act or the Commission's regulations, or the purposes of the Dodd-Frank Act or any applicable rules, orders, or standards prescribed under Section 805(a) of the Dodd-Frank Act.

§40.11 Review of event contracts based upon certain excluded commodities.

(a) *Prohibition.* A registered entity shall not list for trading or accept for clearing on or through the registered entity any of the following:

(1) An agreement, contract, transaction, or swap based upon an excluded commodity, as defined in Section

1a(19)(iv) of the Act, that involves, relates to, or references terrorism, assassination, war, gaming, or an activity that is unlawful under any State or Federal law; or

(2) An agreement, contract, transaction, or swap based upon an excluded commodity, as defined in Section 1a(19)(iv) of the Act, which involves, relates to, or references an activity that is similar to an activity enumerated in §40.11(a)(1) of this part, and that the Commission determines, by rule or regulation, to be contrary to the public interest.

(b) [Reserved]

(c) *90-day review and approval of certain event contracts.* The Commission may determine, based upon a review of the terms or conditions of a submission under §40.2 or §40.3, that an agreement, contract, transaction, or swap based on an excluded commodity, as defined in Section 1a(19)(iv) of the Act, which may involve, relate to, or reference an activity enumerated in §40.11(a)(1) or §40.11(a)(2), be subject to a 90-day review. The 90-day review shall commence from the date the Commission notifies the registered entity of a potential violation of §40.11(a).

(1) The Commission shall request that a registered entity suspend the listing or trading of any agreement, contract, transaction, or swap based on an excluded commodity, as defined in Section 1a(19)(iv) of the Act, which may involve, relate to, or reference an activity enumerated in §40.11(a)(1) or §40.11(a)(2), during the Commission's 90-day review period. The Commission shall post on the Web site a notification of the intent to carry out a 90-day review.

(2) *Final determination.* The Commission shall issue an order approving or disapproving an agreement, contract, transaction, or swap that is subject to a 90-day review under §40.11(c) not later than 90 days subsequent to the date that the Commission commences review, or if applicable, at the conclusion of such extended period agreed to or requested by the registered entity.

§ 40.12 Staying of certification and tolling of review period pending jurisdictional determination.

(a) *Notice of novel derivative products.* (1) A registered entity certifying, submitting for approval, or otherwise filing a proposal to list, trade, or clear a novel derivative product (other than a product subject to the provisions of §1.8 of this chapter) having elements of both a security and a contract for the sale of a commodity for future delivery (or an option on such contract or an option on a commodity) may provide notice of its proposal to the Commission and the Securities and Exchange Commission with a statement that written notice has been provided to both agencies through an appropriate means provided in each Commission's regulations.

(2) If concurrent notice is not provided pursuant to §40.12(a)(1), the Commission shall notify the Securities and Exchange Commission of the registered entity's submission of a novel derivative product described in §40.12(a)(1) and accompany such notice with a copy of the submission. The Commission shall determine whether a particular submission is a novel derivative product requiring notice to the Securities and Exchange Commission not later than five business days subsequent to the date that the registered entity submits the product for Commission review.

(b) *Tolling of review period.* Upon receipt of a request for a jurisdictional determination, pursuant to Section 718(a)(2) of the Dodd-Frank Act, by the Commission or the Securities and Exchange Commission, the product certification shall be stayed or the approval review period shall be tolled until a final determination order is issued.

(1) The Commission will provide the registered entity with a written notice of stay pending issuance of a final determination order by the Commission or the Securities and Exchange Commission.

(2) The stay shall be withdrawn or the approval review period shall resume upon the Commission's or the Securities and Exchange Commission's issuance of a final determination order

finding that the Commission has jurisdiction over the submission.

(3) *Determination order*. A final determination, for purposes of §40.12(b) of this part, shall be a determination order issued by the Commission or the Securities and Exchange Commission pursuant to Section 718(a)(3) of the Dodd-Frank Act.

(c) *Judicial review of determination order*. The filing of a petition by a complaining Commission, pursuant to Section 718(b) of the Dodd-Frank Act, shall operate as a stay of the agency order.

(1) The stay shall remain in effect until the date on which the United States Court of Appeals for the District of Columbia Circuit issues a final determination pursuant to Section 718(b)(4) of the Dodd-Frank Act, or until such date that there is a final disposition of an appeal of that determination.

(2) The submission review period shall resume upon issuance of a final determination, as described in §40.12(c)(1), that the Commission has jurisdiction over the submission.

APPENDIX A TO PART 40—SCHEDULE OF FEES

(a) *Applications for product approval*. Each application for product approval under §40.3 must be accompanied by a check or money order made payable to the Commodity Futures Trading Commission in an amount to be determined annually by the Commission and published in the FEDERAL REGISTER.

(b) Checks and applications should be sent to the attention of the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, DC 20581. No checks or money orders may be accepted by personnel other than those in the Office of the Secretariat.

(c) Failure to submit the fee with an application for product approval will result in return of the application. Fees will not be returned after receipt.

APPENDIXES B–C TO PART 40 [RESERVED]

APPENDIX D TO PART 40—SUBMISSION COVER SHEET AND INSTRUCTIONS

(a) A properly completed submission cover sheet shall accompany all rule and product submissions submitted electronically by a registered entity in a format and manner specified by the Secretary of the Commission to the Secretary of the Commission. A properly completed submission cover sheet shall include all of the following:

1. *Identifier Code (optional)*—A registered entity Identifier Code at the top of the cover sheet, if applicable. Such codes are commonly generated by registered entities to provide an identifier that is unique to each filing (e.g., NYMEX Submission 03–116).

2. *Date*—The date of the filing.

3. *Organization*—The name of the organization filing the submission (e.g., CBOT).

4. *Filing as a*—Check in the appropriate box indicating that the rule or product is being submitted by a designated contract market (DCM), derivatives clearing organization (DCO), swap execution facility (SEF), or swap data repository (SDR).

5. *Type of Filing*—An indication as to whether the filing is a new rule, rule amendment or new product. The registered entity should check the appropriate box to indicate the applicable category under that heading.

6. *Rule Numbers*—For rule filings, the rule number(s) being adopted or modified in the case of rule amendment filings.

7. *Description*—For rule or rule amendment filings, a description of the new rule or rule amendment, including a discussion of its expected impact on the registered entity, market participants, and the overall market. The narrative should describe the substance of the submission with enough specificity to characterize all material aspects of the filing.

(b) *Other Requirements*—A submission shall comply with all applicable filing requirements for proposed rules, rule amendments, or products. The filing of the submission cover sheet does not obviate the registered entity's responsibility to comply with applicable filing requirements (e.g., rules submitted for Commission approval under §40.5 must be accompanied by an explanation of the purpose and effect of the proposed rule along with a description of any substantive opposing views).

(c) Checking the box marked ''confidential treatment requested'' on the Submission Cover Sheet does not obviate the submitter's responsibility to comply with all applicable requirements for requesting confidential treatment in §40.8 and, where appropriate, §145.9 of this chapter, and will not substitute for notice or full compliance with such requirements.

[80 FR 59578, Oct. 2, 2015]

OTC derivatives regulatory regime

To address the structural deficiencies in the over-the-counter (OTC) derivatives market highlighted by the 2008 global financial crisis, the Legislative Council enacted the Securities and Futures (Amendment) Ordinance 2014 (Amendment Ordinance) on 26 March 2014. The Amendment Ordinance provides a regulatory framework for the OTC derivatives market in Hong Kong.

The Amendment Ordinance is being implemented in stages:

- The first stage came into effect on 10 July 2015, involving mandatory reporting of transactions in certain interest rate swaps (IRS) and non-deliverable forwards and related record keeping obligations together with the general framework of the new regime;
- The second stage involves (i) mandatory clearing of certain transactions of standardised IRS in HKD or one of the G4 currencies (i.e. USD, EUR, GBP or JPY) and related record keeping obligations, together with designation of central counterparties for the purposes of mandatory clearing; and (ii) expanding mandatory reporting so that OTC derivatives under all five key asset classes (namely interest rates, foreign exchange, equities, credit and commodities) are covered. This was implemented on 1 September 2016 and 1 July 2017 respectively;
- Other aspects of the regime will follow in later stages.

Primary Legislation:

- Securities and Futures (Amendment) Ordinance 2014
- Securities and Futures and Companies Legislation (Amendment) Ordinance 2021 – Part 3 and Division 4 of Part 4

Subsidiary Legislation and Gazette Notices:

Reporting Obligation related

- Securities and Futures (OTC Derivative Transactions – Reporting and Record Keeping Obligations) Rules, Cap.571AL – click here to access the Hong Kong e-Legislation (HKeL) operated by the Department of Justice
- Securities and Futures (Stock Markets, Futures Markets and Clearing Houses) Notice, Cap.571AM - click here to access the HKeL
- Securities and Futures (OTC Derivative Transactions – Reporting and Record Keeping Obligations) (Amendment) Rules 2016
- Securities and Futures (OTC Derivative Transactions Reporting Obligation – Fees) Rules, Cap.571AO – click here to access the HKeL or here for the gazetted version
- Notice under rule 26(3) of the Reporting Rules designating jurisdictions for the purposes of the masking relief conferred under those rules (G.N. 4905 - 7 July 2015)
- Notice under rule 2A(2) of Securities and Futures (OTC Derivative Transactions - Reporting and Record Keeping Obligations) (Amendment) Rules 2016 specifying a class or description of specified OTC derivative transactions (G.N. 3912 - 15 July 2016)
- Securities and Futures (OTC Derivative Products) Notice, Cap.571AP - click here to access the HKeL or here for the gazetted version
- Securities and Futures (Stock Markets, Futures Markets and Clearing Houses) (Amendment) Notice 2018

Clearing Obligation related

We use cookies to improve the website performance and user experience. If you continue to use this website, you are agreeing to their uses. Learn more about our privacy policy.

- Securities and Futures (OTC Derivative Transactions - Clearing and Record Keeping Obligations and Designation of Central Counterparties) (Amendment) Rules 2022
- Amendments to Securities and Futures (OTC Derivative Transactions – Clearing and Record Keeping Obligations and Designation of Central Counterparties) Rules – Part 3 of Division 3 of the Securities and Futures and Companies Legislation (Amendment) Ordinance 2021
- Securities and Futures (Fees) (Amendment) Rules 2016
- Notice under rule 11(2) of Securities and Futures (OTC Derivative Transactions - Clearing and Record Keeping Obligations and Designation of Central Counterparties) Rules regarding designation of jurisdictions (G.N. 4777 - 22 August 2016)
- Notice under rule 3(1) and rule 3(3) of Securities and Futures (OTC Derivative Transaction – Clearing and Record Keeping obligations and Designation of Central Counterparties) Rules regarding designation of financial services providers (G.N. 7596 - 26 November 2021)

Previous Versions (for reference only)

- Securities and Futures (OTC Derivative Transactions – Clearing and Record Keeping Obligations and Designation of Central Counterparties) Rules, Cap.571AN – click here for the gazetted version
- Securities and Futures (OTC Derivative Transactions – Reporting and Record Keeping Obligations) Rules, Cap.571AL (as of 10 July 2015 (Phase 1 Reporting Rules)) – click here for the gazetted version
- Securities and Futures (Stock Markets, Futures Markets and Clearing Houses) Notice, Cap.571AM (as of 10 July 2015) – click here for the gazetted version
- Notice specifying currencies for the purposes of the definition of "specified currency" as set out in section 1 of Part 1 of Schedule 1 to the Reporting Rules (G.N. 4906 - 10 July 2015)
- Notice specifying floating interest rate indices for the purposes of the definition of "specified floating interest rate index" as set out in section 1 of Part 1 of Schedule 1 to the Reporting Rules (G.N. 4907 - 10 July 2015)
- Notice under rule 3(1) of Securities and Futures (OTC Derivative Transactions - Clearing and Record Keeping Obligations and Designation of Central Counterparties) Rules regarding designation of financial services providers (G.N. 4776 - 22 August 2016)
- Notice under rule 3(1) and rule 3(3) of Securities and Futures (OTC Derivative Transaction – Clearing and Record Keeping obligations and Designation of Central Counterparties) Rules regarding designation of financial services providers(G.N. 9212 - 4 December 2018)
- Notice under rule 3(1) and rule 3(3) of Securities and Futures (OTC Derivative Transaction – Clearing and Record Keeping obligations and Designation of Central Counterparties) Rules regarding designation of financial services providers (G.N. 7083 - 15 November 2019)
- Notice under rule 3(1) and rule 3(3) of Securities and Futures (OTC Derivative Transaction – Clearing and Record Keeping obligations and Designation of Central Counterparties) Rules regarding designation of financial services providers (G.N. 7127 - 26 November 2020)
- Securities and Futures (OTC Derivative Transactions - Clearing and Record Keeping Obligations and Designation of Central Counterparties) (Amendment) Rules 2018

List of Designated Central Counterparties for the Purposes of Mandatory Clearing:

- Chicago Mercantile Exchange Inc
- Japan Securities Clearing Corporation
- LCH Limited
- OTC Clearing Hong Kong Limited

List of prescribed persons that have reached the clearing threshold for the purposes of Mandatory Clearing:

- Published Date: 27 June 2017
- Published Date: 14 September 2018

We use cookies to improve the website performance and user experience. If you continue to use this website, you are agreeing to their uses. Learn more about our privacy policy.

- Published Date: 31 August 2022

Commencement Notices:

- Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2015
- Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2016
- Securities and Futures (OTC Derivative Transactions – Reporting and Record Keeping Obligations) Rules (Commencement) Notice

Public Consultations and Conclusions:

- Consultation paper on the proposed regulatory regime for the OTC derivatives market in Hong Kong – October 2011
- Joint consultation conclusions on the proposed regulatory regime for the OTC derivatives market in Hong Kong – July 2012
- Supplemental consultation on the OTC derivatives regime for Hong Kong – proposed scope of new/expanded regulated activities and regulatory oversight of systemically important players – July 2012
- Joint supplemental consultation conclusions on the OTC derivatives regime in Hong Kong – proposed scope of new/expanded regulated activities and regulatory oversight of systemically important participants – September 2013
- Consultation paper on the Securities and Futures (OTC Derivative Transactions – Reporting and Record Keeping) Rules – July 2014
- Consultation conclusions and further consultation on the Securities and Futures (OTC Derivative Transactions – Reporting and Record Keeping Obligations) Rules – November 2014
- Conclusions on further consultation on the Securities and Futures (OTC Derivative Transactions – Reporting and Record Keeping Obligations) Rules – May 2015
- Consultation paper on introducing mandatory clearing and expanding mandatory reporting - September 2015
- Consultation conclusions and further consultation on introducing mandatory clearing and expanding mandatory reporting – February 2016
- Further consultation conclusions on introducing mandatory clearing and expanding mandatory reporting – July 2016
- Joint consultation paper on the prescription of additional markets and clearing houses and prescription of Delta One Warrants under the OTC derivatives regulatory regime – April 2017
- Joint consultation conclusions on the prescription of additional markets and clearing houses and the prescription of Delta One Warrants under the OTC derivatives regulatory regime – June 2017
- Consultation Paper on (1) the OTC derivatives regime for Hong Kong - Proposed refinements to the scope of regulated activities, requirements in relation to OTC derivative risk mitigation, client clearing, record-keeping and licensing matters; and (2) Proposed conduct requirements to address risks posed by group affiliates – December 2017
- Joint consultation paper on enhancements to the OTC derivatives regime for Hong Kong to - (1) mandate the use of Legal Entity Identifiers for the reporting obligation, (2) expand the clearing obligation and (3) adopt a trading determination process for introducing a platform trading obligation – March 2018
- Joint consultation conclusions paper on enhancements to the OTC derivatives regime for Hong Kong to - (1) mandate the use of Legal Entity Identifiers for the reporting obligation, (2) expand the clearing obligation and (3) adopt a trading determination process for introducing a platform trading obligation – June 2018
- Consultation Paper on the OTC derivatives regime for Hong Kong – Proposed margin requirements for non-centrally cleared OTC derivative transactions - June 2018
- Consultation Conclusions on (1) the OTC derivatives regime for Hong Kong - Proposed requirements in relation to OTC derivative risk mitigation and client clearing; and (2) Proposed conduct requirements to address risks posed by group affiliates - December 2018
- Joint consultation paper on enhancements to the OTC derivatives regulatory regime for Hong Kong to – (1)

We use cookies to improve the website performance and user experience. If you continue to use this website, you are agreeing to their uses. Learn more about our privacy policy.

- Joint consultation conclusions paper on annual update to the list of Financial Services Providers under the clearing obligation for OTC derivative transactions - June 2019
- Consultation Conclusions on the OTC derivatives regime for Hong Kong - Proposed margin requirements for non-centrally cleared OTC derivative transactions - December 2019
- Joint consultation paper on the annual update to the list of Financial Services Providers under the clearing obligation for over-the-counter derivative transactions - March 2020
- Consultation conclusions on the OTC derivatives regime for Hong Kong - Proposed refinements to the scope of regulated activities and competence requirements under the OTC derivatives licensing regime - June 2020
- Joint consultation conclusions paper on annual update to the list of Financial Services Providers under the clearing obligation for OTC derivative transactions - June 2020
- Joint consultation paper on the annual update to the list of Financial Services Providers under the Clearing Rules for over-the-counter derivative transactions - April 2021
- Joint consultation conclusions paper on the annual update to the list of Financial Services Providers under the Clearing Rules for over-the-counter derivative transactions - June 2021
- Joint consultation paper on addition of new calculation periods under the Clearing Rules for over-the-counter derivative transactions - December 2021
- Joint consultation conclusions on addition of new calculation periods and consultation on the annual update to the list of Financial Services Providers under the Clearing Rules for over-the-counter derivative transactions - April 2022
- Joint consultation conclusions paper on the annual update to the list of Financial Services Providers under the Clearing Rules for over-the-counter derivative transaction - June 2022

Frequently Asked Questions, Guidelines and Manuals:

- FAQs on the operation and implementation of the mandatory reporting regime
- FAQs on the operation and implementation of the mandatory clearing regime
- Supplementary Reporting Instructions (SRI) for OTC Derivative Transactions – click here to access the Hong Kong Trade Repository website
- OTC Derivatives Trade Repository Reporting Service Reference Manual – click here to access the Hong Kong Trade Repository website
- Hong Kong Trade Repository Administration and Interface Development Guide – Reporting Service – click here to access the Hong Kong Trade Repository website
- Operating Procedures for the Hong Kong Trade Repository – User Manual for Participants (Administrative Functions) – click here to access the Hong Kong Trade Repository website
- Operating Procedures for the Hong Kong Trade Repository – User Manual for Participants (Trade Functions – Reporting Service) – click here to access the Hong Kong Trade Repository website
- Operating Procedures for the Hong Kong Trade Repository – User Manual for Participants (Trade Functions – Reporting Service – Appendix) – click here to access the Hong Kong Trade Repository website

Other Information:

Hong Kong Trade Repository website: http://hktr.hkma.gov.hk/

Last update: 31 Aug 2022

We use cookies to improve the website performance and user experience. If you continue to use this website, you are agreeing to their uses. Learn more about our privacy policy.

Copyright 2020 Securities and Futures Commission. All rights reserved.

We use cookies to improve the website performance and user experience. If you continue to use this website, you are agreeing to their uses. Learn more about our privacy policy.

Securities and Futures Ordinance

(Cap. 571)

Contents

An Ordinance to consolidate and amend the law relating to financial products, the securities and futures market and the securities and futures industry, the regulation of activities and other matters connected with financial products, the securities and futures market and the securities and futures industry, the protection of investors, and other matters incidental thereto or connected therewith, and for connected purposes.

[1 April 2003] *L.N. 12 of 2003*

(Enacting provision omitted—E.R. 2 of 2012)

Part I

Preliminary

(Format changes—E.R. 2 of 2012)

1. Short title

(1) This Ordinance may be cited as the Securities and Futures Ordinance.

(2) *(Omitted as spent—E.R. 2 of 2012)*

2. Interpretation

(1) Schedule 1 contains interpretation provisions which apply to this Ordinance in accordance with their terms.

(2) Individual Parts and provisions of this Ordinance contain interpretation provisions which have application in accordance with their terms.

(3) The Commission may, by notice published in the Gazette, amend Parts 2, 3, 4 and 5 of Schedule 1.

Part II

Securities and Futures Commission

(Format changes—E.R. 2 of 2012)

Division 1—The Commission

3. Securities and Futures Commission

(1) Notwithstanding the repeal of the Securities and Futures Commission Ordinance (Cap. 24) under section 406, the body established by section 3 of that Ordinance as the Securities and Futures Commission shall continue in existence in its original name as a body corporate with power to sue and be sued in that name.

(2) Subject to the provisions of this Ordinance, the corporate identity of the Commission, and the rights, privileges, powers, obligations and liabilities of the Commission and those of others in relation to the Commission, are not affected by the repeal of the Securities and Futures Commission Ordinance (Cap. 24) under section 406, and any reference to the Commission (whether by reference to that Ordinance or otherwise) in any Ordinance or any instrument, record or document, or in or for the purposes of any proceedings, agreement or arrangement (whether in writing or not) shall be construed accordingly.

(3) The receipts of the Commission are not subject to taxation under the Inland Revenue Ordinance (Cap. 112).

(4) Part 1 of Schedule 2 contains provisions relating to the constitution and proceedings of and other matters relating to the Commission.

4. Regulatory objectives of Commission

The regulatory objectives of the Commission are—

(a) to maintain and promote the fairness, efficiency, competitiveness, transparency and orderliness of the securities and futures industry;

(b) to promote understanding by the public of financial services including the operation and functioning of the securities and futures industry; *(Replaced 9 of 2012 s. 30)*

(c) to provide protection for members of the public investing in or holding financial products;

(d) to minimize crime and misconduct in the securities and futures industry;

(e) to reduce systemic risks in the securities and futures industry; and

(f) to assist the Financial Secretary in maintaining the financial stability of Hong Kong by taking appropriate steps in relation to the securities and futures industry.

5. Functions and powers of Commission

(1) The functions of the Commission are, so far as reasonably practicable—

(a) to take such steps as it considers appropriate to maintain and promote the fairness, efficiency, competitiveness, transparency and orderliness of the securities and futures industry;

(b) to supervise, monitor and regulate—

(i) the activities carried on by recognized exchange companies, recognized clearing houses, recognized exchange controllers or recognized investor

compensation companies, or by persons carrying on activities regulated by the Commission under any of the relevant provisions, other than registered institutions; and

(ii) such of the activities carried on by registered institutions as are required to be regulated by the Commission under any of the relevant provisions;

(c) to promote and develop an appropriate degree of self-regulation in the securities and futures industry;

(d) to promote, encourage and enforce the proper conduct, competence and integrity of persons carrying on activities regulated by the Commission under any of the relevant provisions in the conduct of such activities;

(e) to encourage the provision of sound, balanced and informed advice regarding transactions or activities related to financial products;

(f) to take such steps as it considers appropriate to ensure that the relevant provisions are complied with;

(g) to maintain and promote confidence in the securities and futures industry in such manner as it considers appropriate, including by the exercise of its discretion to disclose to the public any matter relating or incidental to the performance of any of its functions;

(h) to co-operate with and provide assistance to regulatory authorities or organizations, whether formed or established in Hong Kong or elsewhere;

(i) to enhance the understanding and knowledge of members of the public of financial services including—

(i) the operation and functioning of the securities and futures industry; and

(ii) the benefits, risks and liabilities associated with purchasing financial services including investing in financial products; *(Replaced 9 of 2012 s. 31)*

(j) to encourage the public to appreciate the relative benefits of purchasing different types of financial services including investing in financial products through persons carrying on activities regulated by the Commission under any of the relevant provisions; *(Amended 9 of 2012 s. 31)*

(k) to promote understanding by the public of the importance of—

(i) making informed decisions regarding the purchasing of financial services and transactions and activities related to financial products; and

(ii) taking responsibility for those decisions; *(Replaced 9 of 2012 s. 31)*

(l) to secure an appropriate degree of protection for members of the public investing in or holding financial products, having regard to their degree of understanding and expertise in respect of investing in or holding financial products;

(m) to promote, encourage and enforce—

(i) the adoption of appropriate internal controls and risk management systems by persons carrying on activities regulated by the Commission under any of the relevant provisions, other than registered institutions; and

(ii) the adoption of appropriate internal controls and risk management systems by registered institutions in the conduct of activities regulated by the Commission under any of the relevant provisions;

(n) to suppress illegal, dishonourable and improper practices in the securities and futures industry;

(o) to take appropriate steps in relation to the securities and futures industry further to any requirement of the Financial Secretary for the purpose of providing assistance in maintaining the financial stability of Hong Kong;

(p) to recommend reforms of the law relating to the securities and futures industry;

(q) to advise the Financial Secretary on matters relating to the securities and futures industry and provide him with such information in relation thereto as it considers appropriate; and

(r) to perform functions conferred or imposed on it by or under this or any other Ordinance.

(2) Subsection (1)(c) does not limit or otherwise affect any other function of the Commission.

(3) The Commission, in performing any of its functions in relation to—

(a) any authorized financial institution as a registered institution or as an associated entity of an intermediary; or

(b) any person as an associated entity of an authorized financial institution that is a registered institution,

may rely, in whole or in part, on the supervision of such authorized financial institution or person (as the case may be) by the Monetary Authority.

(4) For the purposes of this Ordinance, the Commission may—

(a) acquire, hold and dispose of property of any description;

(b) make contracts or other agreements;

(c) receive and expend moneys;

(d) with the approval of the Financial Secretary, borrow money on security or other conditions;

(da) establish a wholly owned subsidiary of the Commission to facilitate the performance of functions under subsection (1)(i), (j) and (k); *(Added 9 of 2012 s. 31)*

(e) publish or otherwise make available materials (however described) indicating to persons who are, or who carry on activities, regulated by the Commission under any of the relevant provisions and, where the Commission considers appropriate, to any other persons the manner in which, in the absence of any particular consideration or circumstance, the Commission proposes to perform any of its functions; and

(f) publish or otherwise make available materials (however described) indicating to the public any matter relating or incidental to the performance of any of the functions of the Commission.

(5) Materials published or otherwise made available under subsection (4)(e) or (f) are not subsidiary legislation.

6. General duties of Commission

(1) In performing its functions, the Commission shall, so far as reasonably practicable, act in a way which—

(a) is compatible with its regulatory objectives; and

(b) it considers most appropriate for the purpose of meeting those objectives.

(2) In pursuing its regulatory objectives and performing its functions, the Commission shall have regard to—

(a) the international character of the securities and futures industry and the desirability of maintaining the status

of Hong Kong as a competitive international financial centre;

(b) the desirability of facilitating innovation in connection with financial products and with activities regulated by the Commission under any of the relevant provisions;

(c) the principle that competition among persons carrying on activities regulated by the Commission under any of the relevant provisions should not be impeded unnecessarily;

(d) the importance of acting in a transparent manner, having regard to its obligations of preserving secrecy and confidentiality; and

(e) the need to make efficient use of its resources.

7. Advisory Committee

(1) There shall be an Advisory Committee to advise the Commission on matters of policy regarding any of its regulatory objectives and functions.

(2) The Advisory Committee is constituted in accordance with Part 1 of Schedule 2 and shall conduct its business in accordance with that Part.

(3) The Advisory Committee shall meet at least once every 3 months to advise the Commission.

(4) The Commission may request the Advisory Committee to advise it on matters of policy regarding any of its regulatory objectives and functions.

8. Commission may establish committees

(1) The Commission may establish—

(a) standing committees; and

(b) special committees.

(2) The Commission may refer a matter to a committee established under this section for consideration, inquiry or management.

(3) The Commission may appoint a person to be a member of a committee established under this section, whether or not the person is a member of the Commission, and may appoint a member of the committee to be the chairman of the committee.

(4) A reference of a matter to a committee under subsection (2) does not prevent the Commission from performing any of its functions.

(5) The Commission may—

(a) withdraw a reference under subsection (2) from a committee;

(b) revoke an appointment of a member or chairman of a committee under subsection (3).

(6) A committee established under this section may elect one of its members—

(a) to be its chairman if a chairman has not been appointed by the Commission under subsection (3); or

(b) to act as its chairman for any period during which a chairman appointed by the Commission under subsection (3) is unable to act as chairman due to illness, absence from Hong Kong or any other cause,

and may at any time remove the member so elected from the office of the chairman.

(7) A committee established under this section may, subject to the provisions of this Ordinance, regulate its own procedure and business.

(8) A committee established under this section shall meet when and where the chairman of the committee determines, subject

to any procedure fixed by the committee and any direction given by the Commission under subsection (9).

(9) The Commission may give directions to a committee established under this section, whether generally or in any particular case, and whether regarding the manner in which it shall act or otherwise, and the committee shall act in accordance with any such directions.

9. Staff of Commission

(1) The Commission may employ persons for such remuneration and allowances, and on such other terms and conditions, as the Commission determines.

(2) The Commission may provide and maintain schemes (whether contributory or not) for the payment of retirement benefits, gratuities or other allowances to its employees and their dependants.

(3) The Commission may engage consultants, agents and advisers to assist it in the performance of its functions.

10. Delegation and sub-delegation of Commission's functions

(1) Subject to subsection (2), the Commission may delegate any of its functions to—

(a) a member of the Commission;

(b) a committee established under section 8; or

(c) an employee of the Commission, whether by reference to his name or to the office held by him.

(1A) The Commission may delegate any of its functions under section 5(1)(i), (j) or (k) to a wholly owned subsidiary established under section 5(4)(da). *(Added 9 of 2012 s. 32)*

(2) No delegation shall be made under subsection (1) in respect of—

(a) the power of the Commission to delegate under this section; or

(b) a function specified in Part 2 of Schedule 2.

(2AA) However, subsection (2)(b) does not prevent a function specified in Part 3 of Schedule 2 from being delegated to the chief executive officer of the Commission for the purpose of the application of a stabilization option under the Financial Institutions (Resolution) Ordinance (Cap. 628) to any of the following— *(Amended E.R. 2 of 2017)*

(a) a recognized clearing house;

(b) a recognized exchange company that is designated under section 6(1)(b) of that Ordinance as a within scope financial institution;

(c) a holding company (within the meaning of that Ordinance) or affiliated operational entity of an entity mentioned in paragraph (a) or (b). *(Added 23 of 2016 s. 215)*

(2A) The Commission may delegate any of its functions under section 17 (investment of funds) or 241 (investment of money forming part of the compensation fund) to a consultant, agent or adviser engaged by the Commission under section 9(3). *(Added 9 of 2012 s. 37)*

(3) Where the Commission delegates a function under this section, it may at the same time authorize the delegate to sub-delegate the function and the authorization may contain restrictions or conditions on the exercise of the power to sub-delegate.

(4) A delegation or sub-delegation under this section does not prevent the Commission or its delegate from concurrently performing the function delegated or sub-delegated.

(5) The Commission may—

(a) revoke a delegation under this section;

(b) revoke an authorization in respect of a sub-delegation under this section,

whereupon the delegation or sub-delegation (as the case may be) shall cease to have effect.

(6) Where a person or committee purports to act pursuant to a delegation or sub-delegation under this section, he or it shall be presumed, unless the contrary is proved, to be acting in accordance with the terms of the delegation or sub-delegation.

(7) Without prejudice to subsection (4), where there is a delegation or sub-delegation under this section in respect of a function of the Commission, any reference in this or any other Ordinance to the Commission in connection with the performance of the function shall, unless the context otherwise requires, be construed accordingly.

(8) The Legislative Council may by resolution amend Part 2 or 3 of Schedule 2. *(Amended 23 of 2016 s. 215)*

11. Directions to Commission

(1) After consultation with the chief executive officer of the Commission, the Chief Executive may, upon being satisfied that it is in the public interest to do so, give the Commission written directions as to the furtherance of any of its regulatory objectives or the performance of any of its functions. *(Amended 15 of 2006 s. 2)*

(2) The Commission shall comply with any written direction given under subsection (1).

(3) Where any written direction is given under subsection (1), any requirement under any other provision of this or any other Ordinance that the Commission shall, for the purpose of performing any of the functions to which the written direction relates—

(a) form any opinion;

(b) be satisfied as to any matter (including existence of particular circumstances); or

(c) consult any person,

shall not apply for all purposes connected with the performance of functions pursuant to, or consequent upon, the written direction.

(4) Written directions given under subsection (1) are not subsidiary legislation.

12. Commission to furnish information

The Commission shall, when required by the Financial Secretary, furnish to the Financial Secretary such information as he specifies on the principles, practices and policy it is pursuing or adopting, or proposes to pursue or adopt, in furthering any of its regulatory objectives or performing any of its functions, and the reasons therefor.

Division 2—Accounting and financial arrangements

13. Financial year and estimates

(1) The financial year of the Commission commences on 1 April in each year.

(2) The Commission shall, not later than 31 December in each financial year of the Commission, submit to the Chief Executive for his approval estimates of its income and expenditure for the next financial year.

(3) The Financial Secretary shall cause the estimates as approved pursuant to subsection (2) to be laid on the table of the Legislative Council.

14. Appropriation

For each financial year of the Commission, the Government shall pay to the Commission out of the general revenue the moneys appropriated by the Legislative Council for that purpose.

15. Accounts and annual report

(1) The Commission shall keep proper accounts and records of its transactions.

(2) The Commission shall, as soon as reasonably practicable after the end of each financial year of the Commission, prepare financial statements which shall—

(a) give a true and fair view of the state of affairs of the Commission as at the end of the financial year and of the results of its operations and cash flows in the financial year; and

(b) be signed by the chairman and the chief executive officer of the Commission. *(Amended 15 of 2006 s. 3)*

(3) The Commission shall, as soon as reasonably practicable after the end of each financial year of the Commission, prepare a report on its activities during the financial year and send a copy of the report to the Financial Secretary who shall cause a copy thereof to be laid on the table of the Legislative Council.

16. Auditors and audit

(1) The Commission shall, with the approval of the Financial Secretary, appoint auditors.

(2) The Commission shall, as soon as reasonably practicable after the end of each financial year of the Commission, submit to the auditors appointed under subsection (1) for audit the financial statements prepared for the financial year under section 15(2).

(3) The auditors appointed under subsection (1) shall prepare a report on the financial statements submitted to them under subsection (2) and send the report to the Commission which shall, as soon as reasonably practicable after its receipt, send to the Financial Secretary a copy of the report and a copy of the financial statements to which the report relates.

(4) The auditors appointed under subsection (1) shall include in their report a statement as to whether, in their opinion, the financial statements to which the report relates give a true and fair view of the state of affairs of the Commission as at the end of the financial year for which the financial statements are prepared and of the results of its operations and cash flows in the financial year.

(5) An auditor appointed under subsection (1) has a right of access at all reasonable times to the books, accounts, vouchers, records and documents kept by the Commission and is entitled to require from the officers of the Commission such information and explanations as he considers necessary for the performance of his duties as auditor.

(6) The Financial Secretary shall cause a copy of the report referred to in subsection (3), and a copy of the financial statements to which the report relates, to be laid on the table of the Legislative Council.

(7) The Director of Audit or another public officer authorized by the Director under subsection (8) may at any reasonable time—

(a) examine any books, accounts, vouchers, records or documents kept by the Commission; and

(b) if the Director or the public officer (as the case may be) considers appropriate, make a copy of the whole of, or any entry in, such books, accounts, vouchers, records or documents.

(8) The Director of Audit may authorize any public officer to perform any function for the purposes of subsection (7).

17. Investment of funds

The Commission may invest its funds which are not immediately required in the manner that the Financial Secretary approves.

Part III

Exchange Companies, Clearing Houses, Exchange Controllers, Investor Compensation Companies and Automated Trading Services

(Format changes—E.R. 3 of 2015)

Division 1—Interpretation

18. Interpretation of Part III

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

associated person (相聯者), in relation to a person entitled to exercise, or control the exercise of, voting power in relation to, or holding securities in, a corporation—

(a) subject to paragraph (c), means any other person in respect of whom that first-mentioned person has an agreement or arrangement, whether oral or in writing, express or implied, with respect to the acquisition, holding or disposal of securities or other interests in that corporation or under which they act together in exercising their voting power in relation to it;

(b) subject to paragraph (c), includes, in relation to such provisions of Division 4 as are specified in Part 2 of Schedule 3, a person, or a person belonging to a class of persons, specified in that Part to be an associated person;

(c) excludes, in relation to such provisions of Division 4 as are specified in Part 3 of Schedule 3, a person, or a person belonging to a class of persons, specified in that Part not to be an associated person;

controller (控制人), in relation to a corporation, means any person who is—

(a) a shareholder controller of the corporation; or

(b) an indirect controller of the corporation;

default proceedings (違責處理程序) means any proceedings or other action taken by a recognized clearing house under its default rules;

default rules (違責處理規則), in relation to a recognized clearing house, means the rules of the clearing house required by section 40(2) or made under section 40(2A); *(Amended 6 of 2014 s. 57)*

defaulter (違責者) means a recognized clearing house, or a clearing participant, that is the subject of any default proceedings; *(Amended 6 of 2014 s. 57)*

indirect controller (間接控制人), in relation to a corporation—

(a) subject to paragraph (b), means a person in accordance with whose directions or instructions the directors of the corporation or of another corporation of which it is a subsidiary are accustomed or obliged to act;

(b) excludes, in relation to such provisions of Division 4 as are specified in Part 4 of Schedule 3, a person, or a person belonging to a class of persons, specified in that Part not to be an indirect controller;

market charge (市場押記) means a charge, whether fixed or floating, granted in favour of a recognized clearing house—

(a) over any property which is held by or deposited with the clearing house; and

(b) for the purpose of securing liabilities arising directly in connection with the clearing house's ensuring the settlement of a market contract;

market collateral (市場抵押品) means any property which is held by or deposited with a recognized clearing house for the purpose of securing liabilities arising directly in connection with the clearing house's ensuring the settlement of a market contract;

relevant corporation (相關法團) means a corporation of which a relevant recognized exchange controller is a controller;

relevant office-holder (有關人員) means—

(a) the Official Receiver;

(b) a person acting in relation to a company as its liquidator, receiver or manager;

(c) a person acting in relation to an individual as his trustee in bankruptcy or interim receiver of his property; or

(d) a person appointed pursuant to an order for the administration in bankruptcy of an insolvent estate of a deceased person;

relevant recognized exchange controller (相關認可控制人) means a recognized exchange controller which is a controller of the Stock Exchange Company;

settlement (交收), in relation to a market contract, includes partial settlement;

shareholder controller (股東控制人), in relation to a corporation, means any person who, either alone or with any associated person or persons, is entitled to exercise, or control the exercise of, more than 35% of the voting power at any general meeting of the corporation or of another corporation of which it is a subsidiary.

(2) Where a charge is granted partly for the purpose specified in the definition of ***market charge*** in subsection (1) and partly for other purposes, the charge is in Division 3 a market charge in so far as it has effect for that specified purpose.

(3) Where any collateral is granted partly for the purpose specified in the definition of ***market collateral*** in subsection (1) and partly for other purposes, the collateral is in Division 3 market collateral in so far as it has been provided for that specified purpose.

(4) In Division 3, a reference to the law of insolvency includes a reference to every provision made by or under—

(a) the Bankruptcy Ordinance (Cap. 6);

(b) the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32); and *(Amended 28 of 2012 ss. 912 & 920)*

(c) any other enactment which is concerned with or in any way related to the insolvency of a person.

(5) In Division 3, a reference to settlement in relation to a market contract is a reference to the discharge of the rights and liabilities of the parties to the contract, whether by performance, compromise or otherwise.

(6) Where there is a reference in this or any other Ordinance to a controller of a recognized exchange company or recognized clearing house (however expressed), the term ***controller*** shall be construed in accordance with the provisions of this section.

(7) In this section—

(a) to avoid doubt, the reference to property held by or deposited with a recognized clearing house for the purpose described in the definition of ***market collateral*** in subsection (1) includes property held or deposited as collateral, margin or guarantee fund contributions (by whatever name called in the rules of the clearing house) and whether the property is held or deposited by way of charge, transfer or other arrangement; and

(b) ***guarantee fund contribution*** (保證基金供款) means any contribution by a recognized clearing house or its clearing participants to a fund that—

(i) is maintained by the clearing house to cover losses, including losses arising in connection with—

(A) it being unable or likely to become unable to meet its obligations in respect of any unsettled or open market contract; or

(B) a clearing participant being unable, or appearing to be, or likely to become, unable to meet obligations in respect of unsettled or open market contracts to which that participant is a party; and

(ii) may be applied for that purpose under the default rules of the clearing house. *(Added 6 of 2014 s. 57)*

Division 2—Exchange companies

19. Recognition of exchange company

(1) No person shall—

(a) operate a stock market unless the person is—

(i) the Stock Exchange Company;

(ii) a recognized exchange company of which a relevant recognized exchange controller is a controller; or

(iii) a relevant recognized exchange controller which is itself a recognized exchange company;

(b) operate a futures market unless the person is a recognized exchange company;

(c) assist in the operation of a stock market which is operated in contravention of this subsection;

(d) assist in the operation of a futures market which is operated in contravention of this subsection.

(2) Where the Commission is satisfied that it is appropriate to do so—

(a) in the interest of the investing public or in the public interest; or

(b) for the proper regulation of markets in securities or futures contracts,

it may, after consultation with the public and then the Financial Secretary, by notice in writing served on a company, recognize the company as an exchange company—

(i) subject to such conditions as it considers appropriate specified in the notice; and

(ii) with effect from a date specified in the notice for the purpose.

(3) Without limiting the generality of conditions which may be specified in a notice under subsection (2), the Commission may, by notice in writing served on a recognized exchange company, amend or revoke any condition specified in the first-mentioned notice or impose new conditions, where the Commission—

(a) is satisfied that it is appropriate to do so on a ground specified in paragraph (a) or (b) of that subsection; and

(b) has consulted the Financial Secretary.

(4) Where the Commission amends or revokes any condition or imposes any new condition by a notice under subsection (3), the amendment, revocation or imposition takes effect at the time of service of the notice or at the time specified in the notice, whichever is the later.

(5) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable—

(a) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(6) Where a company becomes a recognized exchange company, the Commission shall cause notice of that fact to be published in the Gazette.

(7) Where a company is seeking to be a recognized exchange company and the Commission is minded not to recognize the company under subsection (2), the Commission shall give the company a reasonable opportunity of being heard before making a decision not to recognize the company.

(8) Where the Commission refuses to recognize a company as an exchange company under subsection (2), the Commission shall, by notice in writing served on the company, inform the company of the refusal and of the reasons for it.

(9) A person shall not be regarded as contravening—

(a) subsection (1)(b) by reason only of—

(i) carrying on a business of providing automated trading services that constitutes an operation of a futures market if—

(A) that person is authorized to provide the services under section 95(2) or is an intermediary licensed or registered for Type 7 regulated activity; and

(B) by virtue of the authorization, licence or registration, that person is permitted to engage in activities that constitute an operation of a futures market; or

(ii) carrying on a business of dealing in futures contracts that constitutes an operation of a futures market if—

(A) that person is an intermediary licensed or registered for Type 2 regulated activity; and

(B) by virtue of the licence or registration, that person is permitted to engage in activities that constitute an operation of a futures market; or

(b) subsection (1)(d) by reason only of assisting in carrying on a business of providing automated trading services that constitutes an operation of a futures market or carrying on a business of dealing in futures contracts that constitutes an operation of a futures market if the conditions referred to in paragraph (a)(i)(A) and (B) or (ii)(A) and (B) (as the case may be) are fulfilled in relation to the business of providing automated trading services or the business of dealing in futures contracts.

(10) In subsection (1), ***stock market*** (證券市場) shall have the meaning assigned to it in the definition of ***stock market*** in section 1 of Part 1 of Schedule 1, except that a reference to securities in that definition shall be construed as not including a reference to interests in any collective investment scheme.

20. Transactions that may be conducted on recognized stock market and recognized futures market

(1) No transaction may be conducted on a recognized stock market other than dealings in—

(a) securities; and

(b) other financial products which are approved by the Commission by notice published in the Gazette, either generally or in a particular case.

(2) No transaction may be conducted on a recognized futures market other than dealings in—

(a) futures contracts; and

(b) other financial products,

which are approved by the Commission by notice published in the Gazette, either generally or in a particular case.

(3) A notice under subsection (1) or (2) is not subsidiary legislation.

21. Duties of recognized exchange company

(1) It shall be the duty of a recognized exchange company to ensure—

(a) so far as reasonably practicable, an orderly, informed and fair market—

(i) in the case of a recognized exchange company which operates a stock market, in securities that are traded on that stock market or through the facilities of that company; *(Amended 6 of 2014 s. 3)*

(ii) in the case of a recognized exchange company which operates a futures market, in futures contracts that are traded on that futures market or through the facilities of that company; or *(Amended 6 of 2014 s. 3)*

(iii) in OTC derivative products that are traded through the facilities of the recognized exchange company; and *(Added 6 of 2014 s. 3)*

(b) that risks associated with its business and operations are managed prudently.

(2) In discharging its duty under subsection (1), a recognized exchange company shall—

(a) act in the interest of the public, having particular regard to the interest of the investing public; and

(b) ensure that the interest of the public prevails where it conflicts with the interest of the recognized exchange company.

(3) A recognized exchange company shall operate its facilities in accordance with the rules made under section 23 and approved under section 24.

(4) A recognized exchange company shall formulate and implement appropriate procedures for ensuring that its exchange participants comply with the rules of the company.

(5) A recognized exchange company shall immediately notify the Commission if it becomes aware—

(a) that any of its exchange participants is unable to comply with any rules of the company or any financial resources rules; or

(b) of a financial irregularity or other matter which in the opinion of the company may indicate that the financial standing or integrity of an exchange participant is in question, or that an exchange participant may not be able to meet his legal obligations.

(6) A recognized exchange company shall at all times provide and maintain—

(a) adequate and properly equipped premises;

(b) competent personnel; and

(c) automated systems with adequate capacity, facilities to meet contingencies or emergencies, security arrangements and technical support,

for the conduct of its business.

22. Immunity, etc.

(1) Without limiting the generality of section 380(1), no civil liability, whether arising in contract, tort, defamation, equity or otherwise, shall be incurred by—

(a) a recognized exchange company; or

(b) any person acting on behalf of a recognized exchange company, including—

(i) any member of the board of directors of the company; or

(ii) any member of any committee established by the company,

in respect of anything done or omitted to be done in good faith in the discharge or purported discharge of the duties of the company under section 21 or in the performance or purported performance of its functions under its rules.

(2) Where, in the discharge or purported discharge of its duties under section 63, a recognized exchange controller gives an instruction or direction or makes a request to a recognized exchange company of which it is a controller, the company's duties under section 21 or under its rules are not applicable to the company in respect of anything done or omitted to be done in good faith by the company in compliance with the instruction, direction or request.

23. Rules by recognized exchange company

(1) Without limiting any of its other powers to make rules, a recognized exchange company may make rules for such matters as are necessary or desirable—

(a) for the proper regulation and efficient operation of the market which it operates;

(b) for the proper regulation of its exchange participants and holders of trading rights;

(c) for the establishment and maintenance of compensation arrangements for the investing public.

(2) Without limiting the generality of subsection (1), a recognized exchange company which may operate a stock market may make rules for—

(a) applications for the listing of securities and the requirements to be met before securities may be listed;

(b) the entering into of agreements between the recognized exchange company and other persons in connection with the listing of securities, and the enforcement of those agreements by the company;

(c) the cancellation and withdrawal of the listing of, and the suspension and resumption of dealings in, securities listed on the recognized stock market operated by the recognized exchange company;

(d) the imposition on any person of obligations to observe specified standards of conduct or to perform, or refrain from performing, specified acts reasonably imposed in connection with the listing or continued listing of securities;

(e) the admission of securities which are regulated in a jurisdiction outside Hong Kong to trading on a recognized stock market operated by the recognized exchange company;

(f) the penalties or sanctions which may be imposed by the recognized exchange company for a breach of rules made under this section;

(g) procedures or conditions which may be imposed, or circumstances which are required to exist, in relation to matters which are provided for in the rules made under this section;

(h) dealing with possible conflicts of interest that might arise where a relevant corporation or a relevant recognized exchange controller seeks to be or is a listed corporation;

(i) such other matters as are necessary or desirable for the proper and efficient operation and management of the recognized exchange company.

(3) The Commission may, by notice in writing served on a recognized exchange company, request the company—

(a) to make rules specified in the request within the period specified in that request; or

(b) to amend rules referred to in the request in the manner and within the period specified in that request.

(4) Before making a request under subsection (3), the Commission shall consult the Financial Secretary and the recognized exchange company to which the request relates.

(5) Where the Commission is satisfied that a recognized exchange company has not complied with a request referred to in subsection (3) within the period specified in the request, the Commission may make or amend the rules specified in the request instead of the company.

(6) The following persons or anyone who seeks to become any such person shall, if required to do so by the rules of a recognized exchange company, make a statutory declaration concerning such matters as may be specified in the rules—

(a) an exchange participant or holder of trading rights of the company;

(b) a director of a corporation which uses the facilities of the company;

(c) a director of a corporation which is seeking to have any of its securities listed; and

(d) a director or adviser of a listed corporation.

(7) In making rules under this section, a recognized exchange company shall take into account that a solicitor or certified public accountant acting in his professional capacity in private practice has duties imposed by law and under rules of professional conduct. *(Amended 23 of 2004 s. 56)*

(8) A recognized exchange company shall, in circumstances stipulated in arrangements agreed from time to time between it and The Law Society of Hong Kong or the Accounting and Financial Reporting Council, refer breaches of rules made under this section— *(Amended 23 of 2004 s. 56; L.N. 66 of 2022)*

(a) which are alleged to have been committed by a solicitor or certified public accountant in private practice; and *(Amended 23 of 2004 s. 56)*

(b) which may also constitute a breach of duty imposed by law or under rules of professional conduct,

to The Law Society of Hong Kong or the Accounting and Financial Reporting Council (as the case may be), for determination of whether to make a finding, impose a penalty or sanction or take other disciplinary action. *(Amended 23 of 2004 s. 56; L.N. 66 of 2022)*

(9) For the purposes of subsections (7) and (8), a person shall be regarded as acting in the capacity of a solicitor or certified public accountant in private practice if in the course of private practice he provides legal or professional accountancy services to a client, but shall not be regarded as so acting where, in respect of a matter governed by rules made under this section, he is also connected with the matter in any other capacity. *(Amended 23 of 2004 s. 56)*

24. Approval of rules or amendments to rules of recognized

exchange company

(1) Subject to subsection (7), no rule (whether or not made under section 23) of a recognized exchange company or any amendment thereto shall have effect unless it has the approval in writing of the Commission.

(2) A recognized exchange company shall submit or cause to be submitted to the Commission—

(a) for its approval the rules and every amendment thereto that require approval under subsection (1), together with explanations of their purpose and likely effect, including their effect on the investing public, in sufficient detail to enable the Commission to decide whether to approve them or refuse to approve them; and

(b) for its information the rules which belong to a class the subject of a declaration under subsection (7) and every amendment to the rules, as soon as reasonably practicable after they have been made.

(3) The Commission shall, not later than 6 weeks after the receipt of a submission under subsection (2)(a) from a recognized exchange company, by notice in writing served on the company, give its approval or refuse to give its approval (together with its reasons for the refusal) to the rules or amendment of the rules (as the case may be) or any part thereof, the subject of the submission.

(4) The Commission may give its approval under subsection (3) subject to requirements which shall be satisfied before the rules or amendment of the rules or any part thereof take effect.

(5) The Commission may in a particular case, with the agreement of the recognized exchange company concerned, extend the time prescribed in subsection (3).

(6) The Financial Secretary may, after consultation with the Commission and the recognized exchange company concerned, extend the time prescribed in subsection (3).

(7) The Commission may, by notice published in the Gazette, declare any class of rules of a recognized exchange company to be a class of rules which are not required to be approved under subsection (1) and, accordingly, any rules of the company which belong to that class (including any amendment thereto) shall have effect notwithstanding that they have not been so approved.

(8) Neither the rules under section 23 nor a notice under subsection (7) is subsidiary legislation.

25. Transfer and resumption of functions of Commission

(1) The Commission may request the Chief Executive in Council to transfer, by order (***transfer order***) published in the Gazette, to a recognized exchange company (***designated exchange company***)—

(a) a function to which this section applies; or

(b) that function in so far as it applies to the exchange participants or applicants to be exchange participants of the designated exchange company,

if the Commission is satisfied that the designated exchange company is willing and able to perform the function.

(2) This section applies to a function of the Commission under—

(a) Part V;

(b) section 145; *(Amended 28 of 2012 ss. 912 & 920)*

(c) Parts II and XII of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32); and *(Replaced 28 of 2012 ss. 912 & 920)*

(d) Part 5 of the Companies Ordinance (Cap. 622). *(Added 28 of 2012 ss. 912 & 920)*

(3) A function to which this section applies may be transferred by a transfer order either in whole or in part, and the transfer may be subject to—

(a) a reservation that the Commission is to perform the function concurrently with the designated exchange company; and

(b) such other conditions as the Commission considers appropriate.

(4) A transfer order may contain such incidental, supplemental and consequential provisions as may be necessary or expedient for the purpose of giving full effect to the order.

(5) The Commission shall not request that a transfer order be made in respect of the making of financial resources rules unless the proposed designated exchange company has first supplied the Commission with a draft of the financial resources rules which it proposes to make, and the Commission is satisfied that the rules, if made, will afford the investing public an adequate level of protection.

(6) The Commission may at the request or with the consent of a designated exchange company resume a function transferred by a transfer order, but the resumption takes effect only by order of the Chief Executive in Council.

(7) The Chief Executive in Council may order that the Commission resume a function transferred to a designated exchange company by a transfer order if the Commission so requests and if it appears to the Chief Executive in Council to be in the public interest to do so.

(8) A transfer order may provide for a designated exchange company to retain all or any of the fees payable in relation to the performance of a transferred function, and an order made

under subsection (6) or (7) may provide for the Commission to retain all or any such fees, from a date specified in the order.

26. Appointment of chief executive of recognized exchange company requires approval of Commission

No appointment of a person as chief executive of a recognized exchange company shall have effect unless the appointment has the approval in writing of the Commission.

27. Production of records, etc. by recognized exchange company

(1) The Commission may, by notice in writing served on a recognized exchange company, require the company to provide to the Commission, within such period as the Commission may specify in the notice—

(a) such books and records kept by it in connection with or for the purposes of its business or in respect of any trading in securities, futures contracts or OTC derivative products; and

(b) such other information relating to its business or any trading in securities, futures contracts or OTC derivative products,

as the Commission may reasonably require for the performance of its functions. *(Amended 6 of 2014 s. 4)*

(2) A recognized exchange company served with a notice under subsection (1) which, without reasonable excuse, fails to comply with the notice commits an offence and is liable on conviction to a fine at level 5.

28. Withdrawal of recognition of exchange company and direction to cease to provide facilities or services

(1) Subject to subsections (4), (5) and (6), the Commission may,

after consultation with the Financial Secretary, by notice in writing served on a recognized exchange company—

(a) withdraw the company's recognition as an exchange company with effect from a date specified in the notice for the purpose; or

(b) direct the company to cease with effect from a date specified in the notice for the purpose—

(i) to provide or operate such facilities as are specified therein; or

(ii) to provide such services as are specified therein.

(2) The Commission may by the notice served under subsection (1) permit the recognized exchange company to continue, on or after the date on which the withdrawal or direction is to take effect, to carry on such activities affected by the withdrawal or direction as the Commission may specify in the notice for the purpose of—

(a) closing down the operations of the company or ceasing to provide the services specified in the notice; or

(b) protecting the interest of the investing public or the public interest.

(3) Where the Commission has granted a permission to a recognized exchange company under subsection (2), the company shall not, by reason of its carrying on the activities in accordance with the permission, be regarded as having contravened section 19(1).

(4) The Commission may only serve a notice under subsection (1) in relation to a recognized exchange company that—

(a) fails to comply with any requirement of this Ordinance or with a condition imposed under section 19;

(b) is being wound up;

(c) ceases to operate a market that it has been authorized to operate by virtue of section 19; or

(d) requests the Commission to do so.

(5) Except where responding to a request under subsection (4)(d), the Commission shall not exercise its power under subsection (1) in relation to a recognized exchange company unless it has given the company a reasonable opportunity of being heard.

(6) Except where responding to a request under subsection (4)(d), the Commission shall give the recognized exchange company not less than 14 days' notice in writing of its intention to serve a notice under subsection (1) and the grounds for doing so.

(7) Where the Commission withdraws a company's recognition as an exchange company under subsection (1)(a), it shall cause notice of that fact to be published in the Gazette.

(8) A notice served under subsection (1)(a) shall not take effect—

(a) subject to paragraph (b), until the expiration of the period within which an appeal against the notice may be made under section 33; or

(b) if an appeal against the notice is made under section 33, until the appeal is withdrawn, abandoned or determined.

(9) A notice served under subsection (1)(b) shall take effect immediately.

29. Direction to cease to provide facilities or services in emergencies

(1) In addition to the powers of the Commission under section 28, the Commission may, after consultation with a recognized exchange company, by notice in writing served on the company, direct the company to cease to provide or operate

such facilities or cease to provide such services as are specified in the notice for a period not exceeding 5 business days.

(2) The Commission may only serve a notice under subsection (1) if it is of the opinion that the orderly transaction of business on the stock market or futures market (as the case may be) is being, or is likely to be, impeded because—

(a) an emergency or natural disaster has occurred in Hong Kong; or

(b) there exists an economic or financial crisis, whether in Hong Kong or elsewhere, or any other circumstances, which is likely to prejudice orderly transaction of business on the stock market or futures market (as the case may be).

(3) The Commission may, by notice in writing served on the recognized exchange company, extend the direction under subsection (1) for further periods not exceeding 10 business days in all.

(4) A notice served under this section shall take effect immediately.

30. Contravention of notice constitutes offence

A person who, without reasonable excuse—

(a) provides or operates facilities; or

(b) provides services,

in contravention of a notice under section 28(1)(b) or 29(1) or (3) commits an offence and is liable—

(i) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(ii) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

31. Prevention of entry into closed trading markets

(1) The Commission may take all necessary steps to ensure compliance with a notice under section 28(1)(b) or 29(1) or (3) and may, in particular, secure—

(a) the facilities to which the notice relates; or

(b) the premises on which such facilities are kept or the premises on which the services to which the notice relates are provided,

against use for dealings in securities or futures contracts or other purposes.

(2) A person commits an offence and is liable on conviction to a fine at level 5 if, without the authority of the Commission or reasonable excuse, he—

(a) makes use of any facilities or services to which the notice under section 28(1)(b) or 29(1) or (3) relates; or

(b) enters the premises on which such facilities are kept or the premises on which such services are provided.

32. Publication of directions

Where the Commission—

(a) directs a recognized exchange company under section 28(1)(b) or 29(1) to cease to provide or operate any facilities or cease to provide any services; or

(b) extends under section 29(3) a direction referred to in that section,

it shall cause notice of the particulars of the direction or extension (as the case may be) to be published in the Gazette.

33. Appeals

(1) A company served with a notice under section 28(1) or 29(1)

or (3) may appeal against the notice to the Chief Executive in Council not later than 14 days after the date of service of the notice or such longer period (if any) as the Commission specifies in the notice.

(2) The decision of the Chief Executive in Council on an appeal under subsection (1) shall be final.

34. Restriction on use of titles relating to exchanges, markets, etc.

(1) A person commits an offence if he, without the authority of the Commission or reasonable excuse, takes or uses the title—

(a) "stock exchange";

(b) "stock market";

(c) "commodity exchange";

(d) "futures exchange";

(e) "futures market";

(f) "unified exchange";

(g) "united exchange";

(h) "證券交易所";

(i) "股票交易所";

(j) "證券市場";

(k) "股票市場";

(l) "商品交易所";

(m) "期貨交易所";

(n) "期貨市場";

(o) "聯合交易所",

or anything which closely resembles any such title.

(2) A person who commits an offence under this section is liable—

(a) on conviction on indictment to a fine of $200,000 and to imprisonment for 2 years; or

(b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.

35. Contract limits and reportable open position

(1) Without prejudice to section 398(7) and (8), the Commission may make rules to—

(a) prescribe limits on, or conditions relating to, the number of futures contracts which may be held or controlled, directly or indirectly, by any person, whether or not such contracts are traded on a recognized futures market or through the facilities of a recognized exchange company;

(b) prescribe limits on, or conditions relating to, the number of options contracts which may be held or controlled, directly or indirectly, by any person, whether or not such contracts are traded on a recognized stock market or recognized futures market or through the facilities of a recognized exchange company;

(c) require a person holding or controlling a reportable position to lodge a notice of that reportable position with a recognized exchange company or the Commission;

(d) prescribe the manner in which and the period within which a notice of a reportable position is to be lodged;

(e) prescribe the information by which a notice of a reportable position is to be accompanied.

(2) The Commission shall consult the Financial Secretary before making rules under subsection (1)(e).

(3) Subsection (1) does not prohibit the Commission from prescribing different limits or conditions, or different reportable positions, for different types or classes of futures or options contracts, or from exempting specified futures or options contracts.

(4) Without limiting the generality of subsection (1) and without prejudice to section 398(7) and (8), the Commission may make rules for the purposes of this section to prohibit a person from—

(a) directly or indirectly entering, during a specified period, into transactions of a specified class in excess of a specified amount; or

(b) directly or indirectly holding or controlling positions of a specified class in excess of a specified position limit.

(5) Rules made under this section may provide that a person who, without reasonable excuse, contravenes any specified provision of the rules that applies to the person commits an offence and is liable to a specified penalty not exceeding—

(a) on conviction on indictment a fine at level 6 and a term of imprisonment of 2 years;

(b) on summary conviction a fine at level 3 and a term of imprisonment of 6 months.

(6) In this section ***reportable position*** (須申報的持倉量) means an open position in futures or options contracts the number or total value of which is in excess of a number or total value specified by rules made under this section.

36. Rules by Commission

(1) Without prejudice to section 398(7) and (8), the Commission may make rules in respect of the following matters—

(a) the listing of securities, and in particular—

(i) prescribing the requirements to be met before securities may be listed;

(ii) prescribing the procedure for dealing with applications for the listing of securities;

(iii) providing for the cancellation of the listing of any specified securities if the Commission's requirements for listing, or the requirements of the undertaking referred to in paragraph (e), are not complied with or the Commission considers that such action is necessary to maintain an orderly market in Hong Kong;

(b) the conditions subject to which, and the circumstances in which, a recognized exchange company shall suspend dealings in securities or shall direct that dealings in securities recommence;

(c) the procedure for and the method of allotment of any securities arising out of an offer made to members of the public in respect of those securities;

(d) persons who may be admitted as an exchange participant of a recognized exchange company;

(e) requiring corporations the securities of which are listed or accepted for listing to enter into an undertaking in the form prescribed in the rules with a recognized exchange company which may operate a stock market under section 19 to provide such information at such times as may be specified, and to carry out such duties in relation to its securities as may be imposed, in the undertaking; *(Amended 16 of 2016 s. 3)*

(f) requiring a recognized exchange company which has become aware of any matter which adversely affects, or is likely to adversely affect, the ability of any exchange participant of the company to meet its obligations as

an exchange participant, to make a report concerning the matter to the Commission as soon as reasonably practicable after becoming aware of the matter;

(g) requiring a recognized exchange company when it expels any of its exchange participants, or suspends any of its exchange participants from trading on the recognized stock market or recognized futures market it operates or through its facilities, or requests any of its exchange participants to resign as an exchange participant, to notify the Commission of that fact within 3 business days after the expulsion, suspension or making of the request (as the case may be) and, in addition, to cause the expulsion, suspension or request to be notified to the public in such manner and within such period as may be prescribed in the rules;

(h) any matter which is to be or may be prescribed by rules made under section 23.

(2) Before making any rules in respect of any matter specified in subsection (1), the Commission shall consult—

(a) the Financial Secretary; and

(b) the recognized exchange company or all the recognized exchange companies (as the case may be) to which that matter relates.

(3) Nothing in this section prevents a recognized exchange company from making rules under section 23 on any matter referred to in subsection (1), but any such rules shall have effect only to the extent that they are not repugnant to any rule made by the Commission under subsection (1).

Division 3—Clearing houses

37. Recognition of clearing house

(1) Where the Commission is satisfied that it is appropriate to do so—

(a) in the interest of the investing public or in the public interest; or

(b) for the proper regulation of markets in securities or futures contracts,

it may, after consultation with the Financial Secretary, by notice in writing served on a company, recognize the company as a clearing house—

(i) subject to such conditions as it considers appropriate specified in the notice; and

(ii) with effect from a date specified in the notice for the purpose.

(2) Without limiting the generality of conditions which may be specified in a notice under subsection (1), the Commission may, by notice in writing served on a recognized clearing house, amend or revoke any condition specified in the first-mentioned notice or impose new conditions, where the Commission—

(a) is satisfied that it is appropriate to do so on a ground specified in paragraph (a) or (b) of that subsection; and

(b) has consulted the Financial Secretary.

(3) Where the Commission amends or revokes any condition or imposes any new condition by a notice under subsection (2), the amendment, revocation or imposition takes effect at the time of service of the notice or at the time specified in the notice, whichever is the later.

(4) Where a company becomes a recognized clearing house, the Commission shall cause notice of that fact to be published in the Gazette.

(5) Where a company is seeking to be a recognized clearing house and the Commission is minded not to recognize the company under subsection (1), the Commission shall give the company a reasonable opportunity of being heard before making a decision not to recognize the company.

(6) Where the Commission refuses to recognize a company as a clearing house under subsection (1), the Commission shall, by notice in writing served on the company, inform the company of the refusal and of the reasons for it.

38. Duties of recognized clearing house

(1) It shall be the duty of a recognized clearing house to ensure—

(a) so far as reasonably practicable, that there are orderly, fair and expeditious clearing and settlement arrangements for any transactions in securities, futures contracts or OTC derivative products cleared or settled through its facilities; and *(Amended 6 of 2014 s. 5)*

(b) that risks associated with its business and operations are managed prudently.

(2) In discharging its duty under subsection (1), a recognized clearing house shall—

(a) act in the interest of the public, having particular regard to the interest of the investing public; and

(b) ensure that the interest of the public prevails where it conflicts with the interest of the recognized clearing house.

(3) A recognized clearing house shall operate its facilities in accordance with the rules made under section 40 and approved under section 41.

(4) A recognized clearing house shall formulate and implement appropriate procedures for ensuring that its clearing participants comply with the rules of the clearing house.

(5) A recognized clearing house shall at all times provide and maintain—

(a) adequate and properly equipped premises;

(b) competent personnel; and

(c) automated systems with adequate capacity, facilities to meet contingencies or emergencies, security arrangements and technical support,

for the conduct of its business.

39. Immunity, etc.

(1) Without limiting the generality of section 380(1), no civil liability, whether arising in contract, tort, defamation, equity or otherwise, shall be incurred by—

(a) a recognized clearing house; or

(b) any person acting on behalf of a recognized clearing house, including—

(i) any member of the board of directors of the clearing house; or

(ii) any member of any committee established by the clearing house,

in respect of anything done or omitted to be done in good faith in the discharge or purported discharge of the duties of the clearing house under sections 38 and 47 or in the performance or purported performance of its functions under its rules, including its default rules.

(2) Where, in the discharge or purported discharge of its duties under section 63, a recognized exchange controller gives an

instruction or direction or makes a request to a recognized clearing house of which it is a controller, the clearing house's duties under sections 38 and 47 or under its rules (including its default rules) are not applicable to the clearing house in respect of anything done or omitted to be done in good faith by the clearing house in compliance with the instruction, direction or request.

(3) Without limiting the generality of section 380(1), no civil liability, whether arising in contract, tort, defamation, equity or otherwise, shall be incurred by—

(a) a person performing, by virtue of a delegation under the default rules of a recognized clearing house, a function of the clearing house in connection with any default proceedings; or

(b) any person acting on behalf of a person referred to in paragraph (a), including—

(i) any member of the board of directors of that person; or

(ii) any member of any committee established by that person,

in respect of anything done or omitted to be done in good faith in the performance and purported performance of that function.

(4) Any failure by a recognized clearing house to comply with its rules in relation to a matter does not prevent the matter from being treated for the purposes of this Ordinance as done in accordance with the rules so long as the failure does not substantially affect the rights of a person entitled to require compliance with the rules.

(5) Where a relevant office-holder takes action in relation to property of a defaulter which is liable to be dealt with in accordance with the default rules of a recognized clearing

house, and believes on reasonable grounds that he is entitled to take that action, he is not liable to any person in respect of any loss or damage resulting from his action except in so far as the loss or damage (as the case may be) is caused by the office-holder's own negligence.

40. Rules by recognized clearing houses

(1) Without limiting any of its other powers to make rules, a recognized clearing house may make rules for such matters as are necessary or desirable—

(a) for the proper regulation and efficient operation of the clearing or settlement facilities which it operates;

(b) for the proper regulation of its clearing participants;

(c) for the establishment and maintenance of compensation arrangements for the investing public.

(2) A recognized clearing house shall make rules which—

(a) provide for the taking of proceedings or other action if a clearing participant appears to be unable, or likely to become unable, to meet his obligations in respect of all unsettled or open market contracts to which he is a party; and

(b) comply with Part 5 of Schedule 3.

(2A) A recognized clearing house may make rules to provide for the following purposes—

(a) taking proceedings or other action if—

(i) the clearing house is unable, or likely to become unable, to meet its obligations in respect of any unsettled or open market contract to which it is a party as those obligations fall due; and

(ii) it becomes necessary or desirable for the clearing house to cease to provide or operate any clearing and settlement facilities provided or operated by it;

(b) taking proceedings or other action in relation to any contracts entered into between a clearing participant and its clients if—

(i) the clearing participant appears to be unable, or likely to become unable, to meet its obligations in respect of all unsettled or open market contracts to which it is a party; and

(ii) those contracts relate to such unsettled or open market contracts recorded in a client account;

(c) taking proceedings or other action in relation to any positions or collateral relating to a contract entered into between a clearing participant and its clients referred to in paragraph (b) if—

(i) the clearing participant appears to be unable, or likely to become unable, to meet its obligations in respect of all unsettled or open market contracts to which it is a party; and

(ii) those positions or collateral relate to such unsettled or open market contracts recorded in a client account. *(Added 6 of 2014 s. 58)*

(3) Where a recognized clearing house takes default proceedings, all subsequent proceedings or other action taken under its rules for the settlement of market contracts to which the defaulter is a party shall be treated as taken under the default rules.

(4) The Commission may, by notice in writing served on a recognized clearing house, request the clearing house—

(a) to make rules specified in the request within the period specified in that request; or

(b) to amend rules referred to in the request in the manner and within the period specified in that request.

(5) Before making a request under subsection (4), the Commission shall consult the Financial Secretary and the recognized clearing house to which the request relates.

(6) Where the Commission is satisfied that a recognized clearing house has not complied with a request referred to in subsection (4) within the period specified in the request, the Commission may make or amend the rules specified in the request instead of the recognized clearing house.

(7) In this section—

client account (客户帳户), in relation to a clearing participant, means an account held with a recognized clearing house in the name of the clearing participant, other than a house account in which positions or collateral are recorded;

house account (結算所帳户), in relation to a clearing participant, means an account—

(a) which is held with a recognized clearing house in the name of the clearing participant; and

(b) in which the following are recorded—

(i) the clearing participant's own positions or collateral;

(ii) the positions or collateral of other persons that are regarded by the rules of the recognized clearing house to be the clearing participant's own positions or collateral. *(Added 6 of 2014 s. 58)*

41. Approval of rules or amendments to rules of recognized clearing house

(1) Subject to subsection (7), no rule (whether or not made under section 40) of a recognized clearing house or any amendment thereto shall have effect unless it has the approval in writing of the Commission.

(2) A recognized clearing house shall submit or cause to be submitted to the Commission—

(a) for its approval the rules and every amendment thereto that require approval under subsection (1), together with explanations of their purpose and likely effect, including their effect on the investing public, in sufficient detail to enable the Commission to decide whether to approve them or refuse to approve them; and

(b) for its information the rules which belong to a class the subject of a declaration under subsection (7) and every amendment to the rules, as soon as reasonably practicable after they have been made.

(3) The Commission shall, not later than 6 weeks after the receipt of a submission under subsection (2)(a) from a recognized clearing house, by notice in writing served on the clearing house, give its approval or refuse to give its approval (together with its reasons for the refusal) to the rules or amendment of the rules (as the case may be) or any part thereof, the subject of the submission.

(4) The Commission may give its approval under subsection (3) subject to requirements which shall be satisfied before the rules or amendment of the rules or any part thereof take effect.

(5) The Commission may in a particular case, with the agreement of the recognized clearing house concerned, extend the time prescribed in subsection (3).

(6) The Financial Secretary may, after consultation with the Commission and the recognized clearing house concerned, extend the time prescribed in subsection (3).

(7) The Commission may, by notice published in the Gazette, declare any class of rules of a recognized clearing house (except any default rules of the clearing house) to be a class of rules which are not required to be approved under subsection (1) and, accordingly, any rules of the clearing house which belong to that class (including any amendment thereto) shall have effect notwithstanding that they have not been so approved.

(8) Neither the rules under section 40 nor a notice under subsection (7) is subsidiary legislation.

42. Production of records, etc. by recognized clearing house

(1) The Commission may, by notice in writing served on a recognized clearing house, require the clearing house to provide to the Commission, within such period as the Commission may specify in the notice—

(a) such books and records kept by it in connection with or for the purposes of its business or in respect of any clearing and settlement arrangements for any transactions in securities, futures contracts or OTC derivative products; and

(b) such other information relating to its business or any clearing and settlement arrangements for any transactions in securities, futures contracts or OTC derivative products,

as the Commission may reasonably require for the performance of its functions. *(Amended 6 of 2014 s. 6)*

(2) A recognized clearing house served with a notice under subsection (1) which, without reasonable excuse, fails to

comply with the notice commits an offence and is liable on conviction to a fine at level 5.

43. Withdrawal of recognition of clearing house and direction to cease to provide facilities

(1) Subject to subsections (3), (4) and (5), the Commission may, after consultation with the Financial Secretary, by notice in writing served on a recognized clearing house—

(a) withdraw the company's recognition as a clearing house with effect from a date specified in the notice for the purpose; or

(b) direct the clearing house to cease to provide or operate with effect from a date specified in the notice for the purpose such clearing or settlement facilities as are specified therein.

(2) The Commission may by the notice served under subsection (1) permit the recognized clearing house to continue, on or after the date on which the withdrawal or direction is to take effect, to carry on such activities affected by the withdrawal or direction as the Commission may specify in the notice for the purpose of—

(a) closing down the operations of the clearing house; or

(b) protecting the interest of the investing public or the public interest.

(3) The Commission may only serve a notice under subsection (1) in relation to a recognized clearing house that—

(a) fails to comply with any requirement of this Ordinance or with a condition imposed under section 37;

(b) is being wound up;

(c) ceases to operate as a clearing house; or

(d) requests the Commission to do so.

(4) Except where responding to a request under subsection (3)(d), the Commission shall not exercise its power under subsection (1) in relation to a recognized clearing house unless it has given the clearing house a reasonable opportunity of being heard.

(5) Except where responding to a request under subsection (3)(d), the Commission shall give the recognized clearing house not less than 14 days' notice in writing of its intention to serve a notice under subsection (1) and the grounds for doing so.

(6) Where the Commission withdraws a company's recognition as a clearing house under subsection (1)(a), it shall cause notice of that fact to be published in the Gazette.

(7) Where the Commission directs under subsection (1)(b) a recognized clearing house to cease to provide or operate any clearing or settlement facilities, it shall cause notice of the particulars of the direction to be published in the Gazette.

(8) A notice served under subsection (1)(a) shall not take effect—

(a) subject to paragraph (b), until the expiration of the period within which an appeal against the notice may be made under section 44; or

(b) if an appeal against the notice is made under section 44, until the appeal is withdrawn, abandoned or determined.

(9) A notice served under subsection (1)(b) shall take effect immediately.

44. Appeals

(1) A company served with a notice under section 43(1) may appeal against the notice to the Chief Executive in Council not later than 14 days after the date of service of the notice or such longer period (if any) as the Commission specifies in the notice.

(2) The decision of the Chief Executive in Council on an appeal under subsection (1) shall be final.

45. Proceedings of recognized clearing house take precedence over law of insolvency

(1) None of the following shall be regarded as to any extent invalid at law on the ground of inconsistency with the law relating to distribution of the assets of a person on insolvency, bankruptcy or winding up, or on the appointment of a receiver over any of the assets of a person—

(a) a market contract;

(b) the rules of a recognized clearing house relating to the settlement of a market contract;

(c) any proceedings or other action taken under the rules of a recognized clearing house relating to the settlement of a market contract;

(d) a market charge;

(da) the provision of market collateral; *(Added 6 of 2014 s. 59)*

(e) the default rules of a recognized clearing house; or

(f) any default proceedings.

(2) The powers of a relevant office-holder in his capacity as such, and the powers of a court acting under the law of insolvency, shall not be exercised in such a way as to prevent or interfere with—

(a) the settlement in accordance with the rules of a recognized clearing house of a market contract; or

(b) any default proceedings.

(3) Subsection (2) shall not operate to prevent a relevant office-holder from recovering an amount under section 51 after the

completion of a matter referred to in paragraph (a) or (b) of that subsection.

46. Supplementary provisions as to default proceedings

(1) A court may, on an application by a relevant office-holder, make such order as it considers appropriate altering or releasing him from compliance with the functions of his office that are affected by the fact that default proceedings are pending or could be taken, or have been or could have been taken.

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

(3) Section 12, 14 or 20 to 20K of the Bankruptcy Ordinance (Cap. 6), sections 181, 183, 186 and 254 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) and sections 670 and 673 of the Companies Ordinance (Cap. 622) do not prevent or interfere with any default proceedings. *(Amended 28 of 2012 ss. 912 & 920)*

47. Duty to report on completion of default proceedings

(1) A recognized clearing house shall, upon the completion by it of any default proceedings, make a report on such proceedings stating in respect of each defaulter—

(a) any net sum certified by the clearing house to be payable by or to the defaulter; or *(Amended 6 of 2014 s. 60)*

(b) the fact that no sum is so payable,

(as the case may be) and the clearing house may include in that report such other particulars in respect of such proceedings as it considers appropriate.

(2) A recognized clearing house which has made a report pursuant to subsection (1) shall supply the report to—

(a) the Commission; and

(b) (i) any relevant office-holder acting in relation to—

(A) the defaulter to whom the report relates; or

(B) that defaulter's estate; or

(ii) if there is no relevant office-holder referred to in subparagraph (i), the defaulter to whom the report relates.

(3) Where the Commission receives pursuant to subsection (2) a report made pursuant to subsection (1), it may publish notice of that fact in such manner as it considers appropriate to bring it to the attention of creditors of the defaulter to whom the report relates.

(4) Where a relevant office-holder or defaulter receives pursuant to subsection (2) a report made pursuant to subsection (1), he shall, at the request of a creditor of the defaulter to whom the report relates—

(a) make the report available for inspection by the creditor;

(b) on payment of such reasonable fee as the relevant office-holder or defaulter (as the case may be) determines, supply to the creditor all or any part of that report.

(5) In subsections (2), (3) and (4), ***report*** (報告) includes a copy of a report.

48. Net sum payable on completion of default proceedings

(1) This section applies with respect to any net sum referred to in section 47(1)(a).

(2) Where a bankruptcy or winding-up order has been made, or a resolution for voluntary winding up has been passed, any net sum shall, notwithstanding any provision of section 34 or 35 of the Bankruptcy Ordinance (Cap. 6) or section 264 of the Companies (Winding Up and Miscellaneous Provisions)

Ordinance (Cap. 32), be— *(Amended 28 of 2012 ss. 912 & 920)*

(a) provable in the bankruptcy or winding up or (as the case may be) payable to the relevant office-holder; and

(b) taken into account, where appropriate, under section 35 of the Bankruptcy Ordinance (Cap. 6) or that section as applied in the case of a winding-up order under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32). *(Amended 28 of 2012 ss. 912 & 920)*

49. Disclaimer of property, rescission of contracts, etc.

(1) Section 59 of the Bankruptcy Ordinance (Cap. 6) and section 268 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) do not apply in relation to— *(Amended 28 of 2012 ss. 912 & 920)*

(a) a market contract;

(b) a contract effected by a recognized clearing house for the purpose of realizing property provided as market collateral;

(c) a market charge; or

(d) any default proceedings.

(2) Section 42 of the Bankruptcy Ordinance (Cap. 6) and section 182 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) do not apply in relation to any act, matter or thing which has been done pursuant to— *(Amended 28 of 2012 ss. 912 & 920)*

(a) a market contract;

(b) a disposal of property pursuant to a market contract;

(c) the provision of market collateral;

(d) a contract effected by a recognized clearing house for the purpose of realizing property provided as market collateral, or any disposal of property pursuant to such a contract;

(e) a disposal of property in accordance with the rules of a recognized clearing house as to the application of property provided as market collateral;

(f) a disposal of property as a result of which the property becomes subject to a market charge, or any transaction pursuant to which that disposal is made;

(g) a disposal of property made in enforcing a market charge;

(h) a market charge; or

(i) any default proceedings.

50. Adjustment of prior transactions

(1) No order shall be made pursuant to—

(a) section 49 or 50 of the Bankruptcy Ordinance (Cap. 6);

(b) section 265D or 266 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32); or *(Amended 28 of 2012 ss. 912 & 920; 14 of 2016 s. 184)*

(c) section 60 of the Conveyancing and Property Ordinance (Cap. 219),

in relation to any matter to which this section applies.

(2) The matters to which this section applies are—

(a) a market contract;

(b) a disposal of property pursuant to a market contract;

(c) the provision of market collateral;

(d) a contract effected by a recognized clearing house for the purpose of realizing property provided as market collateral;

(e) a disposal of property in accordance with the rules of a recognized clearing house as to the application of property provided as market collateral;

(f) a market charge; and

(g) any default proceedings.

(3) In subsection (1)(b), the reference to section 266 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) includes that section as in force immediately before the commencement date of the Companies (Winding Up and Miscellaneous Provisions) (Amendment) Ordinance 2016 (14 of 2016). *(Added 14 of 2016 s. 184)*

51. Right of relevant office-holder to recover certain amounts arising from certain transactions

(1) Where a clearing participant (***the first participant***) enters into a transaction for the sale or purchase of securities with another clearing participant (***the second participant***) at an undervalue or an over-value in circumstances described in subsection (2), and thereafter a relevant office-holder is acting in relation to—

(a) the second participant;

(b) the person who was, in respect of the transaction, the principal of the second participant (***the second principal***); or

(c) the estate of the second participant or the second principal,

then, unless a court otherwise orders, the relevant office-holder may recover, from the first participant, or the person

who was, in respect of the transaction, the principal of the first participant (***the first principal***), an amount equal to the prescribed gain obtained under the transaction by the first participant or the first principal (as the case may be). The amount is recoverable even if the transaction may have been discharged in accordance with the rules of a recognized clearing house and replaced by a market contract.

(2) The circumstances referred to in subsection (1) in which a transaction is entered into occur when—

(a) a prescribed event has occurred in relation to the second participant or the second principal; or

(b) the first participant or the first principal knew or ought reasonably to have known—

(i) in the case of the first participant, that a prescribed event was likely to occur in relation to the second participant or the second principal;

(ii) in the case of the first principal, that a prescribed event was likely to occur in relation to the second principal,

and the event occurs within the period of 6 months immediately following the date on which the transaction was so entered into.

(3) In this section—

prescribed event (訂明事件), in relation to a second participant or a second principal, means—

(a) grounds exist for a creditor to present a bankruptcy petition against the second participant or the second principal (as the case may be);

(b) the making of a statement in the specified form in respect of the second participant or the second principal (as the case may be) pursuant to section 228A of the

Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32); *(Amended 28 of 2003 s. 129; 28 of 2012 ss. 912 & 920; 14 of 2016 s. 185)*

(c) a meeting of creditors summoned in relation to the second participant or the second principal (as the case may be) pursuant to section 241 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32); or *(Amended 28 of 2012 ss. 912 & 920)*

(d) the presentation of a petition for the winding up of the second participant or the second principal (as the case may be) by a court;

prescribed gain (訂明收益), in relation to a transaction referred to in subsection (1), means the difference between—

(a) the market value of the securities the subject of the transaction; and

(b) the value of the consideration for the transaction,

as at the time the transaction was entered into.

52. Application of market collateral not affected by certain other interests, etc.

(1) The provisions of this section have effect with respect to the application by a recognized clearing house of property provided as market collateral.

(2) So far as necessary to enable the property to be applied in accordance with the rules of a recognized clearing house, it may be so applied notwithstanding any prior equitable interest or right, or any right or remedy arising from a breach of fiduciary duty, unless the clearing house had actual notice of the interest, right or breach of duty (as the case may be) at the time the property was provided as market collateral.

(3) No right or remedy arising subsequently to the property being provided as market collateral may be enforced so as to prevent or interfere with the application of the property by the recognized clearing house in accordance with its rules.

(4) Where a recognized clearing house has power by virtue of the provisions of this section to apply property notwithstanding an interest, right or remedy, a person to whom the clearing house disposes of the property in accordance with its rules takes free from that interest, right or remedy.

53. Enforcement of judgments over property subject to market charge, etc.

(1) Where property is subject to a market charge or has been provided as market collateral, no execution or other legal process for the enforcement of a judgment or order may be commenced or continued, and no distress may be levied, against the property by a person not seeking to enforce any interest in or security over the property, except with the consent of the recognized clearing house concerned.

(2) Where by virtue of this section a person would not be entitled to enforce a judgment or order against any property, any injunction or other remedy granted with a view to facilitating the enforcement of any such judgment or order shall not extend to that property.

54. Law of insolvency in other jurisdictions

(1) A court shall not, pursuant to any enactment or rule of law, recognize or give effect to—

(a) an order of a court exercising jurisdiction under the law of insolvency in a place outside Hong Kong; or

(b) an act of a person appointed in that place to perform a function under the law of insolvency there,

in so far as making the order or doing the act would be prohibited in the case of a court in Hong Kong or a relevant office-holder by provisions made by or under this Ordinance.

(2) In this section, ***law of insolvency*** (破產清盤法), in relation to a place outside Hong Kong, means any law of that place which is similar to, or serves the same purposes as, any part of the law of insolvency in Hong Kong.

55. Clearing participant to be party to certain transactions as principal

(1) Where a clearing participant—

(a) in his capacity as such enters into any transaction (including a market contract) with a recognized clearing house; and

(b) but for this subsection, would be a party to that transaction as agent,

then, notwithstanding any other enactment or rule of law, as between, but only as between, the clearing house and any other person (including the clearing participant and the person who is his principal in respect of that transaction), the clearing participant shall for all purposes (including any action, claim or demand, either civil or criminal)—

(i) be deemed not to be a party to that transaction as agent; and

(ii) be deemed to be a party to that transaction as principal.

(2) Where—

(a) 2 or more clearing participants in their capacities as such enter into any transaction; and

(b) but for this subsection, any such clearing participant would be a party to that transaction as agent,

then, notwithstanding any other enactment or rule of law, any such clearing participant to whom paragraph (b) applies shall for all purposes (including any action, claim or demand, either civil or criminal), except as between, but only as between, him and the person who is his principal in respect of that transaction—

(i) be deemed not to be a party to that transaction as agent; and

(ii) be deemed to be a party to that transaction as principal.

56. Property deposited with recognized clearing house

(1) Subject to subsections (2) and (3), where any property is deposited as market collateral by a clearing participant with a recognized clearing house in accordance with the rules of the clearing house, then, notwithstanding any other enactment or rule of law, no action, claim or demand, either civil or criminal, in respect of any right, title or interest in such property held or enjoyed by any person lies, or shall be commenced or allowed, against the clearing house or its nominees.

(2) The operation of subsection (1) in respect of any property deposited as market collateral with a recognized clearing house is subject to the modifications and exclusions provided in the rules of the clearing house.

(3) This section does not operate to prejudice the operation of— *(Amended 28 of 2012 ss. 912 & 920; 16 of 2016 s. 4)*

(a) section 633 of the Companies Ordinance (Cap. 622); or

(b) any provision of the OFC rules relating to the rectification of the register of shareholders of an open-ended fund company. *(Amended 16 of 2016 s. 4)*

57. Preservation of rights, etc.

Except to the extent that they expressly provide, the provisions of this Division do not operate to limit, restrict or otherwise affect—

(a) any right, title, interest, privilege, obligation or liability of a person;

(b) any investigation, legal proceeding or remedy in respect of any such right, title, interest, privilege, obligation or liability.

58. Amendment of Schedule 3

(1) The Financial Secretary may, by notice published in the Gazette, amend Part 5 of Schedule 3.

(2) For the avoidance of doubt, it is hereby declared that the power of the Financial Secretary under subsection (1) to amend Part 5 of Schedule 3 may be exercised in such a way as to include in that Part a provision which requires a recognized clearing house to have, as part of its default rules, rules which prohibit the clearing house from taking any proceedings or other action specified in the provision, either generally or in a particular case.

Division 4—Exchange controllers

59. Recognition of exchange controller

(1) Subject to subsection (20) and section 62, no person shall become or continue to be a controller of a recognized exchange company or recognized clearing house unless the person is a recognized exchange controller.

(2) Where the Commission is satisfied that it is appropriate to do so—

(a) in the interest of the investing public or in the public interest; or

(b) for the proper regulation of markets in securities or futures contracts,

it may, with the consent in writing of the Financial Secretary, by notice in writing served on a company, recognize the company as an exchange controller—

(i) subject to such conditions as it considers appropriate specified in the notice; and

(ii) with effect from a date specified in the notice for the purpose.

(3) Without limiting the generality of conditions which may be specified in a notice under subsection (2), the Commission may, by notice in writing served on a recognized exchange controller, amend or revoke any condition specified in the first-mentioned notice or impose new conditions, where the Commission—

(a) is satisfied that it is appropriate to do so on a ground specified in paragraph (a) or (b) of that subsection; and

(b) has the consent in writing of the Financial Secretary to do so.

(4) Where the Commission amends or revokes any condition or imposes any new condition by a notice under subsection (3), the amendment, revocation or imposition takes effect at the time of service of the notice or at the time specified in the notice, whichever is the later.

(5) Subject to subsection (6), a person who contravenes subsection (1) commits an offence and is liable—

(a) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(6) Where a person is charged with an offence under subsection (5), it is a defence to the charge for the person to prove that the person did not know that the acts or circumstances by virtue of which the person became a controller of the recognized exchange company or recognized clearing house concerned were such as to have that effect.

(7) Where a person—

(a) is a controller of a recognized exchange company or recognized clearing house in contravention of subsection (1) (and whether or not the person is charged with an offence under subsection (5) in relation to the contravention);

(b) did not know and had no reason to suspect the existence of any of the acts or circumstances by virtue of which the person became the controller of the recognized exchange company or recognized clearing house; and

(c) subsequently becomes aware of the fact that the person has become such a controller,

the person shall serve on the Commission, not later than 14 days after becoming aware of that fact, a notice in writing stating that the person has become such a controller.

(8) The Commission may, upon the service of a notice under subsection (7)—

(a) recognize the person as an exchange controller in accordance with subsection (2); or

(b) refuse to recognize the person as an exchange controller.

(9) Where a person is a controller of a recognized exchange company or recognized clearing house in contravention of subsection (1) (and whether or not the person is charged with an offence under subsection (5) in relation to the contravention)—

(a) the Commission may, by notice published in the Gazette—

(i) declare that any votes cast at any meeting of the recognized exchange company or recognized clearing house (as the case may be) by the person after the person became the controller shall be void and of no effect; and

(ii) give such directions as it considers appropriate for any such meetings to be reconvened for voting anew on the business on which such votes were cast;

(b) the person or any of his associated persons shall not exercise any rights conferred on the person as a holder of securities in the recognized exchange company or recognized clearing house, or any rights in securities in any such company which are otherwise controlled by the person, except for the purpose of ceasing to be such controller; and

(c) the Commission may, by notice in writing served on the person, direct the person to take such steps as are specified in the notice—

(i) for the purpose of causing the person to cease to be such controller; and

(ii) within such period as is specified in the notice for the purpose.

(10) Without limiting the generality of steps referred to in subsection (9)(c) which may be specified in a notice under that subsection to be served on a person referred to in that subsection, such steps may consist in whole or in part of steps proposed in writing to the Commission by that person.

(11) The steps specified in a notice under subsection (9)(c) may be framed so as to afford the person on whom the notice is

served a choice between different ways of ceasing to be a controller of the recognized exchange company or recognized clearing house concerned.

(12) A notice served under subsection (9)(c) shall not take effect—

(a) subject to paragraph (b), until the expiration of the period within which an appeal against the notice may be made under section 73; or

(b) if an appeal against the notice is made under section 73, until the appeal is withdrawn, abandoned or determined.

(13) Subject to subsection (14), a person served with a notice under subsection (9)(c) who fails to comply with the notice commits an offence and is liable—

(a) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(14) It is a defence for a person charged with an offence under subsection (13) to prove that the person exercised reasonable diligence to comply with the notice concerned under subsection (9)(c) served on the person.

(15) Where a person served with a notice under subsection (9)(c) fails to comply with the notice (and whether or not the person is charged with an offence under subsection (13) in relation to the failure), the provisions of Part 6 of Schedule 3 shall immediately apply.

(16) The provisions of this section, except subsection (5), shall apply to a person who became a controller of a recognized exchange company or recognized clearing house before the commencement of this section as they apply to a person who became a controller of a recognized exchange company or recognized clearing house on or after that commencement.

(17) Where a company becomes a recognized exchange controller, the Commission shall cause notice of that fact to be published in the Gazette.

(18) Where a company is seeking to be a recognized exchange controller and the Commission is minded not to recognize the company under subsection (2), the Commission shall give the company a reasonable opportunity of being heard before making a decision not to recognize the company.

(19) Where the Commission refuses to recognize a company or a person as an exchange controller under subsection (2) or (8)(b), the Commission shall, by notice in writing served on the company or the person (as the case may be), inform the company or the person of the refusal and of the reasons for it.

(20) Subsection (1) shall not apply to a person who is a controller of a recognized exchange company or recognized clearing house if the recognized exchange company or recognized clearing house is itself a recognized exchange controller.

(21) A notice under subsection (9)(a) is not subsidiary legislation.

60. Interest of recognized exchange controller in recognized exchange company or recognized clearing house cannot be increased or decreased except with approval of Commission

Where a recognized exchange controller is a controller of a recognized exchange company or recognized clearing house, then, by virtue of this section and notwithstanding any other enactment or rule of law—

(a) any interest the recognized exchange controller has in the recognized exchange company or recognized clearing house (as the case may be) as such controller cannot be increased or decreased except with the approval in writing of the Commission;

(b) any attempt (whether in the form of an agreement or otherwise and by whomsoever) to increase or decrease any such interest in contravention of paragraph (a) is void for all purposes.

61. Person not to become minority controller of exchange controller, etc. without approval of Commission

(1) Subject to subsections (2) and (16), on or after the commencement of this section, a person shall not—

(a) be or become a minority controller of a recognized exchange controller, recognized exchange company or recognized clearing house except with the approval in writing of the Commission after consultation with the Financial Secretary; and

(b) if such approval is given, and subject to any condition specified in the approval disapplying this paragraph in whole or in part, increase the interest the person has as such minority controller except with the further approval in writing of the Commission after consultation with the Financial Secretary.

(2) The Commission shall not give an approval under subsection (1)(a) or (b) unless it is satisfied that it is appropriate to do so in the interest of the investing public or in the public interest.

(3) Where the Commission refuses to give an approval under subsection (1)(a) or (b), it shall give notice in writing of its reasons for the refusal to the person concerned.

(4) Subject to subsection (5), a person who contravenes subsection (1) commits an offence and is liable—

(a) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(5) Where a person is charged with an offence under subsection (4), it is a defence to the charge for the person to prove that the person—

(a) did not know that the acts or circumstances by virtue of which the person became a minority controller, or increased the interest the person has as a minority controller (as the case may be) of the recognized exchange controller, recognized exchange company or recognized clearing house concerned were such as to have that effect; or

(b) exercised reasonable diligence to avoid contravening subsection (1).

(6) Where a person—

(a) is a minority controller of a recognized exchange controller, recognized exchange company or recognized clearing house in contravention of subsection (1) (and whether or not the person is charged with an offence under subsection (4) in relation to the contravention);

(b) did not know and had no reason to suspect the existence of any of the acts or circumstances by virtue of which the person became the minority controller of that recognized exchange controller, recognized exchange company or recognized clearing house; and

(c) subsequently becomes aware of the fact that the person has become such a minority controller,

the person shall serve on the Commission, not later than 14 days after becoming aware of that fact, a notice in writing stating that the person has become such a minority controller.

(7) The Commission may, upon the service of a notice under subsection (6)—

(a) approve the person as a minority controller in accordance with subsection (1); or

(b) refuse to approve the person as a minority controller.

(8) Where a person is a minority controller of a recognized exchange controller, recognized exchange company or recognized clearing house in contravention of subsection (1) (and whether or not the person is charged with an offence under subsection (4) in relation to the contravention), the Commission may, by notice published in the Gazette—

(a) declare that any votes cast at any meeting of the recognized exchange controller, recognized exchange company or recognized clearing house (as the case may be) by the person after the person became the minority controller, shall be void and of no effect; and

(b) give such directions as it considers appropriate for any such meetings to be reconvened for voting anew on the business on which such votes were cast.

(9) Where a person is a minority controller of a recognized exchange controller, recognized exchange company or recognized clearing house in contravention of subsection (1) or has failed to comply with a condition specified in an approval under that subsection (and whether or not the person is charged with an offence under subsection (4) in relation to the contravention)—

(a) the person or any of his associated persons shall not exercise any rights conferred on the person as a holder of securities in the recognized exchange controller, recognized exchange company or recognized clearing house concerned or any rights in securities in any such company which are otherwise controlled by the person, except for the purpose of ceasing to be such controller; and

(b) the Commission may, by notice in writing served on the person, direct the person to take such steps as are specified in the notice—

(i) for the purpose of causing the person to cease to be a minority controller of the recognized exchange controller, recognized exchange company or recognized clearing house the subject of that contravention or failure; and

(ii) within such period as is specified in the notice for the purpose.

(10) Without limiting the generality of steps referred to in subsection (9)(b) which may be specified in a notice under that subsection to be served on a person referred to in that subsection, such steps may consist in whole or in part of steps proposed in writing to the Commission by that person.

(11) The steps specified in a notice under subsection (9)(b) may be framed so as to afford the person on whom the notice is served a choice between different ways of ceasing to be a minority controller of the recognized exchange controller, recognized exchange company or recognized clearing house concerned.

(12) A notice served under subsection (9)(b) shall not take effect—

(a) subject to paragraph (b), until the expiration of the period within which an appeal against the notice may be made under section 73; or

(b) if an appeal against the notice is made under section 73, until the appeal is withdrawn, abandoned or determined.

(13) Subject to subsection (14), a person served with a notice under subsection (9)(b) who fails to comply with the notice commits an offence and is liable—

(a) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(14) It is a defence for a person charged with an offence under subsection (13) to prove that the person exercised reasonable diligence to comply with the notice concerned under subsection (9)(b) served on the person.

(15) Where a person served with a notice under subsection (9)(b) fails to comply with the notice (and whether or not the person is charged with an offence under subsection (13) in relation to the failure), the provisions of Part 6 of Schedule 3 shall immediately apply.

(16) The Commission may, after consultation with the Financial Secretary, make rules to exempt a person, or a person belonging to a class of persons, specified in the rules from one or more of the requirements of subsection (1) subject to such conditions (if any) as are specified in the rules.

(17) Where a person is seeking to be a minority controller of a recognized exchange controller, recognized exchange company or recognized clearing house and the Commission is minded not to give approval under subsection (1) in relation thereto, the Commission shall give the person a reasonable opportunity of being heard before making a decision not to give such approval.

(18) Nothing in this section shall operate to prevent the Commission from approving under this or any other Ordinance the provisions of the constitution, or the provisions of an amendment to the constitution, of a recognized exchange controller, recognized exchange company or recognized clearing house which impose requirements additional to this section in relation to—

(a) interests held in the recognized exchange controller, recognized exchange company or recognized clearing house (as the case may be) including, but not limited to, the exercise, or the control of the exercise, of voting power at any general meeting of the recognized exchange controller, recognized exchange company or recognized clearing house (as the case may be); or

(b) steps to be taken for the purpose of causing a person to dispose of any such interest including, but not limited to, ceasing to be a minority controller (by whatever name called) of the recognized exchange controller, recognized exchange company or recognized clearing house (as the case may be).

(19) A notice under subsection (8) is not subsidiary legislation.

(20) In this section, ***minority controller*** (次要控制人), in relation to a recognized exchange controller, recognized exchange company or recognized clearing house—

(a) subject to paragraph (b), means any person who, either alone or with any associated person or persons, is entitled to exercise, or control the exercise of, 5% or more of the voting power at any general meeting of the recognized exchange controller, recognized exchange company or recognized clearing house (as the case may be) or of a corporation of which the recognized exchange controller, recognized exchange company or recognized clearing house (as the case may be) is a subsidiary;

(b) does not include—

(i) a recognized exchange controller; or

(ii) a person, or a person belonging to a class of persons, specified in Part 7 of Schedule 3 not to

be a minority controller for the purposes of this Division.

62. Exemption from section 59(1) and revocation of exemption

(1) Where the Financial Secretary is satisfied that it is appropriate to do so—

(a) in the interest of the investing public or in the public interest; or

(b) for the proper regulation of markets in securities or futures contracts,

he may, by notice in writing served on a person, exempt the person from section 59(1)—

(i) subject to such conditions as he considers appropriate specified in the notice; and

(ii) with effect from a date specified in the notice for the purpose.

(2) Where the Financial Secretary is satisfied that it is appropriate to do so—

(a) in the interest of the investing public or in the public interest; or

(b) for the proper regulation of markets in securities or futures contracts,

he may, by notice in writing served on a person the subject of an exemption under subsection (1) stating the reasons in support of the ground or grounds for the notice, revoke the exemption—

(i) subject to such conditions as he considers appropriate specified in the notice; and

(ii) with effect from a date specified in the notice for the purpose, being a date reasonable in all the circumstances of the case.

(3) Subject to subsection (4), a person who fails to comply with a condition specified in a notice under subsection (1) or (2) commits an offence and is liable—

(a) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(4) It is a defence for a person charged with an offence under subsection (3) to prove that the person exercised reasonable diligence to comply with the notice concerned under subsection (1) or (2) served on the person.

(5) Without limiting the generality of the Financial Secretary's power under subsection (1), a person is exempt from section 59(1) in the cases specified in Part 8 of Schedule 3.

(6) For the avoidance of doubt, it is hereby declared that the Financial Secretary's power under subsection (2) to revoke an exemption under subsection (1) includes the power to revoke and replace the exemption.

63. Duties of recognized exchange controller

(1) It shall be the duty of a recognized exchange controller which is a controller of a recognized exchange company or recognized clearing house to ensure so far as reasonably practicable—

(a) an orderly, informed and fair market in securities or futures contracts traded on the stock market or futures market operated by the recognized exchange company or through the facilities of the company;

(ab) an orderly, informed and fair market in OTC derivative products traded through the facilities of the recognized exchange company; *(Added 6 of 2014 s. 7)*

(b) that there are orderly, fair and expeditious clearing and settlement arrangements for any transactions in securities, futures contracts or OTC derivative products cleared or settled through the facilities of the recognized clearing house; *(Amended 6 of 2014 s. 7)*

(c) that risks associated with its business and operations are managed prudently;

(d) that the recognized exchange company or recognized clearing house (as the case may be) complies with any lawful requirement placed on it under any enactment or rule of law and with any other legal requirement placed on it.

(2) In discharging its duty under subsection (1)(a), (b) or (c), a recognized exchange controller shall—

(a) act in the interest of the public, having particular regard to the interest of the investing public; and

(b) ensure that the interest of the public prevails where it conflicts with the interest of the recognized exchange controller.

64. Immunity, etc.

Without limiting the generality of section 380(1), no civil liability, whether arising in contract, tort, defamation, equity or otherwise, shall be incurred by—

(a) a recognized exchange controller; or

(b) any person acting on behalf of a recognized exchange controller, including—

(i) any member of the board of directors of the recognized exchange controller; or

(ii) any member of any committee established by the recognized exchange controller,

in respect of anything done or omitted to be done in good faith in the discharge or purported discharge of the duties of the controller under section 63 or in the performance or purported performance of its functions under its rules.

65. Establishment and functions of Risk Management Committee

(1) A recognized exchange controller shall establish and keep established a committee, to be called the Risk Management Committee, to formulate policies on risk management matters relating to the activities of the recognized exchange controller and of any recognized exchange company or recognized clearing house of which the recognized exchange controller is a controller and to submit such policies to the recognized exchange controller for its consideration.

(2) The Risk Management Committee shall consist of—

(a) the chairman of the recognized exchange controller who shall also be the chairman of the Committee; and

(b) not less than 4 or more than 7 other members.

(3) The Financial Secretary shall appoint not less than 3 or more than 5 of the members referred to in subsection (2)(b).

(4) The recognized exchange controller shall appoint not more than 2 of the members referred to in subsection (2)(b) of whom not less than one shall be a member of the board of directors of the recognized exchange controller who—

(a) is such a member otherwise than by virtue of an appointment under section 77(1); and

(b) is not the chief executive of the recognized exchange controller.

66. Rules by recognized exchange controllers

(1) Without limiting any of its other powers to make rules, a recognized exchange controller may make rules for such matters as are necessary or desirable—

(a) for the discharge of its duties under section 63;

(b) for the establishment and maintenance of compensation arrangements for the investing public.

(2) The Commission may, after consultation with the Financial Secretary, by notice published in the Gazette, declare a person or body of persons specified in the notice to be a person or body of persons (as the case may be) to which paragraph (c)(ii)(C) of the definition of ***rules*** in section 1 of Part 1 of Schedule 1 shall apply.

67. Approval of rules or amendments to rules of recognized exchange controller

(1) Subject to subsection (7), no rule (whether or not made under section 66) of a recognized exchange controller or any amendment thereto shall have effect unless it has the approval in writing of the Commission.

(2) A recognized exchange controller shall submit or cause to be submitted to the Commission—

(a) for its approval the rules and every amendment thereto that require approval under subsection (1), together with explanations of their purpose and likely effect, including their effect on the investing public, in sufficient detail to enable the Commission to decide whether to approve them or refuse to approve them; and

(b) for its information the rules which belong to a class the subject of a declaration under subsection (7) and every amendment to the rules, as soon as reasonably practicable after they have been made.

(3) The Commission shall, not later than 6 weeks after the receipt of a submission under subsection (2)(a) from a recognized exchange controller, by notice in writing served on the controller, give its approval or refuse to give its approval (together with its reasons for the refusal) to the rules or amendment of the rules (as the case may be) or any part thereof, the subject of the submission.

(4) The Commission may give its approval under subsection (3) subject to requirements which shall be satisfied before the rules or amendment of the rules or any part thereof take effect.

(5) The Commission may in a particular case, with the agreement of the recognized exchange controller concerned, extend the time prescribed in subsection (3).

(6) The Financial Secretary may, after consultation with the Commission and the recognized exchange controller concerned, extend the time prescribed in subsection (3).

(7) The Commission may, by notice published in the Gazette, declare any class of rules of a recognized exchange controller to be a class of rules which are not required to be approved under subsection (1) and, accordingly, any rules of the controller which belong to that class (including any amendment thereto) shall have effect notwithstanding that they have not been so approved.

(8) Neither the rules under section 66(1) nor a notice under subsection (7) is subsidiary legislation.

68. Transfer and resumption of functions of Commission

(1) The Commission may request the Chief Executive in Council to transfer, by order (***transfer order***) published in the Gazette, to a recognized exchange controller (***designated exchange controller***), a function to which this section applies, if the Commission is satisfied that the designated exchange controller is willing and able to perform the function.

(2) This section applies to a function of the Commission under—

(a) Part V;

(b) section 145;*(Amended 28 of 2012 ss. 912 & 920)*

(c) Parts II and XII of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32); and *(Replaced 28 of 2012 ss. 912 & 920)*

(d) Part 5 of the Companies Ordinance (Cap. 622). *(Added 28 of 2012 ss. 912 & 920)*

(3) A function to which this section applies may be transferred by a transfer order either in whole or in part, and the transfer may be subject to—

(a) a reservation that the Commission is to perform the function concurrently with the designated exchange controller; and

(b) such other conditions as the Commission considers appropriate.

(4) A transfer order may contain such incidental, supplemental and consequential provisions as may be necessary or expedient for the purpose of giving full effect to the order.

(5) The Commission shall not request that a transfer order be made in respect of the making of financial resources rules unless the proposed designated exchange controller has first supplied the Commission with a draft of the financial resources rules which it proposes to make, and the

Commission is satisfied that the rules, if made, will afford the investing public an adequate level of protection.

(6) The Commission may at the request or with the consent of a designated exchange controller resume a function transferred by a transfer order, but the resumption takes effect only by order of the Chief Executive in Council.

(7) The Chief Executive in Council may order that the Commission resume a function transferred to a designated exchange controller by a transfer order if the Commission so requests and if it appears to the Chief Executive in Council to be in the public interest to do so.

(8) A transfer order may provide for a designated exchange controller to retain all or any of the fees payable in relation to the performance of a transferred function, and an order made under subsection (6) or (7) may provide for the Commission to retain all or any such fees, from a date specified in the order.

69. Chairman of recognized exchange controller

(1) No person shall be the chairman of a company which is a recognized exchange controller unless he has the approval in writing of the Chief Executive to hold that office.

(2) Where the Chief Executive is satisfied that it is appropriate to do so—

(a) in the interest of the investing public or in the public interest; or

(b) for the proper regulation of markets in securities or futures contracts,

he may, by notice in writing served on a person who is the chairman of a recognized exchange controller, remove the person from that office with effect from a date specified in the notice for the purpose.

70. Appointment of chief executive or chief operating officer of recognized exchange controller requires approval of Commission

(1) No appointment of a person as chief executive or chief operating officer of a company which is a recognized exchange controller shall have effect unless the appointment has the approval in writing of the Commission.

(2) Where the Commission, after consultation with the Financial Secretary and the chairman of a recognized exchange controller, is satisfied that it is appropriate to do so—

(a) in the interest of the investing public or in the public interest; or

(b) for the proper regulation of markets in securities or futures contracts,

it may, by notice in writing served on a person who is the chief executive or chief operating officer of the controller, remove the person from that office with effect from a date specified in the notice for the purpose.

(3) A notice served under subsection (2) shall take effect immediately.

71. Production of records, etc. by recognized exchange controller

(1) The Commission may, by notice in writing served on a recognized exchange controller, require the controller to provide to the Commission, within such period as the Commission may specify in the notice—

(a) such books and records kept by it—

(i) in connection with or for the purposes of its business;

(ii) in respect of any trading in securities or futures contracts traded on the stock market or futures market operated by the recognized exchange company of which it is a controller, or through the facilities of that company;

(iia) in respect of any trading in OTC derivative products traded through the facilities of the recognized exchange company of which it is a controller; or *(Added 6 of 2014 s. 8)*

(iii) in respect of any clearing and settlement arrangements for any transactions in securities, futures contracts or OTC derivative products cleared or settled through the facilities of the recognized clearing house of which it is a controller; and *(Amended 6 of 2014 s. 8)*

(b) such other information relating to its business or any such trading or clearing and settlement arrangements,

as the Commission may reasonably require for the performance of its functions.

(2) A recognized exchange controller served with a notice under subsection (1) which, without reasonable excuse, fails to comply with the notice commits an offence and is liable on conviction to a fine at level 5.

72. Withdrawal of recognition of exchange controller

(1) Subject to subsection (2), where the Commission is satisfied that it is appropriate to do so—

(a) in the interest of the investing public or in the public interest; or

(b) for the proper regulation of markets in securities or futures contracts,

it may, with the consent in writing of the Financial Secretary, by notice in writing served on a recognized exchange controller stating the reasons in support of the ground or grounds for the notice—

(i) withdraw the company's recognition as an exchange controller with effect from a date specified in the notice for the purpose; or

(ii) direct the company to take such steps as are specified in the notice—

(A) for the purpose of causing the company to cease to be such controller; and

(B) within such period as is specified in the notice for the purpose.

(2) The Commission shall not exercise its power under subsection (1) in relation to a recognized exchange controller unless it has given the controller a reasonable opportunity of being heard.

(3) Without limiting the generality of steps referred to in subsection (1)(ii) which may be specified in a notice under that subsection to be served on a company referred to in that subsection, such steps may consist in whole or in part of steps proposed in writing to the Commission by that company.

(4) The steps specified in a notice under subsection (1)(ii) may be framed so as to afford the company on which the notice is served a choice between different ways of ceasing to be a controller of the recognized exchange company or recognized clearing house concerned.

(5) Where the Commission withdraws a company's recognition as an exchange controller under subsection (1)(i), it shall cause notice of that fact to be published in the Gazette.

(6) A notice served under subsection (1) shall not take effect—

(a) subject to paragraph (b), until the expiration of the period within which an appeal against the notice may be made under section 73; or

(b) if an appeal against the notice is made under section 73, until the appeal is withdrawn, abandoned or determined.

(7) Subject to subsection (8), a company served with a notice under subsection (1) which fails to comply with the notice commits an offence and is liable—

(a) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(8) It is a defence for a person charged with an offence under subsection (7) to prove that the person exercised reasonable diligence to comply with the notice concerned under subsection (1) served on the person.

(9) Where a company served with a notice under subsection (1) fails to comply with the notice (and whether or not the company is charged with an offence under subsection (7) in relation to the failure), the provisions of Part 6 of Schedule 3 shall immediately apply.

73. Appeals

(1) A person served with a notice under section 59(9)(c), 61(9)(b), 70(2), 72(1) or 75(1) may appeal against the notice to the Chief Executive in Council not later than 14 days after the date of service of the notice or such longer period (if any) as the Commission specifies in the notice.

(2) The decision of the Chief Executive in Council on an appeal under subsection (1) shall be final.

74. Provisions applicable where recognized exchange controller,

etc. seeks to be listed corporation

(1) A relevant recognized exchange controller, or a relevant corporation, shall not become a listed corporation unless and until the Commission states in writing that it is satisfied that—

(a) subject to subsection (2), rules made under section 23 adequately deal with possible conflicts of interest that might arise if the relevant recognized exchange controller or relevant corporation (as the case may be) were to be a listed corporation; and

(b) the relevant recognized exchange controller or relevant corporation (as the case may be) has entered into arrangements with the Commission that adequately ensure—

(i) the integrity of the market in securities or futures contracts traded on the stock market or futures market operated by the recognized exchange company concerned or through the facilities of that recognized exchange company; and

(ii) the compliance with obligations as a listed corporation which would fall on the relevant recognized exchange controller or relevant corporation (as the case may be) if it were to become a listed corporation.

(2) Rules referred to in subsection (1)(a) shall make provision to the effect that the Commission shall, instead of the Stock Exchange Company, take all actions and make all decisions in relation to the relevant recognized exchange controller or relevant corporation that would be taken by the Stock Exchange Company in the case of a corporation that was neither a recognized exchange controller nor a relevant corporation except in the case of any action or decision in

respect of which the Commission states in writing that it is satisfied that a conflict of interest will not arise if that action or decision were to be taken or made (as the case may be) by the Stock Exchange Company.

(3) By virtue of this section, the Commission shall have such functions as are provided for it under—

(a) rules made for the purposes of subsections (1)(a) and (2);

(b) arrangements referred to in subsection (1)(b).

(4) Where a fee is payable to the Stock Exchange Company by a person for the taking of an action or the making of a decision which may be taken or made (as the case may be) by the Commission by virtue of subsections (1)(a) and (2), then, notwithstanding any other enactment or rule of law, that person shall pay that fee to the Commission in any case where the Commission takes that action or makes that decision (as the case may be) by virtue of those subsections.

75. Commission may give directions to recognized exchange controller where it is satisfied that conflict of interest exists, etc.

(1) Where the Commission is satisfied that—

(a) a conflict of interest exists or may come into existence between—

(i) the interest of a recognized exchange controller or a relevant corporation; and

(ii) the interest of the proper performance of the functions conferred by this or any other Ordinance (including any rules made under any Ordinance, whether or not they are subsidiary legislation) on the controller or the relevant corporation; or

(b) such a conflict of interest has existed in circumstances that make it likely that the conflict of interest will continue or be repeated,

then the Commission may, by notice in writing served on the controller or relevant corporation (as the case may be) stating the reasons in support of the ground or grounds for the notice, direct the controller or relevant corporation (as the case may be) to forthwith take such steps as are specified in the notice (including steps in relation to any of its affairs, business and property whatsoever) for the purposes of remedying the conflict of interest or the matters occasioning the conflict of interest (as the case may be).

(2) A notice served under subsection (1) shall take effect immediately.

(3) A recognized exchange controller or relevant corporation served with a notice under subsection (1) which, without reasonable excuse, fails to comply with the notice commits an offence and is liable—

(a) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

76. Fees to be approved by Commission

(1) No fee imposed on or after the commencement of this section by—

(a) a recognized exchange controller in its capacity as a recognized exchange controller; or

(b) a recognized exchange company or recognized clearing house—

(i) of which the recognized exchange controller is a controller; and

(ii) in its capacity as a recognized exchange company or recognized clearing house (as the case may be),

shall have effect unless the fee is specified in the rules of the recognized exchange controller, recognized exchange company or recognized clearing house (as the case may be) and has the approval in writing of the Commission.

(2) The Commission shall, in deciding whether or not to approve a fee referred to in subsection (1), have regard to, among other matters—

(a) the level of competition (if any) in Hong Kong for the matter for which the fee is to be imposed; and

(b) the level of fee (if any) imposed by another recognized exchange controller, recognized exchange company or recognized clearing house or any similar body outside Hong Kong, for the same or a similar matter to which the fee relates.

77. Financial Secretary may appoint not more than 8 persons to board of directors of HKEC

(1) Notwithstanding any enactment or rule of law but subject to subsection (2), the Financial Secretary may appoint not more than 8 persons to be members of the board of directors of the HKEC where the Financial Secretary is satisfied that it is appropriate to do so in the interest of the investing public or in the public interest.

(2) The Financial Secretary shall exercise his power under subsection (1) in such a way that immediately following the annual general meeting of the HKEC held in 2003 and thereafter, the number of members of its board of directors who are such members by virtue of an appointment under

that subsection is not more than the maximum number of members of that board who may be such members otherwise than by virtue of such an appointment (but excluding the chief executive of the HKEC).

(3) Subject to subsection (4), a member of the board of directors of the HKEC who is such a member by virtue of an appointment under subsection (1) shall have the same rights, privileges, obligations and liabilities under any enactment or rule of law as a member of that board who is such a member otherwise than by virtue of such an appointment.

(4) Notwithstanding any enactment or rule of law, no person appointed under subsection (1) as a member of the board of directors of the HKEC may be removed from that office by a resolution of the other directors of the board or a special resolution of the HKEC.

(5) In this section, ***HKEC*** (交易結算公司) means the company incorporated, and registered by the name Hong Kong Exchanges and Clearing Limited, under the relevant Ordinance. *(Amended 28 of 2012 ss. 912 & 920)*

78. Amendment of Schedule 3

The Chief Executive in Council may, by order published in the Gazette, amend Parts 2, 3, 4, 6, 7 or 8 of Schedule 3.

Division 5—Investor compensation companies

79. Recognition of investor compensation company

(1) Where the Commission is satisfied that it is appropriate to do so—

(a) in the interest of the investing public or in the public interest; or

(b) for the facilitation of the management and administration of the compensation fund under Part XII,

it may, after consultation with the Financial Secretary, by notice in writing served on a company, recognize the company as an investor compensation company—

(i) subject to such conditions as it considers appropriate specified in the notice; and

(ii) with effect from a date specified in the notice for the purpose.

(2) Without limiting the generality of conditions which may be specified in a notice under subsection (1), the Commission may, by notice in writing served on a recognized investor compensation company, amend or revoke any condition specified in the first-mentioned notice or impose new conditions, where the Commission—

(a) is satisfied that it is appropriate to do so on a ground specified in paragraph (a) or (b) of that subsection; and

(b) has consulted the Financial Secretary.

(3) Where the Commission amends or revokes any condition or imposes any new condition by a notice under subsection (2), the amendment, revocation or imposition takes effect at the time of service of the notice or at the time specified in the notice, whichever is the later.

(4) Where a company becomes a recognized investor compensation company, the Commission shall cause notice of that fact to be published in the Gazette.

(5) Where a company is seeking to be a recognized investor compensation company and the Commission is minded not to recognize the company under subsection (1), the Commission shall give the company a reasonable opportunity of being heard before making a decision not to recognize the company.

(6) Where the Commission refuses to recognize a company as an investor compensation company under subsection (1), the Commission shall, by notice in writing served on the company, inform the company of the refusal and of the reasons for it.

80. Transfer and resumption of functions of Commission

(1) The Commission may request the Chief Executive in Council to transfer, by order (***transfer order***) published in the Gazette, to a recognized investor compensation company (***designated investor compensation company***), a function to which this section applies, if the Commission is satisfied that the designated investor compensation company is willing and able to perform the function.

(2) This section applies to a function of the Commission under Part XII (other than sections 240(4) and (9) and 244(2)) or rules made under that Part.

(3) For the purposes of subsection (2), the function of the Commission under Part XII to maintain the compensation fund includes a function to maintain all or any part of the compensation fund, and the other provisions of this Ordinance shall apply accordingly.

(4) A function to which this section applies may be transferred by a transfer order either in whole or in part, and the transfer may be subject to—

(a) a reservation that the Commission is to perform the function concurrently with the designated investor compensation company; and

(b) such other conditions as the Commission considers appropriate.

(5) A transfer order may contain such incidental, supplemental and consequential provisions as may be necessary or expedient for the purpose of giving full effect to the order.

(6) The Commission may at the request or with the consent of a designated investor compensation company resume a function transferred by a transfer order, but the resumption takes effect only by order of the Chief Executive in Council.

(7) The Chief Executive in Council may order that the Commission resume a function transferred to a designated investor compensation company by a transfer order if the Commission so requests and if it appears to the Chief Executive in Council to be in the public interest to do so.

81. Immunity, etc.

(1) Without limiting the generality of section 380(1), no civil liability, whether arising in contract, tort, defamation, equity or otherwise, shall be incurred by—

(a) a recognized investor compensation company; or

(b) any person acting on behalf of a recognized investor compensation company, including—

(i) any member of the board of directors of the company; or

(ii) any member of any committee established by the company,

in respect of anything done or omitted to be done in good faith in the discharge or purported discharge of the duties to which this subsection applies.

(2) The duties to which subsection (1) applies are those—

(a) that relate to or arise out of a function that has been transferred to the recognized investor compensation company under section 80; or

(b) to which the company is subject under rules made under Part XII.

82. Rules by recognized investor compensation company

Without limiting any of its other powers to make rules, a recognized investor compensation company may make rules for such matters as are necessary or desirable—

(a) for the proper and efficient management and operation of the company;

(b) for the obtaining of such insurance, surety, guarantee or other security or the making of such financial arrangement by the company as may be necessary or appropriate for the purposes of its operation;

(c) for the proper and efficient performance of a function transferred to the company under section 80.

83. Approval of rules or amendments to rules of recognized investor compensation companies

(1) Subject to subsection (7), no rule (whether or not made under section 82) of a recognized investor compensation company or any amendment thereto shall have effect unless it has the approval in writing of the Commission.

(2) A recognized investor compensation company shall submit or cause to be submitted to the Commission—

(a) for its approval the rules and every amendment thereto that require approval under subsection (1), together with explanations of their purpose and likely effect, including their effect on the investing public, in sufficient detail to enable the Commission to decide whether to approve them or refuse to approve them; and

(b) for its information the rules which belong to a class the subject of a declaration under subsection (7) and

every amendment to the rules, as soon as reasonably practicable after they have been made.

(3) The Commission shall, not later than 6 weeks after the receipt of a submission under subsection (2)(a) from a recognized investor compensation company, by notice in writing served on the company, give its approval or refuse to give its approval (together with its reasons for the refusal) to the rules or amendment of the rules (as the case may be) or any part thereof, the subject of the submission.

(4) The Commission may give its approval under subsection (3) subject to requirements which shall be satisfied before the rules or amendment of the rules or any part thereof take effect.

(5) The Commission may in a particular case, with the agreement of the recognized investor compensation company concerned, extend the time prescribed in subsection (3).

(6) The Financial Secretary may, after consultation with the Commission and the recognized investor compensation company concerned, extend the time prescribed in subsection (3).

(7) The Commission may, by notice published in the Gazette, declare any class of rules of a recognized investor compensation company to be a class of rules which are not required to be approved under subsection (1) and, accordingly, any rules of the company which belong to that class (including any amendment thereto) shall have effect notwithstanding that they have not been so approved.

(8) A recognized investor compensation company shall make its rules available to the public in a manner approved by the Commission.

(9) Neither the rules under section 82 nor a notice under subsection (7) is subsidiary legislation.

84. Production of records, etc. by recognized investor compensation company

(1) The Commission may, by notice in writing served on a recognized investor compensation company, require the company to provide to the Commission, within such period as the Commission may specify in the notice—

(a) such books and records kept by it in connection with or for the purposes of its business or in respect of the management and administration of the compensation fund under Part XII; and

(b) such other information relating to its business or the management and administration of the compensation fund under Part XII,

as the Commission may reasonably require for the performance of its functions.

(2) A recognized investor compensation company served with a notice under subsection (1) which, without reasonable excuse, fails to comply with the notice commits an offence and is liable on conviction to a fine at level 5.

85. Withdrawal of recognition of investor compensation company

(1) Subject to subsections (3), (4) and (5), the Commission may, after consultation with the Financial Secretary, by notice in writing served on a recognized investor compensation company, withdraw the company's recognition as an investor compensation company with effect from a date specified in the notice for the purpose.

(2) The Commission may by the notice served under subsection (1) permit the recognized investor compensation company to continue, on or after the date on which the withdrawal is to take effect, to carry on such activities affected by the

withdrawal as the Commission may specify in the notice for the purpose of—

(a) closing down the operations of the company; or

(b) protecting the interest of the investing public or the public interest.

(3) The Commission may only serve a notice under subsection (1) in relation to a recognized investor compensation company that—

(a) fails to comply with any requirement of this Ordinance or with a condition imposed under section 79;

(b) is being wound up;

(c) ceases to perform any function transferred to it under section 80; or

(d) requests the Commission to do so.

(4) Except where responding to a request under subsection (3)(d), the Commission shall not exercise its power under subsection (1) in relation to a recognized investor compensation company unless it has given the company a reasonable opportunity of being heard.

(5) Except where responding to a request under subsection (3)(d), the Commission shall give the recognized investor compensation company not less than 14 days' notice in writing of its intention to serve a notice under subsection (1) and the grounds for doing so.

(6) Where the Commission withdraws a company's recognition as an investor compensation company under subsection (1), it shall cause notice of that fact to be published in the Gazette.

(7) A notice served under this section shall take effect immediately.

86. Appeals

(1) A company served with a notice under section 85(1) may appeal against the notice to the Chief Executive in Council not later than 14 days after the date of service of the notice or such longer period (if any) as the Commission specifies in the notice.

(2) The decision of the Chief Executive in Council on an appeal under subsection (1) shall be final.

87. Subrogation of recognized investor compensation company to rights, etc. of claimant on payment from compensation fund

(1) Where a recognized investor compensation company makes any payment out of the compensation fund in respect of any claim made under rules made under Part XII—

(a) subject to subsection (1A), the company shall be subrogated, to the extent which that payment bears to the loss sustained (without taking into account any compensation paid or payable out of the compensation fund for the loss) by the claimant by reason of the default on which the claim was based, to all the rights and remedies of the claimant in relation to the loss; and *(Amended 7 of 2004 s. 55)*

(b) the respective rights of the claimant and the company in bankruptcy or winding up or by legal proceedings or otherwise to receive in respect of the loss—

(i) any sum out of the assets of the person concerned who is in default; or

(ii) any property held on trust by that person for the claimant,

shall rank equally.

(1A) The company is not subrogated to any rights and remedies of the claimant in respect of compensation from the Deposit Protection Scheme Fund established by section 14 of the

Deposit Protection Scheme Ordinance (Cap. 581). *(Added 7 of 2004 s. 55)*

(2) All assets (whether in cash or otherwise) recovered by the recognized investor compensation company under subsection (1) shall be dealt with in such manner as the Commission may direct and shall become part of the compensation fund.

88. Financial statements of a recognized investor compensation company

(1) Subject to subsection (3), a recognized investor compensation company shall—

(a) prepare such financial statements and other documents, for such periods, as are prescribed by rules made under section 397 for the purposes of this section; and

(b) submit the financial statements and other documents, together with an auditor's report, to the Commission not later than 4 months after the end of the financial year to which they relate.

(2) Without limiting the generality of subsection (1), the requirements under that subsection relating to the financial statements and other documents, and the auditor's report, referred to in that subsection include the requirements that—

(a) the financial statements and other documents are to relate to such matters and contain such particulars as are prescribed by rules made under section 397 for the purposes of this section;

(b) the auditor's report is to contain such particulars, including such statement of opinion, as are prescribed by the rules;

(c) the financial statements and other documents, and the auditor's report, are to be prepared in accordance with

such principles or bases as are prescribed by the rules; and

(d) without limiting the generality of section 387 of the Companies Ordinance (Cap. 622), the financial statements and other documents are to be signed by the chief executive officer of the recognized investor compensation company, by which they are prepared. *(Amended 28 of 2012 ss. 912 & 920)*

(3) On an application in writing by the recognized investor compensation company by which any financial statements and other documents, and any auditor's report, are required under subsection (1) to be submitted, the Commission may, where it is satisfied that there are special reasons for so doing, extend the period within which the financial statements and other documents, and the auditor's report, are required to be submitted, for such period and subject to such conditions as the Commission considers appropriate, and upon the Commission granting the extension, subsection (1) shall apply subject to the extension accordingly.

(4) A recognized investor compensation company shall cause a copy of each of the financial statements and other documents and the auditor's report that are required under subsection (1) to be submitted by it to be sent to the Financial Secretary and to be published in the Gazette.

(5) A reference in this section to financial statements shall not be construed as including a reference to financial statements of the compensation fund.

89. Employees of and delegations by a recognized investor compensation company

(1) The Commission may arrange for any of its officers, employees, agents or consultants to assist in the operations of a recognized investor compensation company.

(2) A recognized exchange company or recognized exchange controller may, with the consent of a recognized investor compensation company, arrange for any of its officers, employees, agents or consultants to assist in the operations of that recognized investor compensation company.

(3) A recognized investor compensation company may by resolution and subject to the approval of the Commission, with or without restrictions or conditions as the company considers appropriate, delegate in writing to any person any of its powers and duties other than its power under section 82.

90. Further activities of recognized investor compensation company

(1) A recognized investor compensation company may, in addition to performing a function transferred to it under section 80, conduct such activities or businesses as may be approved in writing by the Commission.

(2) The Commission shall not approve the conduct of any activities or businesses referred to in subsection (1) unless it is satisfied that such activities or businesses are incidental to the management or administration of the compensation fund under Part XII.

Division 6—General—Exchange companies, clearing houses, exchange controllers and investor compensation companies

91. Supply of information

(1) The Commission, a recognized exchange company, a recognized clearing house, a recognized exchange controller or a recognized investor compensation company shall be entitled to supply each other with information about its affairs and—

(a) in the case of a recognized exchange company, the affairs of any of its exchange participants;

(b) in the case of a recognized clearing house, the affairs of any of its clearing participants;

(c) in the case of a recognized exchange controller, the affairs of any of its subsidiaries; or

(d) in the case of a recognized investor compensation company, any claim made against the compensation fund,

if the supply of information is reasonably required for the performance of—

(i) in the case where the information is supplied to the Commission, the functions of the Commission under the relevant provisions; or

(ii) in any other cases, the functions of the recognized exchange company, recognized clearing house, recognized exchange controller or recognized investor compensation company to which the information is supplied, under this Part or their respective rules.

(2) The Commission may, by notice in writing served on a recognized exchange company, recognized clearing house, recognized exchange controller or recognized investor compensation company, require it to supply the Commission with such information as the Commission may reasonably require for the performance of the functions of the Commission under any of the relevant provisions, including information in its possession relating to—

(a) in the case of a recognized exchange company, the affairs of any of its exchange participants;

(b) in the case of a recognized clearing house, the affairs of any of its clearing participants;

(c) in the case of a recognized exchange controller, the affairs of any of its subsidiaries; or

(d) in the case of a recognized investor compensation company, any claim made against the compensation fund.

(3) The supply of information under subsection (1) or (2) shall not be treated as publication for the purposes of the law of defamation and, without limiting the generality of section 380(3) but subject to section 378, a person supplying the information does not incur liability as a consequence thereof.

(4) Where any information is supplied under subsection (1) to a recognized exchange company, recognized clearing house, recognized exchange controller or recognized investor compensation company, the company concerned, the clearing house or the controller to whom the information is supplied shall not disclose the information, or any part of it, to any other person without the consent of the Commission.

92. Additional powers of Commission—restriction notices

(1) Subject to subsections (2), (6) and (14), where the Commission is satisfied that it is appropriate to do so—

(a) in the interest of the investing public or in the public interest;

(b) for the protection of investors; or

(c) for the proper regulation of a recognized exchange company, recognized clearing house, recognized exchange controller or recognized investor compensation company,

it may by notice in writing (***restriction notice***) served on the exchange company, clearing house, exchange controller or investor compensation company do any or all of the following—

(i) require the exchange company, clearing house, exchange controller or investor compensation company before the expiry of a period specified in the notice—

(A) to amend, supplement, withdraw or revoke, in the manner specified in the notice, a provision of its rules or other instrument so specified;

(B) to take such action relating to the management, conduct or operation of its business as may be so specified;

(ii) prohibit the exchange company, clearing house, exchange controller or investor compensation company from doing, during a period so specified, such act or other thing relating to the management, conduct or operation of its business as may be so specified.

(2) The Commission shall not serve a restriction notice unless—

(a) it has previously consulted the Financial Secretary in relation to the notice;

(b) it has previously requested in writing the exchange company, clearing house, exchange controller or investor compensation company concerned to put, or cause to be put, into effect a provision (which includes a request to refrain from doing any act or other thing) specified in the request and similar in effect to the requirement or prohibition specified in the restriction notice or, where there is more than one such requirement or prohibition so specified, provisions the combined effect of all of which is similar to the combined effect of the requirements or prohibitions so specified; and

(c) in the case of a request under paragraph (b) which—

(i) contains a provision requesting the exchange company, clearing house, exchange controller or investor compensation company concerned

to amend, supplement, withdraw or revoke any provision of its constitution under subsection (1)(i), the provision has not been complied with before the expiration of the period specified in relation thereto in the request being not less than 45 days; or

(ii) contains a provision requesting the exchange company, clearing house, exchange controller or investor compensation company concerned to do or refrain from doing any act or other thing, the Commission is satisfied that the provision has not been complied with.

(3) A recognized exchange company, recognized clearing house, recognized exchange controller or recognized investor compensation company may appeal to the Chief Executive in Council against a restriction notice that requires the exchange company, clearing house, exchange controller or investor compensation company to amend, supplement, withdraw or revoke any provision of its constitution.

(4) The decision of the Chief Executive in Council on an appeal under subsection (3) shall be final.

(5) A restriction notice served under this section shall take effect immediately.

(6) A period specified in a restriction notice in relation to a prohibition under subsection (1)(ii) shall not exceed 6 months beginning on the date of the notice.

(7) The Commission may, after consultation with the Financial Secretary, by notice in writing served on the exchange company, clearing house, exchange controller or investor compensation company concerned, extend, for a period or successive periods of not more than 3 months each, the period during which a restriction notice is to remain in force.

(8) Where a restriction notice is issued or extended under this section, the Commission may publish in the Gazette a copy of the notice or, as may be appropriate, particulars of the extension.

(9) A restriction notice may, on the application of the Commission to the Court of First Instance, be enforced by an order of the Court as if it were a judgment or order of the Court.

(10) Where a recognized exchange company, recognized clearing house, recognized exchange controller or recognized investor compensation company is in breach of a requirement in a restriction notice under subsection (1)(i)(A) relating to a provision of its rules or other instrument—

(a) in the case of a requirement to amend or supplement such provision, the provision shall be deemed to have effect as if the requirement had been complied with; or

(b) in the case of a requirement to withdraw or revoke such provision, the provision ceases to have effect.

(11) Where—

(a) a restriction notice includes a requirement described in subsection (1)(i)(A) and the requirement relates to the constitution of a company; and

(b) by virtue of subsection (10) the provision to which the requirement relates has effect as if the requirement had been complied with or has ceased to have effect (as the case may be),

the Commission shall, as soon as may be, deliver to the Registrar of Companies a copy of the notice.

(12) If there is an appeal under subsection (3) against the notice and the appeal is not withdrawn, the Commission shall, as

soon as may be, inform the Registrar of Companies in writing of the outcome of the appeal.

(13) Without limiting the generality of section 380(1), no civil liability, whether arising in contract, tort, defamation, equity or otherwise, shall be incurred by—

(a) a recognized exchange company, recognized clearing house, recognized exchange controller or recognized investor compensation company;

(b) an officer or employee of a recognized exchange company, recognized clearing house, recognized exchange controller or recognized investor compensation company;

(c) an exchange participant; or

(d) a clearing participant,

in respect of anything done or omitted to be done in good faith in compliance or purported compliance with a restriction notice.

(14) This section shall not be construed as enabling the Commission to do under this section anything which may be done by the Commission by direction under section 28(1)(b) or 29.

93. Additional powers of Commission—suspension orders

(1) Where the Commission is satisfied that it is appropriate to do so—

(a) in the interest of the investing public or in the public interest;

(b) for the protection of investors; or

(c) for the proper regulation of a recognized exchange company, recognized clearing house, recognized

exchange controller or recognized investor compensation company,

it may, after consultation with the Financial Secretary, make an order (***suspension order***) relating to all or any of the following—

(i) the functions of the board of directors or governing body of the exchange company, clearing house, exchange controller or investor compensation company;

(ii) the functions of a director of a board or a member of a body referred to in paragraph (i);

(iii) the functions of a committee, including a sub-committee, established by a board or body referred to in paragraph (i);

(iv) the functions of the chief executive officer (by whatever name called) of the exchange company, clearing house, exchange controller or investor compensation company.

(2) While a suspension order is in force the following provisions apply—

(a) neither the recognized exchange company, recognized clearing house, recognized exchange controller or recognized investor compensation company to which the order relates nor any board, governing body, committee or officer of it shall perform a function to which the order relates;

(b) a function to which paragraph (a) applies may be performed by the person specified in the order in relation to that function;

(c) a person referred to in paragraph (a) shall not, by act or omission, either directly or indirectly, affect the manner in which a function referred to in that paragraph is performed.

(3) A recognized exchange company, recognized clearing house, recognized exchange controller or recognized investor compensation company may appeal to the Chief Executive in Council against a suspension order made in respect of the exchange company, clearing house, exchange controller or investor compensation company.

(4) The decision of the Chief Executive in Council on an appeal under subsection (3) shall be final.

(5) Subject to subsection (9), a suspension order shall continue in force for the period not exceeding 6 months specified in the order.

(6) A suspension order or an extension of it under subsection (9) shall take effect when a copy of the order or notice of the extension is served under subsection (10)(a) on the exchange company, clearing house, exchange controller or investor compensation company to which the order relates.

(7) Where a suspension order is made or extended under this section, the Commission shall, as soon as reasonably practicable to do so, give a copy of a suspension order or, as may be appropriate, notice of its extension to the chief executive officer of the exchange company, clearing house, exchange controller or investor compensation company to which the order relates and to the directors or members of its committee (if any) as the Commission considers appropriate in the circumstances.

(8) Nothing in subsection (7) affects subsection (6).

(9) The Commission may, after consultation with the Financial Secretary, extend for a period or successive periods of not more than 3 months each the period during which a suspension order is to remain in force.

(10) Where a suspension order is made or extended under this section, the Commission shall—

(a) forthwith serve a copy of the order or notice in writing of the extension on the exchange company, clearing house, exchange controller or investor compensation company to which the order relates; and

(b) publish in the Gazette and publish through at least one other medium a copy of the suspension order or, as may be appropriate, notice of its extension.

(11) A suspension order may, on the application of the Commission to the Court of First Instance, be enforced by an order of the Court as if it were a judgment or order of the Court.

(12) The exchange company, clearing house, exchange controller or investor compensation company concerned shall pay to the Commission on demand costs and expenses reasonably incurred by the Commission or a member or employee of the Commission in connection with a suspension order.

(13) The amount of the costs and expenses demanded under subsection (12) are recoverable by the Commission as a civil debt.

(14) A person who knowingly contravenes subsection (2)(c) commits an offence and is liable—

(a) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

94. Application of Companies Ordinance and Companies (Winding Up and Miscellaneous Provisions) Ordinance

(Amended 28 of 2012 ss. 912 & 920)

Where there is any inconsistency between this Part and the Companies Ordinance (Cap. 622) or the Companies (Winding

Up and Miscellaneous Provisions) Ordinance (Cap. 32) in its application to a recognized exchange company, a recognized clearing house, a recognized exchange controller or a recognized investor compensation company, this Part prevails.

(Amended 28 of 2012 ss. 912 & 920)

Division 7—Automated trading services

95. Authorization for providing automated trading services

(1) No person shall—

(a) provide automated trading services; or

(b) offer to provide automated trading services,

unless that person—

(i) is authorized under subsection (2);

(ii) is an employee or agent of a person authorized under subsection (2), and is acting in that capacity for or on behalf of that person;

(iii) is an intermediary licensed or registered for Type 7 regulated activity;

(iv) is a licensed representative for Type 7 regulated activity, and is acting in that capacity for the licensed corporation to which the representative is accredited; or

(v) is an individual whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as that of a person engaged in respect of Type 7 regulated activity by a registered institution registered for that regulated activity, and is acting in that capacity for the registered institution.

(2) Where the Commission is satisfied that it is appropriate to do so, the Commission may upon application by a person, by

notice in writing served on that person, authorize that person to provide automated trading services—

(a) subject to such conditions as it considers appropriate specified in the notice; and

(b) with effect from a date specified in the notice for the purpose.

(3) Where a person is granted an authorization under subsection (2), the Commission shall cause notice of that fact to be published in the Gazette.

(4) Where a person is seeking an authorization to provide automated trading services and the Commission is minded not to grant the authorization under subsection (2), the Commission shall give the person a reasonable opportunity of being heard before making a decision not to grant the authorization.

(5) Where the Commission refuses to authorize a person to provide automated trading services under subsection (2), the Commission shall, by notice in writing served on the person, inform the person of the refusal and of the reasons for it.

(6) The Commission shall prepare and publish in the Gazette or otherwise guidelines setting out the principles, procedures and standards in relation to authorization for providing automated trading services under this section.

(7) Guidelines published under subsection (6) are not subsidiary legislation.

(8) Subject to subsection (9), for the purposes of subsection (1)(b), a person offers to provide automated trading services only if the services are actively marketed, whether in Hong Kong or elsewhere, to persons in Hong Kong by the first-mentioned person or by another person on his behalf.

(9) For the purposes of subsection (1)(b), a person shall not be regarded as offering to provide automated trading services if the persons to whom the offer is made are persons to whom the first-mentioned person or a related corporation thereof, at any time during the period of 3 years immediately preceding the day on which the offer is made, has provided or has agreed to provide any financial services, including automated trading services.

96. Application for authorization

(1) An application under section 95(2) shall be accompanied by—

(a) such information and particulars as the Commission may reasonably require; and

(b) an application fee prescribed by rules made under section 395 for the purposes of this section.

(2) Without limiting the generality of subsection (1)(a), an application under section 95(2) shall also be accompanied by such information as may reasonably be required by the Commission regarding—

(a) the services and facilities which the applicant will hold itself out as being able to provide if the application is allowed;

(b) the business which the applicant proposes to carry on and to which the application relates, and any person whom the applicant proposes to employ or with whom the applicant intends to be associated in the course of carrying on the business;

(c) the business which the applicant is carrying on, the officers it employs and the persons with whom the applicant is associated in the course of carrying on the business; and

(d) its directors and substantial shareholders and, if any of its substantial shareholders is a corporation, the directors and substantial shareholders of that corporation.

(3) In considering an application under section 95(2), the Commission may have regard to any information in its possession whether provided by the applicant or not.

97. Conditions for authorization

(1) Without limiting the generality of conditions which may be specified in a notice under section 95(2), the Commission may, by notice in writing served on a person authorized under that section, amend or revoke any conditions specified under that section or impose new conditions, where the Commission is satisfied that it is appropriate to do so.

(2) Where the Commission amends or revokes any condition or imposes any new condition under subsection (1), the amendment, revocation or imposition takes effect at the time of service of the notice or at the time specified in the notice, whichever is the later.

(3) Without limiting the generality of subsection (1) or section 95(2), a notice served thereunder may contain a condition that the person authorized to provide automated trading services shall comply with all or any of the following requirements, that is to say, the person shall—

(a) provide the services according to rules approved by the Commission for the purpose;

(b) ensure as far as is reasonably practicable that there is an orderly, informed and fair market in relation to all transactions which are carried out by means of or through the services;

(c) ensure that the securities or futures contract, the sale or purchase of which is to be negotiated or concluded by

means of or through the services, belongs to a class of securities or futures contracts specified in the notice by the Commission for this purpose;

(d) ensure that the transaction that is to be novated, cleared, settled or guaranteed by means of or through the services belongs to a class of transactions specified in the notice by the Commission for this purpose;

(e) disclose to the Commission within the time and in the manner specified in the notice, such information as the Commission may request for the purpose of performing its functions under this Ordinance;

(f) permit any person authorized in that behalf by the Commission to enter at any reasonable time the premises on which the services are provided and to inspect the electronic facilities by means of which the services are provided;

(g) provide and maintain automated systems with adequate capacity, facilities to meet contingencies or emergencies, security arrangements and technical support for the provision of the services;

(h) notify the Commission of any changes to the information and particulars required by the Commission under section 96(1) or (2);

(i) pay to the Commission a fee prescribed by rules made under section 395 for the purposes of this section.

98. Withdrawal of authorization

(1) Subject to subsection (4), where the Commission is satisfied that it is appropriate to do so in the interest of the investing public or in the public interest, it may, by notice in writing served on a person who has been granted an authorization under section 95(2), stating the reasons in support of the

ground or grounds for the notice, withdraw the authorization with effect from a date specified in the notice for the purpose.

(2) The Commission may by the notice served under subsection (1) permit the person to continue, on or after the date on which the withdrawal is to take effect, to carry on such activities affected by the withdrawal as the Commission may specify in the notice for the purpose of—

(a) ceasing to provide the automated trading services to which the withdrawal relates; or

(b) protecting the interest of the investing public or the public interest.

(3) Where the Commission has granted a permission to a person under subsection (2), the person shall not, by reason of its carrying on the activities in accordance with the permission, be regarded as having contravened section 95.

(4) The Commission shall not exercise its power under subsection (1) in relation to a person who has been granted an authorization under section 95(2) unless it has given the person a reasonable opportunity of being heard.

(5) Where the Commission withdraws an authorization under subsection (1), it shall cause notice of that fact to be published in the Gazette.

(6) A notice served under this section shall take effect immediately.

99. Commission to maintain register of authorized automated trading services

(1) The Commission shall maintain a register of authorized automated trading services in such form as it considers appropriate.

(2) The register maintained under subsection (1) shall contain in relation to each person who has been granted an authorization under section 95(2)—

(a) the name and business address of the person;

(b) such conditions of the authorization as the Commission considers appropriate; and

(c) such other particulars as are prescribed by rules made under section 397 for the purposes of this subsection.

(3) The register may be maintained—

(a) in a documentary form; or

(b) by recording the information required under subsection (2) otherwise than in a legible form, so long as the information is capable of being reproduced in a legible form.

(4) For the purposes of enabling any member of the public to ascertain whether he is dealing with a person who has been granted an authorization under section 95(2) in matters of or connected with any automated trading services and to ascertain the particulars of the authorization of such person, the register shall be made available for public inspection at all reasonable times.

(5) At all reasonable times, a member of the public may—

(a) inspect the register, or (where the register is maintained otherwise than in a documentary form) a reproduction of the information or the relevant part of it in a legible form; and

(b) obtain a copy of an entry in or extract of the register on payment of a fee prescribed by rules made under section 395.

(6) A document purporting to be—

(a) a copy of an entry in or extract of the register maintained under this section; and

(b) certified by an authorized officer of the Commission as a true copy of the entry or extract referred to in paragraph (a),

shall be admissible as evidence of its contents in any legal proceedings.

(7) Without derogating from the other provisions of this section, the Commission shall, in addition, cause the register to be available to the public in the form of an on-line record.

100. Rules by Commission

(1) Without prejudice to section 398(7) and (8), the Commission may make rules to—

(a) require a person authorized to provide automated trading services to supply the Commission with such information as the Commission requires to satisfy the Commission that the conditions specified in a notice served on the person under section 95(2) or 97 are complied with;

(b) provide for the time within which and the manner in which the information under paragraph (a) shall be provided;

(c) provide for the regulation of automated trading services and any other matters incidental thereto.

(2) Without limiting the generality of rules which may be made under subsection (1), such rules may—

(a) provide for the standards of conduct and practices to be complied with in relation to the provision of automated trading services;

(b) prohibit the use of misleading or deceptive advertisements in relation to the provision of automated trading services or impose conditions for the use of advertisements in relation to the provision of such services;

(c) require a person authorized to provide automated trading services—

(i) to take steps to avoid conflicts of interests, and specify the steps that shall be taken in the event that there is a potential or actual conflict of interest; and

(ii) to take such steps as the Commission may specify to ensure that there is integrity, orderliness, transparency and fairness in transactions conducted through the services, including steps to ensure that—

(A) a request for the services is to be dealt with properly and as expeditiously as is appropriate in the circumstances; and

(B) access rights to the services and the relevant trading conventions relating to the transactions to be conducted through the services are properly explained to the persons to whom the services are provided;

(d) provide for measures designed to discourage and identify any money laundering activities.

(3) Rules made under this section may provide that a person who, without reasonable excuse, contravenes any specified provision of the rules that apply to the person commits an offence and is liable to a specified penalty not exceeding—

(a) on conviction on indictment a fine at level 6 and a term of imprisonment of 2 years;

(b) on summary conviction a fine at level 3 and a term of imprisonment of 6 months.

101. Providing automated trading services without authorization

A person who, without reasonable excuse, contravenes section 95(1) commits an offence and is liable—

(a) on conviction on indictment to a fine of $5,000,000 and to imprisonment for 7 years and, in the case of a continuing offence, to a further fine of $100,000 for every day during which the offence continues; or

(b) on summary conviction to a fine of $500,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of $10,000 for every day during which the offence continues.

Part IIIA

OTC Derivative Transactions

(Part IIIA added 6 of 2014 s. 9)

Division 1—Interpretation

101A. Interpretation of Part IIIA

In this Part—

clearing obligation (結算責任)—

(a) in relation to a prescribed person that is an authorized financial institution incorporated in Hong Kong, means—

(i) an obligation imposed by section 101C(1); or

(ii) an obligation imposed by section 101C(3); and

(b) in relation to any other prescribed person, means an obligation imposed by section 101C(1);

clearing rules (《結算規則》) means rules made under section 101N;

[#]***deregistration*** (撤銷登記), in relation to a specific class, means the removal of—

(a) a name under section 101V(1); or

(b) an entry under section 101V(2);

designated CCP (指定中央對手方), in relation to a class or description of specified OTC derivative transactions, means a person designated as a central counterparty under section 101J for that class or description;

Editorial Note:

[#] Not yet in operation.

#***designated trading platform*** (指定交易平台), in relation to a class or description of specified OTC derivative transactions, means a person designated as a trading platform under section 101K for that class or description;

designation rules (《指定規則》) means rules made under section 101Q;

#***notification*** (具報) means a notification required to be given for the purposes of section 101R(2);

#***notification level*** (具報水平), in relation to a specific class, means the threshold prescribed—

(a) for that specific class; and

(b) by rules made under section 101Z(a)(i);

#***notification requirement*** (具報規定) means the requirement imposed by section 101R(2);

#***notification rules*** (《具報規則》) means rules made under section 101Z;

prescribed fee (訂明費用) means a fee prescribed by rules made under section 395;

prescribed manner (訂明方式)—

(a) in relation to an application for designation as a central counterparty, means in the manner prescribed by rules made under section 101Q(a)(i); and

#(b) in relation to an application for designation as a trading platform, means in the manner prescribed by rules made under section 101Q(a)(ii);

prescribed person (訂明人士)—

(a) in relation to the reporting obligation, means—

Editorial Note:

Not yet in operation.

(i) an authorized financial institution;

(ii) an approved money broker;

(iii) a licensed corporation; or

(iv) a person of a class or description specified in the reporting rules as being subject to the reporting obligation;

(b) in relation to the clearing obligation, means—

(i) an authorized financial institution;

(ii) an approved money broker;

(iii) a licensed corporation; or

(iv) a person of a class or description specified in the clearing rules as being subject to the clearing obligation;

#(c) in relation to the trading obligation, means—

(i) an authorized financial institution;

(ii) an approved money broker;

(iii) a licensed corporation; or

(iv) a person of a class or description specified in the trading rules as being subject to the trading obligation; and

(d) in relation to the record keeping obligation, means—

(i) an authorized financial institution;

(ii) an approved money broker;

(iii) a licensed corporation; or

Editorial Note:

Not yet in operation.

(iv) a person of a class or description specified in the record keeping rules as being subject to the record keeping obligation;

record keeping obligation (備存紀錄責任)—

(a) in relation to a prescribed person that is an authorized financial institution incorporated in Hong Kong, means—

(i) an obligation imposed by section 101E(1); or

(ii) an obligation imposed by section 101E(3); and

(b) in relation to any other prescribed person, means an obligation imposed by section 101E(1);

record keeping rules (《備存紀錄規則》) means rules made under section 101P;

#***registered SIP*** (已登記系統重要參與者) means a person whose name appears on the SIP register;

reporting obligation (匯報責任)—

(a) in relation to a prescribed person that is an authorized financial institution incorporated in Hong Kong, means—

(i) an obligation imposed by section 101B(1); or

(ii) an obligation imposed by section 101B(3); and

(b) in relation to any other prescribed person, means an obligation imposed by section 101B(1);

reporting rules (《匯報規則》) means rules made under section 101L;

#***SIP register*** (系統重要參與者登記冊) means the register maintained under section 101S(1);

Editorial Note:

Not yet in operation.

#***specific class*** (特定類別) means a particular class or description of OTC derivative transactions;

specified OTC derivative transaction (指明場外衍生工具交易)—

(a) in relation to the reporting obligation, means a transaction specified in the reporting rules for the purposes of that obligation;

(b) in relation to the clearing obligation, means a transaction specified in the clearing rules for the purposes of that obligation;

#(c) in relation to the trading obligation, means a transaction specified in the trading rules for the purposes of that obligation; and

(d) in relation to the record keeping obligation, means a transaction specified in the record keeping rules for the purposes of that obligation;

#***systemically important participant*** (系統重要參與者) means a person—

(a) to whom section 101R(1) applies; and

(b) whose position in respect of a specific class has reached the notification level;

#***trading obligation*** (交易責任)—

(a) in relation to a prescribed person that is an authorized financial institution incorporated in Hong Kong, means—

(i) an obligation imposed by section 101D(1); or

(ii) an obligation imposed by section 101D(3); and

(b) in relation to any other prescribed person, means an obligation imposed by section 101D(1);

Editorial Note:

Not yet in operation.

#***trading rules*** (《交易規則》) means rules made under section 101O;

underlying subject matter (標的項目)—

(a) in relation to a transaction in an OTC derivative product that falls within subsection (1)(a)(i) of section 1A of Part 1 of Schedule 1, means any type or combination of types of securities, commodity, index, property, interest rate, currency exchange rate or futures contract;

(b) in relation to a transaction in an OTC derivative product that falls within subsection (1)(a)(ii) of section 1A of Part 1 of Schedule 1, means any basket of more than one type, or any combination of types, of securities, commodity, index, property, interest rate, currency exchange rate or futures contract; and

(c) in relation to a transaction in an OTC derivative product that falls within subsection (1)(a)(iii) of section 1A of Part 1 of Schedule 1, means any specified event or events (excluding an event or events relating only to the issuer or guarantor of the instrument or to both the issuer and the guarantor).

Division 2—Reporting, Clearing, Trading and Record Keeping Obligations

101B. Reporting obligation

(1) A prescribed person must report an OTC derivative transaction to which subsection (2) applies—

(a) to the Monetary Authority; and

(b) in accordance with the reporting rules.

(2) This subsection applies to an OTC derivative transaction that—

(a) is specified in the reporting rules—

(i) in relation to the prescribed person; and

(ii) as a transaction that is required to be reported to the Monetary Authority;

(b) falls within the circumstances and the criteria specified in those rules—

(i) in relation to the prescribed person; and

(ii) for the application of the requirement to report referred to in paragraph (a)(ii); and

(c) does not fall within the circumstances specified in those rules—

(i) in relation to the prescribed person; and

(ii) as circumstances in which the requirement to report is taken to have been complied with.

(3) In addition, a prescribed person that is an authorized financial institution incorporated in Hong Kong must ensure that a subsidiary of that institution specified under subsection (5) complies in relation to an OTC derivative transaction with the requirement set out in subsection (4).

(4) The requirement is that the subsidiary reports to the Monetary Authority, in accordance with the reporting rules, an OTC derivative transaction—

(a) to which the subsidiary is a counterparty; and

(b) that is specified in those rules as a transaction to which subsection (3) applies.

(5) The Monetary Authority may, by a written notice given to an authorized financial institution incorporated in Hong Kong, specify for the purposes of subsection (3)—

(a) a particular subsidiary;

(b) more than one subsidiary; or

(c) subsidiaries generally.

(6) The Monetary Authority may specify under subsection (5) a subsidiary incorporated outside Hong Kong or a subsidiary incorporated in Hong Kong.

(7) Subject to an express agreement to the contrary by the parties to the transaction, a contravention of the reporting obligation in relation to an OTC derivative transaction does not of itself invalidate the transaction or affect any rights or obligations arising under, or relating to, the transaction.

101C. Clearing obligation

(1) A prescribed person must clear an OTC derivative transaction to which subsection (2) applies—

(a) with a designated CCP; and

(b) in accordance with the clearing rules.

(2) This subsection applies to an OTC derivative transaction that—

(a) is specified in the clearing rules—

(i) in relation to the prescribed person; and

(ii) as a transaction that is required to be cleared with a designated CCP;

(b) falls within the circumstances and the criteria specified in those rules—

(i) in relation to the prescribed person; and

(ii) for the application of the requirement to clear referred to in paragraph (a)(ii); and

(c) does not fall within the circumstances specified in those rules—

(i) in relation to the prescribed person; and

(ii) as circumstances in which the requirement to clear is taken to have been complied with.

(3) In addition, a prescribed person that is an authorized financial institution incorporated in Hong Kong must ensure that a subsidiary of that institution specified under subsection (5) complies in relation to an OTC derivative transaction with the requirement set out in subsection (4).

(4) The requirement is that the subsidiary clears with a designated CCP, in accordance with the clearing rules, an OTC derivative transaction—

(a) to which the subsidiary is a counterparty; and

(b) that is specified in those rules as a transaction to which subsection (3) applies.

(5) The Monetary Authority may, by a written notice given to an authorized financial institution incorporated in Hong Kong, specify for the purposes of subsection (3)—

(a) a particular subsidiary;

(b) more than one subsidiary; or

(c) subsidiaries generally.

(6) The Monetary Authority may specify under subsection (5) a subsidiary incorporated outside Hong Kong or a subsidiary incorporated in Hong Kong.

(7) Subject to an express agreement to the contrary by the parties to the transaction, a contravention of the clearing obligation in relation to an OTC derivative transaction does not of itself invalidate the transaction or affect any rights or obligations arising under, or relating to, the transaction.

101D. Trading obligation

(Not yet in operation)

(1) A prescribed person must execute an OTC derivative transaction to which subsection (2) applies—

(a) only on a designated trading platform; and

(b) in accordance with the trading rules.

(2) This subsection applies to an OTC derivative transaction that—

(a) is specified in the trading rules—

(i) in relation to the prescribed person; and

(ii) as a transaction that is required to be executed only on a designated trading platform;

(b) falls within the circumstances and the criteria specified in those rules—

(i) in relation to the prescribed person; and

(ii) for the application of the requirement to execute as described in paragraph (a)(ii); and

(c) does not fall within the circumstances specified in those rules—

(i) in relation to the prescribed person; and

(ii) as circumstances in which the requirement to execute as described in subsection (1) is taken to have been complied with.

(3) In addition, a prescribed person that is an authorized financial institution incorporated in Hong Kong must ensure that a subsidiary of that institution specified under subsection (5) complies in relation to an OTC derivative transaction with the requirement set out in subsection (4).

(4) The requirement is that the subsidiary executes only on a designated trading platform and in accordance with the trading rules an OTC derivative transaction—

(a) to which the subsidiary is a counterparty; and

(b) that is specified in those rules as a transaction to which subsection (3) applies.

(5) The Monetary Authority may, by a written notice given to an authorized financial institution incorporated in Hong Kong, specify for the purposes of subsection (3)—

(a) a particular subsidiary;

(b) more than one subsidiary; or

(c) subsidiaries generally.

(6) The Monetary Authority may specify under subsection (5) a subsidiary incorporated outside Hong Kong or a subsidiary incorporated in Hong Kong.

(7) Subject to an express agreement to the contrary by the parties to the transaction, a contravention of the trading obligation in relation to an OTC derivative transaction does not of itself invalidate the transaction or affect any rights or obligations arising under, or relating to, the transaction.

101E. Record keeping obligation

(1) A prescribed person must keep, in accordance with the record keeping rules, records relating to an OTC derivative transaction to which subsection (2) applies.

(2) This subsection applies to an OTC derivative transaction that—

(a) is specified in the record keeping rules—

(i) in relation to the prescribed person; and

(ii) as a transaction the records of which are required to be kept;

(b) falls within the circumstances and the criteria specified in those rules—

(i) in relation to the prescribed person; and

(ii) for the application of the requirement to keep record referred to in paragraph (a)(ii); and

(c) does not fall within the circumstances specified in those rules—

(i) in relation to the prescribed person; and

(ii) as circumstances in which the requirement to keep record is taken to have been complied with.

(3) In addition, a prescribed person that is an authorized financial institution incorporated in Hong Kong must ensure that a subsidiary of that institution specified under subsection (5) complies in relation to an OTC derivative transaction with the requirement set out in subsection (4).

(4) The requirement is that the subsidiary keeps, in accordance with the record keeping rules, records relating to an OTC derivative transaction—

(a) to which the subsidiary is a counterparty; and

(b) that is specified in those rules as a transaction to which subsection (3) applies.

(5) The Monetary Authority may, by a written notice given to an authorized financial institution incorporated in Hong Kong, specify for the purposes of subsection (3)—

(a) a particular subsidiary;

(b) more than one subsidiary; or

(c) subsidiaries generally.

(6) The Monetary Authority may specify under subsection (5) a subsidiary incorporated outside Hong Kong or a subsidiary incorporated in Hong Kong.

(7) A person specified in subsection (9)(a) must, when requested by the Commission—

(a) give the Commission access to the records kept under this section; and

(b) produce the records to the Commission within the time and at the place specified by the Commission.

(8) A person specified in subsection (9)(b) must, when requested by the Monetary Authority—

(a) give the Monetary Authority access to the records kept under this section; and

(b) produce the records to the Monetary Authority within the time and at the place specified by the Monetary Authority.

(9) The person specified—

(a) for the purposes of subsection (7) is—

(i) a prescribed person that is a licensed corporation; or

(ii) a prescribed person that is a person of a class or description specified in the record keeping rules as being subject to the record keeping obligation; and

(b) for the purposes of subsection (8) is—

(i) a prescribed person that is an authorized financial institution; or

(ii) a prescribed person that is an approved money broker.

(10) Subject to an express agreement to the contrary by the parties to the transaction, a contravention of the record keeping obligation in relation to an OTC derivative transaction does not of itself invalidate the transaction or affect any rights or obligations arising under, or relating to, the transaction.

[#]101F. Application by Commission to Court of First Instance for contravention of obligations

(1) If a prescribed person that is not an authorized financial institution or an approved money broker contravenes the reporting obligation, clearing obligation, trading obligation or record keeping obligation, the Commission may apply to the Court of First Instance in respect of the contravention.

(2) The application must be made by originating summons that is in Form No. 10 in Appendix A to the Rules of the High Court (Cap. 4 sub. leg. A).

(3) The Court of First Instance may inquire into the case and, if satisfied that there is no reasonable excuse for the contravention, impose a financial penalty not exceeding $5,000,000 on the prescribed person.

Editorial Note:

[#] The new section 101F added by the Securities and Futures (Amendment) Ordinance 2014 (6 of 2014) came into operation on—

(a) 10 July 2015, in so far as it relates to the contravention of the reporting obligation and the record keeping obligation; please see paragraph (c)(iii) of the Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2015 (L.N. 95 of 2015); and

(b) 1 September 2016, in so far as it relates to the contravention of the clearing obligation; please see paragraph (a)(iii) of the Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2016 (L.N. 27 of 2016).

[#]101G. Application by Monetary Authority to Court of First Instance for contravention of obligations

(1) If a prescribed person that is an authorized financial institution or an approved money broker contravenes the reporting obligation, clearing obligation, trading obligation or record keeping obligation, the Monetary Authority may apply to the Court of First Instance in respect of the contravention.

(2) The application must be made by originating summons that is in Form No. 10 in Appendix A to the Rules of the High Court (Cap. 4 sub. leg. A).

(3) The Court of First Instance may inquire into the case and, if satisfied that there is no reasonable excuse for the contravention, impose a financial penalty not exceeding $5,000,000 on the prescribed person.

Editorial Note:

[#] The new section 101G added by the Securities and Futures (Amendment) Ordinance 2014 (6 of 2014) came into operation on—

(a) 10 July 2015, in so far as it relates to the contravention of the reporting obligation and the record keeping obligation; please see paragraph (c)(iv) of the Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2015 (L.N. 95 of 2015); and

(b) 1 September 2016, in so far as it relates to the contravention of the clearing obligation; please see paragraph (a)(iv) of the Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2016 (L.N. 27 of 2016).

[#]101H. Exemptions from obligations

(1) On application by a prescribed person and on payment of the prescribed fee, the Commission may, with the consent of the Monetary Authority—

(a) exempt the person from one or more of the following—

(i) the reporting obligation;

(ii) the clearing obligation;

(iii) the trading obligation;

(iv) the record keeping obligation; and

(b) on granting the exemption, impose conditions.

(2) The Commission may, with the consent of the Monetary Authority—

(a) suspend or withdraw an exemption on—

(i) the ground that a condition has not been complied with; or

(ii) any other ground that the Commission considers appropriate; or

---

Editorial Note:

[#] The new section 101H added by the Securities and Futures (Amendment) Ordinance 2014 (6 of 2014) came into operation on—

(a) 10 July 2015, in so far as it relates to the exemptions from the reporting obligation and the record keeping obligation; please see paragraph (c)(v) of the Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2015 (L.N. 95 of 2015); and

(b) 1 September 2016, in so far as it relates to the exemption from the clearing obligation; please see paragraph (a)(v) of the Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2016 (L.N. 27 of 2016).

(b) amend any condition.

(3) The Commission must publish on the Internet particulars that it considers appropriate of an exemption granted, suspended or withdrawn under this section.

[#]101I. Guidelines on exemptions

(1) The Commission may, with the consent of the Monetary Authority and after consultation with the Financial Secretary, publish guidelines for granting exemptions from the reporting obligation, clearing obligation, trading obligation or record keeping obligation.

(2) The Commission—

(a) may exercise its powers under section 101H only after guidelines have been published; and

(b) must have regard to the published guidelines when exercising its powers under section 101H.

(3) Guidelines published under subsection (1) are not subsidiary legislation.

Editorial Note:

[#] The new section 101I added by the Securities and Futures (Amendment) Ordinance 2014 (6 of 2014) came into operation on—

(a) 10 July 2015, in so far as it relates to the guidelines on the exemptions from the reporting obligation and the record keeping obligation; please see paragraph (c)(vi) of the Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2015 (L.N. 95 of 2015); and

(b) 1 September 2016, in so far as it relates to the guidelines on exemption from the clearing obligation; please see paragraph (a)(vi) of the Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2016 (L.N. 27 of 2016).

Division 3—Designation of Central Counterparties and Trading Platforms

101J. Designation of central counterparties

(1) On application by a person in the prescribed manner and on payment of the prescribed fee, the Commission may, with the consent of the Monetary Authority and after consultation with the Financial Secretary—

(a) designate the person, in accordance with the designation rules and by a written notice served on the person, as a central counterparty for the purposes of this Part; or

(b) refuse, in accordance with the designation rules, to designate the person.

(2) A person may be designated only if—

(a) at the time of designation, the person—

(i) is a recognized clearing house; or

(ii) is a person authorized under section 95(2) to provide automated trading services; and

(b) the requirements prescribed by the designation rules have been met.

(3) A designation may be for—

(a) OTC derivative transactions generally; or

(b) a class or description of OTC derivative transactions specified in the designation.

(4) A person outside Hong Kong or in Hong Kong may be designated under this section.

(5) The Commission may, with the consent of the Monetary Authority and after consultation with the Financial Secretary,

in accordance with the designation rules and by a written notice served on a person, do the following with regard to a designation—

(a) impose conditions;

(b) amend or revoke a condition;

(c) impose additional conditions;

(d) revoke the designation.

(6) Before exercising a power under subsection (1)(b) or (5)(d), the Commission must give the person concerned a reasonable opportunity of being heard.

(7) If the Commission amends or revokes a condition or imposes an additional condition under subsection (5)(b) or (c), the amendment, revocation or imposition takes effect at the time of the service of the notice or at the time specified in the notice, whichever is the later.

(8) If the Commission revokes a designation under subsection (5)(d), the revocation takes effect at the time of the service of the notice or at the time specified in the notice, whichever is the later.

(9) If, under this section, a person is designated or a designation is revoked, the Commission must publish notice of that fact in the Gazette.

(10) A notice published under subsection (9) is not subsidiary legislation.

101K. Designation of trading platforms

(Not yet in operation)

(1) On application by a person in the prescribed manner and on payment of the prescribed fee, the Commission may, with the

consent of the Monetary Authority and after consultation with the Financial Secretary—

(a) designate the person, in accordance with the designation rules and by a written notice served on the person, as a trading platform for the purposes of this Part; or

(b) refuse, in accordance with the designation rules, to designate the person.

(2) A person may be designated only if—

(a) at the time of designation, the person—

(i) is a recognized exchange company; or

(ii) is a person authorized under section 95(2) to provide automated trading services; and

(b) the requirements prescribed by the designation rules have been met.

(3) A designation may be for—

(a) OTC derivative transactions generally; or

(b) a class or description of OTC derivative transactions specified in the designation.

(4) A person outside Hong Kong or in Hong Kong may be designated under this section.

(5) The Commission may, with the consent of the Monetary Authority and after consultation with the Financial Secretary, in accordance with the designation rules and by a written notice served on a person, do the following with regard to a designation—

(a) impose conditions;

(b) amend or revoke a condition;

(c) impose additional conditions;

(d) revoke the designation.

(6) Before exercising a power under subsection (1)(b) or (5)(d), the Commission must give the person concerned a reasonable opportunity of being heard.

(7) If the Commission amends or revokes a condition or imposes an additional condition under subsection (5)(b) or (c), the amendment, revocation or imposition takes effect at the time of the service of the notice or at the time specified in the notice, whichever is the later.

(8) If the Commission revokes a designation under subsection (5)(d), the revocation takes effect at the time of the service of the notice or at the time specified in the notice, whichever is the later.

(9) If, under this section, a person is designated or a designation is revoked, the Commission must publish notice of that fact in the Gazette.

(10) A notice published under subsection (9) is not subsidiary legislation.

Division 4—Rule Making Powers on Obligations and Designations

101L. Rule making power—reporting obligation

(1) The Commission may, with the consent of the Monetary Authority and after consultation with the Financial Secretary, make rules—

(a) generally for the purposes of the reporting obligation; and

(b) without limiting paragraph (a), to prescribe the particular matters set out in this section.

(2) Rules made under this section—

(a) may specify for the purposes of paragraph (a)(iv) of the definition of ***prescribed person*** in section 101A, a class or description of persons; and

(b) must provide in relation to a person of such a class or description that the person is subject to the reporting obligation only if the person is a counterparty to a specified OTC derivative transaction.

(3) Rules made under this section—

(a) may specify generally, or with reference to a class or description of transactions, the OTC derivative transactions that are subject to the reporting obligation; and

(b) without limiting paragraph (a), may provide that an OTC derivative transaction is subject to the reporting obligation—

(i) even if a counterparty or more than one counterparty is a person outside Hong Kong;

(ii) except in relation to a person of a class or description specified under subsection (2), even if a prescribed person is not a counterparty to the transaction; or

(iii) even if the transaction is entered into or conducted wholly or partially outside Hong Kong.

(4) Without limiting subsection (3), OTC derivative transactions may be specified under that subsection with reference to any factor relating to an OTC derivative transaction, including—

(a) the underlying subject matter of the transaction;

(b) the features or characteristics of the transaction; and

(c) the persons involved in the transaction.

(5) Rules made under this section may specify—

(a) the circumstances relating to a specified OTC derivative transaction in which the reporting obligation—

(i) applies;

(ii) does not apply; or

(iii) is taken to have been complied with;

(b) the criteria (including thresholds) for the application of the reporting obligation; and

(c) different circumstances and criteria for different prescribed persons or different OTC derivative transactions.

(6) Rules made under this section may provide that a prescribed person is subject to the reporting obligation—

(a) in relation to OTC derivative transactions entered into before the date on which the reporting obligation started to apply—

(i) to the class or description of persons to which the person belongs; or

(ii) in relation to the class or description of OTC derivative transactions to which the transaction belongs; and

(b) if the OTC derivative transaction referred to in paragraph (a)—

(i) belongs to a class or description of transactions that is specified by rules made under this section for the purposes of the reporting obligation; and

(ii) if at the time the reporting obligation started to apply to the person or the transaction, the transaction is still outstanding within the meaning given by rules made under this subsection.

(7) Rules made under this section may specify—

(a) the form and manner in which a specified OTC derivative transaction is to be reported to the Monetary Authority;

(b) without limiting paragraph (a), that any requirement as to the form and manner of reporting is complied with if the specified OTC derivative transaction is reported by means of an electronic system operated by or on behalf of the Monetary Authority for submitting and receiving reports on OTC derivative transactions for the purposes of section 101B;

(c) any documents, information or particulars that must be submitted for complying with the reporting obligation;

(d) the period within which the reporting obligation must be complied with; and

(e) any other matter relating to the procedure for complying with the reporting obligation.

(8) Rules made under this section may specify—

(a) that a prescribed person may report a specified OTC derivative transaction to the Monetary Authority directly or through a third party; and

(b) that a subsidiary specified under section 101B(5) that is a counterparty to a specified OTC derivative transaction may report the transaction to the Monetary Authority directly or through a third party.

101M. Rule making power—fees

(1) The Chief Executive in Council may, after consultation with the Monetary Authority, make rules to require and provide for the payment to the Monetary Authority of the fees for using the electronic system referred to in section 101L(7)(b).

(2) Rules made under this section may provide—

(a) that the amount of any fees may be fixed by reference to a scale set out in the rules;

(b) for the payment of different fees by or in relation to persons or cases of different classes or descriptions;

(c) for the time and manner of payment of the fees;

(d) that the payment of any fees may, either generally or in a particular case, be reduced, waived or refunded;

(e) that the Monetary Authority may recover any outstanding amount of the fees as a civil debt due to the Monetary Authority; and

(f) for any other matters relating or incidental to a matter mentioned in paragraph (a), (b), (c), (d) or (e).

(3) This section is in addition to and not in derogation of sections 29 and 29A of the Interpretation and General Clauses Ordinance (Cap. 1).

101N. Rule making power—clearing obligation

(1) The Commission may, with the consent of the Monetary Authority and after consultation with the Financial Secretary, make rules—

(a) generally for the purposes of the clearing obligation; and

(b) without limiting paragraph (a), to prescribe the particular matters set out in this section.

(2) Rules made under this section—

(a) may specify for the purposes of paragraph (b)(iv) of the definition of ***prescribed person*** in section 101A, a class or description of persons; and

(b) must provide in relation to a person of such a class or description that the person is subject to the clearing

obligation only if the person is a counterparty to a specified OTC derivative transaction.

(3) Rules made under this section—

(a) may specify generally, or with reference to a class or description of transactions, the OTC derivative transactions that are subject to the clearing obligation; and

(b) without limiting paragraph (a), may provide that an OTC derivative transaction is subject to the clearing obligation—

(i) even if a counterparty or more than one counterparty is a person outside Hong Kong;

(ii) except in relation to a person of a class or description specified under subsection (2), even if a prescribed person is not a counterparty to the transaction; or

(iii) even if the transaction is entered into or conducted wholly or partially outside Hong Kong.

(4) Without limiting subsection (3), OTC derivative transactions may be specified under that subsection with reference to any factor relating to an OTC derivative transaction, including—

(a) the underlying subject matter of the transaction;

(b) the features or characteristics of the transaction; and

(c) the persons involved in the transaction.

(5) Rules made under this section may specify—

(a) the circumstances relating to a specified OTC derivative transaction in which the clearing obligation—

(i) applies;

(ii) does not apply; or

(iii) is taken to have been complied with;

(b) the criteria (including thresholds) for the application of the clearing obligation; and

(c) different circumstances and criteria for different prescribed persons or different OTC derivative transactions.

(6) Rules made under this section may specify—

(a) the manner in which a specified OTC derivative transaction is to be cleared with a designated CCP;

(b) the period within which the clearing obligation must be complied with;

(c) the circumstances in which a specified OTC derivative transaction that is cleared otherwise than with a designated CCP is treated, for the purposes of the clearing obligation, as having been cleared with a designated CCP;

(d) that a prescribed person may clear a specified OTC derivative transaction with a designated CCP directly or through a third party; and

(e) that a subsidiary specified under section 101C(5) that is a counterparty to a specified OTC derivative transaction may clear the transaction with a designated CCP directly or through a third party.

101O. Rule making power—trading obligation

(Not yet in operation)

(1) The Commission may, with the consent of the Monetary Authority and after consultation with the Financial Secretary, make rules—

(a) generally for the purposes of the trading obligation; and

(b) without limiting paragraph (a), to prescribe the particular matters set out in this section.

(2) Rules made under this section—

(a) may specify for the purposes of paragraph (c)(iv) of the definition of ***prescribed person*** in section 101A, a class or description of persons; and

(b) must provide in relation to a person of such a class or description that the person is subject to the trading obligation only if the person is a counterparty to a specified OTC derivative transaction.

(3) Rules made under this section—

(a) may specify generally, or with reference to a class or description of transactions, the OTC derivative transactions that are subject to the trading obligation; and

(b) without limiting paragraph (a), may provide that an OTC derivative transaction is subject to the trading obligation—

(i) even if a counterparty or more than one counterparty is a person outside Hong Kong;

(ii) except in relation to a person of a class or description specified under subsection (2), even if a prescribed person is not a counterparty to the transaction; or

(iii) even if the transaction is entered into or conducted wholly or partially outside Hong Kong.

(4) Without limiting subsection (3), OTC derivative transactions may be specified under that subsection with reference to any factor relating to an OTC derivative transaction, including—

(a) the underlying subject matter of the transaction;

(b) the features or characteristics of the transaction; and

(c) the persons involved in the transaction.

(5) Rules made under this section may specify—

(a) the circumstances relating to a specified OTC derivative transaction in which the trading obligation—

(i) applies;

(ii) does not apply; or

(iii) is taken to have been complied with;

(b) the criteria (including thresholds) for the application of the trading obligation; and

(c) different circumstances and criteria for different prescribed persons or different OTC derivative transactions.

(6) Rules made under this section may specify—

(a) the manner in which a specified OTC derivative transaction is to be executed on a designated trading platform;

(b) the circumstances in which a specified OTC derivative transaction that is executed otherwise than on a designated trading platform is treated, for the purposes of the trading obligation, as having been executed on a designated trading platform;

(c) that a prescribed person may execute a specified OTC derivative transaction on a designated trading platform directly or through a third party; and

(d) that a subsidiary specified under section 101D(5) that is a counterparty to a specified OTC derivative transaction may execute the transaction on a designated trading platform directly or through a third party.

101P. Rule making power—record keeping obligation

(1) The Commission may, with the consent of the Monetary Authority and after consultation with the Financial Secretary, make rules—

(a) generally for the purposes of the record keeping obligation; and

(b) without limiting paragraph (a), to prescribe the particular matters set out in this section.

(2) Rules made under this section—

(a) may specify for the purposes of paragraph (d)(iv) of the definition of ***prescribed person*** in section 101A, a class or description of persons; and

(b) must provide in relation to a person of such a class or description that the person is subject to the record keeping obligation only if the person is a counterparty to a specified OTC derivative transaction.

(3) Rules made under this section may specify—

(a) generally, or with reference to a class or description of transactions, the OTC derivative transactions that are subject to the record keeping obligation;

(b) the records to be kept;

(c) different records to be kept under different circumstances or by different classes or descriptions of prescribed persons;

(d) the manner in which, the location at which and the minimum duration for which the records must be kept;

(e) the circumstances relating to a specified OTC derivative transaction in which the record keeping obligation—

(i) applies;

(ii) does not apply; or

(iii) is taken to have been complied with; and

(f) any other matter relating to the records to be kept.

101Q. Rule making power—designations

The Commission may, with the consent of the Monetary Authority and after consultation with the Financial Secretary, make rules to prescribe—

(a) the application procedure for designation—

(i) as a central counterparty, including the documents and information to be provided by the applicant; or

#(ii) as a trading platform, including the documents and information to be provided by the applicant;

(b) other requirements to be complied with by an applicant for designation;

(c) any matter that may be taken into account when considering an application;

(d) the grounds on which designation may be refused or revoked;

+(e) the procedure for exercising a power under section 101J(1) or (5) or 101K(1) or (5); or

+(f) any other matter relating to the process of or procedure for a designation or revocation under section 101J or 101K.

Editorial Note:

Not yet in operation.

+ The new section 101Q(e) and (f) added by the Securities and Futures (Amendment) Ordinance 2014 (6 of 2014) came into operation on 1 September 2016, except in so far as they relate to the new section 101K. Please see paragraph (a)(viii)(B) and (C) of the Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2016 (L.N. 27 of 2016).

Division 5—Systemically Important Participants

(Not yet in operation)

101R. Persons who must notify positions in OTC derivative transactions

(Not yet in operation)

(1) This section applies to a person who—

(a) is not—

(i) an authorized financial institution;

(ii) an approved money broker;

(iii) a licensed corporation;

(iv) a recognized exchange company;

(v) a recognized clearing house; or

(vi) a person authorized under section 95(2) to provide automated trading services; and

(b) engages in OTC derivative transactions.

(2) A person to whom this section applies must notify the Commission in accordance with subsection (4) if the person's position in a specific class reaches the notification level.

(3) For the purposes of subsection (2), a reference to a person's position includes the position of another person to the extent to which the performance of the obligations arising from that other person's position is guaranteed by the person.

(4) A notification must be given—

(a) in writing and within the period prescribed by the notification rules; and

(b) in accordance with subsection (5).

(5) A notification must contain—

(a) sufficient information—

(i) to identify the systemically important participant;

(ii) to identify the specific class to which the notification relates; and

(iii) to show that the notification level has been reached; and

(b) any information prescribed by the notification rules (including additional information so prescribed, relating to the matters referred to in paragraph (a)).

(6) A person who without reasonable excuse fails to comply with subsection (2) commits an offence.

(7) A person who commits an offence under subsection (6) is liable—

(a) on conviction on indictment to a fine of $5,000,000 and to imprisonment for 7 years and, if the offence is a continuing offence, to a further fine of $100,000 for every day during which the offence continues, until the cut-off date for the further fine; or

(b) on summary conviction to a fine of $500,000 and to imprisonment for 2 years and, if the offence is a continuing offence, to a further fine of $10,000 for every day during which the offence continues, until the cut-off date for the further fine.

(8) For the purposes of subsection (7), the cut-off date for a further fine for which the person is liable is the date on which the person, in writing, notifies the Commission in accordance with subsection (5) of the person's position in that specific class.

101S. Commission to maintain register

(Not yet in operation)

(1) The Commission must maintain a register, in a form that it considers appropriate, to record information under section 101T.

(2) The SIP register may be maintained—

(a) in a documentary form; or

(b) by recording information otherwise than in a documentary form, so long as the information is capable of being reproduced in a legible form.

(3) At all reasonable times, the SIP register must be made available to the public for the purpose of enabling a person who is a member of the public to ascertain—

(a) whether the person is dealing with a registered SIP; and

(b) the particulars of registration of a registered SIP the person is dealing with.

(4) At all reasonable times, a member of the public may—

(a) inspect the SIP register, or if it is maintained otherwise than in a documentary form, a reproduction of the information or the relevant part of it in a legible form; and

(b) on payment of the prescribed fee, obtain a copy of—

(i) an entry in the SIP register; or

(ii) an extract of the SIP register.

(5) A document purporting to be—

(a) a copy of an entry in or extract of the SIP register; and

(b) certified by an authorized officer of the Commission as a true copy of the entry or extract,

is admissible as evidence of its contents in any legal proceedings.

(6) Without derogating from the other provisions of this section, the Commission must, in addition, make the SIP register available to the public in the form of an online record.

101T. Registration in SIP register

(Not yet in operation)

(1) The Commission may enter in the SIP register in respect of a person who has complied with the notification requirement—

(a) the name of the person; and

(b) the specific class in respect of which the notification level has been reached.

(2) The Commission may enter in the SIP register in respect of a person who has purportedly given a notification, but not in accordance with section 101R(4)—

(a) the name of the person; and

(b) the specific class in respect of which the notification level has been reached.

(3) If the conditions in subsection (6) are satisfied in relation to a person, the Commission may enter in the SIP register—

(a) the name of the person; and

(b) the specific class referred to in subsection (6)(b).

(4) Before making an entry in the SIP register under subsection (3)(a) or (b) in respect of a person, the Commission must—

(a) inform the Monetary Authority; and

(b) give the person concerned a reasonable opportunity of being heard in respect of the proposed entry.

(5) The Commission must inform the person concerned by a written notice as soon as practicable after making an entry in

the SIP register under subsection (1)(a) or (b), (2)(a) or (b) or (3)(a) or (b).

(6) The conditions referred to in subsection (3) are that—

(a) section 101R(1) applies to the person; and

(b) either—

(i) the Commission has reasonable cause to believe that the person's position in a specific class has reached the notification level but the person has not given a notification in respect of the specific class; or

(ii) the Monetary Authority informs the Commission that the Monetary Authority has reasonable cause to believe that the person's position in a specific class has reached the notification level but the person has not given a notification in respect of the specific class.

(7) For the purposes of subsection (6)(b), a reference to a person's position includes the position of another person to the extent to which the performance of the obligations arising from that other person's position is guaranteed by the person.

(8) A decision to make an entry in the SIP register under subsection (1), (2) or (3) takes effect at the time of the service of the notice under subsection (5) on the person or at the time specified in the notice, whichever is the later.

101U. Notification not required after registration for specific class

(Not yet in operation)

(1) If a person is registered for a specific class, as long as the name of the person remains on the SIP register for that specific class, the person is not required to comply with the notification requirement in respect of that specific class.

(2) Subsection (1) does not affect any liability incurred for a failure by a person who is registered for a specific class under section 101T(2) or (3) to comply with the notification requirement in respect of that specific class.

(3) Also, subsection (1) does not affect the application of section 101R(2) to a person whose position in a specific class reaches the notification level after the first or any subsequent deregistration for that specific class.

(4) For the purposes of this section, a person is taken to be registered for a specific class if the SIP register shows that the person's position in that specific class has reached the notification level.

(5) For the purposes of subsections (3) and (4), a reference to the position of a person or a person's position includes the position of another person to the extent to which the performance of the obligations arising from that other person's position is guaranteed by the person.

101V. Deregistration

(Not yet in operation)

(1) The Commission must remove from the SIP register the name of a person, if the Commission is satisfied that the relevant conditions, circumstances and criteria prescribed by the notification rules for removing a person's name from the SIP register have been met.

(2) The Commission must remove from the SIP register a specific class entered in respect of a person's name, if the Commission is satisfied that the relevant conditions, circumstances and criteria prescribed by the notification rules for removing the specific class from the SIP register have been met.

(3) A deregistration may be effected—

(a) by the Commission on its own initiative; or

(b) on application by a registered SIP.

(4) The Commission must give the person concerned a reasonable opportunity of being heard before refusing an application for deregistration.

(5) The Commission must consult the Monetary Authority before effecting a deregistration.

(6) The Commission must inform the person concerned of a deregistration or a refusal to deregister by a written notice as soon as practicable after a deregistration or a refusal to deregister.

(7) This section does not prevent the Commission from amending the SIP register to give effect to a decision of the Securities and Futures Appeals Tribunal under Part XI on a review by that Tribunal of a decision of the Commission under section 101T(3).

101W. Power to require information from registered SIPs

(Not yet in operation)

(1) The Commission may, by a written notice, require a registered SIP to give to the Commission, in the form and manner set out in the notice, information required by the notice, regarding one or more of the following—

(a) the registered SIP's activities and transactions in OTC derivative products;

(b) the risk management systems and policies established in respect of the registered SIP's transactions in OTC derivative products;

(c) any other matter prescribed by the notification rules.

(2) The Monetary Authority may, by a written notice, require a registered SIP to give to the Monetary Authority, in the form and manner set out in the notice, information required by the notice, regarding one or more of the following—

(a) the registered SIP's activities and transactions in OTC derivative products;

(b) the risk management systems and policies established in respect of the registered SIP's transactions in OTC derivative products;

(c) any other matter prescribed by the notification rules.

(3) The registered SIP must give any information required to be given under subsection (1) or (2) within the period specified in the notice.

101X. Power to require registered SIPs to take certain action

(Not yet in operation)

(1) The Commission may, with the consent, or at the request, of the Monetary Authority, take the action specified in subsection (2), if the Commission has reasonable cause to believe that the registered SIP's activities or transactions in OTC derivative products pose, or may pose, a systemic risk—

(a) in the securities and futures industry; or

(b) to the financial stability of Hong Kong.

(2) The action the Commission may take is to require, by a written notice, the registered SIP to do one or more of the following acts specified in the notice—

(a) to refrain from increasing, or to reduce, the registered SIP's exposure arising from its positions in one or more specific classes;

(b) to collect collateral or to increase the amount of collateral collected;

(c) to post collateral or to increase the amount of collateral posted;

(d) to restrict the use of collateral;

(e) to restrict the type of collateral collected or posted;

(f) to take any other action prescribed by the notification rules.

(3) For the purposes of subsection (2)(a), a reference to the registered SIP's exposure arising from its positions is a reference to the risk to which the registered SIP is exposed in respect of—

(a) the positions of the registered SIP; and

(b) the positions of another person to the extent to which the performance of the obligations arising from those positions is guaranteed by the registered SIP.

(4) A requirement in a notice served under this section takes effect at the time of the service of the notice or at the time specified in the notice, whichever is the later.

101Y. Application to Court of First Instance

(Not yet in operation)

(1) If a registered SIP fails to comply with a requirement made under section 101W(1) or 101X, the Commission may apply to the Court of First Instance for an inquiry into the failure.

(2) If a registered SIP fails to comply with a requirement made under section 101W(2), the Monetary Authority may apply to the Court of First Instance for an inquiry into the failure.

(3) The Court of First Instance may inquire into the case and if satisfied that—

(a) there is no reasonable excuse for the registered SIP not to comply with the requirement, order the registered SIP to comply with the requirement within the period specified by the Court; and

(b) the failure was without reasonable excuse, punish the registered SIP in the same manner as if the registered SIP had been guilty of contempt of court.

(4) If there is a reasonable likelihood that a registered SIP will fail to comply with a requirement referred to in subsection (1), the Commission may apply to the Court of First Instance for an order that the registered SIP take such action or refrain from taking such action as the Court directs.

(5) If there is a reasonable likelihood that a registered SIP will fail to comply with a requirement referred to in subsection (2), the Monetary Authority may apply to the Court of First Instance for an order that the registered SIP take such action or refrain from taking such action as the Court directs.

(6) An application under subsection (1), (2), (4) or (5) must be made by originating summons that is in Form No. 10 in Appendix A to the Rules of the High Court (Cap. 4 sub. leg. A).

101Z. Rule making power—notifications etc.

(Not yet in operation)

The Commission may, with the consent of the Monetary Authority and after consultation with the Financial Secretary, make rules to prescribe—

(a) in relation to a specific class—

(i) the threshold for the application of the notification requirement;

(ii) the period within which the notification requirement must be complied with;

(iii) the conditions, circumstances and criteria for deregistration; and

(iv) the conditions, circumstances and criteria for regarding a person's position as reaching the notification level;

(b) additional information to be given by a person under section 101R(5)(b);

(c) matters on which information may be required to be given under section 101W(1)(c) and (2)(c);

(d) action a registered SIP may be required to take under section 101X(2)(f); and

(e) generally for better carrying out the purposes of this Division.

———————

Part IV

Offers of Investments

(Format changes—E.R. 2 of 2012)

Division 1—Interpretation

102. Interpretation of Part IV

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

advertisement (廣告) includes every form of advertising, whether made orally or produced mechanically, electronically, magnetically, optically, manually or by any other means;

approved person (核准人士)—

(a) in relation to a collective investment scheme, means an individual approved by the Commission under section 104(3); *(Amended 8 of 2011 s. 2)*

(aa) in relation to a structured product, means an individual approved by the Commission under section 104A(3); or *(Added 8 of 2011 s. 2)*

(b) in relation to the issue of an advertisement, invitation or document, means an individual approved by the Commission under section 105(3);

document (文件) means any publication (including a newspaper, magazine or journal, a poster or notice, a circular, brochure, pamphlet or handbill, or a prospectus)—

(a) directed at, or the contents of which are likely to be accessed or read (whether concurrently or otherwise) by, the public; and

(b) whether produced mechanically, electronically, magnetically, optically, manually or by any other means;

exempted body (獲豁免團體) means a body specified in Part 3 of Schedule 4;

invitation (邀請) includes an offer and an invitation, whether made orally or produced mechanically, electronically, magnetically, optically, manually or by any other means;

issue (發出), in relation to any material (including any advertisement, invitation or document), includes publishing, circulating, distributing or otherwise disseminating the material or the contents thereof, whether—

(a) by any visit in person;

(b) in a newspaper, magazine, journal or other publication;

(c) by the display of posters or notices;

(d) by means of circulars, brochures, pamphlets or handbills;

(e) by an exhibition of photographs or cinematograph films;

(f) by way of sound or television broadcasting;

(g) by any information system or other electronic device; or

(h) by any other means, whether mechanically, electronically, magnetically, optically, manually or by any other medium, or by way of production or transmission of light, image or sound or any other medium,

and also includes causing or authorizing the material to be issued;

relevant authority (監管當局), in relation to a place outside Hong Kong, means an authority which the Monetary Authority is satisfied is a recognized banking supervisory authority of that place;

representative (代表)—

(a) in relation to a licensed corporation, means an individual—

(i) who is licensed as a licensed representative for a regulated activity; and

(ii) who carries on that regulated activity for the licensed corporation as a licensed corporation to which he is accredited; or

(b) in relation to a registered institution, means an individual—

(i) whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as that of a person engaged by the registered institution in respect of a regulated activity; and

(ii) who carries on that regulated activity for the registered institution; *(Amended 8 of 2011 s. 2)*

securities (證券) has the same meaning as that given by the definition of ***securities*** in section 1 of Part 1 of Schedule 1 except that it does not include structured products that are securities only because of paragraph (g) of that definition. *(Added 8 of 2011 s. 2)*

(2) For the purposes of this Part—

(a) an advertisement, invitation or document issued by a person shall be regarded as being issued by him on every day on which he causes or authorizes it to be so issued;

(b) an advertisement, invitation or document issued by one person on behalf of another shall be regarded as an advertisement, invitation or document (as the case may be) issued by both persons.

Division 2—Regulation of offers of investments, etc.

103. Offence to issue advertisements, invitations or documents

relating to investments in certain cases

(1) Subject to subsections (2), (3) and (5) to (9), a person commits an offence if he issues, or has in his possession for the purposes of issue, whether in Hong Kong or elsewhere, an advertisement, invitation or document which to his knowledge is or contains an invitation to the public—

(a) to enter into or offer to enter into—

(i) an agreement to acquire, dispose of, subscribe for or underwrite securities; or

(ii) a regulated investment agreement or an agreement to acquire, dispose of, subscribe for or underwrite any other structured product; or *(Replaced 8 of 2011 s. 3)*

(b) to acquire an interest in or participate in, or offer to acquire an interest in or participate in, a collective investment scheme,

unless the issue is authorized by the Commission under section 105(1).

(2) Subsection (1) does not apply to the issue, or the possession for the purposes of issue, of any advertisement, invitation or document—

(a) made by or on behalf of an intermediary licensed or registered for Type 1, Type 4 or Type 6 regulated activity (whether acting as principal or agent) in respect of—

(i) listed securities; or

(ii) unlisted securities (excluding unlisted securities that are structured products); *(Replaced 8 of 2011 s. 3)*

(b) made by or on behalf of an intermediary licensed or registered for Type 2 or Type 5 regulated activity

(whether acting as principal or agent) in respect of futures contracts;

(c) made by or on behalf of—

(i) an authorized financial institution (whether acting as principal or agent); or

(ii) an intermediary licensed for Type 3 regulated activity (whether acting as principal or agent),

in respect of leveraged foreign exchange contracts;

(d) made by or on behalf of a recognized exchange company or recognized clearing house in respect of the provision of services by such recognized exchange company or recognized clearing house (as the case may be);

(e) made by or on behalf of a corporation in respect of securities (excluding securities that are structured products) of the corporation, or of a related corporation of the corporation, to—

(i) holders of securities (excluding securities that are structured products) of the corporation or related corporation;

(ii) creditors of the corporation or related corporation;

(iii) employees employed by the corporation or related corporation; or

(iv) agents acting in a professional capacity on behalf of the corporation or related corporation; *(Replaced 8 of 2011 s. 3)*

(f) made by or on behalf of the Government in respect of securities or structured products issued by it; *(Amended 8 of 2011 s. 3)*

(g) made by or on behalf of a credit union in respect of shares in the credit union;

(ga) made by or on behalf of a corporation, but only to the extent that the advertisement, invitation or document relates to an offer specified in Part 1 of the Seventeenth Schedule to the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) as read with the other Parts of that Schedule; *(Replaced 16 of 2016 s. 5)*

(h) made by or on behalf of a person acting as a trustee of a trust, not being a collective investment scheme, to beneficiaries under the trust; or

(i) made by or on behalf of a person who is engaged in the business of selling and purchasing property other than securities or structured products (whether acting as principal or agent) in the ordinary course of that business. *(Amended 8 of 2011 s. 3)*

(3) Subsection (1) does not apply to the issue, or the possession for the purposes of issue—

(a) of—

(i) a prospectus which complies with or is exempt from compliance with Part II of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32);

(ii) in the case of a corporation incorporated outside Hong Kong, a prospectus which complies with or is exempt from compliance with Part XII of that Ordinance;

(iii) a publication falling within section 38B(2) of that Ordinance; *(Replaced 30 of 2004 s. 3. Amended 28 of 2012 ss. 912 & 920)*

(b) of a document relating to the securities of a body corporate incorporated in Hong Kong that is neither a registered company nor an open-ended fund company, being a document which— *(Amended 16 of 2016 s. 5)*

(i) would, if the body corporate were a registered company, be a prospectus to which section 38 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) applies, or would apply if not excluded by section 38(5)(b) or 38A of that Ordinance; and *(Amended 28 of 2012 ss. 912 & 920)*

(ii) contains all the matters which, by virtue of Part XII of that Ordinance, it would be required to contain if the body corporate were a corporation incorporated outside Hong Kong and the document were a prospectus issued by that corporation;

(c) of a form of application for the shares or debentures of a corporation that is not an open-ended fund company, where it is issued, or the possession is for the purposes of issue, together with— *(Amended 16 of 2016 s. 5)*

(i) a prospectus with respect to those shares or debentures which complies with or is exempt from compliance with Part II of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) or, in the case of a corporation incorporated outside Hong Kong, complies with or is exempt from compliance with Part XII of that Ordinance; or *(Amended 28 of 2012 ss. 912 & 920)*

(ii) in the case of a body corporate incorporated in Hong Kong that is not a registered company, a document containing all the matters which, by virtue of Part XII of that Ordinance, it would be required to contain if the body corporate were

a corporation incorporated outside Hong Kong and the document were a prospectus issued by that corporation with respect to those shares or debentures;

(d) of a form of application for the securities of a corporation, where it is issued, or the possession is for the purposes of issue, in connection with an invitation made in good faith to a person to enter into an underwriting agreement with respect to those securities;

(e) of any advertisement, invitation or document made in respect of the issue, whether in Hong Kong or elsewhere, of a certificate of deposit by an authorized financial institution;

(ea) of any advertisement, invitation or document made in respect of the issue, whether in Hong Kong or elsewhere, of a currency-linked instrument, an interest rate-linked instrument or a currency and interest rate-linked instrument by an authorized financial institution; *(Added 8 of 2011 s. 3)*

(f) of any advertisement, invitation or document made in respect of the issue, whether in Hong Kong or elsewhere, of a certificate of deposit—

(i) the amount or denomination of which is not less than the sum specified in Part 1 of Schedule 4; and

(ii) by—

(A) a multilateral agency; or

(B) a bank incorporated outside Hong Kong and having no place of business in Hong Kong, where the Monetary Authority has declared in writing that he is satisfied that the bank is likely to be adequately supervised by the relevant authority of any place in which it

is incorporated or has its principal place of business;

(g) of any advertisement, invitation or document made in respect of the issue, whether in Hong Kong or elsewhere, of any instrument specified in Part 2 of Schedule 4 (other than a certificate of deposit), where the amount or denomination of the instrument is not less than the sum specified in Part 1 of Schedule 4 and the instrument—

(i) is issued by an authorized financial institution or a multilateral agency, or by an exempted body which, if it is a corporation or a wholly owned subsidiary specified in item 11 of Part 3 of Schedule 4, complies with the relevant condition;

(ii) is issued by a corporation which complies with the relevant condition, and is guaranteed by an authorized financial institution or a multilateral agency, or by an exempted body (other than a corporation specified in item 11 of Part 3 of Schedule 4 which does not comply with the relevant condition, or a wholly owned subsidiary of the corporation); or

(iii) is issued by a wholly owned subsidiary specified in item 11 of Part 3 of Schedule 4 and is guaranteed by the corporation of which it is such a subsidiary and which complies with the relevant condition;

(h) of any advertisement, invitation or document made in respect of the issue of securities the listing of which on a recognized stock market has been approved by the recognized exchange company by which the recognized stock market is operated, where the advertisement, invitation or document complies with the rules made under section 23 or 36 governing the listing of securities,

except to the extent that compliance is, in accordance with those rules, waived, modified or not required;

(i) of any advertisement, invitation or document made in respect of securities regulated in a jurisdiction outside Hong Kong which have been admitted to trading on a recognized stock market under or pursuant to rules made under section 23 or 36;

(j) of any advertisement, invitation or document made in respect of securities or structured products, or interests in any collective investment scheme, that are or are intended to be disposed of only to persons outside Hong Kong; *(Replaced 8 of 2011 s. 3)*

(k) of any advertisement, invitation or document made in respect of securities or structured products, or interests in any collective investment scheme, that are or are intended to be disposed of only to professional investors. *(Replaced 8 of 2011 s. 3)*

(4) A person who commits an offence under subsection (1) is liable—

(a) on conviction on indictment to a fine of $500,000 and to imprisonment for 3 years and, in the case of a continuing offence, to a further fine of $20,000 for every day during which the offence continues; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months and, in the case of a continuing offence, to a further fine of $10,000 for every day during which the offence continues.

(5) A person shall not be regarded as committing an offence under subsection (1) by reason only that he issues, or has in his possession for the purposes of issue—

(a) as or on behalf of an intermediary licensed or registered for Type 1, Type 4 or Type 6 regulated activity (whether

acting as principal or agent) any advertisement, invitation or document made in respect of—

(i) listed securities; or

(ii) unlisted securities (excluding unlisted securities that are structured products); *(Replaced 8 of 2011 s. 3)*

(b) as or on behalf of an intermediary licensed or registered for Type 2 or Type 5 regulated activity (whether acting as principal or agent), any advertisement, invitation or document made in respect of futures contracts;

(c) as or on behalf of—

(i) an authorized financial institution (whether acting as principal or agent); or

(ii) an intermediary licensed for Type 3 regulated activity (whether acting as principal or agent),

any advertisement, invitation or document made in respect of leveraged foreign exchange contracts.

(6) A person shall not be regarded as committing an offence under subsection (1) by reason only that he issues any advertisement, invitation or document, or has any advertisement, invitation or document in his possession for the purposes of issue—

(a) in the case of any advertisement, invitation or document made in respect of any of the following to an intermediary licensed or registered for Type 1, Type 4 or Type 6 regulated activity, or a representative of such an intermediary that carries on such a regulated activity for the intermediary—

(i) listed securities; or

(ii) unlisted securities (excluding unlisted securities that are structured products); *(Replaced 8 of 2011 s. 3)*

(b) in the case of any advertisement, invitation or document made in respect of futures contracts, to an intermediary licensed or registered for Type 2 or Type 5 regulated activity, or a representative of such intermediary that carries on such regulated activity for such intermediary; or

(c) in the case of any advertisement, invitation or document made in respect of leveraged foreign exchange contracts, to—

(i) an authorized financial institution; or

(ii) an intermediary licensed for Type 3 regulated activity, or a representative of such intermediary that carries on such regulated activity for such intermediary.

(7) A person shall not be regarded as committing an offence under subsection (1) by reason only that he issues, or has in his possession for the purposes of issue, any advertisement, invitation or document if—

(a) the advertisement, invitation or document (as the case may be) was so issued, or possessed for the purposes of issue, in the ordinary course of a business (whether or not carried on by him), the principal purpose of which was receiving and issuing materials provided by others;

(b) the contents of the advertisement, invitation or document (as the case may be) were not, wholly or partly, devised—

(i) where the business was carried on by him, by himself or any officer, employee or agent of his; or

(ii) where the business was not carried on by him, by himself; and

(c) for the purposes of the issue—

(i) where the business was carried on by him, he or any officer, employee or agent of his; or

(ii) where the business was not carried on by him, he,

did not select, add to, modify or otherwise exercise control over the contents of the advertisement, invitation or document (as the case may be).

(8) A person shall not be regarded as committing an offence under subsection (1) by reason only that he issues by way of live broadcast, or has in his possession for the purposes of issue by way of live broadcast, any advertisement, invitation or document if—

(a) the advertisement, invitation or document (as the case may be) was so issued, or possessed for the purposes of issue, in the ordinary course of the business of a broadcaster (whether or not he was such broadcaster);

(b) the contents of the advertisement, invitation or document (as the case may be) were not, wholly or partly, devised—

(i) where he was the broadcaster, by himself or any officer, employee or agent of his; or

(ii) where he was not the broadcaster, by himself;

(c) for the purposes of the issue—

(i) where he was the broadcaster, he or any officer, employee or agent of his; or

(ii) where he was not the broadcaster, he,

did not select, add to, modify or otherwise exercise control over the contents of the advertisement, invitation or document (as the case may be); and

(d) in relation to the broadcast—

(i) where he was the broadcaster, he; or

(ii) where he was not the broadcaster, he believed and had reasonable grounds to believe that the broadcaster,

acted in accordance with the terms and conditions of the licence (if any) by which he or the broadcaster (as the case may be) became entitled to broadcast as a broadcaster and with any code of practice or guidelines (however described) issued under or pursuant to the Telecommunications Ordinance (Cap. 106) or the Broadcasting Ordinance (Cap. 562) and applicable to him or the broadcaster (as the case may be) as a broadcaster.

(9) It is a defence to a charge for an offence under subsection (1) for the person charged to prove that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence with which he is charged.

(10) For the purposes of any proceedings under this section—

(a) an advertisement, invitation or document which consists of or contains information likely to lead, directly or indirectly, to the doing of any act referred to in subsection (1)(a) or (b) shall be regarded as an advertisement, invitation or document (as the case may be) which is or contains an invitation to do such act;

(b) an advertisement, invitation or document which is or contains an invitation directed at, or the contents of which are likely to be accessed or read (whether concurrently or otherwise) by, the public shall be

regarded as an advertisement, invitation or document (as the case may be) which is or contains an invitation to the public.

(11) Nothing in subsection (2)(a), (b), (c) or (i) or (5)(a), (b) or (c) applies to anything done by any person in respect of any interest in a collective investment scheme that is not authorized by the Commission under section 104.

(12) In this section—

guaranteed (作出擔保) means guaranteed fully, unconditionally, irrevocably and in writing;

registered company (註冊公司) means a company registered under the Companies Ordinance (Cap. 622) or the relevant Ordinance; *(Amended 28 of 2012 ss. 912 & 920)*

relevant condition (有關條件), in relation to a corporation (including a wholly owned subsidiary of any other corporation), means a condition that the amount by which the aggregate of the corporation's assets exceeds the aggregate of its liabilities, as calculated in accordance with generally accepted accounting principles, is not less than the sum specified in Part 4 of Schedule 4.

104. Commission may authorize collective investment schemes

(1) On an application to the Commission, the Commission may, where it considers appropriate, authorize any collective investment scheme, subject to the condition specified in subsection (2) and to any other conditions it considers appropriate.

(2) It shall be a condition of authorization of a collective investment scheme under subsection (1) that at any time when the scheme is authorized—

(a) there is an individual approved by the Commission under subsection (3) as an approved person for the

purpose of being served by the Commission with notices and decisions for the scheme; and

(b) the Commission is informed of particulars—

(i) subject to subparagraph (ii), of the current contact details of the approved person referred to in paragraph (a), including, in so far as applicable, the address, telephone and facsimile numbers, and electronic mail address of the approved person;

(ii) where there is any change in the contact details referred to in subparagraph (i), of the change, within 14 days after the change takes place.

(3) For the purposes of subsection (2)(a), on an application by any person to the Commission, the Commission may, where it considers appropriate, approve any individual nominated in the application in respect of a collective investment scheme as an approved person for the purpose of being served by the Commission with notices and decisions for the scheme, and may, by notice in writing served on the person, withdraw the approval.

(4) The Commission may at any time, by notice in writing served on the approved person for a collective investment scheme, amend or revoke any of the conditions (other than the condition specified in subsection (2)) imposed, or impose new conditions, in respect of the authorization granted under subsection (1) in respect of the scheme.

(5) Without limiting any other ground on which the Commission may refuse to authorize any collective investment scheme under subsection (1), the Commission may refuse to do so where it is not satisfied that the authorization is in the interest of the investing public.

(6) An application made pursuant to subsection (1) or (3) shall be accompanied by such information and documents as the Commission requires.

(7) Where the Commission refuses to authorize a collective investment scheme, or to approve an individual as an approved person, pursuant to subsection (1) or (3), it shall by notice in writing notify the person making the application in question of the decision and the reasons for which it is made.

(8) The Commission may publish in such manner as it considers appropriate particulars of any collective investment scheme authorized under subsection (1).

(9) Particulars published under subsection (8) are not subsidiary legislation.

104A. Commission may authorize structured products

(1) On an application by any person, the Commission may authorize a structured product, subject to the condition specified in subsection (2) and to any other conditions it considers appropriate.

(2) It is a condition of authorization of a structured product that, at any time when the product is authorized—

(a) there is an individual approved by the Commission under subsection (3) as an approved person for the purpose of being served by the Commission with notices and decisions for the product; and

(b) the Commission is informed—

(i) subject to subparagraph (ii), of the current contact details of the approved person, including, as applicable, the address, telephone and facsimile numbers, and electronic mail address of the approved person;

(ii) if there is any change in those contact details, of the change within 14 days after the change takes place.

(3) For the purposes of subsection (2)(a), on an application by any person, the Commission may approve an individual nominated in the application in respect of a structured product as an approved person for the purpose of being served by the Commission with notices and decisions for the product.

(4) The Commission may at any time, by notice in writing served on the approved person for a structured product—

(a) amend or revoke any of the conditions (other than the condition specified in subsection (2)) imposed, or impose new conditions, in respect of the authorization of the product; or

(b) withdraw the person's approval under subsection (3).

(5) Without limiting any other ground on which the Commission may refuse to authorize a structured product under subsection (1), the Commission may refuse to do so if it is not satisfied that the authorization is in the interest of the investing public.

(6) An application made under subsection (1) or (3) must be accompanied by any information and documents that the Commission requires.

(7) If the Commission refuses to authorize a structured product, or to approve an individual as an approved person, the Commission must notify the applicant in writing of the refusal and the reasons for it.

(8) The Commission may publish, in any manner it considers appropriate, particulars of a structured product authorized under subsection (1).

(9) Particulars published under subsection (8) are not subsidiary legislation.

(Added 8 of 2011 s. 4)

105. Commission may authorize issue of advertisements, invitations or documents

(1) On an application to the Commission, the Commission may, where it considers appropriate, authorize the issue of any advertisement, invitation or document which is or contains an invitation to do any act referred to in section 103(1)(a) or (b), subject to the condition specified in subsection (2) and to any other conditions it considers appropriate, including conditions on the matter to which the advertisement, invitation or document relates.

(2) It shall be a condition of authorization of the issue of any advertisement, invitation or document under subsection (1) that at any time when the issue is authorized—

(a) there is an individual approved by the Commission under subsection (3) as an approved person for the purpose of being served by the Commission with notices and decisions for the issue; and

(b) the Commission is informed of particulars—

(i) subject to subparagraph (ii), of the current contact details of the approved person referred to in paragraph (a), including, in so far as applicable, the address, telephone and facsimile numbers, and electronic mail address of the approved person;

(ii) where there is any change in the contact details referred to in subparagraph (i), of the change, within 14 days after the change takes place.

(3) For the purposes of subsection (2)(a), on an application by any person to the Commission, the Commission may, where it considers appropriate, approve any individual nominated in the application in respect of the issue of any advertisement,

invitation or document as an approved person for the purpose of being served by the Commission with notices and decisions for the issue, and may, by notice in writing served on the person, withdraw the approval.

(4) The Commission may at any time, by notice in writing served on the approved person for the issue of any advertisement, invitation or document, amend or revoke any of the conditions (other than the condition specified in subsection (2)) imposed, or impose new conditions, in respect of the authorization granted under subsection (1) in respect of the issue.

(5) Without limiting any other ground on which the Commission may refuse to authorize the issue of any advertisement, invitation or document under subsection (1), the Commission may refuse to do so where it is not satisfied that the matter to which the advertisement, invitation or document relates is in the interest of the investing public.

(6) An application made pursuant to subsection (1) or (3) shall be accompanied by such information and documents as the Commission requires.

(7) Where the Commission refuses to authorize the issue of any advertisement, invitation or document, or to approve an individual as an approved person, pursuant to subsection (1) or (3), it shall by notice in writing notify the person making the application in question of the decision and the reasons for which it is made.

106. Withdrawal of authorization under section 104, 104A or 105, etc.

(Amended 8 of 2011 s. 5)

(1) Subject to subsection (5), where, in relation to an authorization of a collective investment scheme under section 104, an authorization of a structured product under section

104A, or an authorization of the issue of an advertisement, invitation or document under section 105, the Commission decides that— *(Amended 8 of 2011 s. 5)*

(a) any information provided to the Commission pursuant to section 104(6), 104A(6) or 105(6) (as the case may be) was at the time when it was provided false or misleading in a material particular;

(b) any of the conditions imposed in respect of the authorization under section 104, 104A or 105 (as the case may be) are not being complied with;

(c) any information provided to the Commission in purported compliance with any of the conditions imposed in respect of the authorization under section 104, 104A or 105 (as the case may be) was at the time when it was provided false or misleading in a material particular; or

(d) it is desirable to withdraw the authorization in order to protect the interest of the investing public,

the Commission may withdraw the authorization. *(Amended 8 of 2011 s. 5)*

(2) Subject to subsection (3), the Commission must withdraw the authorization of a collective investment scheme, a structured product or the issue of an advertisement, invitation or document on a request in writing made by the approved person for the scheme, product or issue (as the case may be). *(Replaced 8 of 2011 s. 5)*

(3) Subject to subsection (5), the Commission may refuse to withdraw an authorization of a collective investment scheme or structured product or of the issue of an advertisement, invitation or document under subsection (2) where it considers that— *(Amended 8 of 2011 s. 5)*

(a) in the case of an authorization of a collective investment scheme or structured product, it is in the public interest that any matter concerning the scheme or product should be investigated before the authorization is withdrawn under subsection (2); or *(Amended 8 of 2011 s. 5)*

(b) the withdrawal of the authorization would not be in the interest of the investing public.

(4) Subject to subsection (5), where the Commission withdraws an authorization under subsection (1) or (2), it may impose such conditions on the withdrawal of the authorization as it considers appropriate.

(5) The Commission shall not—

(a) withdraw an authorization of a collective investment scheme or structured product or of the issue of an advertisement, invitation or document under subsection (1);

(b) refuse to withdraw an authorization of a collective investment scheme or structured product or of the issue of an advertisement, invitation or document under subsection (3); or

(c) impose any conditions on the withdrawal of an authorization of a collective investment scheme or structured product or of the issue of an advertisement, invitation or document under subsection (4),

without first giving the approved person for the scheme, the product or the issue (as the case may be) a reasonable opportunity of being heard. *(Amended 8 of 2011 s. 5)*

(6) Where the Commission—

(a) withdraws an authorization of a collective investment scheme or structured product or of the issue of an

advertisement, invitation or document under subsection (1);

(b) withdraws an authorization of a collective investment scheme or structured product or of the issue of an advertisement, invitation or document under subsection (2);

(c) refuses to withdraw an authorization of a collective investment scheme or structured product or of the issue of an advertisement, invitation or document under subsection (3); or

(d) imposes any conditions on the withdrawal of an authorization of a collective investment scheme or structured product or of the issue of an advertisement, invitation or document under subsection (4),

it shall by notice in writing notify the approved person for the scheme, the product or the issue (as the case may be) of the decision and, in the case of paragraph (a), (c) or (d), the reasons for which it is made. *(Amended 8 of 2011 s. 5)*

(7) Where the Commission withdraws an authorization under subsection (1) or (2), it may publish notice of the withdrawal and the reasons therefor in such manner as it considers appropriate.

(8) A notice or any other matter published under subsection (7) is not subsidiary legislation.

107. Offence to fraudulently or recklessly induce others to invest money

(1) A person commits an offence if he makes any fraudulent misrepresentation or reckless misrepresentation for the purpose of inducing another person—

(a) to enter into or offer to enter into—

(i) an agreement to acquire, dispose of, subscribe for or underwrite securities; or

(ii) a regulated investment agreement or an agreement to acquire, dispose of, subscribe for or underwrite any other structured product; or *(Replaced 8 of 2011 s. 6)*

(b) to acquire an interest in or participate in, or offer to acquire an interest in or participate in, a collective investment scheme.

(2) A person who commits an offence under subsection (1) is liable—

(a) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 7 years; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(3) For the purposes of this section—

(a) ***fraudulent misrepresentation*** (欺詐的失實陳述) means—

(i) any statement which, at the time when it is made, is to the knowledge of its maker false, misleading or deceptive;

(ii) any promise which, at the time when it is made, its maker has no intention of fulfilling, or is to the knowledge of its maker not capable of being fulfilled;

(iii) any forecast which, at the time when it is made, is to the knowledge of its maker not justified on the facts then known to him; or

(iv) any statement or forecast from which, at the time when it is made, its maker intentionally omits a material fact, with the result that—

(A) in the case of the statement, the statement is rendered false, misleading or deceptive; or

(B) in the case of the forecast, the forecast is rendered misleading or deceptive;

(b) ***reckless misrepresentation*** (罔顧實情的失實陳述) means—

(i) any statement which, at the time when it is made, is false, misleading or deceptive and is made recklessly;

(ii) any promise which, at the time when it is made, is not capable of being fulfilled and is made recklessly;

(iii) any forecast which, at the time when it is made, is not justified on the facts then known to its maker and is made recklessly; or

(iv) any statement or forecast from which, at the time when it is made, its maker recklessly omits a material fact, with the result that—

(A) in the case of the statement, the statement is rendered false, misleading or deceptive; or

(B) in the case of the forecast, the forecast is rendered misleading or deceptive.

108. Civil liability for inducing others to invest money in certain cases

(1) Where a person makes any fraudulent misrepresentation, reckless misrepresentation or negligent misrepresentation by which another person is induced—

(a) to enter into or offer to enter into—

(i) an agreement to acquire, dispose of, subscribe for or underwrite securities; or

(ii) a regulated investment agreement or an agreement to acquire, dispose of, subscribe for or underwrite any other structured product; or *(Replaced 8 of 2011 s. 7)*

(b) to acquire an interest in or participate in, or offer to acquire an interest in or participate in, a collective investment scheme,

the first-mentioned person shall, whether or not he also incurs any other liability (whether under this Part or otherwise), be liable to pay compensation by way of damages to the other person for any pecuniary loss that the other person has sustained as a result of the reliance by the other person on the misrepresentation.

(2) For the purposes of this section, where a company or other body corporate has made any fraudulent misrepresentation, reckless misrepresentation or negligent misrepresentation by which another person is induced to do any act referred to in subsection (1)(a) or (b), any person who was a director of the company or body corporate at the time when the misrepresentation was made shall, unless it is proved that he did not authorize the making of the misrepresentation, be presumed also to have made the misrepresentation.

(3) For the avoidance of doubt, where a court has jurisdiction to determine an action brought under subsection (1), it may, where it is, apart from this section, within its jurisdiction to entertain an application for an injunction, grant an injunction in addition to, or in substitution for, damages, on such terms and conditions as it considers appropriate.

(4) This section does not confer a right of action in any case to which section 40 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) (whether with or without reference to section 342E of that Ordinance) applies. *(Amended 28 of 2012 ss. 912 & 920)*

(5) A person may bring an action under subsection (1) even though the person against whom the action is brought has not been charged with or convicted of an offence by reason of a contravention of this Part.

(6) Nothing in this section affects, limits or diminishes any rights conferred on a person, or any liabilities a person may incur, under the common law or any other enactment.

(7) For the purposes of this section—

(a) ***fraudulent misrepresentation*** (欺詐的失實陳述) means—

(i) any statement which, at the time when it is made, is to the knowledge of its maker false, misleading or deceptive;

(ii) any promise which, at the time when it is made, its maker has no intention of fulfilling, or is to the knowledge of its maker not capable of being fulfilled;

(iii) any forecast which, at the time when it is made, is to the knowledge of its maker not justified on the facts then known to him; or

(iv) any statement or forecast from which, at the time when it is made, its maker intentionally omits a material fact, with the result that—

(A) in the case of the statement, the statement is rendered false, misleading or deceptive; or

(B) in the case of the forecast, the forecast is rendered misleading or deceptive;

(b) ***reckless misrepresentation*** (罔顧實情的失實陳述) means—

(i) any statement which, at the time when it is made, is false, misleading or deceptive and is made recklessly;

(ii) any promise which, at the time when it is made, is not capable of being fulfilled and is made recklessly;

(iii) any forecast which, at the time when it is made, is not justified on the facts then known to its maker and is made recklessly; or

(iv) any statement or forecast from which, at the time when it is made, its maker recklessly omits a material fact, with the result that—

(A) in the case of the statement, the statement is rendered false, misleading or deceptive; or

(B) in the case of the forecast, the forecast is rendered misleading or deceptive;

(c) ***negligent misrepresentation*** (疏忽的失實陳述) means—

(i) any statement which, at the time when it is made, is false, misleading or deceptive and is made without reasonable care having been taken to ensure its accuracy;

(ii) any promise which, at the time when it is made, is not capable of being fulfilled and is made without reasonable care having been taken to ensure that it can be fulfilled;

(iii) any forecast which, at the time when it is made, is not justified on the facts then known to its maker and is made without reasonable care having been taken to ensure the accuracy of those facts; or

(iv) any statement or forecast from which, at the time when it is made, its maker negligently omits a material fact, with the result that—

(A) in the case of the statement, the statement is rendered false, misleading or deceptive; or

(B) in the case of the forecast, the forecast is rendered misleading or deceptive.

109. Offence to issue advertisements relating to carrying on of regulated activities, etc.

(1) Subject to subsections (3) to (6), a person commits an offence if he issues, or has in his possession for the purposes of issue—

(a) an advertisement in which to his knowledge—

(i) a person holds himself out as being prepared to carry on Type 4, Type 5, Type 6 or Type 9 regulated activity; and

(ii) the person is not licensed or registered for such regulated activity as required under this Ordinance; or

(b) any document which to his knowledge contains such advertisement.

(2) A person who commits an offence under subsection (1) is liable on conviction to a fine at level 5 and to imprisonment for 6 months.

(3) A person shall not be regarded as committing an offence under subsection (1) by reason only that he issues any advertisement or document, or has any advertisement or document in his possession for the purposes of issue—

(a) in the case of an advertisement in which a person holds himself out as being prepared to carry on Type

4 regulated activity, to an intermediary licensed or registered for Type 4 regulated activity, or a representative of such intermediary that carries on such regulated activity for such intermediary;

(b) in the case of an advertisement in which a person holds himself out as being prepared to carry on Type 5 regulated activity, to an intermediary licensed or registered for Type 5 regulated activity, or a representative of such intermediary that carries on such regulated activity for such intermediary;

(c) in the case of an advertisement in which a person holds himself out as being prepared to carry on Type 6 regulated activity, to an intermediary licensed or registered for Type 6 regulated activity, or a representative of such intermediary that carries on such regulated activity for such intermediary; or

(d) in the case of an advertisement in which a person holds himself out as being prepared to carry on Type 9 regulated activity, to an intermediary licensed or registered for Type 9 regulated activity, or a representative of such intermediary that carries on such regulated activity for such intermediary.

(4) A person shall not be regarded as committing an offence under subsection (1) by reason only that he issues, or has in his possession for the purposes of issue, any advertisement or document if—

(a) the advertisement or document (as the case may be) was so issued, or possessed for the purposes of issue, in the ordinary course of a business (whether or not carried on by him), the principal purpose of which was receiving and issuing materials provided by others;

(b) the contents of the advertisement or document (as the case may be) were not, wholly or partly, devised—

(i) where the business was carried on by him, by himself or any officer, employee or agent of his; or

(ii) where the business was not carried on by him, by himself; and

(c) for the purposes of the issue—

(i) where the business was carried on by him, he or any officer, employee or agent of his; or

(ii) where the business was not carried on by him, he,

did not select, add to, modify or otherwise exercise control over the contents of the advertisement or document (as the case may be).

(5) A person shall not be regarded as committing an offence under subsection (1) by reason only that he issues by way of live broadcast, or has in his possession for the purposes of issue by way of live broadcast, any advertisement or document if—

(a) the advertisement or document (as the case may be) was so issued, or possessed for the purposes of issue, in the ordinary course of the business of a broadcaster (whether or not he was such broadcaster);

(b) the contents of the advertisement or document (as the case may be) were not, wholly or partly, devised—

(i) where he was the broadcaster, by himself or any officer, employee or agent of his; or

(ii) where he was not the broadcaster, by himself;

(c) for the purposes of the issue—

(i) where he was the broadcaster, he or any officer, employee or agent of his; or

(ii) where he was not the broadcaster, he,

did not select, add to, modify or otherwise exercise control over the contents of the advertisement or document (as the case may be); and

(d) in relation to the broadcast—

(i) where he was the broadcaster, he; or

(ii) where he was not the broadcaster, he believed and had reasonable grounds to believe that the broadcaster,

acted in accordance with the terms and conditions of the licence (if any) by which he or the broadcaster (as the case may be) became entitled to broadcast as a broadcaster and with any code of practice or guidelines (however described) issued under or pursuant to the Telecommunications Ordinance (Cap. 106) or the Broadcasting Ordinance (Cap. 562) and applicable to him or the broadcaster (as the case may be) as a broadcaster.

(6) It is a defence to a charge for an offence under subsection (1) for the person charged to prove that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence with which he is charged.

Division 3—Miscellaneous

110. Submission of information to Commission

(1) A person that is—

(a) an authorized financial institution;

(b) an exempted body or, in the case of a wholly owned subsidiary specified in item 11 of Part 3 of Schedule

4 but incorporated outside Hong Kong, an authorized representative of that subsidiary;

(c) a multilateral agency or an authorized representative of that agency; or

(d) a bank incorporated outside Hong Kong or an authorized representative of that bank,

commits an offence if he fails, within 10 business days, or such longer period as is prescribed by rules made under section 397 for the purposes of this subsection, after the issue of any advertisement, invitation or document referred to in section 103(3)(e), (f) or (g) by the authorized financial institution, the exempted body or the wholly owned subsidiary, the multilateral agency or the bank (as the case may be), to submit to the Commission such information in respect of the advertisement, invitation or document as is prescribed by the rules.

(2) A person who commits an offence under subsection (1) is liable on conviction to a fine at level 5 and, in the case of a continuing offence, to a further fine of $5,000 for every day during which the offence continues.

(3) In subsection (1), ***authorized representative*** (獲授權代表), in relation to the issue of any advertisement, invitation or document, means—

(a) in the case of a wholly owned subsidiary specified in item 11 of Part 3 of Schedule 4 but incorporated outside Hong Kong, the listed corporation of which it is the subsidiary; or

(b) in the case of a multilateral agency or a bank incorporated outside Hong Kong, a person resident in Hong Kong who is authorized by the agency or the bank (as the case may be) to act on behalf of the agency or the bank (as the case may be) in respect of that issue.

111. Service of notices, etc. on approved persons

(1) Notwithstanding section 400, any written notice, decision or direction or other document (however described) to be, or required to be, issued or served (however described) to or on an approved person by the Commission for the purposes of this Ordinance shall for all purposes be regarded as duly issued or served only if—

(a) it is delivered to him by hand; or

(b) it is—

(i) left at, or sent by post to, the last address;

(ii) sent by facsimile transmission to the last facsimile number; or

(iii) sent by electronic mail transmission to the last electronic mail address,

shown by the particulars of which the Commission is informed in respect of the approved person for the purposes of section 104(2)(b), 104A(2)(b) or 105(2)(b) (as the case may be). *(Amended 8 of 2011 s. 8)*

(2) Where a notice, decision or direction or other document (however described) is regarded as duly issued or served to or on an approved person under subsection (1)(b), it shall for all purposes be regarded as issued or served to or on the approved person, and as coming to his notice, at the time when—

(a) where it is left at an address, it is so left at that address;

(b) where it is sent by post to an address, it would in the ordinary course of post be delivered to that address;

(c) where it is sent by facsimile transmission to a facsimile number, it would in the ordinary course of transmission by facsimile be received at that number; or

(d) where it is sent by electronic mail transmission to an electronic mail address, it would in the ordinary course of transmission by electronic mail be received at that address.

112. Amendment of Schedule 4

(1) The Financial Secretary may, by notice published in the Gazette, amend Part 1 of Schedule 4.

(2) The Commission may, after consultation with the Financial Secretary, by notice published in the Gazette, amend Parts 2, 3 and 4 of Schedule 4.

Part IVA

Open-ended Fund Companies

(Part IVA added 16 of 2016 s. 6)

Division 1—Preliminary

112A. Interpretation of Part IVA

In this Part—

certificate of re-domiciliation (遷冊證明書) means a certificate issued under section 112ZJC(3)(b); *(Added 33 of 2021 s. 3)*

non-Hong Kong fund corporation (非香港基金法團) has the meaning given by section 112ZJA(1); *(Added 33 of 2021 s. 3)*

OFC rules (《開放式基金型公司規則》) means rules made under section 112ZK, 112ZL or 112ZM;

open-ended fund company (開放式基金型公司) means a collective investment scheme constituted as a corporation that holds— *(Amended 33 of 2021 s. 3)*

(a) a certificate of incorporation issued under section 112C; or

(b) a certificate of re-domiciliation; *(Amended 33 of 2021 s. 3)*

proposed company (擬成立公司) means a company intended to be incorporated under this Part;

re-domiciled OFC (經遷冊公司) means an open-ended fund company that has become such a company under Division 8A; *(Added 33 of 2021 s. 3)*

scheme property (計劃財產), in relation to an open-ended fund company, means the property under the collective investment scheme that is constituted as the company;

sub-custodian (次保管人), in relation to an open-ended fund company, means a person to whom any scheme property of the company is entrusted for safe keeping, other than the custodian of the company;

sub-fund (子基金)—see section 112R.

112B. Prohibition against carrying on business as open-ended fund company without registration etc.

(1) A person, not being an open-ended fund company that is registered under section 112D, must not—

(a) carry on business as an open-ended fund company; or

(b) hold out as an open-ended fund company.

(2) A person must not manage any property on behalf of another person who, not being an open-ended fund company that is registered under section 112D—

(a) carries on business as an open-ended fund company; or

(b) holds out as an open-ended fund company.

(3) A person must not hold out as acting on behalf of another person who, not being an open-ended fund company that is registered under section 112D—

(a) carries on business as an open-ended fund company; or

(b) holds out as an open-ended fund company.

(4) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable—

(a) on conviction on indictment to a fine of $5,000,000 and to imprisonment for 7 years and, in the case of a

continuing offence, to a further fine of $100,000 for each day during which the offence continues; or

(b) on summary conviction to a fine of $500,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of $10,000 for each day during which the offence continues.

(5) A person who, without reasonable excuse, contravenes subsection (2) or (3) commits an offence and is liable—

(a) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of $20,000 for each day during which the offence continues; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months and, in the case of a continuing offence, to a further fine of $2,000 for each day during which the offence continues.

Division 2—Incorporation, Registration, Name and Registered Office

112C. Incorporation of open-ended fund company

(1) Any person may incorporate a company under this Part by delivering to the Registrar of Companies for registration—

(a) an incorporation form prescribed by the OFC rules; and

(b) a copy of the instrument of incorporation of the proposed company that has been signed in accordance with the OFC rules.

(2) The documents specified in subsection (1)—

(a) must be delivered in the manner prescribed by the OFC rules; and

(b) must be accompanied by any document or information prescribed by the OFC rules.

(3) Subject to subsection (4), if the Registrar of Companies is satisfied that the requirements for incorporation prescribed by the OFC rules are met with respect to the proposed company, the Registrar—

(a) must register the documents delivered under subsection (1); and

(b) must issue a certificate of incorporation in respect of the proposed company certifying that it is a company incorporated under this Part.

(4) The Registrar of Companies must not register the relevant documents or issue a certificate of incorporation under subsection (3) unless the Registrar has been notified of the registration of the proposed company under section 112D(7).

112D. Application for registration with Commission before incorporation

(1) On an application by a person, the Commission may register a proposed company for the purposes of this Part.

(2) An application for the purposes of subsection (1)—

(a) must be made in the manner specified by the Commission; and

(b) must be accompanied by any document or information that the Commission requires.

(3) The registration of a proposed company takes effect on the day on which a certificate of incorporation is issued by the Registrar of Companies under section 112C(3)(b) in respect of it.

(4) The Commission must refuse to register a proposed company unless it is satisfied that the requirements for registration

specified in section 112E will, on the day on which the registration takes effect, be met with respect to the company.

(5) Without limiting any other ground on which the Commission may refuse to register a proposed company, the Commission may refuse to do so if it is not satisfied that the registration is in the interest of the investing public.

(6) On registering a proposed company, the Commission may impose any condition that it considers appropriate.

(7) The Commission must, as soon as reasonably practicable after registering a proposed company under subsection (1), notify the Registrar of Companies in writing of the registration.

(8) The Commission must, as soon as reasonably practicable after refusing to register a proposed company under subsection (1), notify the applicant in writing of the refusal and the reasons for it.

112E. Requirements for registration

The requirements for registration specified for the purposes of section 112D(4) or 112ZJB(3) are— *(Amended 33 of 2021 s. 4)*

(a) the requirements relating to the name of an open-ended fund company as set out in section 112H(2), (3), (4) and (5);

(b) the requirement relating to the registered office of an open-ended fund company as set out in section 112I;

(c) the requirements relating to directors of an open-ended fund company as set out in sections 112U(1), 112V(1), 112W(1) and 112X(1);

(d) the requirements relating to an investment manager of an open-ended fund company as set out in section 112Z;

(e) the requirement relating to a custodian of an open-ended fund company as set out in section 112ZA(1); and

(f) any other requirements for registration prescribed by the OFC rules.

112F. Commission may amend conditions of registration

The Commission may, by notice in writing served on an open-ended fund company, amend or revoke any of the conditions imposed, or impose new conditions, in respect of its registration.

112G. Publication of particulars of open-ended fund company

(1) The Commission may publish, in any manner it considers appropriate, particulars of an open-ended fund company.

(2) Particulars published under subsection (1) are not subsidiary legislation.

112H. Name of open-ended fund company

(1) The name of an open-ended fund company is—

(a) the name stated in— *(Amended 33 of 2021 s. 5)*

(i) for a company incorporated under section 112C—its certificate of incorporation; or

(ii) for a re-domiciled OFC—its certificate of re-domiciliation; or *(Amended 33 of 2021 s. 5)*

(b) if a change of name has effect under the OFC rules, its new name.

(2) The name of an open-ended fund company must not—

(a) in the opinion of the Commission, be misleading or otherwise undesirable; or

(b) be the same as the name of another existing open-ended fund company.

(3) For an open-ended fund company that has an English name only, the name must end with "Open-ended Fund Company" or "OFC".

(4) For an open-ended fund company that has a Chinese name only, the name must end with "開放式基金型公司".

(5) For an open-ended fund company that has both an English name and a Chinese name—

(a) the English name must end with "Open-ended Fund Company" or "OFC"; and

(b) the Chinese name must end with "開放式基金型公司".

112I. Registered office of open-ended fund company

An open-ended fund company must have a registered office in Hong Kong to which all communications and notices may be addressed.

Division 3—Capacity and Powers

112J. Capacity of open-ended fund company

An open-ended fund company has the capacity, rights, powers and privileges as are prescribed by the OFC rules.

112K. Instrument of incorporation of open-ended fund company

(1) An open-ended fund company must have an instrument of incorporation prescribing regulations for the company.

(2) The instrument of incorporation of an open-ended fund company must contain—

(a) the name of the company;

(b) a statement that the registered office of the company is situated in Hong Kong;

(c) the objects of the company;

(d) provision as to the kinds of property in which the company is to invest;

(e) a statement that the company is an open-ended fund company with variable share capital;

(f) a statement that the amount of the paid-up share capital of the company is at all times equal to the net asset value of the company;

(g) a statement that the company's shareholders are not liable for the debts of the company;

(h) a statement that the company's scheme property is entrusted to a custodian of the company for safe keeping in compliance with the law; and

(i) any other matters prescribed by the OFC rules.

(3) For an open-ended fund company with sub-funds, its instrument of incorporation must also contain a statement that the assets of a sub-fund of the company belong exclusively to the sub-fund and are not to be used to discharge the liabilities of, or the claims against, any other person, including the company and any other sub-fund of the company.

112L. Effect of instrument of incorporation

(1) Subject to this Ordinance, the instrument of incorporation of an open-ended fund company, once registered under this Ordinance—

(a) has effect as a contract under seal—

(i) between the company and each shareholder; and

(ii) between a shareholder and each other shareholder; and

(b) is to be regarded as containing covenants on the part of the company and of each shareholder to observe all the provisions of the instrument.

(2) Without limiting subsection (1), the instrument of incorporation of an open-ended fund company is enforceable—

(a) by the company against each shareholder;

(b) by a shareholder against the company; and

(c) by a shareholder against each other shareholder.

(3) Money payable by a shareholder to an open-ended fund company under its instrument of incorporation—

(a) is a debt due from the shareholder to the company; and

(b) is of the nature of a specialty debt.

Division 4—Contracts

112M. Contracts made by or on behalf of open-ended fund company

(1) This section applies to—

(a) a contract that would be required by law to be in writing and under seal if made between natural persons;

(b) a contract that would be required by law to be in writing, and to be signed by the parties to the contract, if made between natural persons; and

(c) a contract that, though made orally and not in writing, would by law be valid if made between natural persons.

(2) A contract specified in subsection (1)(a) may be made by an open-ended fund company—

(a) in writing under the company's common seal (if any); or

(b) in writing executed in accordance with the OFC rules and expressed (in whatever words) to be executed by the company.

(3) A contract specified in subsection (1)(b) may be made on behalf of an open-ended fund company in writing signed by

any person acting with the company's authority (whether express or implied).

(4) A contract specified in subsection (1)(c) may be made on behalf of an open-ended fund company orally by any person acting with the company's authority (whether express or implied).

(5) A contract made by or on behalf of an open-ended fund company in accordance with this section—

(a) is effective in law; and

(b) binds the company and its successors and all other parties to the contract.

(6) A contract made in accordance with this section may be varied or discharged in the same manner in which it is authorized by this section to be made.

112N. Contracts made before open-ended fund company's incorporation

(1) This section applies if a contract purports to have been made in the name or on behalf of an open-ended fund company before the company was incorporated.

(2) Subject to any express agreement to the contrary—

(a) the contract has effect as a contract made by the person purporting to act for the company or as an agent for the company; and

(b) the person is personally liable on the contract and is entitled to enforce the contract.

(3) After incorporation, the company may ratify the contract to the same extent as if—

(a) the company had already been incorporated when the contract was made; and

(b) the contract had been made on the company's behalf by an agent acting without the company's authority.

(4) Despite subsection (2)(b), if the contract is ratified by the company, then on and after the ratification, the liability of the person mentioned in that subsection is not greater than the liability that the person would have incurred if the person had made the contract after the company's incorporation as an agent acting without the company's authority.

112O. Contracts made after cancellation of registration

If—

(a) an open-ended fund company makes a contract after its registration has been cancelled under section 112ZH or 112ZI; and

(b) the company fails to comply with any obligation under the contract within 21 days of being called on to do so by the other party to the contract,

the person who has authorized the contract is liable, and if the contract was authorized by 2 or more persons, they are jointly and severally liable, to indemnify that other party in respect of any loss or damage suffered by that other party by reason of the company's failure to comply with the obligation.

Division 5—Share Capital and Shareholders' Liability

112P. Share capital of open-ended fund company

(1) An open-ended fund company may issue shares.

(2) Shares in an open-ended fund company have no nominal value.

(3) The amount of the paid-up share capital of an open-ended fund company is at all times equal to the net asset value of the company.

(4) In this section—

net asset value (淨資產值), in relation to an open-ended fund company, means the balance after deducting the total liabilities of the company from its total assets.

112Q. Shareholders' liability

The liability of the shareholders of an open-ended fund company is limited to any amount unpaid on the shares held by the shareholders.

Division 6—Sub-funds

112R. Sub-funds of open-ended fund company

(1) The instrument of incorporation of an open-ended fund company may provide for the division of its scheme property into separate parts.

(2) Each separate part of the scheme property of an open-ended fund company is a sub-fund of the company.

112S. Segregated liability of sub-funds

(1) The assets of a sub-fund of an open-ended fund company belong exclusively to the sub-fund and must not be used to discharge the liabilities of, or the claims against, any other person, including the company and any other sub-fund of the company.

(2) Any liability incurred on behalf of, or attributable to, a sub-fund of an open-ended fund company may only be discharged out of the assets of the sub-fund.

(3) A provision contained in the instrument of incorporation of an open-ended fund company, or in a contract or any other instrument made or executed by an open-ended fund

company, is void to the extent that it is inconsistent with subsection (1) or (2).

(4) An application of, or agreement to apply, assets of a sub-fund of an open-ended fund company in contravention of subsection (1) or (2) is void.

(5) An open-ended fund company with sub-funds may allocate any assets or liabilities that—

(a) it receives or incurs—

(i) on behalf of its sub-funds; or

(ii) in order to enable the operation of its sub-funds; and

(b) are not attributable to any particular sub-fund,

between its sub-funds in a manner that it considers is fair to its shareholders.

(6) A sub-fund of an open-ended fund company is not a legal person separate from the company but the assets of the sub-fund may be subject to orders of the court as if it were a separate legal person.

(7) Without affecting subsections (1) and (2) and except as provided by the OFC rules, an open-ended fund company may sue and be sued in respect of any sub-fund of the company and may exercise the same rights of set-off in relation to the sub-fund as apply in respect of companies.

Division 7—Directors, Investment Manager, Custodian, Sub-custodian and Auditor

112T. Interpretation of Division 7 of Part IVA

In this Division—

misconduct (失當行為)—

(a) in relation to a director of an open-ended fund company, means negligence, default, breach of duty or breach of trust on the part of the director occurring in the course of performing duties as a director in relation to the company;

(b) in relation to an investment manager of an open-ended fund company, means negligence, default, breach of duty or breach of trust on the part of the investment manager occurring in the course of performing duties as an investment manager in relation to the company;

(c) in relation to a custodian of an open-ended fund company, means negligence, default, breach of duty or breach of trust on the part of the custodian occurring in the course of performing duties as a custodian in relation to the company;

(d) in relation to a sub-custodian of an open-ended fund company, means negligence, default, breach of duty or breach of trust on the part of the sub-custodian occurring in the course of performing duties as a sub-custodian in relation to the company; and

(e) in relation to an auditor of an open-ended fund company, means negligence, default, breach of duty or breach of trust on the part of the auditor occurring in the course of performing duties as an auditor in relation to the company;

specified officer (指明人員), in relation to an open-ended fund company, means—

(a) a director of the company;

(b) an investment manager of the company;

(c) a custodian of the company;

(d) a sub-custodian of the company; or

(e) an auditor of the company.

112U. Directors

(1) An open-ended fund company must have at least 2 directors.

(2) The first directors of an open-ended fund company are the persons named as directors in— *(Amended 33 of 2021 s. 6)*

(a) for a company incorporated under section 112C—the incorporation form delivered to the Registrar of Companies under section 112C(1)(a); or

(b) for a re-domiciled OFC—the re-domiciliation form delivered to the Registrar of Companies under section 112ZJC(1)(a). *(Amended 33 of 2021 s. 6)*

(3) A director of an open-ended fund company owes the open-ended fund company—

(a) the same fiduciary duties that are owed by a director of an ordinary company to the ordinary company; and

(b) the duty to exercise reasonable care, skill and diligence that is owed by a director of an ordinary company to the ordinary company under section 465 of the Companies Ordinance (Cap. 622).

(4) In the case of a breach or threatened breach by a director of an open-ended fund company of any of the director's duties referred to in subsection (3), the director is liable to the same consequences as would apply if the director were a director of an ordinary company.

(5) In this section—

ordinary company (普通公司) means a company formed and registered under the Companies Ordinance (Cap. 622).

112V. Restrictions on body corporate being director

(1) A body corporate must not be appointed a director of an

open-ended fund company.

(2) An appointment made in contravention of subsection (1) is void.

(3) However, this section does not affect any liability of a body corporate under this Ordinance for—

(a) purporting to act as a director of an open-ended fund company; or

(b) acting as a shadow director of an open-ended fund company.

112W. Minimum age for appointment as director

(1) A person must not be appointed a director of an open-ended fund company unless at the time of appointment the person has attained the age of 18 years.

(2) An appointment made in contravention of subsection (1) is void.

(3) However, this section does not affect any liability of a person below the age of 18 years under this Ordinance for—

(a) purporting to act as a director of an open-ended fund company; or

(b) acting as a shadow director of an open-ended fund company.

112X. Provisions as to undischarged bankrupt acting as director

(1) A person who is an undischarged bankrupt must not, except with the leave of the Court of First Instance by which the person was adjudged bankrupt—

(a) act as a director of an open-ended fund company; or

(b) directly or indirectly, be concerned, or take part, in the management of an open-ended fund company.

(2) A person who contravenes subsection (1) commits an offence and is liable—

(a) on conviction on indictment to a fine of $700,000 and to imprisonment for 2 years; or

(b) on summary conviction to a fine of $150,000 and to imprisonment for 1 year.

(3) The Court of First Instance must not give leave for the purposes of this section unless a notice of the intention to apply for it has been served on the Official Receiver.

(4) If the Official Receiver is of opinion that it is contrary to the public interest that an application for leave should be granted, the Official Receiver must attend the hearing of, and oppose the granting of, the application.

112Y. Validity of acts of director

(1) The acts of a person acting as a director of an open-ended fund company are valid even though it is afterwards discovered—

(a) that there was a defect in the appointment of the person as a director;

(b) that the person was not qualified to hold office as a director or was disqualified from holding office as a director;

(c) that the person had ceased to hold office as a director; or

(d) that the person was not entitled to vote on the matter in question.

(2) Subsection (1) applies even if the appointment of the person as a director is void under section 112V or 112W.

112Z. Investment manager

(1) An open-ended fund company must have an investment manager who is responsible for managing the scheme property of the company.

(2) An investment manager of an open-ended fund company must be an intermediary licensed or registered for Type 9 regulated activity.

112ZA. Custodian

(1) An open-ended fund company must have a custodian.

(2) All the scheme property of an open-ended fund company must be entrusted to a custodian of the company for safe keeping.

(3) Despite subsection (2), any scheme property of a class or description specified by the Commission for the purposes of this subsection is not required to be entrusted to a custodian.

(4) A custodian of an open-ended fund company must take reasonable care, skill and diligence to ensure the safe keeping of the scheme property of the company that is entrusted to the custodian under subsection (2).

(5) This section does not prohibit either of the following persons from entrusting, by an agreement in writing, to another person for safe keeping any or all of the scheme property of an open-ended fund company that is entrusted to the first-mentioned person—

(a) a custodian of the company;

(b) a person to whom any scheme property of the company is entrusted for safe keeping under an agreement in writing, other than the custodian of the company.

112ZB. Auditor

An open-ended fund company must appoint an auditor for each

financial year of the company.

112ZC. Provision protecting specified officer from liability void

(1) This section applies to a provision contained in—

(a) the instrument of incorporation of an open-ended fund company; or

(b) a contract, or any other instrument, made or executed by an open-ended fund company.

(2) If a provision purports to exempt a specified officer of the company from any liability that would otherwise attach to the officer in connection with the officer's misconduct, the provision is void.

(3) If, by a provision, the company directly or indirectly provides an indemnity for a specified officer of the company against any liability attaching to the officer in connection with the officer's misconduct, the provision is void.

112ZD. Court of First Instance may grant specified officer relief in proceedings for misconduct

(1) This section applies if, in any proceedings for any misconduct against a specified officer of an open-ended fund company, it appears to the Court of First Instance that the officer—

(a) is or may be liable for the misconduct;

(b) has acted honestly and reasonably; and

(c) ought fairly to be excused for the misconduct, having regard to all the circumstances of the case (including those connected with the officer's appointment).

(2) The Court of First Instance may relieve the specified officer, either wholly or partly, from the liability on any terms that the Court thinks fit.

(3) If the case is tried by a judge with a jury, the judge may—

(a) withdraw the case in whole or in part from the jury; and

(b) direct judgment to be entered for the specified officer on any terms as to costs or otherwise that the judge thinks fit.

(4) To avoid doubt, this section does not apply in relation to criminal proceedings.

112ZE. Court of First Instance may grant specified officer relief for misconduct on specified officer's application

(1) A specified officer of an open-ended fund company may apply to the Court of First Instance for relief if the officer has reason to apprehend that a claim will or might be made against the officer for any misconduct.

(2) On an application by a specified officer of an open-ended fund company, the Court of First Instance may relieve the officer, either wholly or partly, from the liability on any terms that the Court thinks fit if it appears to the Court that the officer—

(a) is or may be liable for the misconduct;

(b) has acted honestly and reasonably; and

(c) ought fairly to be excused for the misconduct, having regard to all the circumstances of the case (including those connected with the officer's appointment).

Division 8—Supervision by Commission

112ZF. Commission's power to give directions

(1) The Commission may, by notice in writing, give any of the directions specified in subsection (2) if it appears to the Commission that—

(a) with respect to an open-ended fund company, any of the requirements for registration specified in section 112E is no longer met;

(b) an open-ended fund company or a director, an investment manager, a custodian or a sub-custodian of an open-ended fund company has contravened—

(i) any of the relevant provisions;

(ii) any notice or requirement given or made by the Commission under or pursuant to this Ordinance; or

(iii) any of the conditions imposed in respect of the registration of the company;

(c) an open-ended fund company or a director, an investment manager, a custodian or a sub-custodian of an open-ended fund company has, in purported compliance with—

(i) any of the relevant provisions;

(ii) any notice or requirement given or made by the Commission under or pursuant to this Ordinance; or

(iii) any of the conditions imposed in respect of the registration of the company,

knowingly or recklessly provided to the Commission any information that is false or misleading in a material particular;

(d) an investment manager of an open-ended fund company has contravened any of the terms and conditions of its licence or registration under this Ordinance;

(e) an investment manager of an open-ended fund company has, in purported compliance with any of the terms and conditions of its licence or registration under this

Ordinance, knowingly or recklessly provided to the Commission any information that is false or misleading in a material particular; or

(f) it is desirable to do so in order to protect the interest of the investing public.

(2) The directions are—

(a) a direction to the company or its investment manager that the company is to cease to issue or redeem, or cease to issue and redeem, shares or any class of shares in the company; and

(b) a direction to a director of the company that the director is to cease to transfer shares or any class of shares in the company to or from, or to and from, the director's own holding of shares.

(3) The Commission may, by notice in writing served on the person to whom a direction is given under this section, amend or revoke the direction.

(4) A direction given under subsection (1), or an amendment or revocation of such a direction under subsection (3), takes effect—

(a) at the time of the service of the notice in respect of the direction, amendment or revocation; or

(b) if a later time is specified in the notice, at that time.

(5) Subject to subsection (6), if the registration of an open-ended fund company is cancelled under section 112ZH or 112ZI while a direction given under this section in relation to the company is in force—

(a) the direction is not to be affected in any respect by the cancellation; and

(b) this section continues to apply to the company as if its registration had not been cancelled.

(6) If an order for the winding up of an open-ended fund company is made by the court under section 212 or the OFC rules, a direction given under this section in relation to the company ceases to have effect on the making of the order.

112ZG. Application to Court of First Instance in respect of failure to comply with direction

(1) If a person fails to comply with a direction given under section 112ZF, the Commission may apply to the Court of First Instance in respect of the failure and the Court may—

(a) if satisfied that there is no reasonable excuse for the person not to comply with the direction, order the person to comply with the direction within the period specified by the Court; and

(b) if satisfied that the failure was without reasonable excuse, punish the person, and any other person knowingly involved in the failure, in the same manner as if the person and, if applicable, that other person had been guilty of contempt of court.

(2) If there is a reasonable likelihood that a person will fail to comply with a direction given under section 112ZF, the Commission may apply to the Court of First Instance for an order that—

(a) the person; and

(b) any other person whom the Court is satisfied is able to procure the person to comply with the direction,

take any action or refrain from taking any action that the Court directs.

(3) An application under this section must be made by originating summons in Form No. 10 in Appendix A to the Rules of the High Court (Cap. 4 sub. leg. A).

112ZH. Commission's power to cancel registration on open-ended fund company's application

(1) Subject to subsection (2), the Commission must cancel the registration under section 112D of an open-ended fund company on an application made by the company in accordance with the OFC rules.

(2) The Commission may refuse to cancel the registration of an open-ended fund company if it considers that—

(a) it is in the public interest that any matter concerning the company should be investigated before its registration is so cancelled; or

(b) the cancellation would not be in the interest of the investing public.

(3) On cancelling the registration of an open-ended fund company, the Commission may impose any condition that it considers appropriate.

(4) The Commission may, by notice in writing served on an open-ended fund company the registration of which is cancelled, amend or revoke any of the conditions imposed, or impose new conditions, in respect of the cancellation.

(5) The Commission must not exercise a power under subsection (2), (3) or (4) in relation to an open-ended fund company without first giving the company a reasonable opportunity to be heard.

(6) If the Commission cancels the registration of an open-ended fund company, it must notify the company in writing of the cancellation.

(7) If the Commission exercises a power under subsection (2), (3) or (4) in relation to an open-ended fund company, it must

notify the company in writing of the exercise and the reasons for it.

(8) If the Commission cancels the registration of an open-ended fund company, it—

(a) must, as soon as reasonably practicable after cancelling the registration, notify the Registrar of Companies in writing of the cancellation; and

(b) may publish notice of the cancellation and the reason for the cancellation in any manner that it considers appropriate.

112ZI. Commission's power to cancel registration otherwise than on open-ended fund company's application

(1) The Commission may cancel the registration under section 112D of an open-ended fund company if—

(a) it appears to the Commission that, with respect to the company, any of the requirements for registration specified in section 112E is no longer met;

(b) it appears to the Commission that the company or a director, an investment manager, a custodian or a sub-custodian of the company has contravened—

(i) any of the relevant provisions;

(ii) any notice or requirement given or made by the Commission under or pursuant to this Ordinance; or

(iii) any of the conditions imposed in respect of the registration of the company;

(c) it appears to the Commission that the company or a director, an investment manager, a custodian or a sub-custodian of the company has, in purported compliance with—

(i) any of the relevant provisions;

(ii) any notice or requirement given or made by the Commission under or pursuant to this Ordinance; or

(iii) any of the conditions imposed in respect of the registration of the company,

knowingly or recklessly provided to the Commission any information that is false or misleading in a material particular;

(d) the Commission is not satisfied that the continued registration of the company is in the interest of the investing public; or

(e) an order for the winding up of the company has been made by the court under the OFC rules.

(2) On cancelling the registration of an open-ended fund company, the Commission may impose any condition that it considers appropriate.

(3) The Commission may, by notice in writing served on an open-ended fund company the registration of which is cancelled, amend or revoke any of the conditions imposed, or impose new conditions, in respect of the cancellation.

(4) The Commission must not exercise a power under subsection (1), (2) or (3) in relation to an open-ended fund company without first giving the company a reasonable opportunity to be heard.

(5) If the Commission exercises a power under subsection (1), (2) or (3) in relation to an open-ended fund company, it must notify the company in writing of the exercise and the reasons for it.

(6) If the Commission cancels the registration of an open-ended fund company, it—

(a) must, as soon as reasonably practicable after cancelling the registration, notify the Registrar of Companies in writing of the cancellation; and

(b) may publish notice of the cancellation and the reasons for the cancellation in any manner that it considers appropriate.

112ZJ. Permission to carry on essential business operations on cancellation of registration

(1) The Commission may, by notice in writing served on an open-ended fund company the registration of which has been cancelled under section 112ZH or 112ZI, permit the company to carry on essential business operations.

(2) The registration of an open-ended fund company to which permission is given is, while it carries on essential business operations in accordance with the permission, deemed not to be cancelled for the purposes of this Ordinance.

(3) On giving permission to an open-ended fund company, the Commission may impose any condition that it considers appropriate.

(4) A condition imposed under subsection (3) must be specified in the notice in respect of the permission.

(5) A permission given or a condition imposed in respect of it under subsection (3) takes effect—

(a) at the time of the service of the notice in respect of the permission; or

(b) if a later time is specified in the notice, at that time.

(6) The Commission may, by notice in writing served on an open-ended fund company to which permission is given, amend or revoke any of the conditions imposed, or impose new conditions, in respect of the permission.

(7) An amendment or revocation of a condition, or a new condition imposed, under subsection (6) takes effect—

(a) at the time of the service of the notice in respect of the amendment or revocation of the condition or the imposition of the new condition; or

(b) if a later time is specified in the notice, at that time.

(8) In this section—

essential business operations (必要的業務運作), in relation to an open-ended fund company, means business operations that are essential for closing down its business.

Division 8A—Re-domiciliation

(Division 8A added 33 of 2021 s. 7)

112ZJA. Interpretation of Division 8A of Part IVA

(1) In this Division—

application date (申請日期), in relation to a non-Hong Kong fund corporation, means the date on which an application under section 112ZJB(1) is made by the corporation;

deregister (撤銷註冊), in relation to a non-Hong Kong fund corporation, means to cease to have a registration under the law of its place of incorporation relating to the incorporation or domicile of the corporation in that place;

intended OFC (籌劃中公司), in relation to a non-Hong Kong fund corporation, means the re-domiciled OFC that the corporation is intended to become on the re-domiciliation date;

non-Hong Kong fund corporation (非香港基金法團) means a collective investment scheme constituted as a corporation that is incorporated outside Hong Kong as at the application date;

place of incorporation (成立地), in relation to a non-Hong Kong fund corporation, means—

(a) the jurisdiction outside Hong Kong in which the corporation is incorporated and under the law of which the corporation is registered as at the application date; or

(b) if the corporation has, after its incorporation, transferred its domicile to a jurisdiction outside Hong Kong, and is registered under the law of that jurisdiction as at the application date—that jurisdiction;

re-domiciliation date (遷冊日期) means the date on which the certificate of re-domiciliation is issued.

(2) In this Division, a reference to registration under the law of a jurisdiction outside Hong Kong includes any permission or authorization (however described) of a similar nature under the law of that jurisdiction.

112ZJB. Registration with Commission before re-domiciliation

(1) On an application by a non-Hong Kong fund corporation, the Commission may register the corporation for the purposes of this Part.

(2) An application for the purposes of subsection (1)—

(a) must be made in the manner specified by the Commission; and

(b) must be accompanied by any document or information that the Commission requires.

(3) The Commission must refuse to register a non-Hong Kong fund corporation under subsection (1) unless it is satisfied that the requirements for registration specified in section 112E will, on the re-domiciliation date, be met in relation to the intended OFC.

(4) Without limiting any other ground on which the Commission may refuse to register a non-Hong Kong fund corporation

under subsection (1), the Commission may refuse to so register the corporation if it is not satisfied that the registration is in the interest of the investing public.

(5) On registering a non-Hong Kong fund corporation under subsection (1), the Commission may impose any condition that it considers appropriate.

(6) The Commission must, as soon as reasonably practicable after registering a non-Hong Kong fund corporation under subsection (1), notify the Registrar of Companies in writing of the registration.

(7) The Commission must, as soon as reasonably practicable after refusing to register a non-Hong Kong fund corporation under subsection (1), notify the corporation in writing of the refusal and the reasons for it.

(8) A registration under subsection (1) takes effect on the re-domiciliation date.

(9) Once a registration under subsection (1) has taken effect—

(a) the registration is taken to be a registration under section 112D(1) that has taken effect; and

(b) a condition imposed under subsection (5) is taken to be a condition imposed under section 112D(6).

112ZJC. Issue of certificate of re-domiciliation by Registrar of Companies

(1) A non-Hong Kong fund corporation may apply for a certificate of re-domiciliation by delivering to the Registrar of Companies for registration—

(a) a re-domiciliation form prescribed by the OFC rules; and

(b) a copy of the instrument of incorporation of the intended OFC that has been signed in accordance with the OFC rules.

(2) The documents specified in subsection (1)—

(a) must be delivered in the manner prescribed by the OFC rules; and

(b) must be accompanied by any document or information prescribed by the OFC rules.

(3) Subject to subsection (4), if the Registrar of Companies is satisfied that the requirements for issuing a certificate of re-domiciliation prescribed by the OFC rules are met in relation to the non-Hong Kong fund corporation, the Registrar—

(a) must register the documents delivered under subsection (1); and

(b) must issue a certificate of re-domiciliation to the corporation certifying that it has become an open-ended fund company.

(4) The Registrar of Companies must not take any action under subsection (3) unless the Registrar has been notified of the registration of the non-Hong Kong fund corporation under section 112ZJB(6).

112ZJD. Effect of re-domiciliation

(1) On the re-domiciliation date of a non-Hong Kong fund corporation—

(a) the corporation becomes, and continues as a body corporate as, a re-domiciled OFC; and

(b) this Ordinance applies accordingly to the re-domiciled OFC.

(2) Subsection (1) does not operate to—

(a) create a new legal entity;

(b) prejudice or affect the identity or continuity of the non-Hong Kong fund corporation as a corporation registered in its place of incorporation;

(c) affect any contract made, resolution passed or any other thing done by or in relation to the corporation;

(d) affect any function, property, right, privilege, obligation or liability acquired, accrued or incurred by or to the corporation; or

(e) render defective any legal proceedings commenced or continued by or against the corporation.

(3) To avoid doubt, on and after the re-domiciliation date, any legal proceedings that could have been commenced or continued by or against the non-Hong Kong fund corporation may be commenced or continued by or against the re-domiciled OFC.

(4) To avoid doubt—

(a) with effect from the re-domiciliation date, all property of the non-Hong Kong fund corporation is the property of the re-domiciled OFC; and

(b) for tax purposes, the operation of this section does not amount to—

(i) a transfer of assets of the corporation; or

(ii) a change in the beneficial ownership of those assets.

(5) If the non-Hong Kong fund corporation is registered as a registered non-Hong Kong company under Part 16 of the Companies Ordinance (Cap. 622) immediately before its re-domiciliation date—

(a) the registration ceases to have effect on the re-domiciliation date; and

(b) the re-domiciled OFC is not to be regarded as a non-Hong Kong company (as defined by section 2(1) of that Ordinance).

112ZJE. Deregistration in place of incorporation

(1) As soon as practicable after the re-domiciliation date of a non-Hong Kong fund corporation, the corporation, which has become a re-domiciled OFC, must take all reasonable steps to procure its deregistration in its place of incorporation.

(2) Within 60 days after the re-domiciliation date, the non-Hong Kong fund corporation—

(a) must be deregistered in its place of incorporation; and

(b) must submit to the Commission a document evidencing the deregistration to the satisfaction of the Commission.

(3) On an application by the non-Hong Kong fund corporation, the Commission may extend the 60-day period mentioned in subsection (2) subject to any condition that the Commission considers appropriate.

Division 9—Rules made by Commission

112ZK. Commission's power to make rules

(1) The Commission may make rules to provide for—

(a) the carrying on of collective investments by means of open-ended fund companies; and

(b) the regulation of open-ended fund companies.

(2) Rules made under subsection (1) may provide for—

(a) the requirements for incorporation of proposed companies;

(ab) the requirements for issuing a certificate of re-domiciliation; *(Added 33 of 2021 s. 8)*

(b) the requirements for registration of proposed companies or non-Hong Kong fund corporations with the Commission; *(Amended 33 of 2021 s. 8)*

(c) the naming of open-ended fund companies;

(d) the change of names of open-ended fund companies;

(e) the capacity, objects, powers, privileges, rights and liabilities of open-ended fund companies;

(f) the instruments of incorporation of open-ended fund companies, including the form of such instruments;

(g) the requirements relating to the execution of documents by open-ended fund companies;

(h) the types of investments that open-ended fund companies may make;

(i) the management and operation of open-ended fund companies, including their administration and procedure;

(j) the management of the scheme property of open-ended fund companies;

(k) the accounting and reporting requirements with which open-ended fund companies must comply;

(l) the making or issue of statements, certificates or other documents by open-ended fund companies and their officers;

(m) the keeping of accounts and records by open-ended fund companies, and the inspection of such accounts and records;

(n) the keeping of a register of shareholders and other registers by open-ended fund companies, and the inspection and rectification of such registers;

(o) matters relating to the share capital of open-ended fund companies, including valuation, purchase, redemption and transfer of shares, redenomination of share capital and variation of rights attached to shares;

(p) the requirements relating to segregating the liabilities of sub-funds of an open-ended fund company; and

(q) the cross investments between sub-funds of an open-ended fund company.

(3) Rules made under subsection (1) may also provide for—

(a) the rights, powers and liabilities of a shareholder of an open-ended fund company;

(b) the rights, powers, duties and liabilities of a director, an investment manager, a custodian, a sub-custodian or an auditor of an open-ended fund company;

(c) the eligibility of a person to be a director, an investment manager, a custodian, a sub-custodian or an auditor of an open-ended fund company;

(d) the appointment and removal of a director, an investment manager, a custodian, a sub-custodian or an auditor of an open-ended fund company, including the procedures to be followed when they cease to act;

(e) the notification of the appointment and removal of a director, an investment manager, a custodian, a sub-custodian or an auditor of an open-ended fund company; and

(f) the notification of changes in the particulars of a director, an investment manager, a custodian, a sub-custodian or an auditor of an open-ended fund company.

(4) Rules made under subsection (1) may also provide for—

(a) the procedures to be followed in relation to the giving, amendment and revocation of directions under section 112ZF;

(b) the procedures to be followed in relation to the cancellation of the registration of open-ended fund companies under section 112ZH or 112ZI;

(c) the merger of 2 or more open-ended fund companies and the reorganization of an open-ended fund company into 2 or more open-ended fund companies;

(d) matters relating to the arrangements and compromises entered into, or proposed to be entered into, by open-ended fund companies, including the Commission's right to be heard in the related court process and the registration of arrangements and compromises with the Registrar of Companies;

(e) the winding up and dissolution of open-ended fund companies, including the grounds and procedures for such winding up and dissolution;

(f) the winding up and dissolution of sub-funds of open-ended fund companies, including the grounds and procedures for such winding up and dissolution;

(g) the power of the Court of First Instance to make an order to disqualify a person from acting in any capacity in relation to open-ended fund companies or the scheme property of open-ended fund companies, or from acting in any capacity in the promotion or incorporation of proposed companies or in the process for a non-Hong Kong fund corporation to become a re-domiciled OFC; *(Amended 33 of 2021 s. 8)*

(h) the liability of a person acting in contravention of section 112X or of an order made by the Court of First Instance under rules made under paragraph (g);

(i) a court's functions in relation to any matter concerning open-ended fund companies and sub-funds of open-ended fund companies; and

(j) any other thing that, under this Part, is required or permitted to be prescribed or provided by rules.

(5) Rules made under this section may provide that a person is not excused from complying with a requirement to produce a document or information imposed on the person under those rules only on the ground that to do so might tend to incriminate the person.

(6) Subsections (2), (3), (4) and (5) do not have the effect of limiting subsection (1).

112ZL. Rules made with consent of Registrar of Companies

(1) The Commission may, with the consent of the Registrar of Companies, make rules to provide for the functions of the Registrar in relation to open-ended fund companies, including—

(a) specifying the form of any document required or authorized to be delivered to the Registrar, other than a document the form of which is or may be prescribed by this Ordinance;

(b) specifying requirements in relation to documents and information required or authorized to be delivered to the Registrar;

(c) keeping records of documents and information relating to open-ended fund companies;

(d) keeping a list of the names of open-ended fund companies;

(e) establishing and maintaining a register of open-ended fund companies;

(f) making available the OFC register for public inspection;

(g) issuing copies or certified true copies of documents and information on the OFC register;

(h) requiring an open-ended fund company to resolve any inconsistency between information contained in a document registered by the Registrar in respect of the company and any other information relating to the company on the OFC register;

(i) ensuring that the OFC register is accurate and up-to-date;

(j) annotating the OFC register;

(k) issuing certificates of change of name; and

(l) destroying or disposing of documents and information delivered to the Registrar for registration.

(2) The Commission may also, with the consent of the Registrar of Companies, make rules to provide for—

(a) the registration by the Registrar of documents delivered by or on behalf of proposed companies, non-Hong Kong fund corporations and open-ended fund companies; *(Amended 33 of 2021 s. 9)*

(b) appeals to the Court of First Instance against a decision of the Registrar to refuse registration of a document;

(c) the information to be contained in the OFC register;

(d) the withholding of information on the OFC register from public inspection, and the use and disclosure of the withheld information;

(e) applications to the Court of First Instance for an order to rectify information on, or to remove information from, the OFC register and the Court's powers in relation to such applications;

(f) the Registrar taking part in the proceedings for an order mentioned in paragraph (e) before the Court of First Instance;

(g) the forms of the certificates issued by the Registrar;

(h) the admissibility in evidence in judicial or other proceedings of documents and information certified to be true by the Registrar;

(i) the delivery of documents and information required or authorized to be delivered to the Registrar by electronic means;

(j) the effect of a discrepancy between a document delivered to the Registrar that is in a language other than English and Chinese and the certified translation of the document;

(k) inquiry by the Registrar into acts that would constitute offences relating to the giving of any misleading, false or deceptive information or statement to the Registrar and the delegation of the Registrar's powers to inquire into such acts;

(l) calculation of the daily fine imposed under rules made under this section or section 112ZK or 112ZM that make it an offence for failing to comply with a requirement to deliver a document or information to the Registrar under those rules and that impose a fine for each day during which the offence continues;

(m) the issue of guidelines by the Registrar and the effect of such guidelines; and

(n) the protection and immunity of the Registrar, other public officers and other persons.

(3) Rules made under this section may provide that a person is not excused from complying with a requirement to produce

a document or information imposed on the person under those rules only on the ground that to do so might tend to incriminate the person.

(4) In this section—

OFC register (《開放式基金型公司登記冊》) means the register of open-ended fund companies maintained by the Registrar of Companies under rules made under this section.

112ZM. Rules made with consent of Official Receiver

The Commission may, with the consent of the Official Receiver, make rules to provide for the functions of the Official Receiver in relation to—

(a) the winding up and dissolution of open-ended fund companies; and

(b) the winding up and dissolution of sub-funds of open-ended fund companies.

112ZN. OFC rules may prescribe offences

(1) The OFC rules may—

(a) make it an offence for a person to do, or omit to do, any specified act; and

(b) provide that the offence is punishable by a fine, imprisonment or both.

(2) The OFC rules may provide for defences to any offence prescribed by those rules.

(3) For an offence punishable on conviction on indictment, the maximum fine that may be prescribed is $1,000,000 and the maximum imprisonment that may be prescribed is 7 years. In addition, in the case of a continuing offence, a further fine not exceeding level 6 for each day during which the offence continues may be prescribed.

(4) For an offence punishable on summary conviction, the maximum fine that may be prescribed is $500,000 and the maximum imprisonment that may be prescribed is 2 years. In addition, in the case of a continuing offence, a further fine not exceeding level 3 for each day during which the offence continues may be prescribed.

112ZO. Modification or waiver of requirements of OFC rules by notice

(1) The Commission may, on an application by a person specified in subsection (2), grant a modification or waiver in relation to the person in respect of any of the requirements of the OFC rules.

(2) The person is—

(a) an open-ended fund company;

(b) a director of an open-ended fund company;

(c) an investment manager of an open-ended fund company;

(d) a custodian of an open-ended fund company;

(e) a sub-custodian of an open-ended fund company; or

(f) an auditor of an open-ended fund company.

(3) An application for the purposes of subsection (1)—

(a) must be made in the manner prescribed by the OFC rules; and

(b) must be accompanied by the fee prescribed by regulations made under section 112ZQ for the purposes of this section.

(4) The Commission may only grant a modification or waiver if it is satisfied that the modification or waiver will not prejudice the interest of the investing public.

(5) The grant of a modification or waiver in relation to a person is to be effected by a notice in writing served on the person

specifying the period (if any) for which the modification or waiver is in force.

(6) On granting a modification or waiver, the Commission may impose any condition that it considers appropriate.

(7) The Commission may, by notice in writing served on a person in relation to whom a modification or waiver is granted, amend or revoke the modification or waiver.

(8) The Commission may, by notice in writing served on a person in relation to whom a modification or waiver is granted, amend or revoke any of the conditions imposed, or impose new conditions, in respect of the modification or waiver.

(9) A person who contravenes a condition imposed under subsection (6) or (8), or as amended under subsection (8), commits an offence and is liable on conviction to a fine at level 6.

112ZP. Modification or waiver of requirements of OFC rules by rules

(1) The Commission may by rules grant a modification or waiver, in relation to a class of open-ended fund companies, or a class of directors, investment managers, custodians, sub-custodians or auditors of open-ended fund companies, in respect of any of the requirements of the OFC rules.

(2) The Commission may only grant a modification or waiver if it is satisfied that the modification or waiver will not prejudice the interest of the investing public.

(3) The Commission may specify in the rules the conditions subject to which a modification or waiver is granted.

(4) The rules may—

(a) make it an offence for a person to contravene any of the conditions specified in respect of a modification or waiver; and

(b) provide that the offence is punishable by a fine not exceeding level 6.

Division 10—Miscellaneous

112ZQ. Financial Secretary may make regulations relating to fees

(1) Despite section 395, the Financial Secretary may make regulations to provide for—

(a) the charging or collecting of fees by the Commission—

(i) in respect of any things done, or services provided, by the Commission in performing the Commission's functions under this Part or the OFC rules; or

(ii) in respect of any things done, or services provided, by the Commission in connection with any other matters specified in the OFC rules;

(b) the charging or collecting of fees by the Registrar of Companies—

(i) in respect of any things done, or services provided, by the Registrar in performing the Registrar's functions under this Part or the OFC rules; or

(ii) in respect of any things done, or services provided, by the Registrar in connection with any other matters specified in the OFC rules; and

(c) the charging or collecting of fees by the Official Receiver—

(i) in respect of any things done, or services provided, by the Official Receiver in performing the Official Receiver's functions under this Part or the OFC rules; or

(ii) in respect of any things done, or services provided, by the Official Receiver in connection with any other matters specified in the OFC rules.

(2) The regulations may—

(a) provide for the amount of the fees to be fixed by or determined under the regulations;

(b) provide for different fees to be payable in respect of the same matter in different circumstances;

(c) specify when and how fees are to be paid; and

(d) provide for the waiver of payment of any fee prescribed by the regulations, either generally or in a particular case.

(3) The Registrar of Companies—

(a) may, subject to the approval of the Financial Secretary, determine what fees are chargeable in respect of the things done, or services provided—

(i) for which fees are not provided for by the regulations; or

(ii) in circumstances other than those for which fees are provided by the regulations; and

(b) may charge such fees.

112ZR. Commission may publish codes and guidelines

(1) The Commission may publish, in the Gazette and in any other manner it considers appropriate, any code or guideline to provide guidance in respect of any matter relating to—

(a) the incorporation, registration, management and operation of open-ended fund companies, including their administration and procedure; or

(b) the business of open-ended fund companies.

(2) Without limiting subsection (1), a code or guideline published under that subsection may refer to obligations to observe any other codes or guidelines issued, or requirements imposed, otherwise than by the Commission.

(3) The Commission may amend any code or guideline published under subsection (1).

(4) Any amendments made to a code or guideline published under subsection (1) must be published in the Gazette and in any other manner the Commission considers appropriate.

(5) A code or guideline published under subsection (1)—

(a) may be of general or special application and, in particular, may be made so as to apply, or so as not to apply—

(i) to a specified extent in relation to a specified person or to members of a specified class of persons; or

(ii) in specified circumstances; and

(b) may make different provisions for different circumstances and provide for different cases or classes of cases.

(6) A code or guideline published under subsection (1) and all amendments made to it are not subsidiary legislation.

112ZS. Effect of codes and guidelines

(1) A failure by a person to comply with a provision in a code or guideline does not itself make the person liable to any judicial or other proceedings.

(2) However, a failure on the part of an intermediary acting as an investment manager of an open-ended fund company, or a representative of such an intermediary, to comply with a provision in a code or guideline may be taken into account

in considering, for the purposes of any provision of this Ordinance—

(a) in the case of an intermediary, whether it is a fit and proper person to be or to remain licensed or registered;

(b) in the case of a representative of an intermediary that is a licensed corporation, whether he or she is a fit and proper person to be or to remain licensed as a representative; or

(c) in the case of a representative of an intermediary that is a registered institution, whether he or she is a fit and proper person to be or to remain a person whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as that of a person engaged by a registered institution in respect of a regulated activity.

(3) Despite subsection (1), in any proceedings under this Ordinance before a court—

(a) a code or guideline is admissible in evidence; and

(b) if any provision in a code or guideline appears to the court to be relevant to a question arising in the proceedings, the provision is to be taken into account in determining the question.

(4) In this section—

code or guideline (守則或指引) means a code or guideline published under section 112ZR.

112ZT. Offence of fraudulent trading

(1) If any business of an open-ended fund company is carried on—

(a) with intent to defraud creditors of the company or creditors of any other person; or

(b) for any fraudulent purpose,

every person who is knowingly a party to the carrying on of the business with that intent or for that purpose commits an offence.

(2) A person who commits an offence under subsection (1) is liable—

(a) on conviction on indictment to a fine of $10,000,000 and to imprisonment for 10 years; or

(b) on summary conviction to a fine of $1,000,000 and to imprisonment for 3 years.

(3) This section applies whether or not the open-ended fund company has been, or is in the course of being, wound up.

Part V

Licensing and Registration

(Format changes—E.R. 2 of 2012)

113. Interpretation of Part V

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

executive director (執行董事), in relation to a licensed corporation, means a director of the corporation who—

(a) actively participates in; or

(b) is responsible for directly supervising,

the business of a regulated activity for which the corporation is licensed;

prescribed fee (訂明費用) means a fee prescribed by rules made under section 395;

prescribed manner (訂明方式) means such manner as is prescribed by rules made under section 397;

principal (主事人), in relation to a licensed representative, means the licensed corporation to which the representative is accredited;

regulated function (受規管職能), in relation to a regulated activity carried on as a business by any person, means any function performed for or on behalf of or by arrangement with the person relating to the regulated activity, other than work ordinarily performed by an accountant, clerk or cashier;

specified titles (指明稱銜) means the titles specified in column 3 of Schedule 6.

(2) In this Part, a reference to a licence to carry on a regulated activity shall be construed—

(a) in relation to a licensed corporation, as a licence to carry on a business in the regulated activity; and

(b) in relation to a licensed representative, as a licence to perform for or on behalf of or by arrangement with a licensed corporation to which he is accredited any regulated function in relation to the regulated activity.

(3) Registration for a regulated activity under section 119 shall be construed as registration for carrying on a business in the regulated activity.

114. Restriction on carrying on business in regulated activities, etc.

(1) Subject to subsections (2), (5) and (6), no person shall—

(a) carry on a business in a regulated activity; or

(b) hold himself out as carrying on a business in a regulated activity.

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

(a) a corporation licensed under section 116 or 117 for the regulated activity;

(b) an authorized financial institution registered under section 119 for the regulated activity; or

(c) a person authorized under section 95(2) for the regulated activity.

(3) Without prejudice to subsection (1) but subject to subsection (4), no person shall—

(a) perform any regulated function in relation to a regulated activity carried on as a business; or

(b) hold himself out as performing such function.

(4) Subsection (3) shall not apply to—

(a) a licensed representative who carries on for his principal a regulated activity for which the representative is licensed;

(b) an individual—

(i) who carries on for a registered institution a regulated activity for which the registered institution is registered; and

(ii) whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged by the registered institution in respect of the regulated activity; or

(c) an employee of a person authorized under section 95(2) for the regulated activity who performs any regulated function in relation to the regulated activity for which the person is so authorized.

(5) A person shall not be regarded as contravening subsection (1) in relation to Type 8 regulated activity by reason only of carrying on one or more of the activities specified in Part 3 of Schedule 5.

(6) A person shall not be regarded as contravening subsection (1) in relation to Type 8 regulated activity by reason only of providing financial accommodation if he reasonably believes that the financial accommodation is not to be used to facilitate—

(a) the acquisition of securities listed on a stock market (whether a recognized stock market or any other stock market outside Hong Kong); or

(b) the continued holding of such securities.

(7) For the purposes of subsection (6), where it is proved in any proceedings for a contravention of subsection (1) that

the person had obtained, before providing the financial accommodation to a borrower, a written confirmation from the borrower that the financial accommodation was not to be used to facilitate such acquisition or continued holding as referred to in subsection (6)(a) and (b), that person shall be presumed, unless the contrary is proved, to have reasonably believed that the financial accommodation was not to be so used.

(8) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable—

(a) on conviction on indictment to a fine of $5,000,000 and to imprisonment for 7 years and, in the case of a continuing offence, to a further fine of $100,000 for every day during which the offence continues; or

(b) on summary conviction to a fine of $500,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of $10,000 for every day during which the offence continues.

(9) A person who, without reasonable excuse, contravenes subsection (3) commits an offence and is liable—

(a) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of $20,000 for every day during which the offence continues; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months and, in the case of a continuing offence, to a further fine of $2,000 for every day during which the offence continues.

115. Application of section 114 in relation to conduct or activities outside Hong Kong

(1) If—

(a) a person actively markets, whether by himself or another person on his behalf and whether in Hong Kong or from a place outside Hong Kong, to the public any services that he provides; and

(b) such services, if provided in Hong Kong, would constitute a regulated activity,

then—

(i) the provision of such services so marketed shall be regarded for the purposes of section 114(1)(a) as carrying on a business in that regulated activity;

(ii) the person's marketing of such services as referred to in paragraph (a) shall be regarded for the purposes of section 114(1)(b) as holding himself out as carrying on a business in that regulated activity; and

(iii) to the extent that the provision of such services involves the performance by a person of a function that, if performed in Hong Kong in relation to a regulated activity, would constitute a regulated function, the performance of such function by that person shall be regarded for the purposes of section 114(3)(a) as performance of that regulated function in relation to that regulated activity.

(2) If—

(a) a person actively markets, whether by himself or another person on his behalf and whether in Hong Kong or from a place outside Hong Kong, to the public any function that he performs; and

(b) such function, if performed in Hong Kong in relation to a regulated activity carried on as a business, would constitute a regulated function,

then—

(i) the performance of such function so marketed shall be regarded for the purposes of section 114(3)(a) as performance of that regulated function in relation to that regulated activity; and

(ii) the person's marketing of such function as referred to in paragraph (a) shall be regarded for the purposes of section 114(3)(b) as holding himself out as performing that regulated function in relation to that regulated activity.

116. Corporations to be licensed for carrying on regulated activities

(1) The Commission may, upon application in the prescribed manner and payment of the prescribed fee, grant to the applicant a licence to carry on one or more than one regulated activity. *(Amended 19 of 2015 s. 3)*

(1A) The Commission must, on granting a licence under subsection (1), issue to the applicant a printed licence specifying the regulated activity for which the applicant is licensed. *(Added 19 of 2015 s. 3)*

(2) The Commission shall refuse to grant a licence to carry on a regulated activity under subsection (1) unless—

(a) the applicant is—

(i) a company;

(ii) a registered non-Hong Kong company as defined by section 2(1) of the Companies Ordinance (Cap. 622); or *(Replaced 28 of 2012 ss. 912 & 920)*

(iii) a corporation (other than a company or a non-Hong Kong company)— *(Amended 30 of 2004 s. 3)*

(A) which carries on a business principally outside Hong Kong in an activity which, if

carried on in Hong Kong, would constitute the regulated activity;

(B) to which section 114(1) would not apply but for the provisions of section 115(1)(i) and (ii); and

(C) to which Part 16 of the Companies Ordinance (Cap. 622) would apply if it established a place of business in Hong Kong; *(Amended 28 of 2012 ss. 912 & 920)*

(b) applications have been lodged under section 126 in respect of such persons as referred to in section 125(1)(a) and (b) for approval of them as the responsible officers of the applicant in relation to the regulated activity; and

(c) an application has been lodged under section 130(1) for approval of premises to be used by the applicant for keeping records or documents required under this Ordinance.

(3) The Commission shall refuse to grant a licence to carry on a regulated activity under subsection (1) unless the applicant satisfies the Commission that—

(a) it is a fit and proper person to be licensed for the regulated activity;

(b) it will be able, if licensed, to comply with the financial resources rules; and

(c) it—

(i) has lodged and maintains with the Commission such security in accordance with rules made under subsection (4); or

(ii) is insured in accordance with rules made under subsection (5).

(4) The Commission may make rules for the purposes of subsection (3)(c)(i) that provide for—

(a) any security to be lodged and maintained by a licensed corporation with the Commission;

(b) the manner in which the security is lodged;

(c) the terms on which the security is maintained;

(d) the Commission's power to apply a security lodged and maintained with the Commission in such circumstances, for such purposes and in such manner as may be prescribed in the rules;

(e) any other matter relating to the security.

(5) The Commission may make rules for the purposes of subsection (3)(c)(ii) that provide for—

(a) insurance coverage for specified amounts to be taken out and maintained by a licensed corporation in relation to specified risks;

(b) the terms on which the insurance is to be taken out and maintained;

(c) any other matter relating to the insurance.

(6) A licence granted under subsection (1) shall be subject to such reasonable conditions as the Commission may impose, and the Commission may at any time, by notice in writing served on the licensed corporation concerned, amend or revoke any such condition or impose new conditions as may be reasonable in the circumstances.

(7) Where the Commission by notice in writing amends or revokes any condition or imposes any new condition under subsection (6), the amendment, revocation or imposition takes effect at the time of the service of the notice or at the time specified in the notice, whichever is the later.

(8) A licensed corporation shall not, when carrying on a regulated activity for which it is licensed under subsection (1), use a name other than the name specified in the printed licence. *(Amended 19 of 2015 s. 3)*

(9) Without prejudice to the Commission's powers under Divisions 2 and 3 of Part IX, a licence granted to a corporation to carry on Type 7 regulated activity shall be deemed to be revoked in respect of that regulated activity upon the corporation's being granted an authorization under section 95(2) to provide automated trading services. *(Amended 6 of 2014 s. 11)*

117. Grant of temporary licences to corporations for carrying on regulated activities

(1) The Commission may, upon application by a corporation in the prescribed manner and payment of the prescribed fee, grant to the applicant a licence to carry on, for a period not exceeding 3 months, one or more than one regulated activity (other than Type 3, Type 7, Type 8 and Type 9 regulated activities). *(Amended 19 of 2015 s. 4)*

(1A) The Commission must, on granting a licence under subsection (1), issue to the applicant a printed licence specifying the regulated activity for which the applicant is licensed. *(Added 19 of 2015 s. 4)*

(2) The Commission shall refuse to grant a licence to carry on a regulated activity under subsection (1) unless the applicant satisfies the Commission that—

(a) it carries on a business principally outside Hong Kong in an activity which, if carried on in Hong Kong, would constitute the regulated activity;

(b) it seeks to be licensed for the regulated activity solely for carrying on in Hong Kong such business in the activity;

(c) it carries on such business in the activity in the place referred to in paragraph (a) under an authorization (however described) by an authority or regulatory organization in that place which—

(i) in the Commission's opinion, performs a function similar to the functions of the Commission under this Part;

(ii) confirms to the satisfaction of the Commission that the applicant has been so authorized; and

(iii) the Commission is satisfied is empowered under the law of that place to investigate, and, where applicable, to take disciplinary action for, the conduct of the applicant in Hong Kong;

(d) the granting of the licence would not result in its being granted licences under subsection (1) for respective licence periods that in total exceed 6 months in any period of 24 months;

(e) it is a fit and proper person to be so licensed for the regulated activity;

(f) it has nominated at least one individual for approval by the Commission for the purposes of subsection (5)(a); and

(g) an application has been lodged under section 130(1) for approval of premises to be used by the applicant for keeping records or documents required under this Ordinance.

(3) A licence granted under subsection (1) shall be subject to such reasonable conditions as the Commission may impose,

and the Commission may at any time, by notice in writing served on the licensed corporation concerned, amend or revoke any such condition or impose new conditions as may be reasonable in the circumstances.

(4) Where the Commission by notice in writing amends or revokes any condition or imposes any new condition under subsection (3), the amendment, revocation or imposition takes effect at the time of the service of the notice or at the time specified in the notice, whichever is the later.

(5) Without limiting the generality of subsection (3), it shall be a condition of a licence granted under subsection (1) for carrying on a regulated activity—

(a) that, in relation to the regulated activity, there is at least one individual who is—

(i) nominated by the licensed corporation and approved by the Commission for the purposes of this paragraph; and

(ii) available at all times to supervise the business of the regulated activity for which the corporation is licensed; and

(b) that the licensed corporation shall not hold any client assets in carrying on the regulated activity.

(6) A licensed corporation shall not, when carrying on a regulated activity for which it is licensed under subsection (1), use a name other than the name specified in the printed licence. *(Amended 19 of 2015 s. 4)*

118. Licensing conditions in certain cases

(1) Without limiting the generality of section 116(6), it shall be a condition of a licence granted under section 116(1) for carrying on—

(a) a regulated activity—

(i) that the licensed corporation—

(A) shall lodge (whether or not in addition to any security that it may have lodged) and maintain with the Commission such security in respect of that regulated activity as may be required by rules made under section 116(4); or

(B) is insured, in lieu of lodging (where applicable) and maintaining such security, in accordance with rules made under section 116(5); and

(ii) that, in relation to the regulated activity, there is at least one responsible officer of the licensed corporation who is available at all times to supervise the business of the regulated activity for which the corporation is licensed;

(b) Type 3 regulated activity, that in relation to any dispute between the licensed corporation and a client regarding or touching upon any matter concerning the carrying on of that regulated activity, the licensed corporation is obliged, if the client so requires, to have the dispute settled by arbitration in accordance with rules made under subsection (2);

(c) Type 7 regulated activity, that if the Commission in its absolute discretion requires by notice in writing, the licensed corporation shall apply, within such reasonable period as may be specified in the notice, for an authorization under section 95(2) for that regulated activity, and the regulated activity shall be operated in such manner as may be specified in the notice pending the revocation of the licence under section 195(2);

(d) Type 8 regulated activity, that—

(i) the licensed corporation shall carry on no business other than securities margin financing, except business that is necessarily incidental to the carrying on of such business; and

(ii) where the licensed corporation carries on a business in one or more of the activities specified in Part 3 of Schedule 5, it shall comply with the requirements of such rules made under Part VI as apply to it in relation to such business.

(2) The Commission may make rules for the purposes of subsection (1)(b) that provide for—

(a) the establishment and functions of an arbitration panel and relevant matters;

(b) the appointment by the Financial Secretary of members of the arbitration panel, including a chairman and one or more than one deputy chairman;

(c) the appointment from the arbitration panel of a tribunal to hear a dispute between a licensed corporation and its client and the constitution and composition of the tribunal;

(d) the liability or entitlement to costs of a party to a dispute and the recovery of costs;

(e) the practice and procedure in the hearing of a dispute;

(f) the Commission to use the findings of a tribunal for performing its functions under any of the relevant provisions;

(g) the exercise of any discretion by a person under the rules.

119. Registered institutions

(1) The Commission may, upon application by an authorized financial institution in the prescribed manner and payment of the prescribed fee, register the applicant for one or more than one regulated activity (other than Type 3 and Type 8 regulated activities) and shall, upon such registration, grant to the applicant a certificate of registration specifying the regulated activity for which it is registered.

(2) The Commission shall refer to the Monetary Authority any application made to it under subsection (1).

(3) Upon receiving an application for registration for a regulated activity referred to him under subsection (2), the Monetary Authority shall—

(a) consider the application;

(b) consult the Commission upon the merits of the application; and

(c) advise the Commission whether he is satisfied by the applicant that the applicant is a fit and proper person to be registered for that regulated activity.

(4) In deciding whether to register or refuse to register an applicant under subsection (1), the Commission—

(a) shall have regard to any advice given to it by the Monetary Authority pursuant to subsection (3)(c); and

(b) may rely wholly or partly on that advice in making that decision.

(5) Any registration under subsection (1) shall be subject to such reasonable conditions as the Commission may impose, and the Commission may at any time, by notice in writing served on the registered institution concerned, amend or revoke any such condition or impose new conditions as may be reasonable in the circumstances.

(6) Where the Commission by notice in writing amends or revokes any condition or imposes any new condition under subsection (5), the amendment, revocation or imposition takes effect at the time of the service of the notice or at the time specified in the notice, whichever is the later.

(7) Without prejudice to the Commission's powers under Divisions 2 and 3 of Part IX, the registration of an authorized financial institution for Type 7 regulated activity shall be deemed to be revoked in respect of that regulated activity upon the institution's being granted an authorization under section 95(2) to provide automated trading services. *(Amended 6 of 2014 s. 12)*

(8) Without limiting the generality of subsection (5), it shall be a condition of any registration under subsection (1) for—

(a) a regulated activity, that—

(i) in relation to the regulated activity, there is at least one executive officer of the registered institution who is available at all times to supervise the business of the regulated activity for which the institution is registered; and

(ii) any individual whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged by the registered institution in respect of the regulated activity is a fit and proper person to be so engaged;

(b) Type 7 regulated activity, that if the Commission in its absolute discretion requires by notice in writing, the registered institution shall apply, within such reasonable period as may be specified in the notice, for an authorization under section 95(2) for that regulated activity, and the regulated activity shall be operated in

such manner as may be specified in the notice pending the revocation of the registration under section 197(2).

(9) The Commission shall not exercise its power under subsection (5) or (8)(b) unless the Commission has first consulted the Monetary Authority.

120. Representatives to be licensed

(1) The Commission may, upon application by an individual in the prescribed manner and payment of the prescribed fee, grant to the applicant a licence to carry on one or more than one regulated activity for a corporation licensed under section 116 to which he is accredited. *(Amended 19 of 2015 s. 5)*

(2) The Commission in its absolute discretion may, upon request by the applicant in the prescribed manner and payment of the prescribed fee, grant to the applicant a provisional licence to carry on, for such corporation, the regulated activity in respect of which the application is made.

(2A) On granting a licence under subsection (1) or (2), the Commission must, by notice in writing served on the applicant, inform the applicant of—

(a) the grant of the licence; and

(b) the regulated activity for which the applicant is licensed. *(Added 19 of 2015 s. 5)*

(2B) Beginning on the day on which Part 2 of the Securities and Futures (Amendment) Ordinance 2015 (19 of 2015) comes into operation[#]—

(a) no printed licence is to be issued on granting a licence under subsection (1) or (2); and

(b) a printed licence issued by the Commission to a licensed representative before that day ceases to be effective for

indicating that an individual is licensed under subsection (1) or (2). *(Added 19 of 2015 s. 5)*

(3) The Commission shall refuse to grant a licence to carry on a regulated activity under subsection (1) or (2) unless the applicant satisfies the Commission that he is a fit and proper person to be so licensed for the regulated activity.

(4) The Commission shall refuse to grant a licence under subsection (2) unless the applicant satisfies the Commission that the grant of the licence will not prejudice the interest of the investing public.

(5) A licence granted under subsection (1) or (2) shall be subject to the condition specified in subsection (6) and to any other reasonable conditions as the Commission may impose.

(6) It shall be a condition of a licence granted under subsection (1) or (2) that the licensed representative concerned shall—

(a) at all times keep the Commission informed of particulars of his contact details including, in so far as applicable, his residential address, telephone and facsimile numbers and electronic mail address; and

(b) inform the Commission of any change in the particulars within 14 days after the change takes place.

(7) The Commission may at any time, by notice in writing served on the licensed representative concerned, amend or revoke any condition imposed under subsection (5) or impose new conditions as may be reasonable in the circumstances.

(8) Where the Commission by notice in writing amends or revokes any condition or imposes any new condition under subsection (7), the amendment, revocation or imposition takes effect at the time of the service of the notice or at the time specified in the notice, whichever is the later.

(9) A provisional licence shall be deemed to be revoked—

(a) upon the Commission's refusal of the relevant application made under subsection (1); or

(b) upon the grant of the licence sought under the application,

whichever first occurs.

(10) Without prejudice to the Commission's powers under Divisions 2 and 3 of Part IX, the Commission may, after having regard to the interest of the investing public and in its absolute discretion, by notice in writing served on the licensed representative concerned, revoke a provisional licence granted under subsection (2). *(Amended 6 of 2014 s. 13)*

(11)-(12) *(Repealed 19 of 2015 s. 5)*

(13) A licensed representative shall not, when carrying on the regulated activity for which the representative is licensed under subsection (1) or (2), use a name other than the name under which the representative is licensed. *(Amended 19 of 2015 s. 5)*

Editorial Note:

Commencement date: 13 November 2015.

121. Temporary licences for representatives

(1) The Commission may, upon application by an individual in the prescribed manner and payment of the prescribed fee, grant to the applicant a licence to carry on, for a period not exceeding 3 months, one or more than one regulated activity (other than Type 3, Type 7, Type 8 and Type 9 regulated activities)— *(Amended 19 of 2015 s. 6)*

(a) for a corporation licensed under section 116 to which he is accredited; or

(b) for a corporation licensed under section 117 to which he is accredited.

(1A) On granting a licence under subsection (1), the Commission must, by notice in writing served on the applicant, inform the applicant of—

(a) the grant of the licence; and

(b) the regulated activity for which the applicant is licensed. *(Added 19 of 2015 s. 6)*

(1B) Beginning on the day on which Part 2 of the Securities and Futures (Amendment) Ordinance 2015 (19 of 2015) comes into operation[#]—

(a) no printed licence is to be issued on granting a licence under subsection (1); and

(b) a printed licence issued by the Commission to a licensed representative before that day ceases to be effective for indicating that an individual is licensed under subsection (1). *(Added 19 of 2015 s. 6)*

(2) The Commission shall refuse to grant a licence to carry on a regulated activity under subsection (1) unless the applicant satisfies the Commission—

(a) that he carries on in a place outside Hong Kong an activity which, if carried on in Hong Kong, would constitute carrying on the regulated activity, under an authorization (however described) by an authority or regulatory organization in that place which—

(i) in the Commission's opinion, performs a function similar to the functions of the Commission under this Part;

(ii) confirms to the satisfaction of the Commission that the applicant has been so authorized; and

(iii) the Commission is satisfied is empowered under the law of that place to investigate, and, where

applicable, to take disciplinary action for, the conduct of the applicant in Hong Kong;

(b) where the application is for a licence under subsection (1)(a), that—

(i) he carries on the activity referred to in paragraph (a) for or on behalf of a corporation which carries on the activity as a business principally in a place outside Hong Kong under an authorization (however described) by an authority or regulatory organization in that place which—

(A) in the Commission's opinion, performs a function similar to the functions of the Commission under this Part; and

(B) confirms to the satisfaction of the Commission that the corporation has been so authorized; and

(ii) the licensed corporation to which he seeks to be accredited is a member of the same group of companies as the corporation referred to in subparagraph (i);

(c) where the application is for a licence under subsection (1)(b), that he seeks to be so licensed solely for the conduct of his principal's business in the activity referred to in section 117(2)(a);

(d) that the granting of the licence would not result in his being granted licences under subsection (1) for respective licence periods that in total exceed 6 months in any period of 24 months; and

(e) that he is a fit and proper person to be so licensed for the regulated activity.

(3) A licence granted under subsection (1) shall be subject to the condition specified in subsection (4) and to any other reasonable conditions as the Commission may impose.

(4) It shall be a condition of a licence granted under subsection (1) that the licensed representative concerned—

(a) shall at all times keep the Commission informed of particulars of his contact details including, in so far as applicable, his residential address, telephone and facsimile numbers and electronic mail address;

(b) shall inform the Commission of any change in the particulars within 14 days after the change takes place; and

(c) shall not hold any client assets in carrying on the regulated activity for which he is so licensed.

(5) The Commission may at any time, by notice in writing served on the licensed representative concerned, amend or revoke any condition imposed under subsection (3) or impose new conditions as may be reasonable in the circumstances.

(6) Where the Commission by notice in writing amends or revokes any condition or imposes any new condition under subsection (5), the amendment, revocation or imposition takes effect at the time of the service of the notice or at the time specified in the notice, whichever is the later.

(7) A licensed representative shall not, when carrying on the regulated activity for which the representative is licensed under subsection (1), use a name other than the name under which the representative is licensed. *(Amended 19 of 2015 s. 6)*

Editorial Note:

Commencement date: 13 November 2015.

122. Approval and transfer of accreditation

(1) The Commission may, upon application in the prescribed manner and payment of the prescribed fee, approve the accreditation of a licensed representative—

(a) who is licensed under section 120(1) or (2) or 121(1)(a), to a corporation licensed under section 116; or

(b) who is licensed under section 121(1)(b), to a corporation licensed under section 117,

and on the Commission's approving the accreditation, the corporation becomes the representative's principal. *(Amended 19 of 2015 s. 7)*

(2) The Commission may, upon application in the prescribed manner and payment of the prescribed fee by a licensed representative licensed under section 120(1) or (2) or 121(1), approve the transfer of his accreditation to another corporation licensed under section 116 or 117 (as the case may be), and on the Commission's approving the transfer, the corporation becomes the representative's principal. *(Amended 19 of 2015 s. 7)*

(2A) On granting an approval under subsection (1) or (2), the Commission must, by notice in writing served on the applicant, inform the applicant of the approval. *(Added 19 of 2015 s. 7)*

(3) The Commission shall refuse to—

(a) approve an accreditation under subsection (1); or

(b) approve a transfer of accreditation under subsection (2),

unless the applicant satisfies the Commission that he will be competent to carry out his duties to the requisite standard as a licensed representative for or on behalf of the licensed corporation concerned.

(4) Without limiting the generality of subsection (3), where a licensed representative who is licensed under section 121(1)(a) applies—

(a) under subsection (1)(a) for approval of an accreditation; or

(b) under subsection (2) for approval of a transfer of accreditation,

to a corporation licensed under section 116, the Commission shall refuse to grant the approval unless the applicant satisfies the Commission that the licensed corporation to which he seeks to be accredited is a member of the same group of companies as the corporation referred to in section 121(2)(b)(i).

123. Commission to be notified, etc. if licensed representative ceases to act for principal

(1) If an individual licensed under section 120(1) or (2) or 121(1) ceases to act for or on behalf of his principal as a licensed representative, he thereupon ceases to be accredited to the principal and—

(a) the principal shall, within 7 business days after such cessation, notify the Commission of the cessation; and *(Amended 19 of 2015 s. 8)*

(b) *(Repealed 19 of 2015 s. 8)*

(c) where the individual has not applied for transfer of his accreditation to another corporation licensed under section 116 or 117 (as the case may be) within 180 days after such cessation, the licence shall be deemed to have been revoked upon such cessation.

(2) A person who contravenes subsection (1)(a) commits an offence and is liable on conviction to a fine at level 6.

(3) *(Repealed 19 of 2015 s. 8)*

124. Duplicate printed licence, etc.

(Amended 19 of 2015 s. 9)

(1) Subject to subsection (2), the Commission may, upon application in the prescribed manner and payment of the prescribed fee by a licensed corporation or a registered institution on the ground that its printed licence or certificate of registration is lost, defaced or destroyed, issue to the licensed corporation or the registered institution a duplicate of the printed licence or certificate of registration (as the case may be).

(2) In support of an application under subsection (1), the licensed corporation or the registered institution shall— *(Amended 19 of 2015 s. 9)*

(a) submit to the Commission a statutory declaration made by the licensed corporation or the registered institution stating the ground of the application and such other particulars as the case may require in order to verify the loss, defacement or destruction (as the case may be) of the printed licence or certificate of registration; and

(b) furnish to the Commission such other information as the Commission may reasonably require in relation to the application.

(Amended 19 of 2015 s. 9)

125. Requirement for executive officers

(1) A corporation licensed under section 116 shall not carry on any regulated activity for which it is licensed unless—

(a) every executive director of the licensed corporation who is an individual is approved by the Commission as a

responsible officer of the corporation in relation to the regulated activity; and

(b) not less than 2 individuals, at least one of whom shall be an executive director of the licensed corporation, are approved by the Commission as the responsible officers of the corporation in relation to the regulated activity.

(2) A registered institution shall not carry on any regulated activity for which it is registered unless it has complied with section 71D of the Banking Ordinance (Cap. 155) in respect of the appointment of executive officers and such executive officers are in compliance with section 71C of that Ordinance (including section 71C of that Ordinance as read with section 71E of that Ordinance).

(3) If a licensed corporation contravenes subsection (1) or a registered institution contravenes subsection (2), without reasonable excuse, the licensed corporation or registered institution (as the case may be) commits an offence and is liable on conviction to a fine at level 6 and, in the case of a continuing offence, to a further fine of $2,000 for every day during which the offence continues.

126. Approval of responsible officers

(1) The Commission may, upon application by a licensed representative in the prescribed manner and payment of the prescribed fee, approve the applicant as a responsible officer of the licensed corporation to which he is accredited.

(2) The Commission shall refuse to approve an applicant as a responsible officer of a licensed corporation under subsection (1) unless the applicant satisfies the Commission that—

(a) he is a fit and proper person to be so approved; and

(b) he has sufficient authority within the licensed corporation.

(3) An approval under subsection (1) shall be subject to such reasonable conditions as the Commission may impose on the licensed corporation and the responsible officer concerned, and the Commission may at any time, by notice in writing served on the licensed corporation or the responsible officer concerned, amend or revoke any such condition or impose new conditions as may be reasonable in the circumstances.

(4) The approval of an individual as a responsible officer of a licensed corporation shall be deemed to be revoked if the individual—

(a) ceases to act as a licensed representative for or on behalf of; or

(b) ceases to be accredited to,

the licensed corporation.

127. Variation of regulated activity for which licensed person or registered institution is licensed or registered

(Amended 19 of 2015 s. 10)

(1) The Commission may, upon application in the prescribed manner and payment of the prescribed fee, vary the regulated activity for which a licensed person or registered institution is licensed or registered by adding to or reducing the regulated activity. *(Amended 19 of 2015 s. 10)*

(2) If a person applies for variation under subsection (1) by adding a regulated activity, the application is, for the purposes of this Part, to be regarded as an application for a licence or registration (as the case may be) in relation to that regulated activity. *(Replaced 19 of 2015 s. 10)*

128. Applicant to provide information

(1) A person who applies—

(a) for a licence under section 116, 117, 120 or 121;

(b) for registration under section 119;

(c) for approval of accreditation or approval of transfer of accreditation to a principal, under section 122;

(d) for approval to be a responsible officer under section 126;

(e) for variation, under section 127, of the regulated activity for which the person is licensed or registered;

(f) for approval of premises under section 130(1);

(g) for approval to become or continue to be (as the case may be) a substantial shareholder under section 132;

(h) for a modification or waiver under section 134; or

(i) for any other matter requiring the approval of the Commission under this Part,

shall provide the Commission with such information as it may reasonably require to enable it to consider the application.

(2) In considering an application referred to in subsection (1), the Commission may have regard to any information in its possession whether provided by the applicant or not.

(3) The Commission may make rules providing for—

(a) the information to be provided by an applicant to enable the Commission to consider his application;

(b) the form, manner and time period in which such information is to be provided;

(c) any other matter relating thereto.

129. Determination of *fit and proper*

(1) In considering whether a person is a fit and proper person for the purposes of any provision of this Part, the Commission or

the Monetary Authority (as the case may be) shall, in addition to any other matter that the Commission or the Monetary Authority (as the case may be) may consider relevant, but subject to section 134, have regard to—

(a) the financial status or solvency;

(b) the educational or other qualifications or experience having regard to the nature of the functions which, if the application is allowed, the person will perform;

(c) the ability to carry on the regulated activity competently, honestly and fairly; and

(d) the reputation, character, reliability and financial integrity,

of—

(i) where the person is an individual, the person himself;

(ii) where the person is a corporation (other than an authorized financial institution), the corporation and any officer of the corporation; or

(iii) where the person is an authorized financial institution, the institution and any director, chief executive, manager (as defined in section 2(1) of the Banking Ordinance (Cap. 155)) and executive officer of the institution.

(2) Without limiting the generality of subsection (1), the Commission or the Monetary Authority (as the case may be) may, in considering whether a person is a fit and proper person for the purposes of any provision of this Ordinance—

(a) take into account a decision made in respect of the person by—

(i) (in the case of the Commission) the Monetary Authority or (in the case of the Monetary Authority) the Commission;

(ii) the Insurance Authority;

(iii) the Mandatory Provident Fund Schemes Authority; or

(iv) any other authority or regulatory organization, whether in Hong Kong or elsewhere, which, in the Commission's opinion, performs a function similar to the functions of the Commission;

(b) take into account any information in the possession of the Commission or the Monetary Authority (as the case may be), whether provided by the person or not, relating to—

(i) where such consideration relates to a licence under section 116 or 117 or an application for the licence, any other person who is or is to be employed by, or associated with, the person for the purposes of the regulated activity for which the licence is granted or the application is made (as the case may be);

(ii) where such consideration relates to a licence under section 116 or 117 to carry on a regulated activity or any registration for a regulated activity under section 119 or an application for the licence or registration, any other person who will be acting for or on behalf of the person in relation to the regulated activity; or

(iii) where the person is a corporation in a group of companies—

(A) any other corporation in the same group of companies; or

(B) any substantial shareholder or officer of the corporation or any corporation referred to in sub-subparagraph (A);

(c) take into account, where such consideration relates to a licence under section 116 or 117 or any registration under section 119 or an application for the licence or registration, whether the person has established effective internal control procedures and risk management systems to ensure his compliance with all applicable regulatory requirements under any of the relevant provisions, having regard in particular to the information provided in accordance with section 128; and

(d) have regard to the state of affairs of any other business which the person carries on or proposes to carry on.

130. Suitability of premises for keeping records or documents

(1) The Commission may, upon application in the prescribed manner and payment of the prescribed fee, approve premises to be used by a licensed corporation for keeping records or documents required under this Ordinance or the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615). *(Amended 15 of 2011 s. 88; 4 of 2018 s. 43)*

(2) The Commission shall refuse to approve premises under subsection (1) unless the applicant satisfies the Commission that—

(a) the premises are suitable for being used for the purpose referred to in that subsection; and

(b) where the premises are used partly for residential purposes, such residential use of the premises will not affect the exercise of any powers under this Part or Part VI or VIII.

(3) A licensed corporation shall not, without the prior approval in writing of the Commission, use any premises for the keeping of records or documents relating to the carrying on of the regulated activity for which it is licensed.

(4) The Commission shall inform the applicant in writing of its decision under subsection (1) as soon as reasonably practicable after receipt of the application.

131. Restriction on substantial shareholding, etc.

(1) A person shall not become and continue to be a substantial shareholder of a corporation licensed under section 116 without first being approved by the Commission under section 132(1)(a).

(2) A person who contravenes subsection (1) commits an offence and is liable—

(a) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years, and to a further fine of $5,000 for every day during which the person continues to be such substantial shareholder without the Commission's approval under section 132(1)(b); or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months, and to a further fine of $500 for every day during which the person continues to be such substantial shareholder without the Commission's approval under section 132(1)(b).

(3) It is a defence for a person charged with an offence under subsection (2) to prove—

(a) that he did not know, and could not have by the exercise of reasonable diligence ascertained, the existence of the act or circumstances by virtue of which he became such a substantial shareholder; and

(b) where he subsequently became aware of such act or circumstances, that he applied under section 132(1)(b), as soon as reasonably practicable and in any event within 3 business days after he became so aware, for

approval to continue to be a substantial shareholder of the corporation.

(4) If a person becomes a substantial shareholder of a corporation licensed under section 116 without the Commission's prior approval under section 132(1)(a) by virtue of—

(a) a transfer of shares;

(b) an issue of shares; or

(c) a transfer of the right to be issued with shares,

then, unless and until the Commission approves the person to continue to be a substantial shareholder of the corporation under section 132(1)(b), the voting rights conferred by the shares concerned are not exercisable.

(5) A person who purportedly exercises any voting right that is not exercisable by virtue of subsection (4) commits an offence and is liable—

(a) on conviction on indictment to a fine of $200,000 and to imprisonment for 1 year; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(6) It is a defence for a person charged with an offence under subsection (5) to prove that he—

(a) did not know; and

(b) could not have by the exercise of reasonable diligence known,

that the voting right which he purportedly exercised is by virtue of subsection (4) not exercisable.

132. Approval to become or continue to be substantial shareholder

(1) The Commission may, upon application in the prescribed manner and payment of the prescribed fee, approve the

applicant—

(a) to become; or

(b) to continue to be,

as the case may be, a substantial shareholder of a corporation licensed under section 116.

(2) The Commission shall refuse to approve an applicant to become or continue to be (as the case may be) a substantial shareholder of the licensed corporation concerned unless the applicant satisfies the Commission that the corporation will remain a fit and proper person to be licensed if the application is approved.

(3) An approval under subsection (1)(a) or (b) shall be subject to such reasonable conditions as the Commission may impose on the applicant and on the licensed corporation concerned, and the Commission may at any time, by notice in writing served on the approved substantial shareholder and the corporation, amend or revoke any such condition or impose new conditions as may be reasonable in the circumstances.

(4) Where the Commission by notice in writing amends or revokes any condition or imposes any new condition under subsection (3), the amendment, revocation or imposition takes effect at the time of the service of the notice or at the time specified in the notice, whichever is the later.

(5) Without limiting the generality of subsection (3), it shall be a condition of an approval under subsection (1)(a) or (b) that the approved substantial shareholder shall—

(a) at all times keep the Commission informed of particulars of his contact details including, in so far as applicable, his business address, residential address, telephone and facsimile numbers and electronic mail address; and

(b) inform the Commission of any change in the particulars within 14 days after the change takes place.

133. Commission's power to give directions

(1) Where a person became a substantial shareholder without the Commission's prior approval under section 132(1)(a), whether or not he has applied under section 132(1)(b) for approval to continue to be such shareholder and regardless of whether such approval is granted or not, the Commission may by notice in writing direct the licensed corporation concerned—

(a) not to permit or acquiesce in the involvement of the person in the management of the business of the corporation;

(b) to deem void and of no effect any votes cast by the person and any of his associates (if any) at any meeting of the corporation;

(c) to reconvene any such meeting for voting anew on the business on which the votes were cast; and

(d) to take such other reasonable steps as it may specify in the notice.

(2) Without prejudice to the operation of subsection (1), where the Commission refuses to approve an application to continue to be a substantial shareholder made under section 132(1)(b), it may by notice in writing direct the applicant—

(a) to reduce, within such reasonable time as the Commission may require, the interest in shares by virtue of which he became a substantial shareholder of the licensed corporation concerned to the extent that he is no longer a substantial shareholder of the corporation; and

(b) to take such other reasonable steps as the Commission may specify in the notice.

(3) If a person fails to comply with any direction under subsection (1) or (2), the Commission may, by originating summons or originating motion, make an application to the Court of First Instance in respect of the failure, and the Court may inquire into the case and—

(a) if the Court is satisfied that there is no reasonable excuse for the person not to comply with the direction, order the person to comply with the direction within the period specified by the Court; and

(b) if the Court is satisfied that the failure was without reasonable excuse, punish the person, and any other person knowingly involved in the failure, in the same manner as if he and, where applicable, that other person had been guilty of contempt of court.

(4) An originating summons under subsection (3) shall be in Form No. 10 in Appendix A to the Rules of the High Court (Cap. 4 sub. leg. A).

(Amended E.R. 2 of 2012)

134. Modification or waiver of requirements

(1) The Commission may, upon application in the prescribed manner and payment of the prescribed fee by—

(a) a licensed corporation;

(b) an applicant for a licence under section 116 or 117;

(c) a registered institution;

(d) an applicant for registration under section 119;

(e) a licensed representative;

(f) an applicant for a licence under section 120 or 121;

(g) a responsible officer approved under section 126;

(h) a substantial shareholder approved under section 132;

(i) an applicant for approval under section 132 to become or continue to be (as the case may be) a substantial shareholder; or

(j) an associated entity,

grant a modification or waiver, in relation to the applicant, in respect of any condition specified in section 118 or imposed under section 116, 117, 119, 120, 121, 126 or 132 or any of the requirements of the following—

(i) sections 116(2)(b) and 125(1) and (2);

(ii) sections 116(2)(c) and 130;

(iii) rules made under section 118(2);

(iv) section 121(2)(a);

(v) section 129;

(vi) rules made under section 145;

(vii) rules made under section 148;

(viii) rules made under section 149;

(ix) rules made under section 151;

(x) rules made under section 152;

(xi) rules made under section 168;

(xii) rules made under section 173;

(xiii) section 175(1), (2) and (3); or

(xiv) any provision of rules made by the Commission under this Ordinance.

(2) The grant of a modification or waiver under subsection (1) shall be effected by a notice in writing served on the applicant specifying the period (if any) for which the modification or waiver is valid.

(3) The Commission shall refuse to grant a modification or waiver under subsection (1) unless it is satisfied by the applicant that to do so will not prejudice—

(a) in the case of a modification or waiver granted in respect of a condition imposed under section 116, 117 or 119, the interests of any client of the applicant; or

(b) in the case of a modification or waiver granted in respect of a condition specified in section 118 or imposed under section 120, 121, 126 or 132, or in respect of any requirement of a provision specified in subsection (1)(i) to (xiv), the interest of the investing public.

(4) A modification or waiver granted under subsection (1) to a person shall be subject to such reasonable conditions as the Commission may impose, and the Commission may at any time, by notice in writing served on—

(a) the person;

(b) where the person is an intermediary or an associated entity, an executive officer of the intermediary or the entity; or

(c) where the modification or waiver is granted pursuant to an application made under subsection (1)(e), (f) or (g), the principal to which the person is accredited,

amend such modification or waiver, or amend or revoke any such condition or impose new conditions as may be reasonable in the circumstances.

(5) Subject to subsection (4), a modification or waiver granted under subsection (1) remains in force—

(a) if a period is specified in the notice served under subsection (2) in respect of the modification or waiver, until the end of the period; or

(b) if no such period is specified, until revoked by the Commission by notice in writing served on—

(i) the person;

(ii) where the person is an intermediary or an associated entity, an executive officer of the intermediary or the entity; or

(iii) where the modification or waiver is granted pursuant to an application made under subsection (1)(e), (f) or (g), the principal to which the person is accredited.

(6) In relation to a modification or waiver under subsection (1) to a person, the Commission shall—

(a) on the grant of the modification or waiver;

(b) on its amendment or an amendment or revocation of its conditions or the imposition of any new condition on it under subsection (4); or

(c) on its revocation under subsection (5)(b),

subject to subsection (7), publish, by the use of the Internet, notice of— *(Amended 9 of 2012 s. 39)*

(i) the name of the person;

(ii) the event referred to in paragraph (a), (b) or (c) (as the case may be) and the reasons for the event;

(iii) any condition imposed on the modification or waiver on its grant, or the condition amended or revoked or newly imposed subsequently under subsection (4) (as the case may be); and

(iv) (if applicable) the period for which the grant or amendment or the condition so imposed is valid.

(7) If the applicant satisfies the Commission that publishing notice of any condition in compliance with subsection (6)(iii)

would prejudice, to an unreasonable degree, the commercial interests of the applicant, the Commission may, in lieu of publishing notice of the condition, include in the notice referred to in subsection (6)— *(Amended 9 of 2012 s. 39)*

(a) a brief account of its reasons for not publishing notice of the condition; and *(Amended 9 of 2012 s. 39)*

(b) such appropriate information on the condition as the Commission considers incapable of prejudicing, to an unreasonable degree, the commercial interests of the applicant.

(8) The Commission may by rules grant a modification or waiver, in relation to a class of licensed persons or registered institutions or associated entities, in respect of any of the requirements of the rules referred to in subsection (1)(vi), (vii), (viii), (ix), (x) or (xi).

(9) The Commission shall not make any rules under subsection (8) to grant a modification or waiver referred to in that subsection unless the Commission is satisfied that to do so will not prejudice the interest of the investing public.

(10) The Commission may specify in the rules referred to in subsection (8) the conditions subject to which the modification or waiver is granted and the rules may provide that a person who fails to comply with such a condition commits an offence and is liable on conviction to a fine not exceeding level 6.

(11) The Commission may at any time by rules—

(a) revoke a modification or waiver granted under subsection (8); or

(b) amend, revoke or add to, any condition subject to which such modification or waiver is granted.

(12) The Commission shall not exercise its power under subsection (1), (4), (8), (10) or (11) in relation to any registered institution or any associated entity that is an authorized financial institution unless the Commission has first consulted the Monetary Authority.

(13) A person who fails to comply with a condition imposed under subsection (4) commits an offence and is liable on conviction to a fine at level 6.

135. Events to be reported by licensed persons and registered institutions

(1) A licensed person or registered institution who intends to cease to carry on any regulated activity for which he is licensed or registered shall notify the Commission and (in the case of a registered institution) the Monetary Authority in writing of such intended cessation as soon as reasonably practicable and in any event not later than 7 business days before such intended cessation.

(2) An intermediary shall give to the Commission and (in the case of a registered institution) the Monetary Authority at least 7 business days' advance notice in writing of any intended change of address at which it proposes to carry on the regulated activity for which it is licensed or registered.

(3) Subject to subsection (5), where a person has provided any information to the Commission under any provision of this Part and a change in the information occurs, then in such circumstances as are prescribed by rules made under section 397 for the purposes of this subsection, the person shall, within 7 business days of the change, give notice in writing of the change containing a full description of it.

(4) The notice referred to in subsection (3) shall be given to the following person or persons—

(a) (where the information has been provided in connection with an application under any provision of this Part and the Commission is still considering the application) the Commission; or

(b) (in other cases) the Commission and (if the information provided relates to a registered institution) the Monetary Authority.

(5) Where the information has been provided in connection with an application under any provision of this Part and the application has been refused or withdrawn, subsection (3) shall no longer apply in relation to the information.

(6) Where a person becomes or ceases to be a director of a licensed corporation, both the person and the corporation shall, within 7 business days thereafter, notify the Commission in writing of the name and address of the person and of the nature of the position which he occupies or has ceased to occupy (as the case may be).

(7) A person who, without reasonable excuse, contravenes subsection (1), (2), (3) or (6) commits an offence and is liable on conviction to a fine at level 5.

136. Commission to maintain register of licensed persons and registered institutions

(1) The Commission shall maintain a register of licensed persons and registered institutions in such form as it considers appropriate.

(2) The register maintained under subsection (1) shall contain in relation to each licence or registration—

(a) the name and business address of the licensed person or registered institution (as the case may be);

(b) such conditions of the licence or registration (as the case may be) as the Commission considers appropriate;

(c) in relation to each licensed representative, the name of his principal;

(d) in relation to the licensed corporation or registered institution (as the case may be) the name and business address of each of its executive officers; and

(e) such other particulars as are prescribed by rules made under section 397 for the purposes of this subsection.

(3) The register may be maintained—

(a) in a documentary form; or

(b) by recording the information required under subsection (2) otherwise than in a documentary form, so long as the information is capable of being reproduced in a legible form.

(4) For the purposes of enabling any member of the public to ascertain whether he is dealing with a licensed person or a registered institution in matters of or connected with any regulated activity and to ascertain the particulars of the licence or registration of such person or institution (as the case may be), the register shall be made available for public inspection at all reasonable times.

(5) At all reasonable times, a member of the public may—

(a) inspect the register, or (where the register is maintained otherwise than in a documentary form) a reproduction of the information or the relevant part of it in a legible form; and

(b) obtain a copy of an entry in or extract of the register on payment of the prescribed fee.

(6) A document purporting to be—

(a) a copy of an entry in or extract of the register maintained under this section; and

(b) certified by an authorized officer of the Commission as a true copy of the entry or extract referred to in paragraph (a),

shall be admissible as evidence of its contents in any legal proceedings.

(7) Without derogating from the other provisions of this section, the Commission shall, in addition, cause the register to be available to the public in the form of an on-line record.

137. Publication of names of licensed persons and registered institutions

(1) The Commission shall at least once in each year publish at such time and in such manner as it considers appropriate the name and address of each licensed person and registered institution, the regulated activities for which the person or institution is licensed or registered and such conditions of the licence or registration as the Commission considers appropriate.

(2) If the Commission amends the register maintained under section 136 by adding or removing the name of a licensed person or registered institution or varying the regulated activity for which a licensed person or registered institution is licensed or registered or any condition of a licence or registration, it shall publish particulars of the amendment within one month after making the amendment.

138. Annual fee and return

(1) A person licensed under section 116 or 120(1) or a registered institution shall pay to the Commission an annual fee prescribed by rules made under section 395 for the purposes of this subsection.

(2) The annual fee shall be payable within one month after each anniversary of the date of grant of the licence or certificate of registration (as the case may be), or on such other date as may be approved by the Commission by notice in writing.

(3) In default of full payment of the annual fee as required under subsection (2), the person shall pay to the Commission an additional sum calculated as follows—

(a) 10% of the fee or such part of the fee (as the case may be) that remains unpaid for the first month after the due date for its payment;

(b) 20% of the fee or such part of the fee (as the case may be) for each subsequent month when it remains unpaid,

and in calculating the additional sum for the purposes of this subsection, any fraction of a month shall be treated as a month.

(4) A person licensed under section 116 or 120(1) shall submit an annual return to the Commission—

(a) within one month after each anniversary of the date on which the person is licensed; or

(b) by such other date as may be approved by the Commission by notice in writing,

which return shall contain such information as is prescribed by rules made under section 397 for the purposes of this subsection.

139. Prohibition of use of certain titles

(1) A person shall not take or use any of the specified titles set out opposite to the reference to this subsection in column 2 of Schedule 6 unless—

(a) the person is licensed or registered for Type 1 regulated activity; or

(b) his name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged in respect of Type 1 regulated activity by a person registered for that regulated activity, while acting in that capacity.

(2) A person shall not take or use any of the specified titles set out opposite to the reference to this subsection in column 2 of Schedule 6 unless—

(a) the person is licensed or registered for Type 2 regulated activity; or

(b) his name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged in respect of Type 2 regulated activity by a person registered for that regulated activity, while acting in that capacity.

(3) A person shall not take or use any of the specified titles set out opposite to the reference to this subsection in column 2 of Schedule 6 unless the person—

(a) is licensed for Type 3 regulated activity;

(b) is an authorized financial institution; or

(c) is engaged by an authorized financial institution, while acting for the institution in an activity that would have fallen within the meaning of the definition of ***leveraged foreign exchange trading*** in Part 2 of Schedule 5 but for paragraph (xii) of that definition.

(4) A person shall not take or use any of the specified titles set out opposite to the reference to this subsection in column 2 of Schedule 6 unless—

(a) the person is licensed or registered for Type 4 regulated activity; or

(b) his name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged in respect of Type 4 regulated activity by a person registered for that regulated activity, while acting in that capacity.

(5) A person shall not take or use any of the specified titles set out opposite to the reference to this subsection in column 2 of Schedule 6 unless—

(a) the person is licensed or registered for Type 5 regulated activity; or

(b) his name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged in respect of Type 5 regulated activity by a person registered for that regulated activity, while acting in that capacity.

(6) A person shall not take or use any of the specified titles set out opposite to the reference to this subsection in column 2 of Schedule 6 unless—

(a) the person is licensed or registered for Type 6 regulated activity; or

(b) his name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged in respect of Type 6 regulated activity by a person registered for that regulated activity, while acting in that capacity.

(7) A person shall not take or use any of the specified titles set out opposite to the reference to this subsection in column 2 of Schedule 6 unless—

(a) the person is licensed or registered for Type 7 regulated activity;

(b) the person is granted an authorization under section 95(2) to provide automated trading services;

(c) his name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged in respect of Type 7 regulated activity by a person registered for that regulated activity, while acting in that capacity; or

(d) the person is an employee of a person authorized under section 95(2) to provide automated trading services, while acting for that person in that regulated activity.

(8) A person shall not take or use any of the specified titles set out opposite to the reference to this subsection in column 2 of Schedule 6 unless the person—

(a) is licensed for Type 8 regulated activity;

(b) is an authorized financial institution; or

(c) is engaged by an authorized financial institution, while acting for the institution in an activity that would have fallen within the meaning of the definition of ***securities margin financing*** in Part 2 of Schedule 5 but for paragraph (v) of that definition.

(9) A person shall not take or use any title, other than any specified title referred to in subsection (1), (2), (3), (4), (5), (6), (7) or (8), which suggests that—

(a) he carries on a business in any regulated activity referred to in any of those subsections; or

(b) he performs any regulated function in relation to a regulated activity referred to in any of those subsections which is carried on as a business,

unless he falls within the description specified in a paragraph of such of those subsections.

(10) A person who contravenes subsection (1), (2), (3), (4), (5), (6), (7), (8) or (9) commits an offence and is liable on conviction to a fine at level 6 and, in the case of a continuing offence, to a further fine of $2,000 for every day during which the offence continues.

140. Procedural requirements

(1) If the Commission forms a preliminary view to—

(a) refuse the whole or a part of an application made under this Part;

(b) impose conditions on approving an application; or

(c) amend or revoke the conditions of, or impose new conditions to—

(i) a licence granted under section 116, 117, 120 or 121, or any registration under section 119;

(ii) an accreditation approved or transferred under section 122;

(iii) an approval for a person to be a responsible officer under section 126 or to become or continue to be (as the case may be) a substantial shareholder under section 132; or

(iv) a modification or waiver granted under section 134(1),

then the Commission shall, before making its final decision—

(i) inform the applicant or the relevant licensed corporation, registered institution, licensed representative, responsible officer or approved substantial shareholder (as the case may be) of the ground for the preliminary view; and

(ii) give such person a reasonable opportunity of being heard.

(2) When the Commission makes a final decision, it shall, as soon as reasonably practicable, notify the applicant or the relevant licensed corporation, registered institution, licensed representative, responsible officer or approved substantial shareholder (as the case may be) in writing of its decision and the reasons for making such decision.

141. Service of notices, etc. on licensed persons

(1) Notwithstanding section 400, any written notice, decision or direction or other document (however described) to be, or required to be, issued or served (however described) to or on a licensed person for the purposes of this Ordinance shall for all purposes be regarded as duly issued or served only if—

(a) in the case of an individual, it is—

(i) delivered to him by hand; or

(ii) (A) left at, or sent by post to, the last residential address;

(B) sent by facsimile transmission to the last facsimile number; or

(C) sent by electronic mail transmission to the last electronic mail address,

provided by the person to the Commission pursuant to section 120(6) or 121(4) (as the case may be); or

(b) in the case of a corporation, it is—

(i) delivered to any officer of the corporation by hand; or

(ii) (A) left at, or sent by post to, the last address;

(B) sent by facsimile transmission to the last facsimile number; or

(C) sent by electronic mail transmission to the last electronic mail address,

provided by the corporation to the Commission pursuant to section 116, 117, 130(1), 135(2) or 138(4) (as the case may be).

(2) Where a notice, decision or direction or other document (however described) is regarded as duly issued or served to or on a licensed person under subsection (1)(a)(ii) or (b)(ii), it shall for all purposes be regarded as issued or served to or on the licensed person, and as coming to his notice, at the time when—

(a) where it is left at an address, it is so left at that address;

(b) where it is sent by post to an address, it would in the ordinary course of post be delivered to that address;

(c) where it is sent by facsimile transmission to a facsimile number, it would in the ordinary course of transmission by facsimile be received at that number; or

(d) where it is sent by electronic mail transmission to an electronic mail address, it would in the ordinary course of transmission by electronic mail be received at that address.

142. Amendment of Schedule 5

The Financial Secretary may, by notice published in the Gazette, amend Schedule 5.

143. Amendment of Schedule 6

The Commission may, by notice published in the Gazette, amend Schedule 6.

Part VI

Capital Requirements, Client Assets, Records and Audit Relating to Intermediaries

(Format changes—E.R. 3 of 2015)

Division 1—Interpretation

144. Interpretation of Part VI

In this Part, unless the context otherwise requires—

specified amount requirements (指明數額規定) means the requirements specified in the financial resources rules pursuant to section 145(2)(a)(i).

Division 2—Capital requirements

145. Financial resources of licensed corporations

(1) The Commission may, after consultation with the Financial Secretary, make rules requiring licensed corporations to maintain such financial resources as are specified in the rules.

(2) Without limiting the generality of subsection (1) and without prejudice to section 398(7) and (8), the Commission may in the rules referred to in subsection (1)—

(a) require licensed corporations to maintain financial resources in accordance with—

(i) specified requirements as to the amount in which they are to be maintained; and

(ii) any other specified requirements;

(b) specify the assets, liabilities and other matters to be taken into account under the rules to determine

the amount of the financial resources of licensed corporations for the purposes of the rules and the extent to which, and the manner in which, they are to be taken into account for that purpose;

(c) provide for the different treatment of the assets, liabilities and other matters for the purposes of the rules according to whether or not they are approved by the Commission for that purpose;

(d) provide that the rules, or any of the provisions of the rules, do not apply to licensed corporations which maintain financial resources, in Hong Kong or elsewhere, in accordance with an authorization of an authority, in Hong Kong or elsewhere, which in the opinion of the Commission performs a function which involves the imposition of requirements relating to financial resources of persons carrying on activities similar to any regulated activity for which a licensed person may be licensed, or apply to such licensed corporations with specified modifications or only in specified circumstances;

(e) provide for the grant of approvals for specified purposes and for the amendment or revocation of such approvals, and for the publication of such approvals and of any amendment or revocation of such approvals in the specified manner;

(f) require licensed corporations to submit to the Commission—

(i) at specified intervals, returns relating to their financial resources and trading activities; and

(ii) notice in writing of specified circumstances relating to their financial resources and trading activities;

(g) require licensed corporations to submit returns to the Commission in response to a request by the Commission for information relating to their financial resources and trading activities;

(h) provide for any other matter relating to financial resources of licensed corporations.

145A. Commission may vary financial resources rules for particular licensed corporations

(1) The Commission may, by a written notice served on a licensed corporation that engages in acts involving OTC derivative transactions, vary any financial resources rule applicable to the corporation, if satisfied, on reasonable grounds, that it is prudent to make the variation, taking into account risks associated with the corporation.

(2) If the Commission proposes to serve a notice under subsection (1) on a licensed corporation, it must serve a draft of the notice (***draft notice***) on the corporation.

(3) A draft notice must—

(a) specify—

(i) the financial resources rule proposed to be varied;

(ii) the manner in which that rule is proposed to be varied; and

(iii) the grounds for the proposed variation; and

(b) include a statement that the corporation may, within 14 days, or a longer period the Commission allows in a particular case, from the date of service of the draft notice, make written representations to the Commission on any or all of the matters specified in the draft notice.

(4) If representations are made in accordance with subsection (3)(b) on a draft notice served on a licensed corporation, the Commission may, after considering the representations—

(a) serve a notice on the corporation under subsection (1) in substantially the same terms as the draft notice;

(b) serve a notice on the corporation under subsection (1) in terms modified to take account of any one or more of those representations that satisfy the Commission that the modification ought to be made; or

(c) elect not to serve a notice on the corporation under subsection (1) because one or more of those representations satisfy the Commission that it should neither take the action mentioned in paragraph (a) nor take the action mentioned in paragraph (b).

(5) If no representations are made in accordance with subsection (3)(b) on a draft notice served on a licensed corporation, the Commission may serve a notice on the corporation under subsection (1) in substantially the same terms as the draft notice.

(6) If a financial resources rule applicable to a licensed corporation that engages in OTC derivative transactions is varied under this section, this Part (including rules made under section 145) applies, in relation to that corporation, with all necessary modifications to take account of the financial resources rule so varied.

(7) To avoid doubt—

(a) the Commission may serve a draft notice on a licensed corporation in substitution for an earlier draft notice served on the corporation; and

(b) the reference to substantially the same terms as the draft notice in subsections (4)(a) and (5) is not to

be construed to include the statement required to be included in a draft notice under subsection (3)(b).

(8) The variation of a financial resources rule under subsection (1) takes effect at the time of the service of the written notice of the variation on the licensed corporation under that subsection or at the time specified in the notice, whichever is the later.

(Added 6 of 2014 s. 14)

146. Failure to comply with financial resources rules

(1) If a licensed corporation becomes aware of its inability to maintain, or to ascertain whether it maintains, financial resources in accordance with the specified amount requirements that apply to it, it shall—

(a) as soon as reasonably practicable notify the Commission by notice in writing of that fact; and

(b) subject to subsection (2), immediately cease carrying on any regulated activity for which it is licensed, otherwise than for the purpose of completing such transactions as the Commission may permit.

(2) Where the Commission considers appropriate, the Commission may permit a licensed corporation which gives notice to the Commission under subsection (1)(a) to carry on any regulated activity for which it is licensed, subject to such conditions as may be imposed by the Commission by notice given to it, whether orally or in writing.

(3) If a licensed corporation becomes aware of its inability to comply with, or to ascertain whether it complies with, all or any of the requirements of the financial resources rules that apply to it, other than the specified amount requirements, it shall within one business day thereafter notify the Commission by notice in writing of that fact.

(4) Without limiting the generality of the financial resources rules and the rules that may be made under section 151, a licensed corporation to which any of the requirements of the financial resources rules apply shall—

(a) keep its records in sufficient detail to establish readily whether all of such requirements are being complied with; and

(b) where the Commission by notice in writing served on it requires it to do so, make its records available to the Commission within 5 business days after the service of the notice.

(5) Without prejudice to sections 194 and 195, where the Commission reasonably believes that a licensed corporation is unable to maintain, or to ascertain whether it maintains, financial resources in accordance with the specified amount requirements that apply to it, the Commission may, whether or not notice has been given under subsection (1)(a)—

(a) by notice in writing served on the licensed corporation suspend the licensed corporation's licence, whether in relation to all or any, or any part of all or any, of the regulated activities for which it is licensed for such period or until the occurrence of such event as the Commission may specify; or

(b) permit the licensed corporation to carry on any regulated activity for which it is licensed, subject to such conditions as may be imposed by the Commission by notice given to it, whether orally or in writing.

(6) Where any conditions are imposed pursuant to subsection (2) or (5)(b) by notice given to a licensed corporation in writing, the Commission may amend any of the conditions in such manner as may be specified by the Commission, by notice

given to the licensed corporation, whether orally or in writing, and where any of the conditions are so amended—

(a) such conditions shall have effect subject to the amendment accordingly; and

(b) where the conditions are amended by notice in writing, this subsection shall apply, with necessary modifications, to the conditions as so amended as if they had been imposed pursuant to subsection (2) or (5)(b) (as the case may be).

(7) Where any conditions are imposed pursuant to subsection (2) or (5)(b), or amended under subsection (6), by notice given to a licensed corporation otherwise than in writing, the Commission shall as soon as reasonably practicable give the licensed corporation a further notice in writing to confirm the conditions imposed or the conditions as amended (as the case may be), subject to such amendment (if any) in respect of the conditions as it may specify in the notice, and where any conditions are so confirmed subject to any amendment—

(a) the conditions shall have effect subject to the amendment accordingly; and

(b) subsection (6) shall apply, with necessary modifications, to the conditions as so amended as if they had been imposed pursuant to subsection (2) or (5)(b) (as the case may be).

(8) Notwithstanding anything in this section, the Commission shall not impose any conditions pursuant to subsection (2) or (5)(b), or amend any conditions under subsection (6), by notice given to a licensed corporation otherwise than in writing if the licensed corporation has on the occasion of being heard pursuant to subsection (12) in respect of the imposition or amendment (as the case may be) made a

request to the Commission that the conditions shall only be so imposed, or amended, by notice given to it in writing.

(9) The suspension of a licence under subsection (5)(a) takes effect at the time when notice is served in respect of it pursuant to that subsection or at the time specified in the notice, whichever is the later.

(10) The imposition of any conditions pursuant to subsection (2) or (5)(b), or the amendment of any conditions under or pursuant to subsection (6) or (7), takes effect at the time when notice is given in respect of it pursuant to such subsection or at the time specified in the notice, whichever is the later.

(11) Where a licence of a licensed corporation is suspended under subsection (5)(a), sections 200(1), 201(2) and (5), 202 and 203 shall apply, with necessary modifications, in relation to the suspension as if it were a suspension under section 194 or 195.

(12) Notwithstanding anything in this section, the Commission shall not exercise any power under subsection (1)(b), (2), (4)(b), (5), (6), (7), (9) or (10) in respect of a licensed corporation unless the Commission has given the licensed corporation a reasonable opportunity of being heard.

(13) A licensed corporation which contravenes subsection (1)(a) or (b) commits an offence and is liable—

(a) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of $100,000 for every day during which the offence continues; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months and, in the case of a continuing offence, to a further fine of $10,000 for every day during which the offence continues.

(14) A licensed corporation which contravenes a condition imposed pursuant to subsection (2) or (5)(b), or as amended under or pursuant to subsection (6) or (7), commits an offence and is liable—

(a) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of $100,000 for every day during which the offence continues; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months and, in the case of a continuing offence, to a further fine of $10,000 for every day during which the offence continues.

(15) A licensed corporation which, without reasonable excuse, contravenes subsection (3) commits an offence and is liable—

(a) on conviction on indictment to a fine of $200,000 and to imprisonment for 1 year; or

(b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.

(16) A licensed corporation which contravenes subsection (4) commits an offence and is liable—

(a) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(17) The financial resources rules may provide that a licensed corporation which, without reasonable excuse, contravenes any specified provision of the financial resources rules that applies to it, other than that imposing any of the specified amount requirements, commits an offence and is liable to a specified penalty not exceeding—

(a) on conviction on indictment a fine of $200,000 and a term of imprisonment of 1 year;

(b) on summary conviction a fine at level 5 and a term of imprisonment of 6 months.

(18) A licensed corporation is not excused from complying with subsection (3) only on the ground that to do so might tend to incriminate it.

147. Monitoring compliance with financial resources rules

(1) The Commission may at any time, by notice in writing served on an executive officer of a licensed corporation, require the licensed corporation to satisfy the Commission that it complies with all of the requirements of the financial resources rules that apply to it.

(2) Without limiting the generality of subsection (1), the Commission and any person authorized by the Commission under subsection (12) may exercise any of the powers of an auditor referred to in section 162 for the purpose of ascertaining whether a licensed corporation complies with all of the requirements of the financial resources rules that apply to it.

(3) Without prejudice to sections 194 and 195, where a licensed corporation, upon being required to do so under subsection (1), fails to satisfy the Commission that it maintains financial resources in accordance with the specified amount requirements that apply to it, the Commission may—

(a) by notice in writing served on the licensed corporation suspend the licensed corporation's licence, whether in relation to all or any, or any part of all or any, of the regulated activities for which it is licensed for such period or until the occurrence of such event as the Commission may specify; or

(b) permit the licensed corporation to carry on any regulated activity for which it is licensed, subject to such conditions as may be imposed by the Commission by notice given to it, whether orally or in writing.

(4) Where any conditions are imposed pursuant to subsection (3)(b) by notice given to a licensed corporation in writing, the Commission may amend any of the conditions in such manner as may be specified by the Commission, by notice given to the licensed corporation, whether orally or in writing, and where any of the conditions are so amended—

(a) such conditions shall have effect subject to the amendment accordingly; and

(b) where the conditions are amended by notice in writing, this subsection shall apply, with necessary modifications, to the conditions as so amended as if they had been imposed pursuant to subsection (3)(b).

(5) Where any conditions are imposed pursuant to subsection (3)(b), or amended under subsection (4), by notice given to a licensed corporation otherwise than in writing, the Commission shall as soon as reasonably practicable give the licensed corporation a further notice in writing to confirm the conditions imposed or the conditions as amended (as the case may be), subject to such amendment (if any) in respect of the conditions as it may specify in the notice, and where any conditions are so confirmed subject to any amendment—

(a) the conditions shall have effect subject to the amendment accordingly; and

(b) subsection (4) shall apply, with necessary modifications, to the conditions as so amended as if they had been imposed pursuant to subsection (3)(b).

(6) Notwithstanding anything in this section, the Commission shall not impose any conditions pursuant to subsection (3)(b),

or amend any conditions under subsection (4), by notice given to a licensed corporation otherwise than in writing if the licensed corporation has on the occasion of being heard pursuant to subsection (10) in respect of the imposition or amendment (as the case may be) made a request to the Commission that the conditions shall only be so imposed, or amended, by notice given to it in writing.

(7) The suspension of a licence under subsection (3)(a) takes effect at the time when notice is served in respect of it pursuant to that subsection or at the time specified in the notice, whichever is the later.

(8) The imposition of any conditions pursuant to subsection (3)(b), or the amendment of any conditions under or pursuant to subsection (4) or (5), takes effect at the time when notice is given in respect of it pursuant to such subsection or at the time specified in the notice, whichever is the later.

(9) Where a licence of a licensed corporation is suspended under subsection (3)(a), sections 200(1), 201(2) and (5), 202 and 203 shall apply, with necessary modifications, in relation to the suspension as if it were a suspension under section 194 or 195.

(10) Notwithstanding anything in this section—

(a) the Commission or any person authorized by the Commission under subsection (12) shall not exercise any power under subsection (2) in respect of a licensed corporation;

(b) the Commission shall not exercise any power under subsection (3), (4), (5), (7) or (8) in respect of a licensed corporation,

unless the Commission or the person (as the case may be) has given the licensed corporation a reasonable opportunity of being heard.

(11) A licensed corporation which contravenes a condition imposed pursuant to subsection (3)(b), or as amended under or pursuant to subsection (4) or (5), commits an offence and is liable—

(a) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of $100,000 for every day during which the offence continues; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months and, in the case of a continuing offence, to a further fine of $10,000 for every day during which the offence continues.

(12) For the purposes of subsection (2), the Commission may authorize any person in writing to exercise any of the powers referred to in that subsection.

Division 3—Client assets

148. Client securities and collateral held by intermediaries and their associated entities

(1) The Commission may make rules requiring intermediaries and their associated entities to treat and deal with client securities and collateral of the intermediaries, and to ensure that client securities and collateral of the intermediaries that are received or held by any other person on behalf of the intermediaries or the associated entities (as the case may be) are treated and dealt with, in such manner as is specified in the rules.

(2) Without limiting the generality of subsection (1) and without prejudice to section 398(7) and (8), the Commission may in the rules referred to in subsection (1)—

(a) require client securities and collateral of intermediaries to be held, and accounted for, in the specified manner;

(b) provide that the client securities and collateral shall not be deposited, transferred, lent, pledged, repledged or otherwise dealt with except in the specified manner;

(c) specify the circumstances in which the client securities and collateral may, notwithstanding that they are subject to a lawful claim or lien, be dealt with by intermediaries or their associated entities;

(d) provide for the approval, subject to such conditions as the Commission considers appropriate, of companies or non-Hong Kong companies as being suitable for the safe custody of the client securities and collateral; *(Amended 30 of 2004 s. 3)*

(e) require intermediaries and their associated entities to ensure, or to take reasonable steps to ensure, that persons who receive or hold the client securities and collateral on behalf of the intermediaries or the associated entities (as the case may be) comply with specified requirements;

(f) require the maintenance of records in relation to the client securities and collateral (including records of performance of reconciliations in respect of movements of the client securities and collateral into and out of accounts of intermediaries or their associated entities) in the specified manner;

(g) require the submission to the Commission, upon request or at specified intervals, of specified information, records and documents for the purpose of enabling the Commission to ascertain readily whether the rules are being complied with;

(h) require specified matters, and the circumstances relevant thereto, to be notified to the clients of intermediaries or the Commission, or both;

(i) require a person who becomes aware that he does not comply with any specified provision of the rules that applies to him to notify the Commission of that fact and of any further specified information, within the specified time;

(j) provide for any other matter relating to the client securities and collateral.

(3) Except as provided in the rules made under this section, client securities and collateral of an intermediary are not liable to be taken in execution against the intermediary or an associated entity of the intermediary under the order or process of a court.

(4) Rules made under this section may provide that an intermediary, or an associated entity of an intermediary, which, without reasonable excuse, contravenes any specified provision of the rules that applies to it commits an offence and is liable to a specified penalty not exceeding—

(a) on conviction on indictment a fine of $200,000 and a term of imprisonment of 2 years;

(b) on summary conviction a fine at level 6 and a term of imprisonment of 6 months.

(5) Rules made under this section may provide that an intermediary, or an associated entity of an intermediary, which, with intent to defraud, contravenes any specified provision of the rules that applies to it commits an offence and is liable to a specified penalty not exceeding—

(a) on conviction on indictment a fine of $1,000,000 and a term of imprisonment of 7 years;

(b) on summary conviction a fine of $500,000 and a term of imprisonment of 1 year.

(6) A person is not excused from complying with a requirement in any rules made pursuant to subsection (2)(i) to give notification to the Commission only on the ground that to do so might tend to incriminate the person.

(7) Notwithstanding anything in this section—

(a) the power of the Commission to make rules under this section in respect of intermediaries shall, where the intermediaries are registered institutions, be regarded as the power to make rules in respect of the intermediaries only in relation to client securities and collateral received or held by them in the course of the businesses which constitute any regulated activities for which they are registered;

(b) the power of the Commission to make rules under this section in respect of associated entities shall, where the associated entities are authorized financial institutions, be regarded as the power to make rules in respect of the associated entities only in relation to client securities and collateral received or held by them in the course of their businesses of receiving or holding client securities and collateral of intermediaries of which they are associated entities.

(8) Notwithstanding anything in subsection (3), that subsection—

(a) applies to client securities and collateral received or held by a registered institution only if the client securities and collateral were received or held by the registered institution in the course of the business which constitutes any regulated activity for which the registered institution is registered;

(b) applies to client securities and collateral received or held by an associated entity that is an authorized financial institution only if the client securities and collateral were

received or held by the associated entity in the course of its business of receiving or holding client securities and collateral of the intermediary of which the associated entity is an associated entity.

149. Client money held by licensed corporations and their associated entities

(1) The Commission may make rules requiring licensed corporations and their associated entities to treat and deal with client money of the licensed corporations in such manner as is specified in the rules.

(2) Without limiting the generality of subsection (1) and without prejudice to section 398(7) and (8), the Commission may in the rules referred to in subsection (1)—

(a) require client money of licensed corporations or any part thereof to be paid into segregated accounts established for client money and designated as trust accounts or client accounts;

(b) specify when and how the client money or any part thereof is to be paid into such accounts and require it to be dealt with, and accounted for, in the specified manner;

(c) specify the amount or proportion of the client money that is not to be paid into such accounts, and the deductions that may be made before the client money is paid into such accounts;

(d) specify the circumstances in which the client money may be paid out of such accounts, including the circumstances in which the client money that is the subject of a lawful claim or lien may be paid out of such accounts;

(e) require interest accruing from the holding of the client money in such accounts to be dealt with and paid in the specified manner;

(f) specify the persons in Hong Kong with whom such accounts are to be established and maintained;

(g) provide for authorization by the Commission as a condition for payment out of such accounts in specified circumstances;

(h) require the maintenance of records in relation to such accounts (including records of performance of reconciliations of payments of the client money into and out of such accounts) in the specified manner;

(i) require the submission to the Commission, upon request or at specified intervals, of specified information, records and documents for the purpose of enabling the Commission to ascertain readily whether the rules are being complied with;

(j) require specified matters, and the circumstances relevant thereto, to be notified to the clients of licensed corporations or the Commission, or both;

(k) require a person who becomes aware that he does not comply with any specified provision of the rules that applies to him to notify the Commission of that fact and of any further specified information, within the specified time;

(l) provide for any other matter relating to the client money.

(3) Except as provided in the rules made under this section, client money of a licensed corporation is not liable to be taken in execution against the licensed corporation or an associated entity of the licensed corporation under the order or process of a court.

(4) Rules made under this section may provide that a licensed corporation, or an associated entity of a licensed corporation, which, without reasonable excuse, contravenes any specified provision of the rules that applies to it commits an offence and is liable to a specified penalty not exceeding—

(a) on conviction on indictment a fine of $200,000 and a term of imprisonment of 2 years;

(b) on summary conviction a fine at level 6 and a term of imprisonment of 6 months.

(5) Rules made under this section may provide that a licensed corporation, or an associated entity of a licensed corporation, which, with intent to defraud, contravenes any specified provision of the rules that applies to it commits an offence and is liable to a specified penalty not exceeding—

(a) on conviction on indictment a fine of $1,000,000 and a term of imprisonment of 7 years;

(b) on summary conviction a fine of $500,000 and a term of imprisonment of 1 year.

(6) A person is not excused from complying with a requirement in any rules made pursuant to subsection (2)(k) to give notification to the Commission only on the ground that to do so might tend to incriminate the person.

(7) Notwithstanding anything in this section, no rules made under this section shall apply to associated entities that are authorized financial institutions.

(8) Notwithstanding anything in subsection (3), that subsection does not prevent client money of a licensed corporation that is received or held by an associated entity that is an authorized financial institution from being taken in execution against the associated entity.

150. Claims and liens not affected

Nothing in sections 148 and 149 and any rules made under any of those sections shall be construed as taking away or affecting a lawful claim or lien which any person has in respect of client assets of an intermediary (whether received or held by the intermediary or an associated entity of the intermediary), but the existence of any such claim or lien does not relieve the intermediary or an associated entity of the intermediary of the duty to comply with the requirements of those rules that apply to the intermediary or the associated entity (as the case may be).

Division 4—Records

151. Keeping of accounts and records by intermediaries and their associated entities

(1) The Commission may make rules to provide for—

(a) the keeping by intermediaries of such accounts and records as are specified in the rules;

(b) the keeping by associated entities of intermediaries of such accounts and records in respect of client assets of the intermediaries that they receive or hold as are specified in the rules.

(2) Without limiting the generality of subsection (1) and without prejudice to section 398(7) and (8), the Commission may in the rules referred to in subsection (1)—

(a) require intermediaries and their associated entities to keep the specified accounts and records for specified purposes;

(b) provide for the manner in which the accounts and records are to be kept;

(c) provide for the period for which, and the location at which, the accounts and records are to be kept before they may be destroyed;

(d) require a person who becomes aware that he does not comply with any specified provision of the rules that applies to him to notify the Commission of that fact and of any further specified information, within the specified time;

(e) provide for any other matter relating to accounts and records to be kept, whether by intermediaries or their associated entities.

(3) An entry in the accounts or records of an intermediary or an associated entity of an intermediary shall, in the absence of evidence to the contrary, be deemed to have been made by or with the authority of the intermediary or the associated entity (as the case may be).

(4) A person who, with intent to defraud—

(a) enters, records or stores, or causes to be entered, recorded or stored, in any accounts or records kept in compliance with, or in purported compliance with, rules made under this section, any matter which he knows to be false or misleading in a material particular;

(b) deletes, destroys, removes or falsifies, or causes to be deleted, destroyed, removed or falsified, any matter that has been entered, recorded or stored in any accounts or records kept in compliance with, or in purported compliance with, rules made under this section; or

(c) fails to enter, record or store in any accounts or records kept in compliance with, or in purported compliance with, rules made under this section, as soon as reasonably practicable, any matter that should be so entered, recorded or stored,

commits an offence and is liable—

(i) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 7 years; or

(ii) on summary conviction to a fine of $500,000 and to imprisonment for 1 year.

(5) Rules made under this section may provide that an intermediary, or an associated entity of an intermediary, which, without reasonable excuse, contravenes any specified provision of the rules that applies to it commits an offence and is liable to a specified penalty not exceeding—

(a) on conviction on indictment a fine of $200,000 and a term of imprisonment of 2 years;

(b) on summary conviction a fine at level 6 and a term of imprisonment of 6 months.

(6) Rules made under this section may provide that an intermediary, or an associated entity of an intermediary, which, with intent to defraud, contravenes any specified provision of the rules that applies to it commits an offence and is liable to a specified penalty not exceeding—

(a) on conviction on indictment a fine of $1,000,000 and a term of imprisonment of 7 years;

(b) on summary conviction a fine of $500,000 and a term of imprisonment of 1 year.

(7) A person is not excused from complying with a requirement in any rules made pursuant to subsection (2)(d) to give notification to the Commission only on the ground that to do so might tend to incriminate the person.

(8) Notwithstanding anything in this section, the power of the Commission to make rules under this section in respect of intermediaries shall, where the intermediaries are registered institutions, be regarded as the power to make rules in respect

of the intermediaries only in relation to accounts and records relating to the businesses which constitute any regulated activities for which they are registered.

152. Provision of contract notes, receipts, statements of account and notifications by intermediaries and their associated entities

(1) The Commission may make rules to provide for—

(a) the preparation by intermediaries of such contract notes, receipts, statements of account and notifications as are specified in the rules, and the provision thereof to clients of the intermediaries;

(b) the preparation by associated entities of intermediaries, in respect of client assets of the intermediaries that they receive or hold, of such receipts, statements of account and notifications as are specified in the rules, and the provision thereof to clients of the intermediaries.

(2) Without limiting the generality of subsection (1) and without prejudice to section 398(7) and (8), the Commission may in the rules referred to in subsection (1)—

(a) require intermediaries, in relation to all transactions they enter into, over any specified period of time, with or on behalf of a client of the intermediaries in the conduct of any of the businesses which constitute any regulated activities for which they are licensed or registered, to prepare and provide to the client a contract note and, where applicable, a statement of account in the specified manner and circumstances;

(b) require intermediaries and their associated entities, in relation to every client of the intermediaries to whom the intermediaries have provided financial accommodation, to prepare and provide to the client a statement of account in the specified manner and circumstances;

(c) require intermediaries and their associated entities, in relation to every receipt of client assets from or for the account of a client of the intermediaries, to prepare and provide to the client a receipt in the specified manner and circumstances;

(d) require intermediaries and their associated entities, in relation to every notification which relates to client assets received or held by the intermediaries or the associated entities (as the case may be) on behalf of a client of the intermediaries, and which is received from any person other than the client (including any notification concerning any entitlement relating to client assets), to prepare and provide to the client a notification in the specified manner and circumstances;

(e) provide for the time when contract notes, receipts, statements of account and notifications are to be provided and the period for which, and the location at which, copies thereof are to be kept before they may be destroyed;

(f) require a person who becomes aware that he does not comply with any specified provision of the rules that applies to him to notify the Commission of that fact and of any further specified information, within the specified time;

(g) provide for any other matter relating to contract notes, receipts, statements of account and notifications to be prepared and provided to clients of intermediaries, whether by the intermediaries or their associated entities.

(3) Rules made under this section may provide that an intermediary, or an associated entity of an intermediary, which, without reasonable excuse, contravenes any specified provision of the rules that applies to it commits an offence and is liable to a specified penalty not exceeding—

(a) on conviction on indictment a fine of $200,000 and a term of imprisonment of 2 years;

(b) on summary conviction a fine at level 6 and a term of imprisonment of 6 months.

(4) Rules made under this section may provide that an intermediary, or an associated entity of an intermediary, which, with intent to defraud, contravenes any specified provision of the rules that applies to it commits an offence and is liable to a specified penalty not exceeding—

(a) on conviction on indictment a fine of $1,000,000 and a term of imprisonment of 7 years;

(b) on summary conviction a fine of $500,000 and a term of imprisonment of 1 year.

(5) A person is not excused from complying with a requirement in any rules made pursuant to subsection (2)(f) to give notification to the Commission only on the ground that to do so might tend to incriminate the person.

(6) Notwithstanding anything in this section, the power of the Commission to make rules under this section in respect of intermediaries shall, where the intermediaries are registered institutions, be regarded as the power to make rules in respect of the intermediaries only in relation to contract notes, receipts, statements of account and notifications relating to the businesses which constitute any regulated activities for which they are registered.

Division 5—Audit

153. Auditor to be appointed by licensed corporations and associated entities of intermediaries

(1) A licensed corporation shall appoint an auditor to perform the functions required of an auditor of the corporation under or pursuant to the provisions of this or any other Ordinance.

(2) An associated entity of an intermediary shall appoint an auditor to perform the functions required of an auditor of the associated entity under or pursuant to the provisions of this or any other Ordinance.

(3) A licensed corporation, and an associated entity of an intermediary, shall, within 7 business days after its appointment of an auditor under subsection (1) or (2) (as the case may be), notify the Commission by notice in writing of the name and address of the auditor.

(4) A person—

(a) is not eligible for appointment as an auditor under subsection (1) or (2)—

(i) if he is an officer or employee of the licensed corporation or the associated entity the accounts of which are to be audited, or is in the employment of such an officer or employee; or

(ii) if he belongs to a class of persons prescribed by rules made under section 397 for the purposes of this subsection;

(b) is, subject to paragraph (a), eligible for appointment as an auditor under subsection (1) or (2), notwithstanding that he is, apart from that appointment, already an auditor appointed by the licensed corporation or the associated entity the accounts of which are to be audited, whether for the purposes of the Companies Ordinance (Cap. 622) or otherwise. *(Amended 28 of 2012 ss. 912 & 920)*

(5) A licensed corporation, or an associated entity of an intermediary, which fails to appoint an auditor in accordance with subsection (1) or (2) within one month after—

(a) it becomes licensed or becomes such an associated entity (as the case may be); or

(b) the auditor first appointed under subsection (1) or (2) after it becomes licensed or becomes such an associated entity, or any auditor further appointed under subsection (1) or (2), ceases to be an auditor of the licensed corporation or of the associated entity (as the case may be),

commits an offence and is liable—

(i) on conviction on indictment to a fine of $200,000 and to imprisonment for 1 year; or

(ii) on summary conviction to a fine at level 5 and to imprisonment for 6 months.

(6) A licensed corporation, or an associated entity of an intermediary, which contravenes subsection (3) commits an offence and is liable on conviction to a fine at level 5.

(7) Nothing in this section prejudices the operation of any other requirements relating to the appointment of an auditor, whether under the Companies Ordinance (Cap. 622) or otherwise. *(Amended 28 of 2012 ss. 912 & 920)*

(8) In this section, a reference to an associated entity of an intermediary shall be construed as a reference to such associated entity other than one that is an authorized financial institution.

154. Notification of proposed change of auditors by licensed corporations and associated entities of intermediaries

(1) A licensed corporation, and an associated entity of an intermediary, shall within one business day after—

(a) it gives notice to its members of a motion, to be moved at its general meeting—

(i) to remove an auditor appointed by it under section 153 before the expiration of his term of office; or

(ii) to replace with another auditor, or not to reappoint, an auditor appointed by it under section 153 at the expiration of his term of office; or

(b) an auditor appointed by it under section 153 ceases to be its auditor before the expiration of his term of office, otherwise than in consequence of a motion referred to in paragraph (a),

notify the Commission by notice in writing of that fact.

(2) A licensed corporation, or an associated entity of an intermediary, which contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5.

(3) In this section, a reference to an associated entity of an intermediary shall be construed as a reference to such associated entity other than one that is an authorized financial institution.

155. Notification of end of financial year by licensed corporations and associated entities of intermediaries, etc.

(1) A licensed corporation, and an associated entity of an intermediary, shall—

(a) in the case of the licensed corporation, within one month after it becomes licensed; or

(b) in the case of the associated entity, within one month after it becomes such an associated entity,

notify the Commission by notice in writing of the date on which its financial year ends.

(2) A licensed corporation, and an associated entity of an intermediary, shall not—

(a) except with the approval in writing of the Commission under subsection (3)(a), alter the date notified to the

Commission under subsection (1) as the date on which its financial year ends;

(b) except with the approval in writing of the Commission under subsection (3)(b), adopt any period which exceeds 12 months as its financial year.

(3) On an application in writing by a licensed corporation or an associated entity of an intermediary, the Commission may, subject to such conditions as it considers appropriate, grant approval in writing in respect of—

(a) an alteration of the date notified to the Commission under subsection (1) as the date on which its financial year ends;

(b) the adoption of any period which exceeds 12 months as its financial year.

(4) A licensed corporation, or an associated entity of an intermediary, which contravenes subsection (1) or (2), or a condition imposed pursuant to subsection (3), commits an offence and is liable on conviction to a fine at level 5.

(5) Nothing in this section prejudices the operation of section 429 of the Companies Ordinance (Cap. 622). *(Amended 28 of 2012 ss. 912 & 920)*

(6) In this section, a reference to an associated entity of an intermediary shall be construed as a reference to such associated entity other than one that is an authorized financial institution.

156. Audited accounts, etc. to be submitted by licensed corporations and associated entities of intermediaries

(1) Subject to subsections (3) and (4), a licensed corporation, and an associated entity of an intermediary, shall—

(a) prepare such financial statements and other documents, for such periods, as are prescribed by rules made under section 397 for the purposes of this section; and

(b) submit the financial statements and other documents, together with an auditor's report, to the Commission not later than 4 months after the end of the financial year to which they relate.

(2) Subject to subsections (3) and (4), a licensed corporation that ceases, in such circumstances as are prescribed by rules made under section 397 for the purposes of this section, carrying on all of the regulated activities for which it is licensed, and an associated entity of an intermediary that ceases to be such an associated entity, shall—

(a) prepare such financial statements and other documents, which shall be made up to (and including) the date of the cessation, as are prescribed by the rules; and

(b) submit the financial statements and other documents, together with an auditor's report, to the Commission not later than 4 months after the date of the cessation.

(3) Without limiting the generality of subsection (1) or (2), the requirements under such subsection relating to the financial statements and other documents, and the auditor's report, referred to in such subsection include the requirements that—

(a) the financial statements and other documents are to relate to such matters and contain such particulars as are prescribed by rules made under section 397 for the purposes of this section;

(b) the auditor's report is to contain such particulars, including such statement of opinion, as are prescribed by the rules;

(c) the financial statements and other documents, and the auditor's report, are to be prepared in accordance with

such principles or bases as are prescribed by the rules; and

(d) without limiting the generality of section 387 of the Companies Ordinance (Cap. 622), the financial statements and other documents are to be signed by such person as is prescribed by the rules. *(Amended 28 of 2012 ss. 912 & 920)*

(4) On an application in writing by the licensed corporation or the associated entity by which any financial statements and other documents, and any auditor's report, are required under subsection (1) or (2) to be submitted, the Commission may, where it is satisfied that there are special reasons for so doing, extend the period within which the financial statements and other documents, and the auditor's report, are required to be submitted, for such period and subject to such conditions as the Commission considers appropriate, and upon the Commission granting the extension, subsection (1) or (2) (as the case may be) shall apply subject to the extension accordingly.

(5) A licensed corporation, or an associated entity of an intermediary, which, without reasonable excuse, contravenes subsection (1) or (2), or a condition imposed pursuant to subsection (4), commits an offence and is liable—

(a) on conviction on indictment to a fine of $200,000 and to imprisonment for 1 year; or

(b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.

(6) A licensed corporation, or an associated entity of an intermediary, which, with intent to defraud, contravenes subsection (1) or (2), or a condition imposed pursuant to subsection (4), commits an offence and is liable—

(a) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 7 years; or

(b) on summary conviction to a fine of $500,000 and to imprisonment for 1 year.

(7) In this section, a reference to an associated entity of an intermediary shall be construed as a reference to such associated entity other than one that is an authorized financial institution.

157. Auditors of licensed corporations or associated entities of intermediaries to lodge report with Commission, etc. in certain cases

(1) If a person—

(a) in the course of performing his functions as an auditor appointed under section 153 by a licensed corporation or an associated entity of an intermediary or, where an associated entity of an intermediary is an authorized financial institution, as an auditor appointed for the purposes of the Banking Ordinance (Cap. 155) by the associated entity, becomes aware of a reportable matter; or

(b) in the course of performing his functions as an auditor appointed under section 153 by a licensed corporation or an associated entity of an intermediary, proposes to include any qualification or adverse statement in any report prepared by him on the financial statements or other documents of the licensed corporation or the associated entity (as the case may be) which are required to be submitted to the Commission under section 156,

he shall—

(i) in the case of paragraph (a), as soon as reasonably practicable after he becomes aware of the reportable matter, lodge with—

(A) in the case of an auditor appointed under section 153 by a licensed corporation or an associated entity of an intermediary, the Commission; or

(B) in the case of an auditor appointed for the purposes of the Banking Ordinance (Cap. 155) by an associated entity of an intermediary, the Commission and the Monetary Authority,

a written report on the reportable matter;

(ii) in the case of paragraph (b), as soon as reasonably practicable after he first proposes the inclusion of the qualification or adverse statement, lodge with the Commission a written report on the qualification or adverse statement.

(2) If a person appointed as an auditor under section 153 by a licensed corporation or an associated entity of an intermediary—

(a) resigns as an auditor of the licensed corporation or the associated entity (as the case may be) before the expiration of his term of office as such auditor;

(b) does not seek reappointment as an auditor of the licensed corporation or the associated entity (as the case may be) at the expiration of his term of office as such auditor; or

(c) otherwise ceases to be an auditor of the licensed corporation or the associated entity (as the case may be),

he shall within one business day thereafter notify the Commission by notice in writing of that fact, and in the notice state the reasons therefor, and give particulars of

any connected circumstances which he considers should be brought to the attention of the Commission or, where no such circumstances exist, make a statement to that effect.

(3) In this section—

prescribed requirement (訂明規定) means such of the requirements under any of the rules made under section 148, 149, 151 or 152 as are prescribed by rules made under section 397 for the purposes of this definition;

reportable matter (須報告事項), in relation to a person acting as an auditor within the meaning of subsection (1)(a), means a matter that, in the opinion of the person—

(a) in the case of a licensed corporation—

(i) constitutes on the part of the licensed corporation or any of its associated entities a failure to comply with any prescribed requirement;

(ii) adversely affects to a material extent the financial position of the licensed corporation or any of its associated entities; or

(iii) constitutes on the part of the licensed corporation a failure to comply with section 146 or with all or any of the requirements of the financial resources rules that apply to it; or

(b) in the case of an associated entity of an intermediary—

(i) constitutes on the part of the associated entity a failure to comply with any prescribed requirement; or

(ii) where the associated entity is not an authorized financial institution, adversely affects to a material extent the financial position of the associated entity.

158. Immunity in respect of communication with Commission, etc. by auditors of licensed corporations or associated entities of intermediaries

(1) Without prejudice to sections 380 and 381, no duty which a person may be subject to as an auditor appointed under section 153 by a licensed corporation or an associated entity of an intermediary or, where an associated entity of an intermediary is an authorized financial institution, as an auditor appointed for the purposes of the Banking Ordinance (Cap. 155) by the associated entity shall be regarded as contravened by reason of his communicating in good faith to the Commission or the Monetary Authority, whether or not in response to a request made by the Commission or the Monetary Authority (as the case may be), any information or opinion on a matter which—

(a) he becomes aware of in his capacity as such auditor (whether or not in the course of performing his functions as such auditor); and

(b) is relevant to any function of the Commission or the Monetary Authority (as the case may be).

(2) In addition to applying to a person who is an auditor appointed under section 153 by a licensed corporation or an associated entity of an intermediary, or appointed for the purposes of the Banking Ordinance (Cap. 155) by an associated entity of an intermediary, subsection (1) also applies to—

(a) a person whose appointment as an auditor appointed under section 153 by a licensed corporation or an associated entity of an intermediary, or appointed for the purposes of the Banking Ordinance (Cap. 155) by an associated entity of an intermediary, has ceased, in which case a reference to a matter in that subsection

shall be construed on the basis that paragraph (a) of that subsection requires the matter to be one which he becomes aware of in his capacity as such auditor (whether or not in the course of performing his functions as such auditor) before the appointment has ceased;

(b) an auditor appointed, whether or not under section 153 or for the purposes of the Banking Ordinance (Cap. 155), by a former licensed corporation or by a former associated entity of an intermediary, in which case a reference to a matter in that subsection shall be construed on the basis that paragraph (a) of that subsection requires the matter to be one which he becomes aware of in his capacity as such auditor (whether or not in the course of performing his functions as such auditor); and

(c) a person whose appointment as an auditor, whether or not under section 153 or for the purposes of the Banking Ordinance (Cap. 155), by a former licensed corporation or by a former associated entity of an intermediary, has ceased, in which case a reference to a matter in that subsection shall be construed on the basis that paragraph (a) of that subsection requires the matter to be one which he becomes aware of in his capacity as such auditor (whether or not in the course of performing his functions as such auditor) before the appointment has ceased.

(3) In this section—

former associated entity of an intermediary (中介人的前有聯繫實體) means a corporation which was formerly an associated entity of an intermediary;

former licensed corporation (前持牌法團) means a corporation which was formerly a licensed corporation.

159. Power of Commission to appoint auditors for licensed corporations and their associated entities

(1) Subject to subsection (3), where—

(a) a licensed corporation has failed to satisfy the Commission in accordance with section 147 that it complies with all of the requirements of the financial resources rules that apply to it;

(b) the Commission has reasonable cause to believe that a licensed corporation or any of its associated entities has failed to comply with any prescribed requirement;

(c) the Commission has reasonable cause to believe that a licensed corporation or any of its associated entities has failed to submit any financial statements or other documents in accordance with section 156; or

(d) the Commission has received a written report lodged by a person under section 157 in relation to a licensed corporation or any of its associated entities,

the Commission may appoint an auditor to examine and audit, either generally or in respect of any particular matter, the accounts and records of the licensed corporation and any of its associated entities (including records of transactions entered into by the licensed corporation with any other person and of client assets of the licensed corporation received or held by the licensed corporation or the associated entity (as the case may be)), and, without prejudice to section 161, to report to the Commission on such matters as the Commission may direct.

(2) Where an auditor is appointed under subsection (1) to examine and audit the accounts and records of a licensed corporation and any of its associated entities, the auditor may, for the purpose of carrying out the examination and audit,

examine any client assets of the licensed corporation received or held by the licensed corporation or the associated entity (as the case may be).

(3) The Commission shall not appoint an auditor under subsection (1) to examine and audit the accounts and records of an associated entity that is an authorized financial institution unless the Commission has first consulted the Monetary Authority in respect of the appointment and of the scope of the examination and audit to be carried out by the auditor.

(4) Subject to subsection (5), where an auditor appointed under subsection (1) has examined and audited the accounts and records of a licensed corporation or an associated entity of a licensed corporation, the Commission may, where it is of the opinion that it is appropriate to do so having regard to the conduct (whether before or after the appointment) of the licensed corporation or the associated entity (as the case may be), by notice in writing direct the licensed corporation or the associated entity (as the case may be) to pay a specified amount, being the whole or a part of the costs and expenses of the examination and audit, within the specified time and in the specified manner.

(5) The Commission shall not give a direction under subsection (4) unless it has given the licensed corporation or the associated entity to which the direction is to be given a reasonable opportunity of being heard.

(6) Where a licensed corporation or an associated entity of a licensed corporation fails to comply with a direction of the Commission under subsection (4), the Commission may recover the specified amount referred to in the direction as a civil debt due to it.

(7) In this section, ***prescribed requirement*** (訂明規定) means such of the requirements under any of the rules made under

section 148, 149, 151 or 152 as are prescribed by rules made under section 397 for the purposes of this definition.

160. Power of Commission to appoint auditors for licensed corporations and their associated entities on application

(1) Subject to subsections (3) to (6), on an application in writing by a person who alleges that a licensed corporation or any of its associated entities—

(a) has failed to account to the person as a client of the licensed corporation for any client assets held on behalf of the person by the licensed corporation or the associated entity (as the case may be); or

(b) has failed to act in accordance with instructions given by the person as a client of the licensed corporation to the licensed corporation or the associated entity (as the case may be), and has failed—

(i) to account to the person for any profit that may have been secured or increased by the person had the instructions been followed; or

(ii) to compensate the person for any loss that may have been avoided or reduced by the person had the instructions been followed,

the Commission may appoint an auditor to examine and audit, either generally or in respect of any particular matter, the accounts and records of the licensed corporation and any of its associated entities (including records of transactions entered into by the licensed corporation with any other person and of client assets of the licensed corporation received or held by the licensed corporation or the associated entity (as the case may be)), and, without prejudice to section 161, to report to the Commission on such matters as the Commission may direct.

(2) Where an auditor is appointed under subsection (1) to examine and audit the accounts and records of a licensed corporation and any of its associated entities, the auditor may, for the purpose of carrying out the examination and audit, examine any client assets of the licensed corporation received or held by the licensed corporation or the associated entity (as the case may be).

(3) A person making an application pursuant to subsection (1) shall state in the application—

(a) the particulars of the circumstances in which any licensed corporation or any associated entity of a licensed corporation is alleged to have failed to account for any client assets, or to act in accordance with instructions given to the licensed corporation or the associated entity and to account for any profit or compensate for any loss (as the case may be);

(b) the particulars of any client assets concerned;

(c) the particulars of the transactions in respect of which the alleged failure has occurred; and

(d) any other particulars the Commission may require,

and shall verify all statements in the application by statutory declaration, which may be taken by any person authorized by the Commission in that behalf.

(4) The Commission shall not appoint an auditor under subsection (1) unless it is satisfied that—

(a) the person making the application pursuant to that subsection has a good reason for making the application; and

(b) it is in the interest of—

(i) the licensed corporation and the associated entity the accounts and records of which are to be examined and audited by the auditor;

(ii) the person making the application; or

(iii) the investing public or the public,

that the auditor be appointed.

(5) The Commission shall not appoint an auditor under subsection (1) to examine and audit the accounts and records of an associated entity that is an authorized financial institution unless the Commission has first consulted the Monetary Authority in respect of the appointment and of the scope of the examination and audit to be carried out by the auditor.

(6) The Commission shall not appoint an auditor under subsection (1) to examine and audit the accounts and records of a licensed corporation or an associated entity of a licensed corporation unless the Commission has given the licensed corporation or the associated entity (as the case may be) a reasonable opportunity of being heard.

(7) For the purposes of the law of defamation, every statement in an application made pursuant to subsection (1) shall, if made in good faith and without malice, be privileged.

(8) Subject to subsection (9), where an auditor appointed under subsection (1) has examined and audited the accounts and records of a licensed corporation or an associated entity of a licensed corporation, the Commission may, where it is of the opinion that it is appropriate to do so having regard to the conduct (whether before or after the appointment) of the licensed corporation or the associated entity (as the case may be) and of the person making the application pursuant to subsection (1) in respect of the appointment, by notice in writing direct the licensed corporation or the associated entity

(as the case may be) or the person making the application to pay a specified amount, being—

(a) in the case of the licensed corporation or the associated entity (as the case may be), the whole or a part of the costs and expenses of the examination and audit; or

(b) in the case of the person making the application, the whole or a part of the costs and expenses of the examination and audit to the extent that they have been reasonably incurred for the purpose of ascertaining matters to which the application relates,

within the specified time and in the specified manner.

(9) The Commission shall not give a direction under subsection (8) unless it has given the licensed corporation, the associated entity or the person to which or to whom the direction is to be given a reasonable opportunity of being heard.

(10) Where a licensed corporation, an associated entity of a licensed corporation or a person making an application pursuant to subsection (1) fails to comply with a direction of the Commission under subsection (8), the Commission may recover the specified amount referred to in the direction as a civil debt due to it.

161. Auditors appointed under section 159 or 160 to report to Commission

(1) An auditor appointed under section 159 or 160 shall make such interim reports to the Commission as it may require and shall, on the conclusion of the examination and audit which he is appointed to carry out, make a final report to the Commission.

(2) A report referred to in subsection (1) shall be made within such time and in such manner as the Commission may direct.

(3) The Commission may, if it considers appropriate, forward a copy of any report made to it under subsection (1) to the licensed corporation or the associated entity the accounts and records of which are the subject of the examination and audit referred to in the report.

162. Powers of auditors appointed under section 159 or 160

(1) An auditor appointed under section 159 or 160 to examine and audit the accounts and records of any licensed corporation and any of its associated entities, for the purpose of carrying out the examination and audit, may, in addition to any other action that the auditor may reasonably take for the purpose—

(a) examine on oath or otherwise—

(i) any officer, employee and agent of the licensed corporation or the associated entity (as the case may be); and

(ii) any auditor appointed by the licensed corporation or the associated entity (as the case may be) under section 153 or, where the associated entity is an authorized financial institution, for the purposes of the Banking Ordinance (Cap. 155),

in respect of any matter relating to the business of the licensed corporation or the associated entity (as the case may be) or to the client assets of the licensed corporation received or held by the licensed corporation or the associated entity (as the case may be) and, for that purpose, administer oaths accordingly;

(b) require any officer, employee and agent of the licensed corporation or the associated entity (as the case may be) to—

(i) produce any accounts and records concerning any matter relating to the business of the licensed

corporation or the associated entity (as the case may be) or to the client assets of the licensed corporation received or held by the licensed corporation or the associated entity (as the case may be); and

(ii) explain the contents of the accounts and records so produced;

(c) require any auditor appointed by the licensed corporation or the associated entity (as the case may be) under section 153 or, where the associated entity is an authorized financial institution, for the purposes of the Banking Ordinance (Cap. 155) to—

(i) produce any accounts and records held by him concerning any matter relating to the business of the licensed corporation or the associated entity (as the case may be) or to the client assets of the licensed corporation received or held by the licensed corporation or the associated entity (as the case may be); and

(ii) explain the contents of the accounts and records so produced;

(d) require a recognized exchange company or recognized clearing house to—

(i) produce any accounts and records kept by it, or information in its possession, concerning any matter relating to the business of the licensed corporation or the associated entity (as the case may be) or to the client assets of the licensed corporation received or held by the licensed corporation or the associated entity (as the case may be); and

(ii) explain the contents of the accounts and records, and the information, so produced;

(e) require any person receiving or holding client assets of the licensed corporation on behalf of the licensed corporation or the associated entity (as the case may be) to—

(i) produce any accounts and records kept by the person, or information in his possession, concerning any matter relating to the client assets; and

(ii) explain the contents of the accounts and records, and the information, so produced;

(f) employ any person he considers necessary to assist him in carrying out the examination and audit which he is appointed to carry out; and

(g) for the purpose of carrying out the examination and audit which he is appointed to carry out, authorize in writing any person employed by him to do any act or thing referred to in this subsection (except to examine a person on oath under paragraph (a) or to exercise any power conferred by this paragraph).

(2) If an auditor appointed under section 159 or 160, or a person authorized under subsection (1)(g), reasonably considers it necessary for the purpose of carrying out the examination and audit of the accounts and records of a licensed corporation and any of its associated entities which the auditor is appointed to carry out, the powers referred to in subsection (1)—

(a) are exercisable in relation to any other business carried on by the licensed corporation in conjunction with any regulated activity for which it is licensed and to any business of any of its associated entities, in which case

any reference to "any matter relating to the business of the licensed corporation or the associated entity (as the case may be)" in subsection (1)(a) to (g) shall be construed on the basis that it refers to any matter relating to such other business carried on by the licensed corporation or to such business of any of its associated entities; and

(b) are exercisable in relation to a related corporation of the licensed corporation or any of its associated entities, in which case—

(i) any reference to "any officer, employee and agent of the licensed corporation or the associated entity (as the case may be)" in subsection (1)(a) to (g) shall be construed on the basis that it refers to any officer, employee and agent of the related corporation;

(ii) any reference to "any auditor appointed by the licensed corporation or the associated entity (as the case may be) under section 153 or, where the associated entity is an authorized financial institution, for the purposes of the Banking Ordinance (Cap. 155)" in subsection (1)(a) to (g) shall be construed on the basis that it refers to any auditor appointed by the related corporation, whether under this Ordinance or otherwise;

(iii) any reference to "any matter relating to the business of the licensed corporation or the associated entity (as the case may be) or to the client assets of the licensed corporation received or held by the licensed corporation or the associated entity (as the case may be)" in subsection (1)(a) to (g) shall be construed on the basis that it refers, apart from the matter originally referred to, also to

any matter relating to the business of the related corporation; and

(iv) any reference to "any person receiving or holding client assets of the licensed corporation on behalf of the licensed corporation or the associated entity (as the case may be)" in subsection (1)(a) to (g) shall be construed on the basis that it refers to any person receiving or holding client assets of the licensed corporation on behalf of the related corporation.

(3) A person who, without reasonable excuse, fails to comply with any requirement imposed on him (including the requirement to answer any question put to him) under this section (whether by an auditor appointed under section 159 or 160 or a person authorized under subsection (1)(g)) commits an offence and is liable—

(a) on conviction on indictment to a fine of $200,000 and to imprisonment for 1 year; or

(b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.

(4) A person who—

(a) in purported compliance with a requirement imposed on him (including the requirement to answer any question put to him) under this section (whether by an auditor appointed under section 159 or 160 or a person authorized under subsection (1)(g)), produces any accounts or records or gives an answer which is false or misleading in a material particular; and

(b) knows that, or is reckless as to whether, the accounts or records or the answer is false or misleading in a material particular,

commits an offence and is liable—

(i) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(ii) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(5) A person who, with intent to defraud—

(a) fails to comply with any requirement imposed on him (including the requirement to answer any question put to him) under this section (whether by an auditor appointed under section 159 or 160 or a person authorized under subsection (1)(g)); or

(b) in purported compliance with a requirement imposed on him (including the requirement to answer any question put to him) under this section (whether by an auditor appointed under section 159 or 160 or a person authorized under subsection (1)(g)), produces any accounts or records or gives an answer which is false or misleading in a material particular,

commits an offence and is liable—

(i) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 7 years; or

(ii) on summary conviction to a fine of $500,000 and to imprisonment for 1 year.

163. Offence to destroy, conceal, or alter accounts, records or documents, etc.

(1) A person commits an offence if he, with intent to prevent, delay or obstruct the carrying out of any examination and audit which an auditor appointed under this Part is required to carry out—

(a) deletes, destroys, mutilates, falsifies, conceals, alters or otherwise makes unavailable any accounts, records or

documents related to such examination and audit, or aids or abets or conspires with another person to do so;

(b) disposes or procures the disposal, in any manner and by any means, of any property related to such examination and audit, or aids or abets or conspires with another person to do so; or

(c) leaves, or attempts to leave, Hong Kong.

(2) A person who commits an offence under subsection (1) is liable—

(a) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 7 years; or

(b) on summary conviction to a fine of $500,000 and to imprisonment for 1 year.

(3) If, in proceedings for an offence under subsection (1), it is proved that the accused person deleted, destroyed, mutilated, falsified, concealed or altered any accounts, records or documents related to any examination and audit which an auditor appointed under this Part is required to carry out, or aided or abetted or conspired with another person to do so, he shall, in the absence of evidence to the contrary, be presumed to have done so with intent to prevent, delay or obstruct the carrying out of such examination and audit.

Division 6—Miscellaneous

164. Restriction on receiving or holding of client assets

(1) No person shall receive or hold in Hong Kong client assets of an intermediary unless the person is—

(a) the intermediary;

(b) an associated entity of the intermediary; or

(c) an excluded person.

(2) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable—

(a) on conviction on indictment to a fine of $200,000 and to imprisonment for 2 years; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(3) In this section, ***excluded person*** (豁除人士) means—

(a) any authorized financial institution;

(b) in the case of client collateral of any intermediary, any other intermediary or person with which or whom it is deposited, or to which or whom it is provided, in the circumstances referred to in paragraph (a)(A) or (B) or (b)(A) or (B) (as the case may be) of the definition of ***securities collateral*** or ***other collateral*** (as the case may be) in section 1 of Part 1 of Schedule 1;

(c) any company or non-Hong Kong company that is approved under rules made pursuant to section 148(2)(d) as being suitable for the safe custody of client securities and collateral of intermediaries; or *(Amended 30 of 2004 s. 3)*

(d) any person in Hong Kong that is specified under rules made pursuant to section 149(2)(f) as that with whom segregated accounts established for client money of licensed corporations and designated as trust accounts or client accounts are to be established and maintained.

165. Associated entities

(1) An associated entity of an intermediary shall within 7 business days after—

(a) it becomes such an associated entity; or

(b) it ceases to be such an associated entity,

notify the Commission by notice in writing of that fact and such other particulars as are prescribed by rules made under section 397 for the purposes of this section.

(2) Where there is any change in the particulars required to be provided by an associated entity of an intermediary under subsection (1), the associated entity shall within 7 business days thereafter notify the Commission by notice in writing of that fact and provide in the notice particulars of the change.

(3) Where an associated entity of an intermediary, other than an authorized financial institution, receives or holds client assets of the intermediary, the associated entity shall not, unless authorized in writing by the Commission, conduct any business other than that of receiving or holding client assets, whether on behalf of the intermediary or otherwise.

(4) An associated entity of an intermediary which, without reasonable excuse, contravenes subsection (1), (2) or (3) commits an offence and is liable—

(a) on conviction on indictment to a fine of $200,000 and to imprisonment for 2 years; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(5) An associated entity of an intermediary which, with intent to defraud, contravenes subsection (1), (2) or (3) commits an offence and is liable—

(a) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 7 years; or

(b) on summary conviction to a fine of $500,000 and to imprisonment for 1 year.

(6) An associated entity of an intermediary which becomes aware that it does not comply with subsection (1), (2) or (3) shall within one business day thereafter notify the Commission

by notice in writing of that fact and of the surrounding circumstances.

(7) An associated entity of an intermediary which contravenes subsection (6) commits an offence and is liable—

(a) on conviction on indictment to a fine of $200,000 and to imprisonment for 2 years; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(8) An associated entity of an intermediary is not excused from complying with subsection (6) only on the ground that to do so might tend to incriminate it.

(9) Notwithstanding anything in this section, the power of the Commission to make rules for the purposes of this section in respect of associated entities shall, where the associated entities are authorized financial institutions, be regarded as the power to make rules in respect of the associated entities only in relation to particulars relating to their businesses of receiving or holding client assets of intermediaries of which they are associated entities.

166. Use of incriminating evidence in proceedings

Notwithstanding any other provisions of this Ordinance, where a person—

(a) is required under section 146(3) to notify the Commission of any matter;

(b) is required under section 165(6) to notify the Commission of any matter; or

(c) is required by rules made pursuant to section 148(2)(i), 149(2)(k), 151(2)(d) or 152(2)(f) to notify the Commission of any matter,

and the notification might tend to incriminate the person, then the notification shall not be admissible in evidence against the person in criminal proceedings in a court of law other than those in which—

(i) he is charged with an offence under Part V of the Crimes Ordinance (Cap. 200), or for perjury, in respect of the notification;

(ii) in the case of paragraph (a), he is charged with an offence under section 146(15) in respect of the notification;

(iii) in the case of paragraph (b), he is charged with an offence under section 165(7) in respect of the notification; or

(iv) in the case of paragraph (c), he is charged with an offence under any rules made under section 148(4) or (5), 149(4) or (5), 151(5) or (6), 152(3) or (4) (as the case may be) in respect of a contravention taking place by reason of a failure to comply with the requirement described in paragraph (c) relating to the notification.

Part VII

Business Conduct, etc. of Intermediaries

(Format changes—E.R. 2 of 2017)

Division 1—Interpretation

167. Interpretation of Part VII

In this Part, unless the context otherwise requires—

client contract (客戶合約) means any contract or arrangement between an intermediary and another person, which contains terms on which the intermediary is to provide services the provision of which constitutes a regulated activity;

representative (代表)—

(a) in relation to a licensed corporation, means an individual—

(i) who is licensed as a licensed representative for a regulated activity; and

(ii) who carries on that regulated activity for the licensed corporation as a licensed corporation to which he is accredited; or

(b) in relation to a registered institution, means an individual—

(i) whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as that of a person engaged by the registered institution in respect of a regulated activity; and

(ii) who carries on that regulated activity for the registered institution.

Division 2—Business conduct

168. Business conduct of intermediaries and their representatives

(1) The Commission may make rules requiring intermediaries and their representatives to comply with such practices and standards, relating to the conduct of the intermediaries or the representatives (as the case may be) in carrying on the regulated activities for which the intermediaries are licensed or registered, as are specified in the rules.

(2) Without limiting the generality of subsection (1) and without prejudice to section 398(7) and (8), the Commission may in the rules referred to in subsection (1)—

(a) prohibit the use of misleading or deceptive advertisements by or on behalf of intermediaries, and impose conditions for the use of advertisements by or on behalf of intermediaries;

(b) require specified terms and conditions to be included in client contracts and provide that the terms and conditions are, unless the Commission in relation to any particular term or condition otherwise directs, to be deemed to be of the essence of the client contracts in which they are included, whether or not a different intention appears from the provisions of such client contracts;

(c) require an intermediary to provide to its client, upon entering into a client contract with the client, and thereafter from time to time upon request by the client, specified information concerning the business of the intermediary, and the identity and status of any person acting on behalf of the intermediary and with whom the client may have contact;

(d) require an intermediary, and any representative of an intermediary, to take specified steps to ascertain, in relation to each of the clients of the intermediary, specified matters relating to his identity and his financial situation, investment experience and investment objectives relevant to the services to be provided by the intermediary;

(e) require an intermediary, and any representative of an intermediary, to take specified steps before providing information or advice concerning financial products to any client of the intermediary;

(f) require an intermediary, and any representative of an intermediary, when making any recommendation concerning any financial product to any client of the intermediary, to disclose to the client in the specified manner any interest the intermediary or the representative (as the case may be) may have in the financial product;

(g) require an intermediary, and any representative of an intermediary, to take specified steps to ensure that disclosure is made to any client of the intermediary of financial risks in relation to any financial product the intermediary or the representative (as the case may be) recommends to the client;

(h) require an intermediary, and any representative of an intermediary, to take specified steps to ensure that disclosure is made to any client of the intermediary of any commission or advantage the intermediary or the representative (as the case may be) receives or is to receive from any third party in connection with any financial product the intermediary or the representative (as the case may be) recommends to the client;

(i) require an intermediary, and any representative of an intermediary, not to effect a transaction on behalf of any client of the intermediary in specified circumstances;

(j) prohibit the use by an intermediary, or any representative of an intermediary, of information relating to the affairs of a client of the intermediary, except in specified circumstances and under specified conditions;

(k) require an intermediary, and any representative of an intermediary, to take specified steps in cases of conflict arising between any of their interests and those of a client of the intermediary;

(l) prohibit the receipt by an intermediary of any property or services from another intermediary in consideration of directing business to that other intermediary, except in specified circumstances and under specified conditions;

(m) prohibit the dealing by any representative of an intermediary for his own account in securities or futures contracts, except in specified circumstances and under specified conditions;

(n) require an intermediary, and any representative of an intermediary, to take specified steps to introduce and implement procedures to discourage and identify any money laundering activities;

(o) provide for any other matter relating to the practices and standards relating to conduct in carrying on the regulated activities for which intermediaries are licensed or registered.

(3) Notwithstanding anything in this section, the Commission shall not exercise any of its powers under this section to make rules to specify any terms and conditions for the purposes of any requirement referred to in subsection (2)(b) unless it is satisfied that the specification of the terms and conditions is

for the better furtherance of any of its regulatory objectives or the better performance of any of its functions.

(4) Rules made under this section may provide that an intermediary, or a representative of an intermediary, that, without reasonable excuse, contravenes any specified provision of the rules that applies to it or him commits an offence and is liable to a specified penalty not exceeding—

(a) on conviction on indictment a fine of $200,000 and a term of imprisonment of 2 years;

(b) on summary conviction a fine at level 6 and a term of imprisonment of 6 months.

169. Codes for business conduct of intermediaries and their representatives

(1) Without prejudice to the power of the Commission to make rules under section 168, the Commission may publish, in the Gazette and in any other manner it considers appropriate, codes of conduct for the purpose of giving guidance relating to the practices and standards with which intermediaries and their representatives are ordinarily expected to comply in carrying on the regulated activities for which the intermediaries are licensed or registered.

(2) Without limiting the generality of subsection (1), any code of conduct referred to in that subsection may, in giving guidance referred to in that subsection, refer to obligations to observe—

(a) any other codes or requirements issued or imposed otherwise than by the Commission;

(b) continuing obligations, including any such obligations—

(i) in the case of an intermediary, to provide for the continuous training of its representatives; or

(ii) in the case of a representative of an intermediary, to undergo continuous training;

(c) practices and standards concerning any of the matters described in section 168(2).

(3) The Commission may from time to time amend the whole or any part of any code of conduct published under this section in a manner consistent with the power to publish the code of conduct under this section, and—

(a) the other provisions of this section apply, with necessary modifications, to such amendments to the code as they apply to the code; and

(b) any reference in this or any other Ordinance to the code (however expressed) shall, unless the context otherwise requires, be construed as a reference to the code as so amended.

(4) A failure on the part of an intermediary, or a representative of an intermediary, to comply with the provisions set out in any code of conduct published under this section that apply to it or him shall not by itself render it or him liable to any judicial or other proceedings, but may be taken into account in considering, for the purposes of any provision of this Ordinance—

(a) in the case of an intermediary, whether it is a fit and proper person to be or to remain licensed or registered;

(b) in the case of a representative of an intermediary that is a licensed corporation, whether he is a fit and proper person to be or to remain licensed as a representative; or

(c) in the case of a representative of an intermediary that is a registered institution, whether he is a fit and proper person to be or to remain a person whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance

(Cap. 155) as that of a person engaged by a registered institution in respect of a regulated activity,

and in any proceedings under this Ordinance before any court the code shall be admissible in evidence, and if any provision set out in the code appears to the court to be relevant to any question arising in the proceedings it shall be taken into account in determining that question.

(5) Any code of conduct published under this section—

(a) may be of general or special application and, without limiting the generality of the foregoing, may be made so as to apply, or so as not to apply—

(i) to a specified extent in relation to any specified person or to members of a specified class of persons;

(ii) in specified circumstances;

(b) may make different provisions for different circumstances and provide for different cases or classes of cases.

(6) Any code of conduct published under this section is not subsidiary legislation.

Division 3—Restriction on short selling, etc.

170. Short selling restricted

(1) Subject to subsections (2) and (3), a person shall not sell securities at or through a recognized stock market unless at the time he sells them—

(a) he has or, where he is selling as an agent, his principal has; or

(b) he believes and has reasonable grounds to believe that he has or, where he is selling as an agent, that his principal has,

a presently exercisable and unconditional right to vest the securities in the purchaser of them.

(2) For the purposes of subsection (1)—

(a) a person shall be regarded as selling securities if he—

(i) purports to sell the securities;

(ii) offers to sell the securities;

(iii) holds himself out as being entitled to sell the securities; or

(iv) instructs any representative of an intermediary that carries on Type 1 regulated activity for the intermediary, to sell the securities;

(b) a person who, at a particular time, has a presently exercisable and unconditional right to have securities vested in him or in accordance with his directions shall be regarded as having at that time a presently exercisable and unconditional right to vest the securities in a purchaser of them;

(c) a right of a person to vest securities in a purchaser of them shall not be regarded as not unconditional by reason only of the fact that the securities are charged or pledged in favour of some other person to secure the repayment of money.

(3) Subsection (1) does not apply to—

(a) a person who acts in good faith, believing and having reasonable grounds to believe that he has a right, title, or interest to or in the securities which he sells within the meaning of subsection (1);

(b) a person who, as a representative of an intermediary that carries on Type 1 regulated activity for the intermediary, acts in good faith on behalf of some other person, believing and having reasonable grounds to believe that such other person has a right, title, or interest to or in the securities which he sells within the meaning of subsection (1) on behalf of such other person;

(c) a sale of securities by an exchange participant acting as a principal, when he acts in the course of his business of dealing in odd lots of securities, in accordance with the rules of the recognized exchange company which operates a stock market, being a sale effected solely for the purpose of—

(i) accepting an offer to purchase an odd lot of securities; or

(ii) disposing of an odd lot of securities, by means of the sale of one board lot of those securities;

(d) a sale of securities effected pursuant to a transaction in an options contract traded on a recognized stock market;

(e) a sale of securities falling within a class of transactions prescribed by rules made under section 397 for the purposes of this paragraph.

(4) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 2 years.

171. Requirements to confirm short selling order

(1) A person, where he is selling as a principal, shall not convey a short selling order at or through a recognized stock market unless he provides to his agent an assurance, in the form of a document, that—

(a) he has a presently exercisable and unconditional right to vest the securities to which the order relates in the purchaser of them; and

(b) where the short selling order is such order by virtue of paragraph (a)(i) or (v) of the definition of ***short selling order*** in section 1 of Part 1 of Schedule 1, the counterparty or the other person (as the case may be) referred to in such paragraph has the securities to which the order relates available to lend or deliver to him.

(2) A person to which subsection (1) applies shall provide to his agent such information (if any), in the form of a document and within such time, as is prescribed by rules made under section 397 for the purposes of this subsection.

(3) An exchange participant, where he is selling as a principal, shall not convey a short selling order which is such order by virtue of paragraph (a)(i) or (v) of the definition of ***short selling order*** in section 1 of Part 1 of Schedule 1 at or through a recognized stock market unless he has received an assurance, in the form of a document, from the counterparty or the other person (as the case may be) referred to in such paragraph that the counterparty or the other person (as the case may be) has the securities to which the order relates available to lend or deliver to him.

(4) An exchange participant to which subsection (3) applies shall collect from the counterparty or the other person referred to in that subsection such information (if any), in the form of a document and within such time, as is prescribed by rules made under section 397 for the purposes of this subsection.

(5) A person, where he is selling as an agent, shall not convey or accept an order to sell securities which is a short selling order at or through a recognized stock market unless he has received from his principal, or the other person for whose

benefit or on whose behalf the order is made, an assurance, in the form of a document, that—

(a) his principal or that other person (as the case may be) has a presently exercisable and unconditional right to vest the securities to which the order relates in the purchaser of them; and

(b) where the short selling order is such order by virtue of paragraph (a)(i) or (v) of the definition of ***short selling order*** in section 1 of Part 1 of Schedule 1, the counterparty or the other person (as the case may be) referred to in such paragraph has the securities to which the order relates available to lend or deliver to him.

(6) A person to which subsection (5) applies shall collect from his principal, or the other person referred to in that subsection, such information (if any), in the form of a document and within such time, as is prescribed by rules made under section 397 for the purposes of this subsection.

(7) For the purposes of subsections (1), (3) and (5), a person who conveys or accepts an order on behalf of his clients or beneficiaries shall be regarded as selling as a principal if—

(a) he has full discretion to sell the securities to which the order relates; and

(b) his conveyance or acceptance is not in accordance with any instruction from his clients or beneficiaries.

(8) An agent or exchange participant who receives or collects an assurance or information by virtue of or under subsection (1), (2), (3), (4), (5) or (6) shall—

(a) subject to paragraph (b), retain the document in which it is contained for not less than one year from the date on which it is received; and

(b) upon request made at any time within that year by the Commission, give the Commission access to the document, and produce to the Commission, within the time and at the place specified by the Commission, the document.

(9) An assurance or information referred to in subsection (1), (2), (3), (4), (5) or (6) shall in any proceedings under this Ordinance before any court be admissible as prima facie evidence of—

(a) in the case of an assurance, the matters specified in subsection (1), (3) or (5) (as the case may be) as that to which the assurance relates; or

(b) in the case of information, the matters (if any) specified in the rules referred to in subsection (2), (4) or (6) (as the case may be) as that to which the information relates.

(10) Subject to subsection (11), a person who contravenes subsection (1), (3) or (5) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 1 year.

(11) It is a defence to a charge for an offence under subsection (10) for the person charged to prove that when he conveyed or, in the case of a contravention of subsection (5), conveyed or accepted the order concerned, he—

(a) believed and had reasonable grounds to believe that the order was not a short selling order; or

(b) did not know that the order was a short selling order.

(12) A person who, without reasonable excuse, contravenes subsection (2), (4), (6) or (8) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 1 year.

172. Requirements to disclose short sales

(1) An exchange participant or exchange participant's representative who knows or is informed that an order to sell securities is a short selling order shall—

(a) when passing the order to any other person with a view that the other person shall input the order into the trading system of a recognized stock market, inform that other person that the order is a short selling order; and

(b) when inputting the order into the trading system of a recognized stock market, indicate such matters as may be required, under the rules of the recognized exchange company by which the recognized stock market is operated, to show that the order is a short selling order.

(2) Subject to subsection (3), a person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 1 year.

(3) A person shall not be regarded as committing an offence under subsection (2) if he contravenes subsection (1) by reason only of his inadvertence, carelessness or negligence.

(4) In this section, ***exchange participant's representative*** (交易所參與者代表) means a licensed representative accredited to a licensed corporation that is an exchange participant of a recognized exchange company which operates a recognized stock market.

Division 4—Other requirements

173. Requirements for options trading

(1) The Commission may make rules—

(a) prohibiting Type 1 intermediaries from—

(i) transacting in Hong Kong;

(ii) holding themselves out in Hong Kong as being prepared to transact,

except as provided in the rules, any dealing whereby directly or indirectly they confer on any person an option to sell to or purchase from them, or any other person on their behalf, any listed securities;

(b) prohibiting Type 2 intermediaries from—

(i) transacting in Hong Kong;

(ii) holding themselves out in Hong Kong as being prepared to transact,

except as provided in the rules, any dealing whereby directly or indirectly they confer on any person an option to sell to or purchase from them, or any other person on their behalf, any futures contracts traded on a recognized futures market.

(2) Rules made under this section may provide that a Type 1 intermediary, or a Type 2 intermediary, which, without reasonable excuse, contravenes any specified provision of the rules that applies to it commits an offence and is liable to a specified penalty not exceeding—

(a) on conviction on indictment a fine of $200,000 and a term of imprisonment of 2 years;

(b) on summary conviction a fine at level 6 and a term of imprisonment of 6 months.

(3) In this section—

Type 1 intermediary (第1類中介人) means an intermediary licensed or registered for Type 1 regulated activity;

Type 2 intermediary (第2類中介人) means an intermediary licensed or registered for Type 2 regulated activity.

174. Certain agreements not to be made during unsolicited calls

(1) Subject to subsections (2) and (3), an intermediary, or a representative of an intermediary, shall not, as principal or agent, during or as a consequence of an unsolicited call made, whether in Hong Kong or elsewhere, by it or him—

(a) make or offer to make with another person—

(i) an agreement for that other person to sell or purchase, or with a view to having that other person sell or purchase, any securities, futures contract or leveraged foreign exchange contract;

(ii) an agreement to provide, or with a view to providing, to that other person securities margin financing; or

(iii) an agreement the purpose or effect, or pretended purpose or effect, of which is to provide, whether conditionally or unconditionally, to that other person a profit, income or other returns—

(A) from any securities, futures contract or leveraged foreign exchange contract; or

(B) calculated by reference to changes in the value of any securities, futures contract or leveraged foreign exchange contract; or

(b) induce or attempt to induce another person to enter into an agreement referred to in paragraph (a),

whether or not in making the unsolicited call it or he does any other act or thing.

(2) An intermediary, or a representative of an intermediary, shall not be regarded as contravening subsection (1) by reason only that it or he—

(a) makes a call on another person who is a solicitor or certified public accountant acting in his professional capacity, or is a licensed person, registered institution,

money lender or professional investor, or its or his existing client; and *(Amended 23 of 2004 s. 56)*

(b) whether as principal or agent, makes or offers to make with that other person an agreement referred to in subsection (1)(a), or induces or attempts to induce that other person to enter into such an agreement.

(3) This section does not apply to—

(a) agreements relating to securities, futures contracts or leveraged foreign exchange contracts or to securities margin financing which are of a class prescribed by rules made under section 397 for the purposes of this paragraph;

(b) calls made by a person who is of a class prescribed by rules made under section 397 for the purposes of this paragraph;

(c) calls made on a person who is of a class prescribed by rules made under section 397 for the purposes of this paragraph;

(d) calls which are of a class prescribed by rules made under section 397 for the purposes of this paragraph.

(4) Without limiting the generality of the powers of the Commission to make rules for the purposes of subsection (3)(d), the Commission may in the rules prescribe that calls made by an authorized financial institution in compliance with such requirements under any guidelines published under section 7(3) of the Banking Ordinance (Cap. 155) that apply to it shall be within a class of calls to which this section does not apply.

(5) An intermediary, or a representative of an intermediary, that contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5.

(6) Where a person on whom an unsolicited call is made enters into an agreement with another person in consequence of a contravention of subsection (1), the person on whom the unsolicited call is so made may, subject to the rights of a subsequent purchaser in good faith for value, rescind the agreement, by giving notice in writing to that effect to that other person, within 28 days after the day on which the agreement is entered into or 7 days after the day on which he becomes aware of the contravention, whichever is the earlier.

(7) In this section—

call (造訪) means a visit in person, or a communication by any means, whether mechanically, electronically, magnetically, optically, manually or by any other medium, or by way of production or transmission of light, image or sound or any other medium;

existing client (原有客戶), in relation to an intermediary or a representative of an intermediary, means a person—

(a) who has entered into a client contract with the intermediary at any time during the period of 3 years immediately preceding the day on which the call is made, and remains a party to the client contract when the call is made; or

(b) for whom the intermediary has provided a service, the provision of which constitutes a regulated activity, at any time during the period of 3 years immediately preceding the day on which the call is made;

futures contract (期貨合約) means—

(a) a futures contract as defined in section 1 of Part 1 of Schedule 1;

(b) a futures contract, or a contract represented as being a futures contract, in respect of an item, whether or not capable of being delivered, which is prescribed by

rules made under section 397 for the purposes of this definition;

money lender (放債人) has the meaning assigned to it by section 2(1) of the Money Lenders Ordinance (Cap. 163);

unsolicited call (未獲邀約的造訪) means any call made otherwise than at the express invitation of the person called upon, and for the purposes of this definition, the provision by a person of his contact details, including an address, telephone or facsimile number, or electronic mail address, does not by itself constitute an express invitation to call that person.

175. Requirements for offers by intermediaries or representatives for Type 1, Type 4 or Type 6 regulated activity

(1) Subject to subsection (5), a Type 1 intermediary or representative, a Type 4 intermediary or representative or a Type 6 intermediary or representative shall not communicate an offer to acquire or dispose of any securities of, or issued by, a body unless—

(a) the offer—

(i) is contained in a written document in an official language; or

(ii) if communicated otherwise than in the form of a written document satisfying the requirement of subparagraph (i), is reduced to a written document in an official language and delivered to the person or persons to whom it was made not later than 24 hours after the communication;

(b) the offer—

(i) contains a description of the securities sufficient to enable them to be identified;

(ii) specifies the terms of the offer, including where appropriate the amount of consideration proposed to be paid for the securities to be acquired pursuant to the offer;

(iii) where a dividend has been declared or recommended in respect of the securities, or it is anticipated that a dividend may be so declared or recommended before the transfer of the securities, states whether the securities are to be transferred with or without the dividend;

(iv) specifies—

(A) whether, in the event of a person accepting the offer, the offeror will pay any stamp duty which the person so accepting the offer will become liable to pay in respect of the transaction under the Stamp Duty Ordinance (Cap. 117); and

(B) if the offeror will not so pay the stamp duty, the rate of the stamp duty that the person so accepting the offer will become liable to pay in respect of the transaction under that Ordinance;

(v) specifies whether, in the event of a person accepting the offer, any fees will be payable by that person to—

(A) where the Type 1 intermediary or representative, the Type 4 intermediary or representative or the Type 6 intermediary or representative (as the case may be) is regarded as such by virtue of being an intermediary, the Type 1 intermediary or representative, the Type 4 intermediary or

representative or the Type 6 intermediary or representative (as the case may be); or

(B) where the Type 1 intermediary or representative, the Type 4 intermediary or representative or the Type 6 intermediary or representative (as the case may be) is regarded as such by virtue of being a representative of an intermediary, the intermediary;

(vi) if contained in a written document referred to in paragraph (a)(i)—

(A) specifies the name and address of the offeror and, where any person is making the offer on behalf of the offeror, the name and address of that person;

(B) bears a date which is not more than 3 days before the date on which the offer is communicated;

(C) where the offer is for the acquisition of securities, satisfies the requirements of Part 1 of Schedule 7;

(D) where the offer is for the disposal of securities, satisfies the requirements of Part 2 of Schedule 7; and

(E) where a report of an expert in connection with the offer is included in or annexed to the offer, contains a statement to the effect that the expert has consented to the inclusion or annexure, and has not, before the communication of the offer, withdrawn that consent; and

(vii) if communicated in the manner described in paragraph (a)(ii), where there is a report of an

expert in connection with the offer, specifies the place at which the report is available for inspection, and contains a statement to the effect that the expert has consented to the contents of the report, and has not, before the communication of the offer, withdrawn that consent; and

(c) where the offer is contained in a written document referred to in paragraph (a)(i) or is reduced to a written document referred to in paragraph (a)(ii) but the written document is in only one official language, the written document includes a translation, in the other official language, of all the particulars required in respect of the offer under paragraph (b), except where the Commission has previously agreed that the requirements of this paragraph may be dispensed with in any particular case.

(2) Where an offer contained in a written document referred to in subsection (1)(a)(i) is to contain a statement referred to in subsection (1)(b)(vi)(E) regarding the consent of an expert, the offer shall not be communicated unless the expert has given, and has not before the communication of the offer withdrawn, his consent to the offer being communicated with the inclusion of the statement in the form and context in which it is included in the written document.

(3) Where an offer communicated in the manner described in subsection (1)(a)(ii) is to contain a statement referred to in subsection (1)(b)(vii) regarding the consent of an expert, the offer shall not be communicated unless the expert has given, and has not before the communication of the offer withdrawn, his consent to the offer being communicated with a reference to the statement in the form and context in which it is referred to.

(4) Any Type 1 intermediary or representative, Type 4 intermediary or representative or Type 6 intermediary or

representative who communicates an offer to acquire or dispose of any securities without having complied with subsections (1), (2) and (3) commits an offence and is liable on conviction to a fine at level 6 and, in the case of a continuing offence, to a further fine of $20,000 for every day during which the offence continues.

(5) This section does not apply to—

(a) an offer regulated by, and made in accordance with, the requirements of—

(i) the rules made under section 23 or 36 governing the listing of securities;

(ii) the code published under section 399(2)(a); or

(iii) Part II of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) or, in the case of a corporation incorporated outside Hong Kong, Part XII of that Ordinance; *(Amended 28 of 2012 ss. 912 & 920)*

(aa) an offer—

(i) specified in Part 1 of the Seventeenth Schedule to the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) as read with the other Parts of that Schedule; and *(Amended 28 of 2012 ss. 912 & 920)*

(ii) specified by the Commission, by notice published in the Gazette, as an offer to which this section does not apply; *(Added 30 of 2004 s. 3)*

(b) an offer communicated to persons who already hold securities of, or issued by, a body, for those persons to acquire securities of, or issued by, the body;

(c) an offer communicated by a Type 1 intermediary or representative, a Type 4 intermediary or representative

or a Type 6 intermediary or representative if the offer is made to a person with whom, or on whose behalf—

(i) where the Type 1 intermediary or representative, the Type 4 intermediary or representative or the Type 6 intermediary or representative (as the case may be) is regarded as such by virtue of being an intermediary, the Type 1 intermediary or representative, the Type 4 intermediary or representative or the Type 6 intermediary or representative (as the case may be); or

(ii) where the Type 1 intermediary or representative, the Type 4 intermediary or representative or the Type 6 intermediary or representative (as the case may be) is regarded as such by virtue of being a representative of an intermediary, the intermediary,

has transacted the sale or purchase of securities on at least 3 occasions during the period of 3 years immediately preceding the date of the offer;

(d) an offer made to—

(i) a professional investor;

(ii) a solicitor or certified public accountant acting in his professional capacity; or *(Amended 23 of 2004 s. 56)*

(iii) any other person who is of a class prescribed by rules made under section 397 for the purposes of this paragraph;

(e) an offer communicated by an exchange participant in the ordinary course of trading on a recognized stock market;

(f) an offer communicated by a person who is of a class prescribed by rules made under section 397 for the purposes of this paragraph;

(g) an offer which is of a class prescribed by rules made under section 397 for the purposes of this paragraph.

(6) Where—

(a) a person has accepted an offer to acquire or dispose of any securities of, or issued by, a body which is an offer to which this section applies; and

(b) the offer has been communicated without subsections (1), (2) and (3) having been complied with in a material particular,

that person may, subject to the rights of a subsequent purchaser of the securities in good faith for value, rescind the acceptance, by giving notice in writing to that effect to the offeror, within 28 days after the date of acceptance or 7 days after the day on which he becomes aware of the matter described in paragraph (b), whichever is the earlier.

(7) For the purposes of this section—

(a) where a Type 1 intermediary or representative, a Type 4 intermediary or representative or a Type 6 intermediary or representative communicates an invitation to a person to acquire or dispose of any securities of, or issued by, a body, the invitation shall be deemed to be an offer, and a reference in this section to acceptance shall be construed accordingly;

(b) an offer to acquire or dispose of a right to acquire or dispose of securities or an interest in securities shall be deemed to be an offer to acquire or dispose of securities, and a reference in this section to a person who holds securities includes a person who holds a right to acquire securities or an interest in securities;

(c) an offer to acquire or dispose of securities in consideration or part consideration for other securities

shall be deemed to be both an offer to acquire and an offer to dispose of securities.

(8) In this section, a reference to securities of a body shall, unless the context otherwise requires, be construed as a reference to securities (having the meaning under section 1 of Part 1 of Schedule 1) which are—

(a) issued, made available or granted by the body; or

(b) proposed to be issued, made available or granted by the body.

(8A) A notice published under subsection (5)(aa)(ii) is not subsidiary legislation. *(Added 30 of 2004 s. 3)*

(9) In this section—

body (團體) means a corporation, a multilateral agency, or a government or municipal government authority;

expert (專家) includes an engineer, valuer, certified public accountant, solicitor, and any other person whose profession gives authority to a statement made by him; *(Amended 23 of 2004 s. 56)*

Type 1 intermediary or representative (第1類中介人或代表) means—

(a) an intermediary licensed or registered for Type 1 regulated activity; or

(b) its representative that carries on Type 1 regulated activity for it;

Type 4 intermediary or representative (第4類中介人或代表) means—

(a) an intermediary licensed or registered for Type 4 regulated activity; or

(b) its representative that carries on Type 4 regulated activity for it;

Type 6 intermediary or representative (第6類中介人或代表) means—

(a) an intermediary licensed or registered for Type 6 regulated activity; or

(b) its representative that carries on Type 6 regulated activity for it;

written document (書面文件) means any document or similar material, or any other medium (whether effected as such mechanically, electronically, magnetically, optically, manually or by any other means), by which words are represented in a visible form.

176. Certain representations prohibited

(1) Subject to subsection (2), an intermediary, or a representative of an intermediary, shall not represent, or permit any other person to represent, in any manner and whether expressly or by implication, that its or his abilities or qualifications have been endorsed or warranted by the Government or the Commission.

(2) A statement to the effect that a person is licensed or registered under this Ordinance does not by itself constitute a contravention of subsection (1).

(3) An intermediary, or a representative of an intermediary, that, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5.

Division 5—Miscellaneous

177. Amendment of Schedule 7

The Chief Executive in Council may, by order published in the Gazette, amend Schedule 7.

Part VIII

Supervision and Investigations

(Format changes—E.R. 2 of 2012)

Division 1—Interpretation

178. Interpretation of Part VIII

In this Part, unless the context otherwise requires—

audit working papers (審計工作材料) means—

(a) any record or document prepared by or on behalf of an auditor; and

(b) any record or document obtained and retained by or on behalf of an auditor,

for or in connection with the performance of any of his functions relating to the conduct of any audit of the accounts of a corporation;

investigator (調查員) means (except in the definition of ***MA investigator*** in this section) a person directed or appointed to investigate any matter under section 182(1); *(Amended 6 of 2014 s. 15)*

MA investigator (金管局調查員) means a person directed or appointed to investigate any matter under section 184A; *(Added 6 of 2014 s. 15)*

person under investigation (受調查人) means—

(a) in section 183, a person in relation to whom an investigator is directed or appointed to investigate any matter under section 182(1); and

(b) in section 184B, a person in relation to whom an MA investigator is directed or appointed to investigate any matter under section 184A(1). *(Replaced 6 of 2014 s. 15)*

Division 2—Powers to require information, etc.

179. Power to require production of records and documents concerning listed corporations, etc.

(1) Where, in relation to a corporation which is or was listed—

(a) it appears to the Commission that there are circumstances suggesting that at any relevant time the business of the corporation has been conducted—

(i) with intent to defraud its creditors, or the creditors of any other person;

(ii) for any fraudulent or unlawful purpose; or

(iii) in a manner oppressive to its members or any part of its members;

(b) it appears to the Commission that there are circumstances suggesting that the corporation was formed for any fraudulent or unlawful purpose;

(c) it appears to the Commission that there are circumstances suggesting that persons concerned in the process by which the corporation became listed (including that for making the securities of the corporation available to the public in the course of such process) have engaged, in relation to such process, in defalcation, fraud, misfeasance or other misconduct;

(d) it appears to the Commission that there are circumstances suggesting that at any relevant time persons involved in the management of the affairs of the corporation have engaged, in relation to such

management, in defalcation, fraud, misfeasance or other misconduct towards it or its members or any part of its members;

(e) it appears to the Commission that there are circumstances suggesting that at any relevant time members of the corporation or any part of its members have not been given all the information with respect to its affairs that they might reasonably expect; or

(f) a matter in respect of the investigation of which the Commission decides to provide assistance under section 186(1) or (2) relates to the corporation and is, in the opinion of the Commission, of a nature similar to the matter described in paragraph (a), (b), (c), (d) or (e) as being suggested by the circumstances referred to in such paragraph, *(Amended 19 of 2015 s. 21)*

an authorized person may, subject to subsections (5) to (10), give a direction to—

(i) the corporation;

(ii) a corporation that is, or was at the material time, a related corporation of the corporation;

(iii) an authorized financial institution, other than the corporation or a corporation described in paragraph (ii);

(iv) an auditor, other than the corporation or a corporation described in paragraph (ii);

(v) any other person,

requiring the production, within the time and at the place specified in the direction, of any record and document specified in the direction.

(2) A power under this section to require the production of any record or document by any person includes the power—

(a) if the record or document is produced—

(i) to make copies or otherwise record details of the record or document; and

(ii) to require—

(A) the person;

(B) in the case of a corporation, any person who is a present or past officer of the corporation, or is or was at any time employed by the corporation,

to provide or make any explanation or statement in respect of the record or document (including, in so far as applicable, a description of the circumstances under which it was prepared or created, details of all instructions given or received in connection with it, and an explanation of the reasons for the making of entries contained in it or the omission of entries from it); or

(b) if the record or document is not produced, to require—

(i) the person;

(ii) in the case of a corporation, any person who is a present or past officer of the corporation, or is or was at any time employed by the corporation,

to state where it is.

(3) An authorized person may in writing require the person providing or making an explanation or statement under this section to verify within a reasonable period specified in the requirement the explanation or statement by statutory declaration, which may be taken by the authorized person.

(4) If a person does not provide or make an explanation or statement in accordance with a requirement under this section for the reason that the explanation or statement was not within his knowledge or in his possession, an authorized

person may in writing require the person to verify within a reasonable period specified in the requirement by statutory declaration, which may be taken by the authorized person, that he was unable to comply or fully comply (as the case may be) with the requirement for that reason.

(5) An authorized person shall not give any direction under subsection (1)(i) or (ii) to require the production of any record or document unless the authorized person has reasonable cause to believe that the record or document relates to the affairs of the corporation to which the direction is to be given or a corporation of which such corporation is, or was at the material time, a related corporation.

(6) An authorized person shall not give any direction to an authorized financial institution under subsection (1)(iii) to require the production of any record or document unless the authorized person has reasonable cause to believe, and the Commission certifies in writing that the authorized person has reasonable cause to believe, that—

(a) the authorized financial institution is in possession of any record or document relating to the affairs of a corporation to which any direction has been or may be given under subsection (1)(i) or (ii); and

(b) the record or document required to be produced under the direction—

(i) relates to the affairs of such corporation or to a transaction with such corporation; and

(ii) is relevant to the consideration of whether there has been the occurrence of—

(A) where subsection (1)(a), (b), (c), (d) or (e) applies, the matter described in such subsection as being suggested by the

circumstances referred to in such subsection; or

(B) where subsection (1)(f) applies, the matter in respect of the investigation of which the Commission decides to provide assistance under section 186(1) or (2). *(Amended 19 of 2015 s. 21)*

(7) An authorized person shall not give any direction to an auditor under subsection (1)(iv) to require the production of any record or document unless the authorized person has reasonable cause to believe, and the Commission certifies in writing that the authorized person has reasonable cause to believe, that—

(a) the auditor is in possession of any record or document, which is in the nature of audit working papers, relating to the affairs of a corporation to which any direction has been or may be given under subsection (1)(i) or (ii); and

(b) the record or document required to be produced under the direction—

(i) relates to the affairs of such corporation; and

(ii) is relevant to the consideration of whether there has been the occurrence of—

(A) where subsection (1)(a), (b), (c), (d) or (e) applies, the matter described in such subsection as being suggested by the circumstances referred to in such subsection; or

(B) where subsection (1)(f) applies, the matter in respect of the investigation of which the Commission decides to provide assistance under section 186(1) or (2). *(Amended 19 of 2015 s. 21)*

(8) An authorized person shall not give any direction to a person under subsection (1)(v) to require the production of any record or document unless the authorized person has reasonable cause to believe, and the Commission certifies in writing that the authorized person has reasonable cause to believe, that—

(a) the person has dealt or has had dealings, directly or indirectly, with, or is otherwise in possession of any record or document relating to the affairs of, a corporation to which any direction has been or may be given under subsection (1)(i) or (ii); and

(b) the record or document required to be produced under the direction—

(i) relates to the affairs of such corporation or to a transaction with such corporation;

(ii) is relevant to the consideration of whether there has been the occurrence of—

(A) where subsection (1)(a), (b), (c), (d) or (e) applies, the matter described in such subsection as being suggested by the circumstances referred to in such subsection; or

(B) where subsection (1)(f) applies, the matter in respect of the investigation of which the Commission decides to provide assistance under section 186(1) or (2); and *(Amended 19 of 2015 s. 21)*

(iii) cannot be obtained by giving a direction to any other person under subsection (1)(i), (ii), (iii) or (iv).

(9) The power of an authorized person to give any direction under subsection (1) (other than subsection (1)(iii)) to any

corporation which is an authorized financial institution may be exercised only in respect of—

(a) subsection (1)(e); or

(b) subsection (1)(f), if, and only if, the matter in respect of the investigation of which the Commission decides to provide assistance under section 186(1) or (2) is, in the opinion of the Commission, of a nature similar to the matter described in subsection (1)(e) as being suggested by the circumstances referred to in that subsection (1)(e). *(Amended 19 of 2015 s. 21)*

(10) Before an authorized person gives any direction under subsection (1) (other than subsection (1)(iii)) to any corporation—

(a) where the corporation is an authorized financial institution or a corporation which, to the knowledge of the authorized person, is a controller of an authorized financial institution, or has as its controller an authorized financial institution, or has a controller that is also a controller of an authorized financial institution, the authorized person shall consult the Monetary Authority; or

(b) where the corporation is an insurer authorized under the Insurance Ordinance (Cap. 41), the authorized person shall consult the Insurance Authority. *(Amended 12 of 2015 s. 139)*

(11) The Commission may authorize in writing any person as an authorized person for the purposes of this section.

(12) The Commission shall furnish an authorized person with a copy of his authorization, and the authorized person, before exercising any power under this section, shall produce a copy of the authorization to the person in respect of whom the power is exercised for inspection.

(13) A person who, without reasonable excuse, fails to comply with a requirement imposed on him by an authorized person under this section commits an offence and is liable—

(a) on conviction on indictment to a fine of $200,000 and to imprisonment for 1 year; or

(b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.

(14) A person who—

(a) in purported compliance with a requirement imposed on him by an authorized person under this section, produces any record or document or provides or makes an explanation or statement which is false or misleading in a material particular; and

(b) knows that, or is reckless as to whether, the record or document or the explanation or statement is false or misleading in a material particular,

commits an offence and is liable—

(i) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(ii) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(15) A person who—

(a) with intent to defraud—

(i) fails to comply with a requirement imposed on him by an authorized person under this section; or

(ii) in purported compliance with a requirement imposed on him by an authorized person under this section, produces any record or document or provides or makes an explanation or statement

which is false or misleading in a material particular; or

(b) being an officer or employee of a corporation, with intent to defraud causes or allows the corporation to—

(i) fail to comply with a requirement imposed on it by an authorized person under this section; or

(ii) in purported compliance with a requirement imposed on it by an authorized person under this section, produce any record or document or provide or make an explanation or statement which is false or misleading in a material particular,

commits an offence and is liable—

(i) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 7 years; or

(ii) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(16) A person is not excused from complying with a requirement imposed on the person by an authorized person under this section only on the ground that to do so might tend to incriminate the person.

(17) In this section—

authorized person (獲授權人) means a person authorized under subsection (11);

controller (控制人) means a person who is an indirect controller or a majority shareholder controller as defined in section 2(1) of the Banking Ordinance (Cap. 155);

material time (關鍵時間) means—

(a) where subsection (1)(a), (b), (c), (d) or (e) applies, the time at which the matter described in such subsection as

being suggested by the circumstances referred to in such subsection appears to the Commission as occurring; or

(b) where subsection (1)(f) applies, the time at which the matter in respect of the investigation of which the Commission decides to provide assistance under section 186(1) or (2) appears to the Commission as occurring; *(Amended 19 of 2015 s. 21)*

relevant time (有關時間)—

(a) in relation to a corporation which is listed, means any time since the formation of the corporation; or

(b) in relation to a corporation which was listed, means any time since the formation of the corporation but before the corporation ceased to remain listed.

180. Supervision of intermediaries and their associated entities

(1) Subject to subsections (9) and (10), an authorized person may at any reasonable time, for the purpose of ascertaining whether an intermediary or an associated entity of an intermediary is complying or has complied with, or is likely to be able to comply with, the requirement specified in subsection (2)—

(a) enter—

(i) in the case of an intermediary—

(A) where it is a licensed corporation, its premises as approved by the Commission under section 130(1); or

(B) where it is a registered institution, the premises of the registered institution; or

(ii) in the case of an associated entity of an intermediary, the premises of the associated entity;

(b) inspect, and make copies or otherwise record details of, any record or document relating to—

(i) the business conducted by the intermediary or the associated entity (as the case may be);

(ii) any transaction carried out by a related corporation of the intermediary or the associated entity (as the case may be); or

(iii) any transaction or activity which was undertaken in the course of, or which may affect, the business conducted by the intermediary or the associated entity (as the case may be); and

(c) make inquiries of—

(i) the intermediary or the associated entity (as the case may be);

(ii) a related corporation of the intermediary or the associated entity (as the case may be);

(iii) subject to subsection (7), any other person, whether or not connected with the intermediary or the associated entity (as the case may be), whom the authorized person has reasonable cause to believe has information relating to, or is in possession of, any record or document referred to in paragraph (b),

concerning any record or document referred to in paragraph (b), or concerning any transaction or activity which was undertaken in the course of, or which may affect, the business conducted by the intermediary or the associated entity (as the case may be).

(2) The requirement specified for the purposes of subsection (1) is the requirement not to contravene—

(a) any provision of this Ordinance;

(ba) any provision of Part 2 (except section 6) of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615); *(Added 15 of 2011 s. 89. Amended 4 of 2018 s. 44)*

(b) any notice or requirement given or made under or pursuant to any of the relevant provisions;

(c) any of the terms and conditions of any licence or registration under this Ordinance;

(d) any other condition imposed under or pursuant to any provision of this Ordinance; or *(Amended 16 of 2016 s. 7)*

(e) any provision in a code or guideline published under this Ordinance. *(Added 16 of 2016 s. 7)*

(3) Subject to subsections (9) and (10), an authorized person in exercising any of his powers under subsection (1)(b) may require—

(a) the intermediary or the associated entity (as the case may be);

(b) a related corporation of the intermediary or the associated entity (as the case may be);

(c) subject to subsection (8), any other person, whether or not connected with the intermediary or the associated entity (as the case may be), whom the authorized person has reasonable cause to believe has information relating to, or is in possession of, any record or document referred to in subsection (1)(b),

to—

(i) give the authorized person access to any record or document referred to in subsection (1)(b), and produce, within the time and at the place specified by him, the record or document; and

(ii) answer any question regarding the record or document.

(4) Subject to subsections (9) and (10), an authorized person in exercising any of his powers under subsection (1)(c) may require the intermediary or the associated entity, the related corporation or the other person (as the case may be) referred to in subsection (1)(c), to—

(a) give the authorized person access to any record or document referred to in subsection (1)(b), and produce, within the time and at the place specified by him, the record or document; and

(b) answer any question raised for the purposes of subsection (1)(c).

(4A) Subject to subsection (10), if the Commission decides to provide assistance in relation to a licensed corporation under section 186(2A), an authorized person may require the licensed corporation or a related corporation of the licensed corporation to—

(a) provide to the authorized person, within the time and at the place specified by the authorized person, a copy of any record or document relating to—

(i) any regulated activity carried on by the licensed corporation; or

(ii) any transaction or activity which was undertaken in the course of, or which may affect, any regulated activity carried on by the licensed corporation; and

(b) answer any question raised by the authorized person regarding any record, document, regulated activity, transaction or activity referred to in paragraph (a). *(Added 19 of 2015 s. 22)*

(5) An authorized person may in writing require the person giving an answer under this section to verify within a

reasonable period specified in the requirement the answer by statutory declaration, which may be taken by the authorized person.

(6) If a person does not give an answer in accordance with a requirement under this section for the reason that the answer was not within his knowledge, an authorized person may in writing require the person to verify within a reasonable period specified in the requirement by statutory declaration, which may be taken by the authorized person, that he was unable to comply or fully comply (as the case may be) with the requirement for that reason.

(7) An authorized person shall not exercise any of his powers under subsection (1)(c)(iii) unless he has reasonable cause to believe that the information sought cannot be obtained by the exercise of any of the powers under subsection (1)(c)(i) or (ii).

(8) An authorized person shall not exercise any of his powers under subsection (3)(c) unless he has reasonable cause to believe that the record or document or the information sought cannot be obtained by the exercise of any of the powers under subsection (3)(a) or (b).

(9) This section shall not be construed as requiring an authorized financial institution, not being the intermediary or the associated entity in question as referred to in subsection (1) or a related corporation of the intermediary or the associated entity (as the case may be), to disclose any information or produce any record or document relating to the affairs of a customer unless the relevant authority is satisfied, and certifies in writing that it is satisfied, that the disclosure or production is necessary for the purposes of this section.

(10) Before an authorized person exercises any power under this section (other than subsection (1)(c)(iii) or (3)(c)) in respect of a corporation—

(a) where the corporation is an authorized financial institution or a corporation which, to the knowledge of the authorized person, is a controller of an authorized financial institution, or has as its controller an authorized financial institution, or has a controller that is also a controller of an authorized financial institution, the authorized person shall consult the Monetary Authority; or

(b) where the corporation is an insurer authorized under the Insurance Ordinance (Cap. 41), the authorized person shall consult the Insurance Authority. *(Amended 12 of 2015 s. 140)*

(11) The relevant authority may authorize in writing any person as an authorized person for the purposes of this section.

(12) The relevant authority shall furnish an authorized person authorized by it with a copy of his authorization, and the authorized person, when exercising any power under this section, shall as soon as reasonably practicable produce a copy of the authorization for inspection.

(13) Where a copy of any record or document is supplied or made for the purpose of complying with a requirement imposed under this section and a facility of a person other than the relevant authority is used to make the copy, the relevant authority shall reimburse the expenses which, in the opinion of the relevant authority, have been reasonably incurred by the person in making the copy.

(14) A person who, without reasonable excuse, fails to comply with a requirement imposed on him by an authorized person under this section commits an offence and is liable—

(a) on conviction on indictment to a fine of $200,000 and to imprisonment for 1 year; or

(b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.

(15) A person who—

(a) in purported compliance with a requirement imposed on him by an authorized person under this section, produces any record or document or gives an answer which is false or misleading in a material particular; and

(b) knows that, or is reckless as to whether, the record or document or the answer is false or misleading in a material particular,

commits an offence and is liable—

(i) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(ii) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(16) A person who—

(a) with intent to defraud—

(i) fails to comply with a requirement imposed on him by an authorized person under this section; or

(ii) in purported compliance with a requirement imposed on him by an authorized person under this section, produces any record or document or gives an answer which is false or misleading in a material particular; or

(b) being an officer or employee of a corporation, with intent to defraud causes or allows the corporation to—

(i) fail to comply with a requirement imposed on it by an authorized person under this section; or

(ii) in purported compliance with a requirement imposed on it by an authorized person under this

section, produce any record or document or give an answer which is false or misleading in a material particular,

commits an offence and is liable—

(i) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 7 years; or

(ii) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(17) In this section—

authorized person (獲授權人) means a person authorized under subsection (11);

controller (控制人) means a person who is an indirect controller or a majority shareholder controller as defined in section 2(1) of the Banking Ordinance (Cap. 155);

relevant authority (有關當局) means—

(a) where—

(i) the intermediary in question as referred to in subsection (1) is a registered institution; or

(ii) the associated entity in question as referred to in that subsection is the associated entity of a registered institution,

the Monetary Authority; or

(b) in any other case, the Commission.

181. Information relating to transactions

(1) An authorized person may, for the purpose of enabling or assisting the Commission to perform a function under any of the relevant provisions, require—

(a) a person registered as the holder of securities in a register of members kept under the Companies

Ordinance (Cap. 622); *(Amended 28 of 2012 ss. 912 & 920)*

(b) a person whom the authorized person has reasonable cause to believe holds any securities, futures contract, leveraged foreign exchange contract, OTC derivative product, or an interest in any securities, futures contract, leveraged foreign exchange contract, OTC derivative product or collective investment scheme;

(c) a person whom the authorized person has reasonable cause to believe has acquired or disposed of any securities, futures contract, leveraged foreign exchange contract, OTC derivative product, or an interest in any securities, futures contract, leveraged foreign exchange contract, OTC derivative product or collective investment scheme, whether directly or through a nominee, trustee or agent, and whether as beneficial owner, nominee, trustee, agent or otherwise;

(d) a licensed person or registered institution through whom or which the authorized person has reasonable cause to believe any securities, futures contract, leveraged foreign exchange contract, OTC derivative product, or an interest in any securities, futures contract, leveraged foreign exchange contract, OTC derivative product or collective investment scheme has been acquired, disposed of, dealt with, traded or arranged,

to furnish to him any of the information specified in subsection (2) within the time and in the form specified by him. *(Amended 6 of 2014 s. 16)*

(2) The information specified for the purposes of subsection (1) is—

(a) the particulars (including, in so far as applicable, the name and aliases, address, telephone and facsimile

numbers, electronic mail address, occupation and particulars of any document of identity (including, if not an individual, any document evidencing incorporation or registration)) that are reasonably capable of establishing the identity of the person on whose behalf, or by, from, to or through whom, the securities, futures contract, leveraged foreign exchange contract, OTC derivative product, or the interest in securities, futures contract, leveraged foreign exchange contract, OTC derivative product or collective investment scheme in question is held, or has been acquired, disposed of, dealt with, traded or arranged (as the case may be);

(b) the particulars (including the quantity) of and, in the case of acquisition or disposal, the consideration (if any) for the securities, futures contract, leveraged foreign exchange contract, OTC derivative product, or the interest in securities, futures contract, leveraged foreign exchange contract, OTC derivative product or collective investment scheme; and

(c) the instructions (if any) given to or by the person referred to in paragraph (a), or any officer, employee or agent of such person, in relation to the holding, acquisition, disposal, dealing, trading, arrangement of or in respect of the securities, futures contract, leveraged foreign exchange contract, OTC derivative product, or the interest in securities, futures contract, leveraged foreign exchange contract, OTC derivative product or collective investment scheme. *(Amended 6 of 2014 s. 16)*

(3) An authorized person may in writing require the person furnishing any information under this section to verify within a reasonable period specified in the requirement the

information by statutory declaration, which may be taken by the authorized person.

(4) If a person does not furnish any information in accordance with a requirement under this section for the reason that the information was not within his knowledge or in his possession, an authorized person may in writing require the person to verify within a reasonable period specified in the requirement by statutory declaration, which may be taken by the authorized person, that he was unable to comply or fully comply (as the case may be) with the requirement for that reason.

(5) The Commission may authorize in writing any person as an authorized person for the purposes of this section.

(6) The Commission shall furnish an authorized person with a copy of his authorization, and the authorized person, when exercising any power under this section, shall upon request by the person in respect of whom the power is exercised produce a copy of the authorization for inspection.

(7) A person who, without reasonable excuse, fails to comply with a requirement imposed on him by an authorized person under this section commits an offence and is liable—

(a) on conviction on indictment to a fine of $200,000 and to imprisonment for 1 year; or

(b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.

(8) A person who—

(a) in purported compliance with a requirement imposed on him by an authorized person under this section, furnishes to the authorized person information which is false or misleading in a material particular; and

(b) knows that, or is reckless as to whether, the information is false or misleading in a material particular,

commits an offence and is liable—

(i) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(ii) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(9) A person who—

(a) with intent to defraud—

(i) fails to comply with a requirement imposed on him by an authorized person under this section; or

(ii) in purported compliance with a requirement imposed on him by an authorized person under this section, furnishes to the authorized person information which is false or misleading in a material particular; or

(b) being an officer or employee of a corporation, with intent to defraud causes or allows the corporation to—

(i) fail to comply with a requirement imposed on it by an authorized person under this section; or

(ii) in purported compliance with a requirement imposed on it by an authorized person under this section, furnish to the authorized person information which is false or misleading in a material particular,

commits an offence and is liable—

(i) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 7 years; or

(ii) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(10) In this section—

authorized person (獲授權人) means a person authorized under subsection (5);

interest (權益) includes an interest of any nature, whether legal, equitable, proprietary or otherwise.

Division 3—Commission's Powers of Investigation

(Replaced 6 of 2014 s. 17)

182. Investigations by Commission

(Replaced 6 of 2014 s. 18)

(1) Where—

(a) the Commission has reasonable cause to believe that an offence under any of the relevant provisions may have been committed;

(b) the Commission has reasonable cause to believe that a person may have engaged in defalcation, fraud, misfeasance or other misconduct in connection with—

(i) dealing in any securities or futures contract or trading in any leveraged foreign exchange contract;

(ii) the management of investment in any securities, futures contract or leveraged foreign exchange contract;

(iii) offering or making any structured product, leveraged foreign exchange contract or collective investment scheme; *(Amended 8 of 2011 s. 9)*

(iv) giving advice in relation to the allotment of securities, or the acquisition or disposal of, or investment in, any securities, structured product, futures contract, leveraged foreign exchange contract, or an interest in any securities, structured

product, futures contract, leveraged foreign exchange contract or collective investment scheme; or *(Amended 8 of 2011 s. 9)*

(v) any transaction involving securities margin financing;

(vi) (Addition not yet in operation—see 6 of 2014 s. 18)

(vii) (Addition not yet in operation—see 6 of 2014 s. 18)

(viii) the management of an open-ended fund company or the management or safe keeping of the scheme property of an open-ended fund company; *(Added 16 of 2016 s. 8)*

(c) the Commission has reasonable cause to believe that market misconduct may have taken place;

(ca) the Commission has reasonable cause to believe that a breach of a disclosure requirement may have taken place under Part XIVA; *(Added 9 of 2012 s. 4)*

(d) the Commission has reasonable cause to believe that the manner in which a person has engaged or is engaging in any of the activities referred to in paragraph (b) is not in the interest of the investing public or in the public interest; *(Amended 17 of 2021 s. 9)*

#(da) the Commission has reasonable cause to believe that a prescribed person other than an authorized financial institution or an approved money broker may have contravened the reporting obligation, clearing obligation, trading obligation or record keeping obligation; *(Added 6 of 2014 s. 18)*

@(db) the Commission has reasonable cause to believe that a registered SIP may have failed to comply with a requirement made under section 101X; *(Added 6 of 2014 s. 18)*

(e) the Commission—

(i) for the purpose of considering whether to exercise any power under section 194 or 196, has reason to inquire whether any person is or was at any time guilty of misconduct, or is not a fit and proper person, as described in section 194(1) or (2) or 196(1) or (2); or

(ii) for the purpose of assisting the Monetary Authority to consider whether to exercise any power under section 58A or 71C of the Banking Ordinance (Cap. 155), has reason to inquire whether any person—

(A) is or was at any time guilty of misconduct, or is not or has ceased to be a fit and proper person, as described in section 58A(1) of that Ordinance; or

(B) is or was at any time guilty of misconduct, or should cease to be regarded as a fit and proper person, as described in section 71C(4) of that Ordinance;

(f) the Commission has reason to inquire whether any of the conditions imposed in respect of an authorization under section 104, 104A or 105 are being complied with; *(Amended 8 of 2011 s. 9; 16 of 2016 s. 8)*

(fa) the Commission has reason to inquire whether, with respect to an open-ended fund company, any of the requirements for registration specified in section 112E is no longer met; *(Added 16 of 2016 s. 8)*

(fb) the Commission has reason to inquire whether any of the conditions imposed in respect of the registration of an open-ended fund company has been or is being complied with; or *(Added 16 of 2016 s. 8)*

[##](g) a matter in respect of the investigation of which the Commission decides to provide assistance under section 186(1) or (2) is, in the opinion of the Commission, of a nature similar to the matter described in paragraph (a), (b), (c), (d), (da), (db), (e), (f), (fa) or (fb) as that which the Commission has reasonable cause to believe or has reason to inquire (as the case may be), *(Amended 6 of 2014 s. 18; 19 of 2015 s. 23; 16 of 2016 s. 8)*

the Commission may in writing direct one or more of its employees or, with the consent of the Financial Secretary, appoint one or more other persons, to investigate any of the matters referred to in paragraphs (a) to (g).

(2) The costs and expenses incurred by an investigator, other than an employee of the Commission, are to be paid out of moneys provided by the Legislative Council.

(3) The Commission shall furnish an investigator with a copy of his direction or appointment (as the case may be), and the investigator, before first imposing any requirement on a person under section 183(1), (2) or (3), shall produce a copy of the direction or appointment (as the case may be) to that person for inspection.

(4) Before the Commission directs any of its employees, or appoints any person—

(a) to investigate any matter under subsection (1)(e)(i), to the extent that the investigation is for the purpose of considering whether to exercise any power under section 196; or

(b) to investigate any matter under subsection (1)(e)(ii),

the Commission shall consult the Monetary Authority.

Editorial Note:

[#] The new section 182(1)(da) added by the Securities and Futures (Amendment) Ordinance 2014 (6 of 2014) came into operation on—

(a) 10 July 2015, in so far as it relates to the contravention of the reporting obligation and the record keeping obligation; please see paragraph (f) of the Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2015 (L.N. 95 of 2015); and

(b) 1 September 2016, in so far as it relates to the contravention of the clearing obligation; please see paragraph (b) of the Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2016 (L.N. 27 of 2016).

[@] Not yet in operation.

[##] The amendment to section 182(1)(g) made by the Securities and Futures (Amendment) Ordinance 2014 (6 of 2014) came into operation on 10 July 2015, except in so far as it relates to the new section 182(1)(db) of the Ordinance. Please see paragraph (g) of the Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2015 (L.N. 95 of 2015).

183. Conduct of investigations

(1) The person under investigation or a person whom the investigator has reasonable cause to believe has in his possession any record or document which contains, or which is likely to contain, information relevant to an investigation under section 182, or whom the investigator has reasonable cause to believe otherwise has such information in his possession, shall—

(a) produce to the investigator, within the time and at the place the investigator reasonably requires in writing, any record or document specified by the investigator which is, or may be, relevant to the investigation and which is in his possession;

(b) if required by the investigator, give the investigator an explanation or further particulars in respect of any record or document produced under paragraph (a);

(c) attend before the investigator at the time and place the investigator reasonably requires in writing, and answer any question relating to the matters under investigation that the investigator may raise with him; and

(d) give the investigator all assistance in connection with the investigation which he is reasonably able to give, including responding to any written question raised by the investigator.

(2) An investigator may in writing require the person giving or making an explanation, particulars, answer or statement under this section to verify within a reasonable period specified in the requirement the explanation, particulars, answer or statement by statutory declaration, which may be taken by the investigator.

(3) If a person does not give or make an explanation, particulars, answer or statement in accordance with a requirement under this section for the reason that the explanation, particulars, answer or statement was not within his knowledge or in his possession, an investigator may in writing require the person to verify within a reasonable period specified in the requirement by statutory declaration, which may be taken by the investigator, that he was unable to comply or fully comply (as the case may be) with the requirement for that reason.

(4) Neither section 182 nor this section shall be construed as requiring an authorized financial institution to disclose any information or produce any record or document relating to the affairs of a customer to the investigator unless—

(a) the customer is a person whom the investigator has reasonable cause to believe may be able to give information relevant to the investigation; and

(b) the Commission is satisfied, and certifies in writing that it is satisfied, that the disclosure or production is necessary for the purposes of the investigation.

(5) The investigator may, and if so directed by the Commission shall, make interim reports on his investigation to the Commission, and on the conclusion of his investigation shall make a final report on his investigation to the Commission.

(6) The Commission may, with the consent of the Secretary for Justice, cause a report under this section to be published.

184. Offences in relation to investigations

(1) A person who, without reasonable excuse—

(a) fails to produce any record or document required to be produced under section 183(1)(a);

(b) fails to give an explanation or further particulars required under section 183(1)(b);

(c) fails to attend before the investigator as required under section 183(1)(c);

(d) fails to answer a question raised by the investigator under section 183(1)(c);

(e) fails to comply with section 183(1)(d); or

(f) fails to comply with a requirement under section 183(2) or (3),

commits an offence and is liable—

(i) on conviction on indictment to a fine of $200,000 and to imprisonment for 1 year; or

(ii) on summary conviction to a fine at level 5 and to imprisonment for 6 months.

(2) A person—

(a) who—

(i) in purportedly complying with a requirement imposed by the investigator under section 183(1)(a), produces any record or document which is false or misleading in a material particular;

(ii) in purportedly complying with a requirement imposed by the investigator under section 183(1)(b), gives any explanation or further particulars which are false or misleading in a material particular;

(iii) in purportedly answering any question raised by the investigator under section 183(1)(c), says anything which is false or misleading in a material particular; or

(iv) in purportedly responding to any written question raised by the investigator under section 183(1)(d), states anything which is false or misleading in a material particular; and

(b) who knows that, or is reckless as to whether, the record or document, the explanation or further particulars, the thing or the statement (as the case may be) is false or misleading in a material particular,

commits an offence and is liable—

(i) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(ii) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(3) A person who—

(a) with intent to defraud—

(i) fails to do anything described in subsection (1)(a), (b), (c), (d), (e) or (f);

(ii) in purportedly complying with a requirement imposed by the investigator under section 183(1)(a), produces any record or document which is false or misleading in a material particular;

(iii) in purportedly complying with a requirement imposed by the investigator under section 183(1)(b), gives any explanation or further particulars which are false or misleading in a material particular;

(iv) in purportedly answering any question raised by the investigator under section 183(1)(c), says anything which is false or misleading in a material particular; or

(v) in purportedly responding to any written question raised by the investigator under section 183(1)(d), states anything which is false or misleading in a material particular; or

(b) being an officer or employee of a corporation, with intent to defraud causes or allows the corporation to—

(i) fail to do anything described in subsection (1)(a), (b), (c), (d), (e) or (f);

(ii) in purportedly complying with a requirement imposed by the investigator under section 183(1)(a), produce any record or document which is false or misleading in a material particular;

(iii) in purportedly complying with a requirement imposed by the investigator under section 183(1)(b), give any explanation or further particulars which are false or misleading in a material particular;

(iv) in purportedly answering any question raised by the investigator under section 183(1)(c), say

anything which is false or misleading in a material particular; or

(v) in purportedly responding to any written question raised by the investigator under section 183(1)(d), state anything which is false or misleading in a material particular,

commits an offence and is liable—

(i) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 7 years; or

(ii) on summary conviction to a fine at level 6 and to imprisonment for 6 months. *(Amended 6 of 2014 s. 19)*

(4) A person is not excused from complying with a requirement imposed on the person by an investigator under section 183 only on the ground that to do so might tend to incriminate the person.

(5) Where any person is convicted by a court on a prosecution instituted as a result of an investigation under section 182, the court may order him to pay to the Commission the whole or a part of the costs and expenses of the investigation and the Commission may recover the whole or the part (as the case may be) of the costs and expenses as a civil debt due to it.

(6) Where the Commission receives an amount under an order made under subsection (5) in respect of any of the costs and expenses of an investigation, and all or any of the costs and expenses have been paid out of moneys provided by the Legislative Council, the Commission shall pay to the Financial Secretary the amount received under the order to the extent that it has already been paid out of moneys provided by the Legislative Council.

Division 3A—Monetary Authority's Powers of Investigation

(Division 3A added 6 of 2014 s. 20)

[#]184A. Investigations by Monetary Authority

(1) If the Monetary Authority has reasonable cause to believe that an authorized financial institution or an approved money broker may have contravened the reporting obligation, clearing obligation, trading obligation or record keeping obligation, the Monetary Authority may—

(a) direct in writing one or more persons appointed under section 5A(3) of the Exchange Fund Ordinance (Cap. 66) to investigate the matter; or

(b) with the consent of the Financial Secretary, appoint in writing one or more other persons to investigate the matter.

(2) The Monetary Authority must give an MA investigator a copy of—

(a) the direction, if the MA investigator is directed under subsection (1)(a); and

(b) the appointment, if the MA investigator is appointed under subsection (1)(b).

(3) The MA investigator must, before first imposing a requirement on a person under section 184B(1), (2) or (3),

---

Editorial Note:

[#] The new section 184A added by the Securities and Futures (Amendment) Ordinance 2014 (6 of 2014) came into operation on—

(a) 10 July 2015, in so far as it relates to the contravention of the reporting obligation and the record keeping obligation; please see paragraph (i)(i) of the Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2015 (L.N. 95 of 2015); and

(b) 1 September 2016, in so far as it relates to the contravention of the clearing obligation; please see paragraph (c) of the Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2016 (L.N. 27 of 2016).

produce a copy of the direction or appointment for inspection by the person.

184B. Conduct of investigations

(1) A person under investigation or a person whom the MA investigator has reasonable cause to believe to be in possession of any record or document that contains, or that is likely to contain, information relevant to an investigation under section 184A, or whom the MA investigator has reasonable cause to believe to be otherwise in possession of such information, must—

(a) produce to the MA investigator, within the time and at a place the MA investigator reasonably requires in writing, a record or document specified by the MA investigator—

(i) that is, or may be, relevant to the investigation; and

(ii) that is in the person's possession;

(b) if required by the MA investigator, give the MA investigator an explanation or further particulars in respect of a record or document produced under paragraph (a);

(c) attend before the MA investigator at a time and place the MA investigator reasonably requires in writing, and answer any question relating to a matter under investigation raised by the MA investigator; and

(d) give the MA investigator all assistance in connection with the investigation that the person is reasonably able to give, including responding to any written question raised by the MA investigator.

(2) An MA investigator may require, in writing, a person who makes or gives an explanation, particulars, answer or

statement under this section to verify, by statutory declaration, within a reasonable period specified in the requirement, the explanation, particulars, answer or statement.

(3) If a person does not make or give an explanation, particulars, answer or statement in accordance with a requirement under this section for the reason that the explanation, particulars, answer or statement was not within the person's knowledge or in the person's possession, an MA investigator may require, in writing, the person to verify by statutory declaration—

(a) that the person was unable to comply or fully comply (as the case may be) with the requirement for that reason; and

(b) within a reasonable period specified in the requirement.

(4) A statutory declaration under this section may be made before the MA investigator.

184C. Investigation reports

(1) An MA investigator—

(a) may make interim reports on the investigation conducted under this Division to the Monetary Authority;

(b) must make interim reports on the investigation to the Monetary Authority if directed by the Monetary Authority; and

(c) must, after the completion of the investigation, make a final report on the investigation to the Monetary Authority.

(2) The Monetary Authority may, with the consent of the Secretary for Justice, publish any report made under subsection (1).

184D. Offences relating to investigations

(1) A person commits an offence if the person, without reasonable excuse—

(a) fails to produce a record or document required to be produced under section 184B(1)(a);

(b) fails to give an explanation or further particulars required under section 184B(1)(b);

(c) fails to attend before the MA investigator as required under section 184B(1)(c);

(d) fails to answer a question raised by the MA investigator under section 184B(1)(c);

(e) fails to comply with section 184B(1)(d); or

(f) fails to comply with a requirement under section 184B(2) or (3).

(2) A person who commits an offence under subsection (1) is liable—

(a) on conviction on indictment to a fine of $200,000 and to imprisonment for 1 year; or

(b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.

(3) A person commits an offence if—

(a) the person—

(i) in purportedly complying with a requirement imposed by the MA investigator under section 184B(1)(a), produces a record or document that is false or misleading in a material particular;

(ii) in purportedly complying with a requirement imposed by the MA investigator under section 184B(1)(b), gives an explanation or further particulars that are false or misleading in a material particular;

(iii) in purportedly answering a question raised by the MA investigator under section 184B(1)(c), says anything that is false or misleading in a material particular; or

(iv) in purportedly responding to a written question raised by the MA investigator under section 184B(1)(d), states anything that is false or misleading in a material particular; and

(b) the person knows that, or is reckless as to whether, the record or document, the explanation or further particulars, the thing said or statement is false or misleading in a material particular.

(4) A person who commits an offence under subsection (3) is liable—

(a) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(5) A person commits an offence if the person with intent to defraud—

(a) fails to do anything described in subsection (1)(a), (b), (c), (d), (e) or (f);

(b) in purportedly complying with a requirement imposed by the MA investigator under section 184B(1)(a), produces a record or document that is false or misleading in a material particular;

(c) in purportedly complying with a requirement imposed by the MA investigator under section 184B(1)(b), gives an explanation or further particulars that are false or misleading in a material particular;

(d) in purportedly answering a question raised by the MA investigator under section 184B(1)(c), says anything that is false or misleading in a material particular; or

(e) in purportedly responding to a written question raised by the MA investigator under section 184B(1)(d), states anything that is false or misleading in a material particular.

(6) An officer or employee of a corporation commits an offence if the officer or employee, with intent to defraud, causes or allows the corporation to—

(a) fail to do anything described in subsection (1)(a), (b), (c), (d), (e) or (f);

(b) in purportedly complying with a requirement imposed by the MA investigator under section 184B(1)(a), produce a record or document that is false or misleading in a material particular;

(c) in purportedly complying with a requirement imposed by the MA investigator under section 184B(1)(b), give an explanation or further particulars that are false or misleading in a material particular;

(d) in purportedly answering a question raised by the MA investigator under section 184B(1)(c), say anything that is false or misleading in a material particular; or

(e) in purportedly responding to a written question raised by the MA investigator under section 184B(1)(d), state anything that is false or misleading in a material particular.

(7) A person is not excused from complying with a requirement imposed under section 184B(1), (2) or (3) only on the ground that to do so might tend to incriminate the person.

(8) A person who commits an offence under subsection (5) or (6) is liable—

(a) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 7 years; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

184E. Recovery of costs of investigation

(1) If a person is convicted by a court on a prosecution instituted as a result of an investigation under this Division, the court may order the person to pay to the Monetary Authority the whole or a part of the costs and expenses of the investigation.

(2) The Monetary Authority may recover, as a civil debt due to the Monetary Authority, the whole or the part (as the case may be) of the costs and expenses ordered under subsection (1).

(3) The Monetary Authority must pay into the Exchange Fund any costs and expenses recovered under subsection (2).

Division 4—Miscellaneous

185. Application to Court of First Instance relating to non-compliance with requirements under section 179, 180, 181, 183 or 184B

(Amended 6 of 2014 s. 21)

(1) If a person fails to do anything upon being required to do so by an authorized person under section 179, 180 or 181, or to do anything upon being required to do so by an investigator under section 183(1), (2) or (3), the Commission may, by originating summons or originating motion, make an application to the Court of First Instance in respect

of the failure, and the Court may inquire into the case and— *(Amended 9 of 2012 s. 40)*

(a) if the Court is satisfied that there is no reasonable excuse for the person not to comply with the requirement, order the person to comply with the requirement within the period specified by the Court; and

(b) if the Court is satisfied that the failure was without reasonable excuse, punish the person, and any other person knowingly involved in the failure, in the same manner as if he and, where applicable, that other person had been guilty of contempt of court.

(1A) If a person fails to do anything on being required to do so by an MA investigator under section 184B(1), (2) or (3), the Monetary Authority may, by originating summons, make an application to the Court of First Instance in respect of the failure. *(Added 6 of 2014 s. 21)*

(1B) The Court of First Instance may inquire into the case and if satisfied that—

(a) there is no reasonable excuse for the person not to comply with the requirement, order the person to comply with it within the period specified by the Court; and

(b) the failure was without reasonable excuse, punish the person, and any other person knowingly involved in the failure, in the same manner as if the person, and (if applicable) that other person, had been guilty of contempt of court. *(Added 6 of 2014 s. 21)*

(2) An originating summons under subsection (1) or (1A) shall be in Form No. 10 in Appendix A to the Rules of the High Court (Cap. 4 sub. leg. A).

(3) Notwithstanding anything in this section and any other provisions of this Ordinance—

(a) no proceedings may be instituted against any person for the purposes of subsection (1)(b) or (1B)(b) in respect of any conduct if— *(Amended 6 of 2014 s. 21)*

(i) criminal proceedings have previously been instituted against the person under section 179, 180, 181, 184 or 184D in respect of the same conduct; and

(ii) (A) those criminal proceedings remain pending; or

(B) by reason of the previous institution of those criminal proceedings, no criminal proceedings may again be lawfully instituted against that person under such section in respect of the same conduct;

(b) no criminal proceedings may be instituted against any person under section 179, 180, 181, 184 or 184D in respect of any conduct if— *(Amended 6 of 2014 s. 21)*

(i) proceedings have previously been instituted against the person for the purposes of subsection (1)(b) or (1B)(b) in respect of the same conduct; and

(ii) (A) those proceedings remain pending; or

(B) by reason of the previous institution of those proceedings, no proceedings may again be lawfully instituted against that person for the purposes of such subsection in respect of the same conduct.

(Amended E.R. 2 of 2012; 6 of 2014 s. 21)

186. Commission's assistance to regulators outside Hong Kong

(Amended 6 of 2014 s. 22)

(1) Where the Commission receives, from an authority or regulatory organization outside Hong Kong which in the opinion of the Commission satisfies the requirements referred to in subsection (5)(a) and (b), a request for assistance to investigate whether a person specified by the authority or regulatory organization has contravened or is contravening legal or regulatory requirements which—

(a) the authority or regulatory organization enforces or administers; and

(b) relate to such transactions regarding any securities, futures contract, leveraged foreign exchange contract, OTC derivative product, collective investment scheme or other similar transactions as are regulated by the authority or regulatory organization, *(Amended 6 of 2014 s. 22)*

the Commission may, where it is of the opinion that the condition specified in subsection (3) is satisfied, provide the assistance to investigate the matter by directing that any of the powers under sections 179, 181, 182 and 183 be exercised. *(Amended 19 of 2015 s. 24)*

(2) Where the Commission receives, from a companies inspector outside Hong Kong who in the opinion of the Commission satisfies the requirements referred to in subsection (5)(a) and (b), a request for assistance to investigate whether a person specified by the companies inspector has contravened or is contravening legal or regulatory requirements which relate to transactions regarding any securities, futures contract, leveraged foreign exchange contract, OTC derivative product, collective investment scheme or other similar transactions, the Commission may, where it is of the opinion that the condition specified in subsection (3) is satisfied, provide the assistance to investigate the matter by directing that any of the powers

under sections 179, 181, 182 and 183 be exercised. *(Amended 6 of 2014 s. 22; 19 of 2015 s. 24)*

(2A) Where the Commission receives, from an authority or regulatory organization outside Hong Kong, a request for assistance in relation to a licensed corporation, the Commission may provide the assistance by directing that the power under section 180(4A) be exercised if—

(a) in the opinion of the Commission—

(i) the authority or regulatory organization satisfies the requirements referred to in subsection (5)(a) and (b); and

(ii) the condition specified in subsection (3) is satisfied; and

(b) the authority or regulatory organization has provided to the Commission a written statement that conforms with subsection (2D) and a written undertaking that conforms with subsection (2E). *(Added 19 of 2015 s. 24)*

(2B) In subsection (2A), a reference to assistance in relation to a licensed corporation is a reference to assistance to ascertain whether a corporation specified in subsection (2C)—

(a) constitutes a risk to, or may affect, the financial stability of the jurisdiction of the authority or regulatory organization; or

(b) is complying or has complied with, or is likely to be able to comply with, legal or regulatory requirements that—

(i) are administered by the authority or regulatory organization; and

(ii) relate to transactions or activities regarding any securities, futures contract, leveraged foreign exchange contract, OTC derivative product,

collective investment scheme, or other similar transactions or activities, that are regulated by the authority or regulatory organization. *(Added 19 of 2015 s. 24)*

(2C) The corporation specified for the purposes of subsection (2B) is one that—

(a) is regulated by the authority or regulatory organization; and

(b) is a licensed corporation or a related corporation of a licensed corporation. *(Added 19 of 2015 s. 24)*

(2D) The written statement referred to in subsection (2A)(b) must be to the effect of confirming that the authority or regulatory organization has not been and will not be able to—

(a) obtain the information referred to in section 180(4A)(a) or (b) by any other reasonable means; and

(b) fully ascertain the matters described in subsection (2B) without the information. *(Added 19 of 2015 s. 24)*

(2E) The written undertaking referred to in subsection (2A)(b) must be to the effect that the authority or regulatory organization—

(a) will use the information obtained from the Commission because of the request for assistance solely for ascertaining the matters described in subsection (2B);

(b) will not use any of the information in any proceedings, in the jurisdiction of the authority or regulatory organization or elsewhere, unless—

(i) the authority or regulatory organization has made a separate request under subsection (1) (***investigation request***), and the Commission has decided to provide assistance under that subsection; and

(ii) the authority or regulatory organization has obtained the same information from the Commission because of the investigation request;

(c) will treat the information as confidential and will not disclose it to any other person, in the jurisdiction of the authority or regulatory organization or elsewhere, for any purpose without the consent of the Commission;

(d) will, on receiving a demand legally enforceable under the laws of the jurisdiction of the authority or regulatory organization, for the disclosure of any of the information—

(i) inform the Commission as soon as reasonably practicable; and

(ii) assist in preserving the confidentiality of the information by taking all appropriate measures as may be available (including but not limited to asserting legal exemptions or privileges under the laws of the jurisdiction of the authority or regulatory organization); and

(e) will cooperate with the Commission in any action or proceedings, in the jurisdiction of the authority or regulatory organization or elsewhere, that seek to safeguard the confidentiality of any of the information. *(Added 19 of 2015 s. 24)*

(3) The condition referred to in subsections (1), (2) and (2A)(a)(ii) is that— *(Amended 19 of 2015 s. 24)*

(a) it is desirable or expedient that the assistance requested under subsection (1), (2) or (2A) (as the case may be) should be provided in the interest of the investing public or in the public interest; or *(Amended 19 of 2015 s. 24)*

(b) the assistance will enable or assist the recipient of the assistance to perform its or his functions and it is not

contrary to the interest of the investing public or to the public interest that the assistance should be provided.

(4) In deciding whether the condition specified in subsection (3) is satisfied in a particular case, the Commission shall take into account—

(a) where the recipient of the assistance is an authority or regulatory organization referred to in subsection (1) or (2A), whether the authority or regulatory organization will— *(Amended 19 of 2015 s. 24)*

(i) pay to the Commission any of the costs and expenses incurred in providing the assistance; and

(ii) be able and willing to provide reciprocal assistance within its jurisdiction in response to a comparable request for assistance from Hong Kong; or

(b) where the recipient of the assistance is a companies inspector referred to in subsection (2), whether—

(i) the companies inspector will pay to the Commission any of the costs and expenses incurred in providing the assistance; and

(ii) under the laws of the country or territory in which the companies inspector is appointed, reciprocal assistance will be provided in response to a comparable request for assistance from Hong Kong.

(5) Where the Commission is satisfied, for the purposes of subsection (1), (2) or (2A)(a)(i), that an authority, regulatory organization or companies inspector outside Hong Kong— *(Amended 19 of 2015 s. 24)*

(a) performs any function similar to a function of the Commission or the Registrar of Companies, or regulates,

supervises or investigates banking, insurance or other financial services or the affairs of corporations; and

(b) is subject to adequate secrecy provisions,

the Commission shall as soon as reasonably practicable thereafter cause the name of the authority, regulatory organization or companies inspector (as the case may be) to be published in the Gazette.

(6) If a person is required—

(a) to provide or make an explanation or statement as required by an authorized person within the meaning of section 179 exercising pursuant to subsection (1) or (2) a power under section 179; or

(b) to give an explanation or further particulars as required by, or to give an answer to any question as raised by, an investigator exercising pursuant to subsection (1) or (2) a power under section 183,

and the explanation or statement, the explanation or further particulars, or the answer (as the case may be) might tend to incriminate him and he so claims before providing or making the explanation or statement, giving the explanation or further particulars, or giving the answer (as the case may be), then, without limiting the provisions of section 187, the authorized person or investigator (as the case may be) shall not provide evidence of the requirement and the explanation or statement, the explanation or further particulars, or the question and answer (as the case may be) to an authority, regulatory organization or companies inspector outside Hong Kong for use in criminal proceedings against him in the jurisdiction of the authority, regulatory organization or companies inspector (as the case may be).

(7) Where the Commission receives from an authority, regulatory organization or companies inspector outside Hong Kong

an amount paid in respect of any of the costs and expenses incurred in providing assistance under this section, and all or any of the costs and expenses have been paid out of moneys provided by the Legislative Council, the Commission shall pay to the Financial Secretary the amount received to the extent that it has already been paid out of moneys provided by the Legislative Council.

(8) Any matter published under subsection (5) is not subsidiary legislation.

(9) In this section, ***companies inspector*** (公司審查員), in relation to a place outside Hong Kong, means a person whose functions under the laws of that place include the investigation of the affairs of a corporation carrying on business in that place.

186A. Monetary Authority's assistance to regulators outside Hong Kong

(1) If the Monetary Authority receives from an overseas entity a request for assistance described in subsection (2), the Monetary Authority may give the requested assistance by exercising the powers under sections 184A and 184B if, in the opinion of the Monetary Authority—

(a) the overseas entity satisfies the requirements referred to in subsection (5); and

(b) the condition in subsection (7) is satisfied.

(2) A request for assistance referred to in subsection (1) is a request for assistance to investigate whether a person specified by the overseas entity has contravened or is contravening legal or regulatory requirements that—

(a) the overseas entity enforces or administers; and

(b) relate to—

(i) transactions regarding OTC derivative products regulated by the overseas entity; or

(ii) other similar transactions regulated by the overseas entity.

(3) If the Monetary Authority receives from a companies inspector outside Hong Kong a request for assistance described in subsection (4), the Monetary Authority may give the requested assistance by exercising the powers under sections 184A and 184B if, in the opinion of the Monetary Authority—

(a) the companies inspector satisfies the requirements referred to in subsection (6); and

(b) the condition in subsection (7) is satisfied.

(4) A request for assistance referred to in subsection (3) is a request for assistance to investigate whether a person specified by the companies inspector outside Hong Kong has contravened or is contravening legal or regulatory requirements that relate to transactions regarding OTC derivative products or other similar transactions.

(5) The requirements referred to in subsection (1)(a) are that the overseas entity—

(a) performs functions similar to the functions of the Monetary Authority or regulates, supervises or investigates banking, insurance or other financial services; and

(b) is subject to adequate secrecy provisions.

(6) The requirements referred to in subsection (3)(a) are that the companies inspector outside Hong Kong—

(a) performs functions similar to the functions of the Registrar of Companies or regulates, supervises or investigates the affairs of corporations; and

(b) is subject to adequate secrecy provisions.

(7) The condition referred to in subsections (1)(b) and (3)(b) is that—

(a) it is desirable or expedient that the assistance should be given in the interests of the investing public or in the public interest; or

(b) the assistance will enable or assist the recipient of the assistance to perform the recipient's functions and it is not contrary to the interests of the investing public or to the public interest that the assistance should be given.

(8) In deciding whether the condition set out in subsection (7) is satisfied in a particular case, the Monetary Authority must take into account—

(a) if the recipient of the assistance is an overseas entity, whether the overseas entity will—

(i) pay to the Monetary Authority any of the costs and expenses incurred in giving the assistance; and

(ii) be able and willing to give reciprocal assistance within its jurisdiction in response to a comparable request for assistance from Hong Kong; or

(b) if the recipient of the assistance is a companies inspector outside Hong Kong, whether—

(i) the companies inspector will pay to the Monetary Authority any of the costs and expenses incurred in giving the assistance; and

(ii) under the laws of the country or territory in which the companies inspector is appointed, reciprocal assistance will be given in response to a comparable request for assistance from Hong Kong.

(9) If the Monetary Authority is satisfied of the matters referred to in subsection (5)(a) and (b) or (6)(a) and (b), the Monetary Authority must, as soon as reasonably practicable after being so satisfied, publish in the Gazette, the name of the overseas entity or the companies inspector outside Hong Kong.

(10) Subsection (11) applies if a person is required to give an explanation or further particulars as required by, or to give an answer to a question raised by, an MA investigator exercising under subsection (1) or (3), a power under section 184B, and the explanation, further particulars or the answer might tend to incriminate the person and the person so claims before giving it.

(11) Without limiting section 187, the MA investigator must not provide to an overseas entity or a companies inspector outside Hong Kong for use in criminal proceedings against the person in the jurisdiction of the overseas entity or the companies inspector—

(a) evidence of the requirement;

(b) evidence of the question and answer; or

(c) evidence of the explanation or further particulars.

(12) The Monetary Authority must pay into the Exchange Fund any amount received from an overseas entity or a companies inspector outside Hong Kong in respect of costs and expenses incurred by the Monetary Authority in giving assistance under this section.

(13) A matter published under subsection (9) is not subsidiary legislation.

(14) In this section—

companies inspector (公司審查員), in relation to a place outside Hong Kong, has the meaning given by section 186(9);

overseas entity (海外實體) means an authority or regulatory organization outside Hong Kong.

(Added 6 of 2014 s. 23)

187. Use of incriminating evidence in proceedings

(1) Where—

(a) an authorized person within the meaning of section 179 requires a person to provide or make an explanation or statement under that section;

(b) an investigator requires a person to give an explanation or further particulars or to give an answer to any question under section 183; or

(c) an MA investigator requires a person to give an explanation or further particulars or give an answer to a question under section 184B, *(Added 6 of 2014 s. 24)*

the authorized person or the investigator (as the case may be) shall ensure that the person has first been informed or reminded (as the case may be) of the limitations imposed by subsection (2) on the admissibility in evidence of the requirement and of the explanation or statement, the explanation or further particulars, or the question and answer (as the case may be).

(2) Notwithstanding any other provisions of this Ordinance, where—

(a) an authorized person within the meaning of section 179 requires a person to provide or make an explanation or statement under that section;

(b) an investigator requires a person to give an explanation or further particulars or to give an answer to any question under section 183; or

(c) an MA investigator requires a person to give an explanation or further particulars or give an answer to a question under section 184B, *(Added 6 of 2014 s. 24)*

and the explanation or statement, the explanation or further particulars, or the answer (as the case may be) might tend to incriminate the person and the person so claims before providing or making the explanation or statement, giving the explanation or further particulars, or giving the answer (as the case may be), then the requirement as well as the explanation or statement, the explanation or further particulars, or the question and answer (as the case may be) shall not be admissible in evidence against the person in criminal proceedings in a court of law other than those in which the person is charged with an offence under section 179(13), (14) or (15), 184 or 184D, or under section 219(2)(a), 253(2)(a) or 254(6)(a) or (b), or under Part V of the Crimes Ordinance (Cap. 200), or for perjury, in respect of the explanation or statement, the explanation or further particulars, or the answer (as the case may be).

(Amended 6 of 2014 s. 24)

188. Lien claimed on records or documents

Where the person in possession of any record or document required to be produced under this Part claims a lien on the record or document—

(a) the requirement to produce the record or document shall not be affected by the lien;

(b) no fees shall be payable for or in respect of the production; and

(c) the production shall be without prejudice to the lien.

189. Production of information in information systems, etc.

Where any information or matter contained in any record or document required to be produced under this Part is recorded otherwise than in a legible form, any power conferred by this Part to require the production of the record or document includes the power to require the production of a reproduction of the recording of the information or matter or of the relevant part of it—

(a) where the recording enables the information or matter to be reproduced in a legible form, in a legible form; and

(b) where the information or matter is recorded in an information system, in a form which enables the information or matter to be reproduced in a legible form.

190. Inspection of records or documents seized, etc.

Where an authorized person within the meaning of section 179, 180 or 181 or an investigator or MA investigator has taken possession of any record or document under this Part, the authorized person or the investigator or MA investigator (as the case may be) shall, subject to any reasonable conditions he imposes as to security or otherwise, permit a person who would be entitled to inspect the record or document had he not taken possession of it under this Part, to inspect it and to make copies or otherwise record details of it at all reasonable times.

(Amended 6 of 2014 s. 25)

191. Magistrate's warrants

(1) If a magistrate is satisfied on information on oath laid by—

(a) an employee of the Commission or, where the exercise of powers under section 180 is concerned, of the relevant authority within the meaning of that section; or

(b) an authorized person within the meaning of section 179 or 180, or an investigator or MA investigator, *(Amended 6 of 2014 s. 26)*

that there are reasonable grounds to suspect that there is, or is likely to be, on premises specified in the information any record or document which may be required to be produced under this Part, the magistrate may issue a warrant authorizing a person specified in the warrant, a police officer, and such other persons as may be necessary to assist in the execution of the warrant to—

(i) enter the premises so specified, if necessary by force, at any time within the period of 7 days beginning on the date of the warrant; and

(ii) search for, seize and remove any record or document which the person specified in the warrant or police officer has reasonable cause to believe may be required to be produced under this Part.

(2) A person specified in, or a police officer or any other person authorized by, a warrant issued under subsection (1) may—

(a) require any person on the premises specified in the warrant whom he has reasonable cause to believe to be employed in connection with a business which is, or which has been, conducted on the premises to produce for examination any record or document which is in the possession of the person and which he has reasonable cause to believe may be required to be produced under this Part;

(b) prohibit any person found on the premises specified in the warrant from—

(i) removing from the premises any record or document required to be produced under paragraph (a);

(ii) erasing, adding to or otherwise altering an entry or other particulars contained in, or otherwise interfering in any manner with, or causing or

permitting any other person to interfere with, the record or document;

(c) take, in relation to any record or document required to be produced under paragraph (a), any other step which may appear necessary for preserving it and preventing interference with it.

(3) Any record or document removed under this section may be retained for any period not exceeding 6 months beginning on the day of its removal or, where the record or document is or may be required for criminal proceedings or for any proceedings under this Ordinance, for such longer period as may be necessary for the purposes of those proceedings.

(4) Where a person removes any record or document under this section, he shall as soon as reasonably practicable thereafter give a receipt for it, and he may permit any person who would be entitled to inspect it but for the removal to inspect the record or document and to make copies or otherwise record details of it at all reasonable times.

(5) Section 102 of the Criminal Procedure Ordinance (Cap. 221) applies to any property which has by virtue of this section come into the possession of the Commission or the Monetary Authority or, where the exercise of powers under section 180 is concerned, of the relevant authority within the meaning of that section, as it applies to property which has come into the possession of the police. *(Amended 6 of 2014 s. 26)*

(6) A person commits an offence if he—

(a) without reasonable excuse, fails to comply with a requirement or prohibition under subsection (2); or

(b) obstructs a person exercising a power conferred by subsection (2).

(7) A person who commits an offence under subsection (6) is liable—

(a) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

192. Destruction of documents, etc.

(1) A person commits an offence if he destroys, falsifies, conceals or otherwise disposes of, or causes or permits the destruction, falsification, concealment or disposal of, any record or document required to be produced under this Part, with intent to conceal, from the person by whom the requirement to produce was imposed, facts or matters capable of being disclosed by the record or document.

(2) A person who commits an offence under subsection (1) is liable—

(a) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

Part IX

Discipline, etc.

(Format changes—E.R. 2 of 2012)

Division 1—Interpretation

193. Interpretation of Part IX

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

Companies Register (公司登記冊) has the meaning given by section 2(1) of the Companies Ordinance (Cap. 622); *(Added 28 of 2012 ss. 912 & 920)*

disciplinary power (紀律懲處權) means—

#(a) in section 197A, a power that may be exercised by the Commission under section 197A(1); and

(b) in Divisions 4 and 5, a power that may be exercised by the Monetary Authority under section 203A(1); *(Added 6 of 2014 s. 27)*

misconduct (失當行為) means—

(a) a contravention of any of the relevant provisions;

(b) a contravention of any of the terms and conditions of any licence or registration under this Ordinance;

(c) a contravention of any other condition imposed under or pursuant to any provision of this Ordinance, or of any condition attached or amended under section 71C(2)(b) or (9) or 71E(3) of the Banking Ordinance (Cap. 155); *(Amended 16 of 2016 s. 9)*

Editorial Note:

Not yet in operation. Please see paragraph (l) of the Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2015 (L.N. 95 of 2015).

(d) an act or omission relating to the carrying on of any regulated activity for which a person is licensed or registered which, in the opinion of the Commission, is or is likely to be prejudicial to the interest of the investing public or to the public interest; or *(Amended 16 of 2016 s. 9)*

(e) an act or omission that—

(i) relates to the carrying on of any activity, other than a regulated activity, that an intermediary may carry on for an open-ended fund company under this Ordinance; and

(ii) in the opinion of the Commission, is or is likely to be prejudicial to the interest of the investing public or to the public interest, *(Added 16 of 2016 s. 9)*

and ***guilty of misconduct*** (犯失當行為) shall be construed accordingly. *(Amended 28 of 2012 ss. 912 & 920)*

(Amended 30 of 2004 s. 3; 28 of 2012 ss. 912 & 920)

(2) In this Part, where an intermediary is, or was at any time, guilty of misconduct within the meaning of paragraph (a), (b), (c), (d) or (e) of the definition of ***misconduct*** in subsection (1) as a result of the commission of any conduct occurring with the consent or connivance of, or attributable to any neglect on the part of— *(Amended 16 of 2016 s. 9)*

(a) in the case of a licensed corporation, another person as—

(i) a responsible officer of the licensed corporation; or

(ii) a person involved in the management of the business of the licensed corporation; or

(b) in the case of a registered institution, another person as—

(i) an executive officer of the registered institution; or

(ii) a person involved in the management of the business constituting any regulated activity for which the registered institution is or was (as the case may be) registered,

the conduct shall also be regarded as misconduct on the part of that other person, and ***guilty of misconduct*** shall also be construed accordingly.

(3) For the purposes of paragraphs (d) and (e) of the definition of ***misconduct*** in subsection (1), the Commission shall not form any opinion that any act or omission is or is likely to be prejudicial to the interest of the investing public or to the public interest, unless it has had regard to such of the provisions set out in any code or guideline published under section 112ZR, any code of conduct published under section 169 or any code or guideline published under section 399 as are in force at the time of occurrence of, and applicable in relation to, the act or omission. *(Amended 16 of 2016 s. 9)*

Division 2—Disciplinary Action by Commission

(Replaced 6 of 2014 s. 28)

194. Disciplinary action in respect of licensed persons, etc.

(1) Subject to section 198, where—

(a) a regulated person is, or was at any time, guilty of misconduct; or

(b) the Commission is of the opinion that a regulated person is not a fit and proper person to be or to remain the same type of regulated person,

the Commission may exercise such of the following powers as it considers appropriate in the circumstances of the case—

(i) where the regulated person is a licensed person—

(A) revoke his licence, whether in relation to all or any, or any part of all or any, of the regulated activities for which he is licensed; or

(B) suspend his licence, whether in relation to all or any, or any part of all or any, of the regulated activities for which he is licensed for such period or until the occurrence of such event as the Commission may specify;

(ii) where the regulated person is a responsible officer of a licensed corporation—

(A) revoke the approval granted under section 126(1) in respect of him as such a responsible officer; or

(B) suspend such approval for such period or until the occurrence of such event as the Commission may specify;

(iii) publicly or privately reprimand the regulated person;

(iv) prohibit the regulated person from doing all or any of the following in relation to such regulated activity or regulated activities, and for such period or until the occurrence of such event, as the Commission may specify—

(A) applying to be licensed or registered;

(B) applying to be approved under section 126(1) as a responsible officer of a licensed corporation;

(C) applying to be given consent to act or continue to act as an executive officer of a registered institution under section 71C of the Banking Ordinance (Cap. 155);

(D) seeking through a registered institution to have his name entered in the register maintained by the Monetary Authority under section 20 of the

Banking Ordinance (Cap. 155) as that of a person engaged by the registered institution in respect of a regulated activity.

(2) Subject to sections 198 and 199, where—

(a) a regulated person is, or was at any time, guilty of misconduct; or

(b) the Commission is of the opinion that a regulated person is not a fit and proper person to be or to remain the same type of regulated person,

the Commission may, separately or in addition to any power exercisable under subsection (1), order the regulated person to pay a pecuniary penalty not exceeding the amount which is the greater of—

(i) $10,000,000; or

(ii) 3 times the amount of the profit gained or loss avoided by the regulated person as a result of his misconduct, or of his other conduct which leads the Commission to form the opinion (as the case may be).

(3) The Commission, in determining whether a regulated person is a fit and proper person within the meaning of subsection (1)(b) or (2)(b), may, among other matters (including those specified in section 129), take into account such present or past conduct of the regulated person as it considers appropriate in the circumstances of the case.

(4) A regulated person ordered to pay a pecuniary penalty under subsection (2) shall pay the penalty to the Commission within 30 days, or such further period as the Commission may specify by notice under section 198(3), after the order has taken effect as a specified decision under section 232.

(5) The Court of First Instance may, on an application of the Commission made in the manner prescribed by rules made

under section 397 for the purposes of this subsection, register an order made under subsection (2) in the Court of First Instance and the order shall, on registration, be regarded for all purposes as an order of the Court of First Instance made within the civil jurisdiction of the Court of First Instance for the payment of money.

(6) Any pecuniary penalty paid to or recovered by the Commission pursuant to an order made under subsection (2) shall be paid by the Commission into the general revenue.

(6A) Where the Commission exercises its power under subsection (1) or (2) against a regulated person, the Commission may disclose to the public details of the decision including the reasons for it and any material facts relating to the case. *(Added 9 of 2012 s. 41)*

(7) In this section—

regulated person (受規管人士) means a person who is or at the relevant time was any of the following types of person—

(a) a licensed person;

(b) a responsible officer of a licensed corporation; or

(c) a person involved in the management of the business of a licensed corporation;

relevant time (有關時間), in relation to a person, means—

(a) where subsection (1)(a) or (2)(a) applies, the time when the person is, or was, guilty of misconduct; or

(b) where subsection (1)(b) or (2)(b) applies, the time of occurrence of any matter which, whether with any other matter or not, leads the Commission to form the opinion that the person is not a fit and proper person within the meaning of such subsection.

195. Other circumstances for disciplinary actions in respect of

licensed persons, etc.

(1) Subject to section 198, the Commission may revoke a licensed person's licence, whether in relation to all or any, or any part of all or any, of the regulated activities for which he is licensed, or suspend a licensed person's licence, whether in relation to all or any, or any part of all or any, of the regulated activities for which he is licensed for such period or until the occurrence of such event as the Commission may specify, if—

(a) where the licensed person is an individual—

(i) the licensed person enters into a voluntary arrangement with creditors, or has a bankruptcy order made against him, under the Bankruptcy Ordinance (Cap. 6);

(ii) the licensed person fails to satisfy a levy of execution;

(iii) the licensed person has been found by a court to be mentally incapacitated, or is detained in a mental hospital, under the Mental Health Ordinance (Cap. 136), which in the opinion of the Commission impugns the fitness and properness of the licensed person to remain licensed; or

(iv) the licensed person is convicted of an offence (other than an offence under any of the relevant provisions) in Hong Kong or elsewhere, which in the opinion of the Commission impugns the fitness and properness of the licensed person to remain licensed;

(b) where the licensed person is a corporation—

(i) a receiver or manager of the property or business of the licensed person is appointed;

(ii) the licensed person fails to satisfy a levy of execution;

(iii) the licensed person enters into a compromise or scheme of arrangement with its creditors;

(iv) the licensed person goes into liquidation or is ordered to be wound up;

(v) the licensed person is convicted of an offence (other than an offence under any of the relevant provisions) in Hong Kong or elsewhere, which in the opinion of the Commission impugns the fitness and properness of the licensed person to remain licensed;

(vi) any of the directors of the licensed person has been found by a court to be mentally incapacitated, or is detained in a mental hospital, under the Mental Health Ordinance (Cap. 136), which in the opinion of the Commission impugns the fitness and properness of the licensed person to remain licensed; or

(vii) any of the directors of the licensed person is convicted of an offence (other than an offence under any of the relevant provisions) in Hong Kong or elsewhere, which in the opinion of the Commission impugns the fitness and properness of the licensed person to remain licensed;

(c) the licensed person does not carry on the regulated activity or regulated activities, or the part of regulated activity or regulated activities, to which the revocation or suspension (as the case may be) relates; or

(d) the licensed person requests the Commission to so revoke or suspend the licence.

(2) Subject to section 198, but without limiting the generality of subsection (1), the Commission may revoke a licensed person's licence in relation to Type 7 regulated activity or any part thereof if—

(a) the Commission has required under section 118(1)(c) that the licensed person should apply for an authorization under section 95(2) for that regulated activity; and

(b) (i) the licensed person has failed to make an application for the authorization under section 95(2) in accordance with the requirement, or has otherwise informed the Commission that he proposes not to make an application for the authorization under section 95(2); or

(ii) the licensed person has made an application for the authorization under section 95(2), but the application is not granted.

(3) A licence shall be deemed to be revoked if—

(a) where the licensed person is an individual, the licensed person dies; or

(b) where the licensed person is a corporation, the licensed person is wound up, struck off the Companies Register or is otherwise dissolved. *(Amended 28 of 2012 ss. 912 & 920)*

(4) Subject to subsection (5), a licence shall be deemed to be suspended if—

(a) the licensed person fails to make full payment of any annual fee payable by him under section 138, or any additional sum payable by him under that section as a result of any default in making full payment of any annual fee payable by him under that section, within 3 months after the due date for payment of the annual fee under that section; or

(b) the licensed person fails to submit an annual return required to be submitted by him under section 138 within 3 months after the due date for submission of the annual return under that section,

and, subject to subsection (6), the suspension shall remain in force until such time as the Commission considers it appropriate that the licence should no longer be suspended and informs the licensed person to that effect by notice in writing.

(5) A licence shall not be regarded as suspended under subsection (4) unless and until—

(a) in the case of a suspension under subsection (4)(a) by reference to any failure to make full payment of any annual fee or additional sum, the Commission has, by notice in writing given not less than 10 business days before the suspension is to take effect, informed the licensed person of the requirement to make full payment of the annual fee or additional sum (as the case may be), and of the consequence of the failure to comply with the requirement under this section; or

(b) in the case of a suspension under subsection (4)(b) by reference to any failure to submit an annual return, the Commission has, by notice in writing given not less than 10 business days before the suspension is to take effect, informed the licensed person of the requirement to submit the annual return, and of the consequence of the failure to comply with the requirement under this section.

(6) Where a licence is suspended under subsection (4) and the event described in subsection (4)(a) or (b) (as the case may be) has not been remedied within 30 days after the day on which the suspension becomes effective under subsection (4), or such further period as the Commission may specify by

notice in writing to the licensed person, the licence shall be deemed to be revoked.

(7) Subject to section 198, where a person who is a responsible officer of a licensed corporation is convicted of an offence (other than an offence under any of the relevant provisions) in Hong Kong or elsewhere, which in the opinion of the Commission impugns the fitness and properness of the person to remain such a responsible officer, the Commission may—

(a) revoke the approval granted under section 126(1) in respect of the person as such a responsible officer; or

(b) suspend such approval for such period or until the occurrence of such event as the Commission may specify.

196. Disciplinary action in respect of registered institutions, etc.

(1) Subject to section 198, where—

(a) a regulated person is, or was at any time, guilty of misconduct; or

(b) the Commission is of the opinion that a regulated person is not a fit and proper person to be or to remain the same type of regulated person,

the Commission may exercise such of the following powers as it considers appropriate in the circumstances of the case—

(i) where the regulated person is a registered institution—

(A) revoke its registration, whether in relation to all or any, or any part of all or any, of the regulated activities for which it is registered; or

(B) suspend its registration, whether in relation to all or any, or any part of all or any, of the regulated activities for which it is registered for such period

or until the occurrence of such event as the Commission may specify;

(ii) publicly or privately reprimand the regulated person;

(iii) prohibit the regulated person from doing all or any of the following in relation to such regulated activity or regulated activities, and for such period or until the occurrence of such event, as the Commission may specify—

(A) applying to be licensed or registered;

(B) applying to be approved under section 126(1) as a responsible officer of a licensed corporation;

(C) applying to be given consent to act or continue to act as an executive officer of a registered institution under section 71C of the Banking Ordinance (Cap. 155);

(D) seeking through a registered institution to have his name entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as that of a person engaged by the registered institution in respect of a regulated activity.

(2) Subject to sections 198 and 199, where—

(a) a regulated person is, or was at any time, guilty of misconduct; or

(b) the Commission is of the opinion that a regulated person is not a fit and proper person to be or to remain the same type of regulated person,

the Commission may, separately or in addition to any power exercisable under subsection (1), order the regulated person to pay a pecuniary penalty not exceeding the amount which is the greater of—

(i) $10,000,000; or

(ii) 3 times the amount of the profit gained or loss avoided by the regulated person as a result of his misconduct, or of his other conduct which leads the Commission to form the opinion (as the case may be).

(3) The Commission, in determining whether a regulated person is a fit and proper person within the meaning of subsection (1)(b) or (2)(b), may, among other matters (including those specified in section 129), take into account such present or past conduct of the regulated person as it considers appropriate in the circumstances of the case.

(4) A regulated person ordered to pay a pecuniary penalty under subsection (2) shall pay the penalty to the Commission within 30 days, or such further period as the Commission may specify by notice under section 198(3), after the order has taken effect as a specified decision under section 232.

(5) The Court of First Instance may, on an application of the Commission made in the manner prescribed by rules made under section 397 for the purposes of this subsection, register an order made under subsection (2) in the Court of First Instance and the order shall, on registration, be regarded for all purposes as an order of the Court of First Instance made within the civil jurisdiction of the Court of First Instance for the payment of money.

(6) Any pecuniary penalty paid to or recovered by the Commission pursuant to an order made under subsection (2) shall be paid by the Commission into the general revenue.

(6A) Where the Commission exercises its power under subsection (1) or (2) against a regulated person, the Commission may disclose to the public details of the decision including the reasons for it and any material facts relating to the case. *(Added 9 of 2012 s. 42)*

(7) Without prejudice to the exercise by the Monetary Authority of any powers under the Banking Ordinance (Cap. 155), the Commission may make such recommendations to the Monetary Authority in respect of the exercise by the Monetary Authority of any of his powers under sections 58A(1) and 71C(4) of that Ordinance as the Commission considers appropriate.

(8) In this section—

regulated person (受規管人士) means a person who is or at the relevant time was any of the following types of person—

(a) a registered institution;

(b) an executive officer of a registered institution;

(c) a person involved in the management of the business constituting any regulated activity for which a registered institution is or was (as the case may be) registered; or

(d) an individual whose name is or was (as the case may be) entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as that of a person engaged by a registered institution in respect of a regulated activity;

relevant time (有關時間), in relation to a person, means—

(a) where subsection (1)(a) or (2)(a) applies, the time when the person is, or was, guilty of misconduct; or

(b) where subsection (1)(b) or (2)(b) applies, the time of occurrence of any matter which, whether with any other matter or not, leads the Commission to form the opinion that the person is not a fit and proper person within the meaning of such subsection.

197. Other circumstances for disciplinary action in respect of registered institutions, etc.

(1) Subject to section 198, the Commission may revoke a registered institution's registration, whether in relation to all or any, or any part of all or any, of the regulated activities for which it is registered, or suspend a registered institution's registration, whether in relation to all or any, or any part of all or any, of the regulated activities for which it is registered for such period or until the occurrence of such event as the Commission may specify—

(a) if—

(i) a receiver or manager of the property or business of the registered institution is appointed;

(ii) the registered institution fails to satisfy a levy of execution;

(iii) the registered institution enters into a compromise or scheme of arrangement with its creditors;

(iv) the registered institution goes into liquidation or is ordered to be wound up;

(v) the registered institution is convicted of an offence (other than an offence under any of the relevant provisions) in Hong Kong or elsewhere, which in the opinion of the Commission impugns the fitness and properness of the registered institution to remain registered;

(b) if the registered institution does not carry on the regulated activity or regulated activities, or the part of regulated activity or regulated activities, to which the revocation or suspension (as the case may be) relates; or

(c) if the registered institution requests the Commission to so revoke or suspend the registration.

(2) Subject to section 198, but without limiting the generality of subsection (1), the Commission may revoke a registered

institution's registration in relation to Type 7 regulated activity or any part thereof if—

(a) the Commission has required under section 119(8)(b) that the registered institution should apply for an authorization under section 95(2) for that regulated activity; and

(b) (i) the registered institution has failed to make an application for the authorization under section 95(2) in accordance with the requirement, or has otherwise informed the Commission that it proposes not to make an application for the authorization under section 95(2); or

(ii) the registered institution has made an application for the authorization under section 95(2), but the application is not granted.

(3) The registration of a registered institution shall be deemed to be revoked if—

(a) the registered institution ceases to be an authorized financial institution; or

(b) the registered institution is wound up, struck off the Companies Register or is otherwise dissolved. *(Amended 28 of 2012 ss. 912 & 920)*

(4) Subject to subsection (5), the registration of a registered institution shall be deemed to be suspended if the registered institution fails to make full payment of any annual fee payable by it under section 138, or any additional sum payable by it under that section as a result of any default in making full payment of any annual fee payable by it under that section, within 3 months after the due date for payment of the annual fee under that section, and, subject to subsection (6), the suspension shall remain in force until such time as the Commission considers it appropriate that the registration

should no longer be suspended and informs the registered institution to that effect by notice in writing.

(5) Any registration shall not be regarded as suspended under subsection (4) by reference to any failure to make full payment of any annual fee or additional sum, unless and until the Commission has, by notice in writing given not less than 10 business days before the suspension is to take effect, informed the registered institution of the requirement to make full payment of the annual fee or additional sum (as the case may be), and of the consequence of the failure to comply with the requirement under this section.

(6) Where any registration is suspended under subsection (4) and the failure to make full payment of the annual fee or additional sum described in that subsection has not been remedied within 30 days after the day on which the suspension becomes effective under that subsection, or such further period as the Commission may specify by notice in writing to the registered institution, the registration shall be deemed to be revoked.

Division 3—Miscellaneous Provisions Relating to Division 2

(Amended 6 of 2014 s. 30)

198. Procedural requirements in respect of exercise of powers under Division 2

(Amended 6 of 2014 s. 31)

(1) The Commission shall not exercise any power under section 194(1) or (2), 195(1)(a), (b) or (c), (2) or (7), 196(1) or (2) or 197(1)(a) or (b) or (2) without first giving the person in respect of whom the power is to be exercised a reasonable opportunity of being heard.

(2) The Commission shall not exercise any power under section 196(1) or (2) or 197(1) or (2) unless it has first consulted the Monetary Authority.

(3) Where the Commission decides to exercise any power under section 194(1) or (2), 195(1), (2) or (7), 196(1) or (2) or 197(1) or (2), the Commission shall inform the person in respect of whom the power is exercised of its decision to do so by notice in writing, and the notice shall include—

(a) a statement of the reasons for which the decision is made;

(b) the time at which the decision is to take effect;

(c) in so far as applicable, the duration and terms of any revocation, suspension or prohibition to be imposed under the decision;

(d) in so far as applicable, the terms in which the person is to be reprimanded under the decision; and

(e) in so far as applicable, the amount of any pecuniary penalty to be imposed under the decision and the period (being specified as a period after the decision has taken effect as a specified decision under section 232) within which it is required to be paid.

199. Guidelines for performance of functions under section 194(2) or 196(2)

(1) The Commission shall not perform any of its functions under section 194(2) or 196(2) unless—

(a) it has published, in the Gazette and in any other manner it considers appropriate, guidelines to indicate the manner in which it proposes to perform such functions; and

(b) in performing such functions, it has had regard to the guidelines so published.

(2) Without prejudice to the inclusion of any other factors that the Commission may consider relevant, guidelines published under subsection (1) shall include the following as factors that the Commission shall take into account in performing any of its functions under section 194(2) or 196(2)—

(a) whether the conduct of the regulated person in question was intentional, reckless or negligent;

(b) whether the conduct damaged the integrity of the securities and futures market;

(c) whether the conduct caused loss to, or imposed costs on, any other person; and

(d) whether the conduct resulted in a benefit to the regulated person or any other person.

(3) Guidelines published under subsection (1) are not subsidiary legislation.

200. Effect of suspension under Division 2 or 3

(Amended 6 of 2014 s. 33)

(1) If a licence of a person is suspended under section 194 or 195 in relation to all or any, or any part of all or any, of the regulated activities for which the person is licensed, then, without prejudice to any provision of this Ordinance which has application in relation to the suspension, the person shall, during the period of the suspension—

(a) continue to be regarded for the purposes of the provisions of this Ordinance, but not section 114, to be licensed for the regulated activity or regulated activities, or the part of regulated activity or regulated activities, to which the suspension relates; and

(b) without limiting the generality of paragraph (a), continue to be required to comply with such provisions of this Ordinance relating to a licensed person as would apply to the person were the licence not so suspended.

(2) If an approval of a person as a responsible officer of a licensed corporation is suspended under section 194 or 195, then, without prejudice to any provision of this Ordinance which has application in relation to the suspension, the person shall, during the period of the suspension—

(a) continue to be regarded for the purposes of the provisions of this Ordinance, but not sections 118 and 125, to be such a responsible officer; and

(b) without limiting the generality of paragraph (a), continue to be required to comply with such provisions of this Ordinance relating to a responsible officer as would apply to the person were the approval not so suspended.

(3) If any registration of a person is suspended under section 196 or 197 in relation to all or any, or any part of all or any, of the regulated activities for which the person is registered, then, without prejudice to any provision of this Ordinance which has application in relation to the suspension, the person shall, during the period of the suspension—

(a) continue to be regarded for the purposes of the provisions of this Ordinance, but not section 114, to be registered for the regulated activity or regulated activities, or the part of regulated activity or regulated activities, to which the suspension relates; and

(b) without limiting the generality of paragraph (a), continue to be required to comply with such provisions of this Ordinance relating to a registered institution as would apply to the person were the registration not so suspended.

(4) A licence of a person may be revoked under section 194 or 195 notwithstanding that, at the time of revocation, the licence is suspended, whether in relation to all or any, or any part of all or any, of the regulated activities for which the person is licensed, under any provision of this Ordinance.

(5) An approval of a person as a responsible officer of a licensed corporation may be revoked under section 194 or 195 notwithstanding that, at the time of revocation, the approval is suspended under any provision of this Ordinance.

(6) Any registration of a person may be revoked under section 196 or 197 notwithstanding that, at the time of revocation, the registration is suspended, whether in relation to all or any, or any part of all or any, of the regulated activities for which the person is registered, under any provision of this Ordinance.

201. General provisions relating to exercise of powers under Division 2 or 3

(Amended 6 of 2014 s. 34)

(1) In reaching a decision under section 194(1) or (2), 195(1), (2) or (7), 196(1) or (2) or 197(1) or (2), the Commission may have regard to any information or material in its possession which is relevant to the decision, regardless of how the information or material has come into its possession.

(2) The revocation or suspension of any licence or registration under Division 2 or 3 does not operate so as to— *(Amended 6 of 2014 s. 34)*

(a) avoid or affect an agreement, transaction or arrangement entered into by the licensed person or registered institution (as the case may be) whether the agreement, transaction or arrangement was entered into before or after the revocation or suspension;

(b) affect a right, obligation or liability arising under the agreement, transaction or arrangement.

(3) Where at any time the Commission is contemplating exercising any power in respect of a person under section 194(1) or (2), 195(1)(a), (b) or (c), (2) or (7), 196(1) or (2) or 197(1)(a) or (b) or (2), it may, where it considers it appropriate to do so in the interest of the investing public or in the public interest, by agreement with the person—

(a) exercise any power the Commission may exercise in respect of the person under this Part (whether or not the same as the power the exercise of which has been contemplated); and

(b) take such additional action as it considers appropriate in the circumstances of the case.

(4) Where the Commission exercises any power or takes any additional action in respect of a person under subsection (3)—

(a) it shall comply with section 198(2) and (3), as if section 198(2) and (3), in addition to applying to the exercise of power under the sections specified therein, also applies with necessary modifications to the taking of any additional action under subsection (3); and

(b) subject to the agreement of the person, it is not obliged to comply with section 198(1).

#(5) Nothing in this Part affects the power of the Court of First Instance to make any order or exercise any other power under

Editorial Note:

The amendment to section 201(5) by the Securities and Futures (Amendment) Ordinance 2014 (6 of 2014) has come into operation on 10 July 2015, except in so far as it relates to the new section 101Y of the Ordinance. Please see paragraph (o) of the Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2015 (L.N. 95 of 2015).

or pursuant to section 101F, 101Y, 211, 212, 213, 214, 214A or 214B. *(Amended 6 of 2014 s. 34; 16 of 2016 s. 10)*

202. Requirement to transfer records upon revocation or suspension of licence or registration

(1) Where any licence or registration is revoked or suspended under Division 2 or 3, the Commission may by notice in writing require the person to whom the licence or registration (as the case may be) was granted to transfer to, or to the order of, his client such records relating to client assets or to the affairs of the client held at any time for the client, in such manner, as the Commission may reasonably specify in the notice. *(Amended 6 of 2014 s. 35)*

(2) A person who, without reasonable excuse, fails to comply with a requirement imposed on him under subsection (1) commits an offence and is liable on conviction to a fine of $200,000 and to imprisonment for 2 years.

(3) In this section, ***client*** (客戶), in relation to a person referred to in subsection (1), means any person who, at any time when the first-mentioned person was an intermediary, was a client of the first-mentioned person under the definition of ***client*** in section 1 of Part 1 of Schedule 1.

203. Permission to carry on business operations upon revocation or suspension of licence or registration

(1) If the licence or registration of an intermediary is revoked, the Commission may by notice in writing permit the intermediary to carry on business operations connected with a revoked activity that are essential for closing down the business of the revoked activity. *(Replaced 19 of 2015 s. 25)*

(1A) An individual named by the Commission in the notice given under subsection (1) may carry on the business operations

referred to in that subsection for and on behalf of the intermediary. *(Added 19 of 2015 s. 25)*

(1B) For the purpose of subsection (1A), the Commission may name in the notice only an individual who is or, immediately before the revocation, was—

(a) for the revocation of the licence of a licensed corporation—

(i) a responsible officer of the licensed corporation; or

(ii) a licensed representative accredited to the licensed corporation;

(b) for the revocation of the registration of a registered institution—

(i) an executive officer of the registered institution to whom the Monetary Authority has or had given consent under section 71C(1) of the Banking Ordinance (Cap. 155); or

(ii) a registered individual engaged by the registered institution. *(Added 19 of 2015 s. 25)*

(1C) If the licence or registration of an intermediary is suspended, the Commission may by notice in writing permit the intermediary to carry on business operations connected with a suspended activity that are essential for protecting the interests of the clients of the intermediary. *(Added 19 of 2015 s. 25)*

(1D) An individual named by the Commission in the notice given under subsection (1C) may carry on the business operations referred to in that subsection for and on behalf of the intermediary. *(Added 19 of 2015 s. 25)*

(1E) For the purpose of subsection (1D), the Commission may name in the notice only an individual who is—

(a) for the suspension of the licence of a licensed corporation—

(i) a responsible officer of the licensed corporation; or

(ii) a licensed representative accredited to the licensed corporation;

(b) for the suspension of the registration of a registered institution—

(i) an executive officer of the registered institution to whom the Monetary Authority has given consent under section 71C(1) of the Banking Ordinance (Cap. 155); or

(ii) a registered individual engaged by the registered institution. *(Added 19 of 2015 s. 25)*

(1F) The Commission may, on granting a permission under subsection (1) or (1C), impose any condition that the Commission thinks fit by specifying the condition in the notice given under that subsection. *(Added 19 of 2015 s. 25)*

(2) Notwithstanding section 200(1), where the Commission has granted a permission to an intermediary under subsection (1) or (1C), the intermediary and the individuals named in the notice given under that subsection are not, because of their carrying on business operations in accordance with the permission, regarded as having contravened section 114.

(2A) When carrying on business operations in accordance with a permission granted under subsection (1)—

(a) despite the revocation of the licence or registration of the intermediary—

(i) it is deemed that the licence or registration of the intermediary in relation to the revoked activity is not revoked;

(ii) an individual referred to in subsection (1B)(a)(i) is deemed to be a responsible officer of the intermediary approved in relation to the revoked activity;

(iii) an individual referred to in subsection (1B)(a)(ii) is deemed to be a licensed representative accredited to, and licensed to carry on the revoked activity for, the intermediary;

(iv) an individual referred to in subsection (1B)(b)(i) is deemed to be an executive officer of the intermediary to whom the Monetary Authority has given consent under section 71C(1) of the Banking Ordinance (Cap. 155) in relation to the revoked activity; and

(v) an individual referred to in subsection (1B)(b)(ii) is deemed to be a registered individual engaged by the intermediary in relation to the revoked activity; and

(b) any of the relevant provisions that apply to or in relation to an intermediary, responsible officer, licensed representative, executive officer or registered individual (as the case may be) apply accordingly to or in relation to the intermediary and individuals. *(Added 19 of 2015 s. 25)*

(2B) When carrying on business operations in accordance with a permission granted under subsection (1C)—

(a) despite the suspension of the licence or registration of the intermediary—

(i) it is deemed that the licence or registration of the intermediary in relation to the suspended activity is not suspended;

(ii) an individual referred to in subsection (1E)(a)(i) continues to act in the capacity of or is deemed to be (as the case requires) a responsible officer of the intermediary approved in relation to the suspended activity;

(iii) an individual referred to in subsection (1E)(a)(ii) continues to act in the capacity of or is deemed to be (as the case requires) a licensed representative accredited to, and licensed to carry on the suspended activity for, the intermediary;

(iv) an individual referred to in subsection (1E)(b)(i) continues to act in the capacity of or is deemed to be (as the case requires) an executive officer of the intermediary to whom the Monetary Authority has given consent under section 71C(1) of the Banking Ordinance (Cap. 155) in relation to the suspended activity; and

(v) an individual referred to in subsection (1E)(b)(ii) continues to act in the capacity of or is deemed to be (as the case requires) a registered individual engaged by the intermediary in relation to the suspended activity; and

(b) any of the relevant provisions that apply to or in relation to an intermediary, responsible officer, licensed representative, executive officer or registered individual (as the case may be) apply accordingly to or in relation to the intermediary and individuals. *(Added 19 of 2015 s. 25)*

(3) Any permission granted under subsection (1) or (1C), and the imposition of conditions pursuant to subsection (1F), take effect at the time of the service of the notice given in respect thereof or at the time specified in the notice, whichever is the later.

(4) In this section—

intermediary (中介人) includes—

(a) a corporation the licence of which has been revoked or suspended; and

(b) an authorized financial institution the registration of which has been revoked or suspended;

registered individual (登記個人), in relation to a registered institution, means an individual whose name is entered in the register maintained by the Monetary Authority under section 20(1)(ea) of the Banking Ordinance (Cap. 155) as that of a person engaged by the registered institution;

revoke (撤銷), in relation to the licence or registration of an intermediary, means revoke under Division 2 or 3, whether in relation to all or any, or any part of all or any, of the regulated activities for which the intermediary is licensed or registered;

revoked activity (撤銷活動), in relation to the revocation of a licence or registration, means any of the regulated activities, or any part of any of the regulated activities, in relation to which the licence or registration has been revoked;

suspend (暫時吊銷、暫時撤銷), in relation to the licence or registration of an intermediary, means suspend under Division 2 or 3, whether in relation to all or any, or any part of all or any, of the regulated activities for which the intermediary is licensed or registered;

suspended activity (暫時吊銷活動、暫時撤銷活動), in relation to the suspension of a licence or registration, means any of the regulated activities, or any part of any of the regulated activities, in relation to which the licence or registration has been suspended. *(Added 19 of 2015 s. 25)*

(Amended 19 of 2015 s. 25)

Division 4—Disciplinary Action by Monetary Authority[#]

(Division 4 added 6 of 2014 s. 37)

203A. Disciplinary action by Monetary Authority

(1) If an authorized financial institution or an approved money broker contravenes an obligation, the Monetary Authority may exercise, in respect of a person who is subject to disciplinary action, one or more of the following powers as the Monetary Authority considers appropriate in the circumstances of the case—

(a) publicly or privately reprimand the person;

(b) prohibit the person, for a period, or until the occurrence of an event, specified by the Monetary Authority—

(i) from continuing to carry on the business of OTC derivative transactions, if at the time the power is exercised the person is carrying on that business; or

(ii) from carrying on the business of OTC derivative transactions, if at that time the person is not carrying on that business;

Editorial Note:

[#] The new Division 4 of Part IX added by the Securities and Futures (Amendment) Ordinance 2014 (6 of 2014) came into operation on—

(a) 10 July 2015, in so far as it relates to the contravention of the reporting obligation and the record keeping obligation; please see paragraph (q)(i) of the Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2015 (L.N. 95 of 2015); and

(b) 1 September 2016, in so far as it relates to the contravention of the clearing obligation; please see paragraph (d) of the Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2016 (L.N. 27 of 2016).

(c) order the person to pay a pecuniary penalty not exceeding the amount that is the greater of the following—

(i) $10,000,000;

(ii) 3 times the amount of the profit gained, or loss avoided, by the person as a result of the contravention.

(2) The exercise of the disciplinary power—

(a) under subsection (1)(a) and (b) is subject to section 203B; and

(b) under subsection (1)(c) is subject to sections 203B and 203C.

(3) If the Monetary Authority exercises a disciplinary power, the Monetary Authority may disclose to the public details of the decision including the reasons for it and any material facts relating to the case.

(4) The Monetary Authority may, in reaching a decision to exercise a disciplinary power, have regard to any information or material in the Monetary Authority's possession that is relevant to the decision, regardless of how it came into the Monetary Authority's possession.

(5) For the purposes of subsection (1), the persons who are subject to disciplinary action are—

(a) a person that is, or was, an authorized financial institution at the time of a contravention;

(b) in relation to a contravention by a person referred to in paragraph (a), a person who is, or was, involved in the management of the business of OTC derivative transactions of the authorized financial institution at the time of the contravention;

(c) a person that is, or was, an approved money broker at the time of a contravention; and

(d) in relation to a contravention by a person referred to in paragraph (c), a person who is, or was, involved in the management of the business of OTC derivative transactions of the approved money broker at the time of the contravention.

(6) In this section—

contravention (違責) means a contravention of an obligation;

obligation (責任) means the reporting obligation, clearing obligation, trading obligation or record keeping obligation.

Division 5—Miscellaneous Provisions Relating to Division 4[#]

(Division 5 added 6 of 2014 s. 37)

203B. Procedural requirements for exercise of disciplinary powers

(1) The Monetary Authority must not exercise a disciplinary power without first giving the person who is proposed to be disciplined a reasonable opportunity of being heard.

(2) If the Monetary Authority decides to exercise a disciplinary power, the Monetary Authority must inform the person who is to be disciplined of the decision by a written notice.

(3) The notice must state—

(a) the reasons for the decision;

(b) when the decision is to take effect;

(c) in relation to a decision to reprimand, the terms in which the person is to be reprimanded;

Editorial Note:

[#] The new Division 5 of Part IX added by the Securities and Futures (Amendment) Ordinance 2014 (6 of 2014) has come into operation on 10 July 2015, except in so far as it relates to the new section 101Y referred to in the new section 203D(3) of the Ordinance. Please see paragraph (q)(ii) of the Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2015 (L.N. 95 of 2015).)

(d) in relation to a decision to prohibit a person from continuing to carry on, or carrying on, the business of OTC derivative transactions, the duration and other terms of the prohibition; and

(e) in relation to a decision to impose a pecuniary penalty—

(i) the amount of the penalty; and

(ii) the period after the decision has taken effect as a specified decision under section 232 within which it is required to be paid.

203C. Guidelines for performance of functions under section 203A(1)(c)

(1) The Monetary Authority must publish guidelines indicating the manner in which the Monetary Authority proposes to exercise the disciplinary power to order a pecuniary penalty.

(2) The guidelines must be published—

(a) in the Gazette; and

(b) in any other manner that the Monetary Authority considers appropriate.

(3) Without limiting subsection (1), guidelines published under subsection (2)—

(a) may include any factor that the Monetary Authority considers relevant to the exercise of the disciplinary power to order a pecuniary penalty; and

(b) must include the following as factors that the Monetary Authority must take into account when exercising that power—

(i) whether the conduct of the person in respect of whom the power is being exercised was intentional, reckless or negligent;

(ii) whether the conduct of that person damaged the integrity of the securities and futures market or was potentially damaging or detrimental to the integrity of the securities and futures market or the financial stability of Hong Kong;

(iii) whether the conduct of that person caused loss to, or imposed costs on, any other person;

(iv) whether the conduct of that person resulted in a benefit to that person or any other person.

(4) The Monetary Authority—

(a) may exercise the disciplinary power to order a pecuniary penalty only after guidelines have been published; and

(b) must have regard to the published guidelines when exercising a disciplinary power to order a pecuniary penalty.

(5) The Monetary Authority may amend any guideline published under this section in a manner consistent with the power to publish guidelines and the other provisions of this section apply to any such amendment as they apply to the guideline.

(6) A failure on the part of a person to comply with a guideline does not by itself render that person liable to any judicial or other proceedings, but in any proceedings under this Ordinance before a court—

(a) the guideline is admissible in evidence; and

(b) if any guideline appears to the court to be relevant to a question arising in any proceedings, it must be taken into account in determining that question.

(7) Guidelines published under this section are not subsidiary legislation.

(8) A reference to a guideline is a reference to that guideline as amended from time to time under this section.

203D. General provisions relating to exercise of powers under Division 4

(1) If the Monetary Authority is contemplating the exercise of a disciplinary power, the Monetary Authority may, if the Monetary Authority considers it appropriate to do so in the interests of the investing public or in the public interest, with the agreement of the person proposed to be disciplined—

(a) exercise a disciplinary power (not necessarily the disciplinary power that was contemplated); and

(b) take any other action the Monetary Authority considers appropriate in the circumstances of the case (***additional action***).

(2) If the Monetary Authority exercises a disciplinary power or takes any additional action under subsection (1), the Monetary Authority—

(a) must comply with section 203B(2) and (3) as if section 203B(2) and (3) applied, with necessary modifications, to the taking of additional action; and

(b) subject to the agreement of the person proposed to be disciplined, is not obliged to comply with section 203B(1).

[#](3) Nothing in this Division or Division 4 affects the power of the Court of First Instance to make an order or exercise any other power under or pursuant to section 101G, 101Y or 203F.

Editorial Note:

[#] The new Division 5 of Part IX added by the Securities and Futures (Amendment) Ordinance 2014 (6 of 2014) has come into operation on 10 July 2015, except in so far as it relates to the new section 101Y referred to in the new section 203D(3) of the Ordinance. Please see paragraph (q)(ii) of the Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2015 (L.N. 95 of 2015).)

203E. Recovery and payment of pecuniary penalty

(1) If a person is ordered to pay a pecuniary penalty in the exercise of a disciplinary power, the person must pay it to the Monetary Authority within—

(a) 30 days after the order has taken effect as a specified decision under section 232; or

(b) a longer period specified in the notice referred to in section 203B(2), after the order has taken effect as a specified decision under section 232.

(2) The Court of First Instance may, on an application made by the Monetary Authority, register the order in the Court of First Instance.

(3) An application under subsection (2) must be made by producing to the Registrar of the High Court a notice in writing requesting that the order be registered, together with the order and a copy of the order.

(4) On registration, the order is to be regarded for all purposes as an order of the Court of First Instance made within its civil jurisdiction for the payment of money.

(5) The Monetary Authority must pay a pecuniary penalty paid to or recovered by the Monetary Authority under an order made under this section into the general revenue.

203F. Application to Court of First Instance relating to non-compliance with prohibition under section 203A

(1) If a person fails to comply with a prohibition in force in respect of the person as a result of the exercise of a power under section 203A(1)(b), the Monetary Authority may, by originating summons, make an application to the Court of First Instance in respect of the failure.

(2) The Court of First Instance may inquire into the case and if satisfied that—

(a) there is no reasonable excuse for the person not to comply with the prohibition, order the person to comply with the prohibition within the period specified by the Court; and

(b) the failure was without reasonable excuse, punish the person, and any other person knowingly involved in the failure, in the same manner as if the person and, if applicable, the other person, had been guilty of contempt of court.

(3) If there is a reasonable likelihood that a person will fail to comply with a prohibition in force in respect of the person as a result of the exercise of a power under section 203A(1)(b), the Monetary Authority may, by originating summons, apply to the Court of First Instance for an order that—

(a) the person take such action or refrain from taking such action as the Court directs; and

(b) any other person whom the Court is satisfied is able to procure the person to comply with the prohibition, take such action or refrain from taking such action as the Court directs.

(4) An originating summons under this section must be in Form No. 10 in Appendix A to the Rules of the High Court (Cap. 4 sub. leg. A).

Part X

Powers of Intervention and Proceedings

(Format changes—E.R. 2 of 2012)

Division 1—Powers of intervention

204. Restriction of business

(1) Subject to section 207, the Commission may by notice in writing—

(a) prohibit a licensed corporation from—

(i) entering into transactions of a specified description or other than of a specified description, or entering into transactions in specified circumstances or other than in specified circumstances, or entering into transactions to a specified extent or other than to a specified extent;

(ii) soliciting business from persons of a specified description or from persons other than of a specified description;

(iii) carrying on business in a specified manner or other than in a specified manner;

(b) require a licensed corporation to carry on business in, and only in, a specified manner.

(2) A prohibition or requirement imposed on a licensed corporation under this section may relate to either or both of the following—

(a) transactions entered into in connection with the business which constitutes a regulated activity for which the licensed corporation is licensed;

(b) transactions entered into in connection with any other business which is carried on by the licensed corporation in connection with the business which constitutes a regulated activity for which it is licensed.

205. Restriction on dealing with property

(1) Subject to section 207, the Commission may by notice in writing—

(a) prohibit a licensed corporation—

(i) from—

(A) disposing of any relevant property;

(B) dealing with any relevant property in a specified manner or other than in a specified manner;

(ii) from assisting, counselling or procuring another person to—

(A) dispose of any relevant property;

(B) deal with any relevant property in a specified manner or other than in a specified manner;

(b) require a licensed corporation to deal with any relevant property in, and only in, a specified manner.

(2) In this section, ***relevant property*** (有關財產), in relation to a licensed corporation, means—

(a) any property held by the licensed corporation, acting within the capacity for which the licensed corporation is licensed, on behalf of any of the clients of the licensed corporation, or held by any other person on behalf or to the order of the licensed corporation acting within such capacity;

(b) any other property which the Commission reasonably believes to be owned or controlled by the licensed corporation.

206. Maintenance of property

(1) Subject to section 207, the Commission may by notice in writing require a licensed corporation to maintain property in Hong Kong and in any specified place outside Hong Kong such that—

(a) the property maintained is of the value and of the description that appear to the Commission to be desirable with a view to ensuring that the licensed corporation will be able to meet its liabilities in relation to the business which constitutes a regulated activity for which it is licensed; and

(b) the property is maintained in a manner that will enable the licensed corporation at any time freely to transfer or otherwise dispose of the property.

(2) The Commission may in any requirement imposed under this section direct that, for the purposes of the requirement, property of a specified description shall or shall not be taken into account.

207. Imposition of prohibition or requirement under section 204, 205 or 206

The Commission may impose a prohibition or requirement under section 204, 205 or 206 in respect of or with reference to any licensed corporation if it appears to the Commission that—

(a) any property of the licensed corporation or its clients, or any property connected with the business which constitutes a regulated activity for which it is licensed, might be dissipated, transferred or otherwise dealt with

in a manner prejudicial to the interest of any of its clients or creditors;

(b) the licensed corporation is not a fit and proper person to remain licensed or is not a fit and proper person to carry on any regulated activity for which it is licensed (having regard, among other matters, to the matters specified in section 129);

(c) the licensed corporation has failed to comply with the requirement specified in section 180(2) or, in purported compliance with such requirement, has furnished the Commission with information which was at the time when it was furnished false or misleading in a material particular;

(d) the licence of the licensed corporation may be revoked or suspended on any of the grounds specified in section 194(1) or 195(1) or (2); or

(e) the imposition of the prohibition or requirement is desirable in the interest of the investing public or in the public interest.

208. Withdrawal, substitution or variation of prohibitions or requirements under section 204, 205 or 206

(1) Where a prohibition or requirement imposed under section 204, 205 or 206 is in force, the Commission may, where it considers appropriate to do so (whether of its own volition or upon the request of the person on whom the prohibition or requirement is imposed or any other person affected by the prohibition or requirement), by notice in writing given to the person on whom the prohibition or requirement is imposed—

(a) withdraw the prohibition or requirement; or

(b) substitute another prohibition or requirement for, or vary, the prohibition or requirement.

(2) A prohibition or requirement imposed under section 204, 205 or 206, or a prohibition or requirement substituting for another prohibition or requirement under subsection (1)(b), or a prohibition or requirement as varied under subsection (1)(b), shall, unless it provides otherwise, remain in force in accordance with the terms thereof until it is—

(a) withdrawn; or

(b) substituted by another prohibition or requirement, or varied,

by the Commission under this section.

(3) The provisions of this section apply, with necessary modifications, to a prohibition or requirement substituting for another prohibition or requirement under subsection (1)(b), or a prohibition or requirement as varied under subsection (1)(b), as they apply to a prohibition or requirement imposed under section 204, 205 or 206, and the provisions of this Division shall be construed accordingly.

209. General provisions relating to sections 204, 205, 206 and 208

(1) Where the Commission imposes under section 204, 205 or 206, or withdraws, substitutes or varies under section 208, a prohibition or requirement, the imposition, withdrawal, substitution or variation (as the case may be) of the prohibition or requirement takes effect at the time of the service of the notice given in respect thereof or at the time specified in the notice, whichever is the later.

(2) Where the Commission imposes under section 204, 205 or 206, or withdraws, substitutes or varies under section 208, a prohibition or requirement, the notice given in respect thereof shall be accompanied by a statement specifying the reasons for the imposition, withdrawal, substitution or variation (as the case may be) of the prohibition or requirement.

(3) Where any request is made by any person to the Commission pursuant to section 208(1) for the withdrawal, substitution or variation of a prohibition or requirement, the Commission shall serve on the person—

(a) where it withdraws, substitutes or varies the prohibition or requirement in accordance with the request, a copy of the notice given in respect thereof and of the statement accompanying it in accordance with subsection (2); or

(b) where it refuses to withdraw, substitute or vary the prohibition or requirement notwithstanding the request, a notice of its refusal, together with a statement specifying the reasons for the refusal.

(4) Where—

(a) the Commission imposes under section 204, 205 or 206, or withdraws, substitutes or varies under section 208, a prohibition or requirement; and

(b) the reasons for the imposition, withdrawal, substitution or variation (as the case may be) as specified in the statement accompanying the notice given in respect thereof in accordance with subsection (2) relate specifically to matters which—

(i) refer to any person who is identified in the statement but who is not the person on whom the prohibition or requirement was imposed; and

(ii) are, in the opinion of the Commission, prejudicial to the person in any respect,

the Commission shall, as soon as reasonably practicable after the imposition, withdrawal, substitution or variation (as the case may be), take all reasonable steps to serve on the person a copy of the notice given in respect of the imposition, withdrawal, substitution or variation (as the case may be)

and of the statement accompanying it in accordance with subsection (2).

(5) Nothing in subsections (3) and (4) requires a copy of any notice given in respect of the imposition, withdrawal, substitution or variation of a prohibition or requirement, or of a statement accompanying it in accordance with subsection (2), to be served on any person if the notice or statement or a copy of the notice or statement (as the case may be) has been served on the person under any other provision of this Part.

(6) The Commission shall publish in the Gazette, and may publish by such additional means as it may consider appropriate, a notice regarding the imposition under section 204, 205 or 206, or the withdrawal, substitution or variation under section 208, of a prohibition or requirement.

(7) A notice published under subsection (6) may, if the Commission considers appropriate, include a statement specifying the reasons for the imposition, withdrawal, substitution or variation (as the case may be) to which the notice relates.

(8) The Commission shall—

(a) before imposing under section 204, 205 or 206, or withdrawing, substituting or varying under section 208, a prohibition or requirement in respect of or with reference to a corporation that is an exchange participant or a clearing participant, use its best endeavours to inform the recognized exchange company or the recognized clearing house (as the case may be) of the proposed imposition, withdrawal, substitution or variation (as the case may be) by notice in writing; and

(b) where before the imposition, withdrawal, substitution or variation of a prohibition or requirement it has not informed the recognized exchange company or the

recognized clearing house (as the case may be) of the proposed imposition, withdrawal, substitution or variation (as the case may be) by notice in writing, forthwith after the imposition, withdrawal, substitution or variation (as the case may be) inform the recognized exchange company or the recognized clearing house (as the case may be) thereof by notice in writing.

(9) Sections 204, 205, 206 and 208, and the imposition, withdrawal, substitution or variation of a prohibition or requirement under section 204, 205, 206 or 208, do not operate so as to render an agreement unenforceable by a party to the agreement if he proves that in entering into the agreement he acted in good faith and was unaware of any notice given, served or published, whether under section 204, 205, 206 or 208 or under this section, in respect of or regarding the imposition, withdrawal, substitution or variation (as the case may be).

(10) Where by reason of the application of section 204, 205, 206 or 208 or of the giving, service or publication of any notice, whether under section 204, 205, 206 or 208 or under this section, a person rescinds an agreement, he shall restore to any other party to the agreement any money or other benefit received or obtained by him under the agreement from that party.

(11) A notice published under subsection (6) is not subsidiary legislation.

210. Cases of revocation or suspension of licensed corporations' licences

(1) Notwithstanding any other provisions of this Ordinance, but without limiting the generality of section 200(1) (whether having application with or without reference to section 146(11) or 147(9)), the revocation or suspension of the

licence of a licensed corporation under any provision of this Ordinance does not affect—

(a) the validity of—

(i) a prohibition or requirement imposed under section 204, 205 or 206 in respect of or with reference to the corporation;

(ii) a prohibition or requirement substituting for another prohibition or requirement under section 208(1)(b); or

(iii) a prohibition or requirement as varied under section 208(1)(b),

where the imposition, substitution or variation (as the case may be) takes effect at any time before the revocation or suspension (as the case may be) takes effect;

(b) without limiting the generality of paragraph (a), any power exercisable by the Commission under section 208 in respect of any prohibition or requirement provided for in that paragraph, at the time when, or at any time after, the revocation or suspension (as the case may be) takes effect,

and references in this Division to a licensed corporation shall be construed accordingly.

(2) Notwithstanding section 200(1) (whether having application with or without reference to section 146(11) or 147(9)), where—

(a) the licence of a corporation is revoked or suspended under any provision of this Ordinance; and

(b) the Commission has imposed under section 204, 205 or 206 a prohibition or requirement in respect of or with reference to, or substituted or varied under section 208 a

prohibition or requirement imposed in respect of or with reference to, the corporation, whether before or after the revocation or suspension,

the corporation shall not, by reason of its compliance with the prohibition or requirement in force in respect of it under the circumstances described in paragraph (b), be regarded as having contravened section 114.

(3) For the avoidance of doubt, where the Commission has decided to revoke or suspend the licence of a licensed corporation under any provision of this Ordinance, the Commission may, at any time before the revocation or suspension (as the case may be) takes effect—

(a) impose under section 204, 205 or 206 a prohibition or requirement in respect of or with reference to; or

(b) withdraw, substitute or vary under section 208 a prohibition or requirement imposed in respect of or with reference to,

the licensed corporation.

(4) For the avoidance of doubt, nothing in this section affects the power of the Commission to—

(a) impose under section 204, 205 or 206 a prohibition or requirement in respect of or with reference to; or

(b) withdraw, substitute or vary under section 208 a prohibition or requirement imposed in respect of or with reference to,

a licensed corporation the licence of which has been suspended under any provision of this Ordinance.

211. Application to Court of First Instance relating to non-compliance with prohibitions or requirements under section 204, 205, 206 or 208

(1) If a person fails to comply with a prohibition or requirement in force in respect of him as a result of the exercise of any of the powers under sections 204, 205, 206 and 208, the Commission may, by originating summons or originating motion, make an application to the Court of First Instance in respect of the failure, and the Court may inquire into the case and—

(a) if the Court is satisfied that there is no reasonable excuse for the person not to comply with the prohibition or requirement (as the case may be), order the person to comply with the prohibition or requirement (as the case may be) within the period specified by the Court; and

(b) if the Court is satisfied that the failure was without reasonable excuse, punish the person, and any other person knowingly involved in the failure, in the same manner as if he and, where applicable, that other person had been guilty of contempt of court.

(2) If there is a reasonable likelihood that a person will fail to comply with a prohibition or requirement in force in respect of him as a result of the exercise of any of the powers under sections 204, 205, 206 and 208, the Commission may, by originating summons or originating motion, apply to the Court of First Instance for an order that the person, and any other person who the Court is satisfied is able to procure the person to comply with the prohibition or requirement (as the case may be), to take such action or refrain from taking such action as the Court directs.

(3) An originating summons under this section shall be in Form No. 10 in Appendix A to the Rules of the High Court (Cap. 4 sub. leg. A).

(Amended E.R. 2 of 2012)

Division 2—Other powers and proceedings

212. Winding-up orders and bankruptcy orders

(1) If—

(a) a corporation, other than an authorized financial institution, is of a class of corporations which the Court of First Instance has jurisdiction to wind up under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32); and *(Amended 28 of 2012 ss. 912 & 920)*

(b) it appears to the Commission that it is desirable in the public interest that the corporation should be wound up,

the Commission may present a petition for the corporation to be wound up under that Ordinance on the ground that it is just and equitable that the corporation should be so wound up, and that Ordinance shall apply to such petition as it applies in relation to a petition presented under that Ordinance.

(1A) If it appears to the Commission that it is desirable in the public interest that an open-ended fund company should be wound up, the Commission may present a petition for the company to be wound up under the OFC rules on the ground that it is just and equitable that the company should be so wound up, and those rules apply to such a petition as they apply in relation to a petition presented under them. *(Added 16 of 2016 s. 11)*

(2) If—

(a) grounds exist for the presentation of a petition for a bankruptcy order against a licensed representative by his creditor in accordance with the Bankruptcy Ordinance (Cap. 6); and

(b) it appears to the Commission that it is desirable in the public interest to present a petition for a bankruptcy

order against the licensed representative in accordance with that Ordinance,

the Commission may present a petition for a bankruptcy order against the licensed representative in accordance with that Ordinance, and that Ordinance shall apply to such petition as it applies in relation to a petition presented by a creditor.

(3) The Commission shall—

(a) before presenting a petition under subsection (1) against a corporation that is an exchange participant or a clearing participant, use its best endeavours to inform the recognized exchange company or the recognized clearing house (as the case may be) of the proposed presentation of the petition by notice in writing; and

(b) where before the presentation of the petition it has not informed the recognized exchange company or the recognized clearing house (as the case may be) of the proposed presentation of the petition by notice in writing, forthwith after the presentation of the petition inform the recognized exchange company or the recognized clearing house (as the case may be) thereof by notice in writing.

213. Injunctions and other orders

(1) Where—

(a) a person has—

(i) contravened—

(A) any of the relevant provisions;

(B) any notice or requirement given or made under or pursuant to any of the relevant provisions;

(C) any of the terms and conditions of any licence or registration under this Ordinance; or

(D) any other condition imposed under or pursuant to any provision of this Ordinance;

(ii) aided, abetted, or otherwise assisted, counselled or procured a person to commit any such contravention;

(iii) induced, whether by threats, promises or otherwise, a person to commit any such contravention;

(iv) directly or indirectly been in any way knowingly involved in, or a party to, any such contravention; or

(v) attempted, or conspired with others, to commit any such contravention; or

(b) it appears, whether or not during the course or as a result of the exercise of any power under Part VIII, to the Commission that any of the matters referred to in paragraph (a)(i) to (v) has occurred, is occurring or may occur,

the Court of First Instance, on the application of the Commission, may, subject to subsection (4), make one or more of the orders specified in subsection (2).

(2) The orders specified for the purposes of subsection (1) are—

(a) an order restraining or prohibiting the occurrence or the continued occurrence of any of the matters referred to in subsection (1)(a)(i) to (v);

(b) where a person has been, or it appears that a person has been, is or may become, involved in any of the matters referred to in subsection (1)(a)(i) to (v), whether knowingly or otherwise, an order requiring the person to take such steps as the Court of First Instance may direct,

including steps to restore the parties to any transaction to the position in which they were before the transaction was entered into;

(c) an order restraining or prohibiting a person from acquiring, disposing of, or otherwise dealing in, any property specified in the order;

(d) an order appointing a person to administer the property of another person;

(e) an order declaring a contract relating to any securities, structured product, futures contract, leveraged foreign exchange contract, or an interest in any securities, structured product, futures contract, leveraged foreign exchange contract or collective investment scheme to be void or voidable to the extent specified in the order; *(Amended 8 of 2011 s. 10)*

(f) for the purpose of securing compliance with any other order made under this section, an order directing a person to do or refrain from doing any act specified in the order;

(g) any ancillary order which the Court of First Instance considers necessary in consequence of the making of any of the orders referred to in paragraphs (a) to (f).

(3) The Commission shall—

(a) before making an application pursuant to subsection (1) for an order affecting any person that is an exchange participant or a clearing participant, use its best endeavours to inform the recognized exchange company or the recognized clearing house (as the case may be) of the proposed application by notice in writing; and

(b) where before the making of the application it has not informed the recognized exchange company or the recognized clearing house (as the case may be) of the

proposed application by notice in writing, forthwith after the making of the application inform the recognized exchange company or the recognized clearing house (as the case may be) thereof by notice in writing.

(3A) If the contravention involved in a case is a contravention by an open-ended fund company or a director, an investment manager, a custodian or a sub-custodian of an open-ended fund company, the Court of First Instance may also, on the application of the Commission, make any of the orders specified in subsection (3C). *(Added 16 of 2016 s. 12)*

(3B) The power under subsection (3A) may be exercised whether or not the Commission also applies for an order specified in subsection (2). *(Added 16 of 2016 s. 12)*

(3C) The orders specified for the purposes of subsection (3A) are—

(a) for an open-ended fund company without sub-funds—

(i) an order removing a director of the company;

(ii) an order removing an investment manager of the company;

(iii) an order removing a custodian of the company;

(iv) an order removing a sub-custodian of the company;

(v) an order requiring a part of the investments of the company to be realized and the funds remaining after the discharge of the liabilities (if any) of the company attributable to the part to be distributed to shareholders of the company in accordance with the OFC rules;

(vi) an order requiring all of the investments of the company to be realized and the funds remaining after the discharge of the liabilities (if any) of the

company to be distributed to shareholders of the company in accordance with the OFC rules;

(vii) an order requiring the company to be wound up under the OFC rules; and

(viii) any ancillary order that the Court of First Instance considers necessary as a result of the making of any of the orders referred to in subparagraphs (i), (ii), (iii), (iv), (v), (vi) and (vii); and

(b) for an open-ended fund company with sub-funds—

(i) any of the orders specified in paragraph (a)(i), (ii), (iii), (iv), (v), (vi) and (vii);

(ii) an order requiring the investments made in respect of a part of a sub-fund of the company to be realized and the funds remaining after the discharge of the liabilities (if any) of the company attributable to the part to be distributed to shareholders of the company in accordance with the OFC rules;

(iii) an order requiring all of the investments made in respect of a sub-fund of the company to be realized and the funds remaining after the discharge of the liabilities (if any) of the company attributable to the sub-fund to be distributed to shareholders of the company in accordance with the OFC rules;

(iv) an order requiring a sub-fund of the company to be wound up under the OFC rules; and

(v) any ancillary order that the Court of First Instance considers necessary as a result of the making of any of the orders referred to in subparagraphs (i), (ii), (iii) and (iv). *(Added 16 of 2016 s. 12)*

(4) The Court of First Instance shall, before making an order under subsection (1) or (3A), satisfy itself, so far as it can reasonably do so, that it is desirable that the order be made, and that the order will not unfairly prejudice any person. *(Amended 16 of 2016 s. 12)*

(5) The Court of First Instance may, before making an order under subsection (1) or (3A), direct that a notice of the application made in respect thereof be given to the persons it considers appropriate, or be published in the manner it considers appropriate, or both. *(Amended 16 of 2016 s. 12)*

(6) Where the Court of First Instance considers it desirable to do so, it may grant such interim order as it considers appropriate pending the determination of an application made pursuant to subsection (1) or (3A). *(Amended 16 of 2016 s. 12)*

(7) An order may be made under subsection (1) or (3A) whether or not it appears to the Court of First Instance that— *(Amended 16 of 2016 s. 12)*

(a) the person against whom the order is made intends to engage again, or to continue to engage, in any of the matters referred to in subsection (1)(a)(i) to (v);

(b) the person against whom the order is made has previously engaged in any of such matters;

(c) there is an imminent danger of damage to any person in the event of the order not being made.

(8) Where the Court of First Instance has power to make an order against a person under subsection (1) or (3A), it may, in addition to or in substitution for such order, make an order requiring the person to pay damages to any other person. *(Amended 16 of 2016 s. 12)*

(9) The Court of First Instance may reverse, vary or discharge an order made or granted by it under subsection (1), (3A) or (6)

or suspend the operation of the order. *(Amended 16 of 2016 s. 12)*

(10) A notice published under subsection (5) is not subsidiary legislation.

(11) In this section—

sub-fund (子基金)—see section 112R. *(Added 16 of 2016 s. 12)*

214. Remedies in cases of unfair prejudice, etc. to interests of members of listed corporations, etc.

(1) Where, in relation to a corporation which is or was listed, it appears to the Commission that at any relevant time the business or affairs of the corporation have been conducted in a manner—

(a) oppressive to its members or any part of its members;

(b) involving defalcation, fraud, misfeasance or other misconduct towards it or its members or any part of its members;

(c) resulting in its members or any part of its members not having been given all the information with respect to its business or affairs that they might reasonably expect; or

(d) unfairly prejudicial to its members or any part of its members,

the Commission may, subject to subsection (3), by petition apply to the Court of First Instance for an order under this section.

(2) If, on an application under this section, the Court of First Instance is of the opinion that the business or affairs of a corporation have been conducted in a manner described in subsection (1)(a), (b), (c) or (d), whether through conduct consisting of an isolated act or a series of acts or any failure to act, the Court may—

(a) make an order restraining the carrying out, or requiring the carrying out, of any act or acts;

(b) order that the corporation shall bring in its name such proceedings as the Court considers appropriate against such persons, and on such terms, as may be specified in the order;

(c) unless the corporation is an authorized financial institution, appoint a receiver or manager of the whole or any part of the property or business of the corporation and may specify the powers and duties of the receiver or manager and fix his remuneration;

(d) order that a person wholly or partly responsible for the business or affairs of the corporation having been so conducted shall not, without the leave of the Court—

(i) be, or continue to be, a director, liquidator, or receiver or manager of the property or business, of the corporation or any other corporation; or

(ii) in any way, whether directly or indirectly, be concerned, or take part, in the management of the corporation or any other corporation,

for such period (not exceeding 15 years) as may be specified in the order;

(e) make any other order it considers appropriate, whether for regulating the conduct of the business or affairs of the corporation in future, or for the purchase of the shares of any members of the corporation by other members of the corporation or by the corporation (and, in the case of a purchase by the corporation, for the reduction accordingly of the corporation's capital), or otherwise.

(3) The Commission shall not make an application under this section unless it has first consulted—

(a) *(Repealed 9 of 2012 s. 18)*

(b) where the corporation in question is an authorized financial institution or a corporation which, to the knowledge of the Commission, is a controller of an authorized financial institution, or has as its controller an authorized financial institution, or has a controller that is also a controller of an authorized financial institution, the Monetary Authority.

(4) Where the Court of First Instance makes an order under subsection (2)(d), the order shall be filed by the Court with the Registrar of Companies, as soon as reasonably practicable after it is made.

(5) Where an order under this section makes an alteration in or addition to the constitution of a company, notwithstanding any other provisions of the Companies Ordinance (Cap. 622) or the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) but subject to the provisions of the order, the company shall not have the power, without the leave of the Court of First Instance, to make any further alteration in or addition to the constitution inconsistent with the order. *(Amended 28 of 2012 ss. 912 & 920)*

(6) Where any alteration in or addition to the constitution of a company is made by an order under this section, the alteration or addition (as the case may be) has the same effect as if duly made by a resolution of the company, and the Companies Ordinance (Cap. 622) and the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) apply to the constitution as altered or added to accordingly. *(Amended 28 of 2012 ss. 912 & 920)*

(7) An office copy of an order of the Court of First Instance altering or adding to, or of the leave of the Court to alter or add to, the constitution of a company shall, within 14 days

after the order is made or the leave is given, be delivered by the company to the Registrar of Companies for registration.

(8) A company which contravenes subsection (7) commits an offence and is liable on conviction to a fine at level 3 and, in the case of a continuing offence, to a further fine of $300 for every day during which the offence continues.

(9) In this section—

controller (控制人) means a person who is an indirect controller or a majority shareholder controller as defined in section 2(1) of the Banking Ordinance (Cap. 155);

relevant time (有關時間)—

(a) in relation to a corporation which is listed, means any time since the formation of the corporation; or

(b) in relation to a corporation which was listed, means any time since the formation of the corporation but before the corporation ceased to remain listed.

214A. Remedies in cases of unfair prejudice etc. to interests of shareholders of open-ended fund companies

(1) The Commission may by petition apply to the Court of First Instance for an order under this section if it appears to the Commission that at any time since the date of incorporation (or the re-domiciliation date as defined by section 112ZJA(1)) of an open-ended fund company, the business or affairs of the company have been conducted in a manner— *(Amended 33 of 2021 s. 10)*

(a) oppressive to its shareholders or any part of its shareholders;

(b) involving defalcation, fraud, misfeasance or other misconduct towards it or its shareholders or any part of its shareholders;

(c) resulting in its shareholders or any part of its shareholders not having been given all the information with respect to its business or affairs that they might reasonably expect; or

(d) unfairly prejudicial to its shareholders or any part of its shareholders.

(2) If, on an application under subsection (1), the Court of First Instance is of the opinion that the business or affairs of an open-ended fund company have been conducted in a manner described in subsection (1)(a), (b), (c) or (d), whether through conduct consisting of an isolated act or a series of acts or a failure to act, the Court may—

(a) make an order restraining the carrying out, or requiring the carrying out, of an act;

(b) make an order requiring the company to bring in its name any proceedings that the Court considers appropriate against any persons, and on any terms, specified in the order;

(c) make an order appointing a receiver or manager of the whole or any part of the property or business of the company, specifying the powers and duties of the receiver or manager and fixing his or her remuneration;

(d) make an order that a person wholly or partly responsible for the business or affairs of the company having been so conducted must not, without the leave of the Court—

(i) be, or continue to be, a director, an investment manager, a liquidator, or a receiver or manager of the property or business, of the company or any other corporation; or

(ii) in any way, whether directly or indirectly, be concerned, or take part, in the management of the company or any other corporation; or

(e) make any other order the Court considers appropriate, whether for regulating the conduct of the business or affairs of the company in the future, or for the purchase of the shares of any shareholders of the company by other shareholders of the company or by the company, or otherwise.

(3) If the order to be applied for under subsection (1) is an order against—

(a) an authorized financial institution; or

(b) a corporation that, to the knowledge of the Commission—

(i) is a controller of an authorized financial institution;

(ii) has as its controller an authorized financial institution; or

(iii) has a controller that is also a controller of an authorized financial institution,

the Commission must not make the application unless it has first consulted the Monetary Authority.

(4) An order under subsection (2)(d) must specify the period for which it is to have effect and such a period must not exceed 15 years.

(5) The Court of First Instance must, as soon as reasonably practicable after making an order under subsection (2)(d), file the order with the Registrar of Companies.

(6) In this section—

controller (控制人) means an indirect controller, or a majority shareholder controller, as defined by section 2(1) of the Banking Ordinance (Cap. 155).

(Added 16 of 2016 s. 13)

214B. Order under section 214A altering open-ended fund company's instrument of incorporation

(1) If an order made under section 214A alters the instrument of incorporation of an open-ended fund company, despite any other provisions of this Ordinance but subject to the provisions of the order, the company does not have the power, without the leave of the Court of First Instance, to make any further alteration to the instrument that is inconsistent with the order.

(2) If the instrument of incorporation of an open-ended fund company is altered by an order made under section 214A—

(a) the alteration has the same effect as if duly made by a resolution of the company; and

(b) this Ordinance applies to the instrument as altered accordingly.

(3) An open-ended fund company must, within 14 days after an order altering its instrument of incorporation is made under section 214A, deliver an office copy of the order to the Registrar of Companies for registration under this Ordinance.

(4) An open-ended fund company must, within 14 days after the leave of the Court of First Instance to alter its instrument of incorporation is given, deliver an office copy of the leave to the Registrar of Companies for registration under this Ordinance.

(5) An open-ended fund company that contravenes subsection (3) or (4) commits an offence and is liable on conviction to a fine at level 3 and, in the case of a continuing offence, to a further fine of $300 for each day during which the offence continues.

(6) In this section—

alter (改動) includes add to.

(Added 16 of 2016 s. 13)

Part XI

Securities and Futures Appeals Tribunal

(Format changes—E.R. 2 of 2017)

Division 1—Interpretation

215. Interpretation of Part XI

In this Part, unless the context otherwise requires—

application for review (覆核申請) means an application made under section 217(1);

judge (法官) means—

(a) a judge or a deputy judge of the Court of First Instance;

(b) a former Justice of Appeal of the Court of Appeal;

(c) a former judge or a former deputy judge of the Court of First Instance;

parties (各方), in relation to a review, means—

(a) the relevant authority making the specified decision in question; and

(b) the person making the application for review in question;

relevant authority (有關當局)—

(a) in relation to a specified decision within the meaning of paragraph (a) of the definition of ***specified decision*** in this section, means the Commission;

(b) in relation to a specified decision within the meaning of paragraph (b) of the definition of ***specified decision*** in this section, means the Monetary Authority; or

(c) in relation to a specified decision within the meaning of paragraph (c) of the definition of ***specified decision*** in this section, means the Commission or the recognized investor compensation company by which the decision is made (as the case may be);

review (覆核) means a review of a specified decision by the Tribunal under section 218(1);

specified decision (指明決定) means—

(a) a decision of the Commission which—

(i) is made under or pursuant to any of the provisions set out in column 2 of Division 1 of Part 2 of Schedule 8; and

(ii) is within the description set out, opposite such provisions, in column 3 of Division 1 of Part 2 of Schedule 8;

(b) a decision of the Monetary Authority which—

(i) is made under or pursuant to any of the provisions set out in column 2 of Division 2 of Part 2 of Schedule 8; and

(ii) is within the description set out, opposite such provisions, in column 3 of Division 2 of Part 2 of Schedule 8; or

(c) a decision of the Commission or a recognized investor compensation company which—

(i) is made under or pursuant to any of the provisions set out in column 2 of Division 3 of Part 2 of Schedule 8; and

(ii) is within the description set out, opposite such provisions, in column 3 of Division 3 of Part 2 of Schedule 8;

Tribunal (審裁處) means the Securities and Futures Appeals Tribunal established by section 216.

Division 2—Securities and Futures Appeals Tribunal

216. Securities and Futures Appeals Tribunal

(1) There is established a Tribunal to be known as the Securities and Futures Appeals Tribunal which shall have jurisdiction to review specified decisions, and to hear and determine any question or issue arising out of or in connection with any review, in accordance with this Part and Schedule 8.

(2) Except as otherwise provided in this Part or in Schedule 8, the Tribunal—

(a) shall consist of a chairman and 2 other members; and

(b) shall be presided over by the chairman who shall sit with the 2 other members.

(3) The chairman of the Tribunal shall be a judge and the 2 other members of the Tribunal shall not be public officers.

(4) Part 1 of Schedule 8 shall have effect in relation to the appointment of members of the Tribunal, and to the proceedings and sittings of, and procedural and other matters concerning, the Tribunal.

(5) Where the Chief Executive considers appropriate, additional Tribunals may be established for the purposes of any reviews, whereupon the provisions of this or any other Ordinance shall apply, subject to necessary modifications, to each of such additional Tribunals (including appointment of the chairman and other members of, and all matters concerning, each of such additional Tribunals) as they apply to the Tribunal.

(6) With the exception of the chairman of the Tribunal who is a judge within the meaning of paragraph (a) of the definition of ***judge*** in section 215, a member of the Tribunal may be

paid, as a fee for his services, such amount as the Financial Secretary considers appropriate, and that amount shall be a charge on the general revenue.

(7) Where a person who is a judge within the meaning of paragraph (a) of the definition of ***judge*** in section 215 is appointed as the chairman of the Tribunal, neither the appointment nor the service or removal of the person as the chairman affects—

(a) the tenure of office of, and the exercise of powers by, the person as a judge within the meaning of that paragraph;

(b) the person's rank, title, status, precedence, salary or other rights or privileges as a holder of that office;

(c) the terms and conditions to which the person is subject as a holder of that office.

217. Applications for review of specified decisions

(1) Subject to subsections (2) and (3), a person aggrieved by a specified decision of the relevant authority made in respect of him may, by notice in writing given to the Tribunal, apply to the Tribunal for a review of the decision.

(2) A notice given to the Tribunal under subsection (1) shall set out the grounds for the application to which the notice relates.

(3) An application for review of a specified decision of the relevant authority shall be made within 21 days after—

(a) subject to paragraph (b)—

(i) where there is any requirement in this or any other Ordinance for notice in writing in respect of the decision to be served, the notice has been served in accordance with such requirement; or

(ii) where there is no such requirement, a notice in writing in respect of the decision has been served on the person in respect of whom it is made;

(b) where the decision is a specified decision which is described in column 2 of Division 1 of Part 3 of Schedule 8 and to which the provision set out, opposite such description of the specified decision, in column 3 of that Division applies, a notice in respect of the decision has been given to the person in respect of whom it is made.

(4) Notwithstanding subsection (3), the Tribunal, upon application in writing by any person, may, subject to subsection (5), by order extend the time within which an application for review of a specified decision of the relevant authority shall be made under subsection (3), whereupon the time within which such an application shall be made under subsection (3) shall be extended accordingly.

(5) The Tribunal shall not grant an extension under subsection (4) unless—

(a) the person who has applied for the grant of the extension pursuant to that subsection and the relevant authority have been given a reasonable opportunity of being heard; and

(b) it is satisfied that there is a good cause for granting the extension.

(6) Where the Tribunal receives a notice under subsection (1), it shall as soon as reasonably practicable thereafter serve a copy of the notice on the relevant authority.

218. Proceedings before Tribunal

(1) After an application for review has been made, the Tribunal shall review the specified decision to which the application

relates.

(2) Following the review of a specified decision under subsection (1), the Tribunal may—

(a) confirm, vary or set aside the decision, and, where the decision is set aside, substitute for the decision any other decision which the Tribunal considers appropriate;

(b) remit the matter in question to the relevant authority with the directions it considers appropriate, which may include a direction to the relevant authority to make a decision afresh in respect of any matter specified by the Tribunal.

(3) Where the Tribunal varies, or substitutes any decision for, a specified decision under subsection (2)(a), the decision as varied or the decision substituting for the specified decision (as the case may be) may be any decision (whether more or less onerous) that the relevant authority had power to make in respect of the person making the application for review in question, whether or not under the same provision as that under which the specified decision has been made.

(4) Without limiting the generality of subsections (2)(a) and (3) but subject to subsection (6)—

(a) where the specified decision in question is a specified decision described in column 2 of Division 2 of Part 3 of Schedule 8, the decision that the Tribunal may substitute under subsection (2)(a) for the specified decision may also include (whether or not in addition to the decision that the Tribunal may, apart from this subsection, substitute under subsection (2)(a) for the specified decision) any decision that the Monetary Authority had power to make in respect of the person making the application for review in question under or pursuant to any of the provisions set out, opposite such

description of the specified decision, in column 3 of that Division; and

(b) where the specified decision in question is a specified decision described in column 2 of Division 3 of Part 3 of Schedule 8, the decision that the Tribunal may substitute under subsection (2)(a) for the specified decision may also include (whether or not in addition to the decision that the Tribunal may, apart from this subsection, substitute under subsection (2)(a) for the specified decision) any decision that the Commission had power to make in respect of the person making the application for review in question under or pursuant to any of the provisions set out, opposite such description of the specified decision, in column 3 of that Division.

(5) Notwithstanding anything in this section, the Tribunal shall not determine a review without first giving the parties to the review a reasonable opportunity of being heard.

(6) Without limiting the generality of subsection (5), the Tribunal shall not exercise any power pursuant to subsection (4)(a) or (b) without first giving a reasonable opportunity of being heard to—

(a) in the case of subsection (4)(a), the Monetary Authority; or

(b) in the case of subsection (4)(b), the Commission.

(7) Subject to section 221(3), the standard of proof required to determine any question or issue before the Tribunal shall be the standard of proof applicable to civil proceedings in a court of law.

219. Powers of Tribunal

(1) Subject to the provisions of Part 1 of Schedule 8 and any rules made by the Chief Justice under section 233, the

Tribunal, for the purposes of a review, may, on its own motion or on the application of any of the parties to the review—

(a) receive and consider any material by way of oral evidence, written statements or documents, even if the material would not be admissible in evidence in civil or criminal proceedings in a court of law;

(b) by notice in writing signed by the chairman of the Tribunal require a person to attend before it at any sitting and to give evidence and produce any article, record or document in his possession relating to the subject matter of the review;

(c) administer oaths;

(d) examine or cause to be examined on oath or otherwise a person attending before it and require the person to answer truthfully any question which the Tribunal considers appropriate for the purposes of the review;

(e) order a witness to provide evidence in a truthful manner for the purposes of the review by affidavit;

(f) order a person not to publish or otherwise disclose any material the Tribunal receives;

(g) prohibit the publication or disclosure of any material the Tribunal receives at any sitting, or any part of a sitting, which is held in private;

(h) determine the manner in which any material referred to in paragraph (a) is received;

(i) stay any of the proceedings in the review on such grounds and on such terms and conditions as it considers appropriate having regard to the interests of justice;

(j) determine the procedure to be followed in the review;

(k) exercise such other powers or make such other orders as may be necessary for or ancillary to the conduct of the review or the carrying out of its functions.

(2) A person commits an offence if he, without reasonable excuse—

(a) fails to comply with an order, notice, prohibition or requirement of the Tribunal made or given under or pursuant to subsection (1);

(b) disrupts or otherwise misbehaves during any sitting of the Tribunal;

(c) having been required by the Tribunal under subsection (1) to attend before the Tribunal, leaves the place where his attendance is so required without the permission of the Tribunal;

(d) hinders or deters any person from attending before the Tribunal, giving evidence or producing any article, record or document, for the purposes of a review;

(e) threatens, insults or causes any loss to be suffered by any person who has attended before the Tribunal, on account of such attendance; or

(f) threatens, insults or causes any loss to be suffered by any member of the Tribunal at any time on account of the performance of his functions in that capacity.

(3) A person who commits an offence under subsection (2) is liable—

(a) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(4) A person is not excused from complying with an order, notice, prohibition or requirement of the Tribunal made or

given under or pursuant to subsection (1) only on the ground that to do so might tend to incriminate the person.

220. Use of incriminating evidence required by Tribunal

Notwithstanding any other provisions of this Ordinance, where the Tribunal—

(a) requires a person to give evidence under section 219(1)(b);

(b) requires a person to answer any question under section 219(1)(d);

(c) orders a person to provide evidence under section 219(1)(e); or

(d) otherwise orders or requires a person to provide any information under section 219(1)(k),

and the evidence, answer or information (as the case may be) might tend to incriminate the person, then the requirement or order as well as the evidence, the question and answer, or the information (as the case may be) shall not be admissible in evidence against the person in criminal proceedings in a court of law other than those in which the person is charged with an offence under section 219(2)(a), 253(2)(a) or 254(6)(a) or (b), or under Part V of the Crimes Ordinance (Cap. 200), or for perjury, in respect of the evidence, answer or information (as the case may be).

221. Contempt dealt with by Tribunal

(1) The Tribunal shall have the same powers as the Court of First Instance to punish for contempt.

(2) Without limiting the generality of the powers of the Tribunal under subsection (1), the Tribunal shall have the same powers as the Court of First Instance to punish for contempt, as if it were contempt of court, a person who, without reasonable

excuse, commits any conduct falling within the description of section 219(2)(a), (b), (c), (d), (e) or (f).

(3) The Tribunal shall, in the exercise of its powers to punish for contempt under this section, adopt the same standard of proof as the Court of First Instance in the exercise of the same powers to punish for contempt.

(4) Notwithstanding anything in this section and any other provisions of this Ordinance—

(a) no power may be exercised under or pursuant to this section to determine whether to punish any person for contempt in respect of any conduct if—

(i) criminal proceedings have previously been instituted against the person under section 219(2) in respect of the same conduct; and

(ii) (A) those criminal proceedings remain pending; or

(B) by reason of the previous institution of those criminal proceedings, no criminal proceedings may again be lawfully instituted against that person under such section in respect of the same conduct;

(b) no criminal proceedings may be instituted against any person under section 219(2) in respect of any conduct if—

(i) any power has previously been exercised under or pursuant to this section to determine whether to punish the person for contempt in respect of the same conduct; and

(ii) (A) proceedings arising from the exercise of such power remain pending; or

(B) by reason of the previous exercise of such power, no power may again be lawfully exercised under or pursuant to this section to determine whether to punish the person for contempt in respect of the same conduct.

222. Privileged information

Nothing in this Part and Schedule 8 requires an authorized financial institution, acting as the banker or financial adviser of a person who makes an application for review, to disclose information as to the affairs of any of its customers other than that person.

223. Costs

(1) The Tribunal may, in relation to a review, by order award to—

(a) any person whose attendance, whether as a witness or otherwise, has been necessary or required for the purposes of the review;

(b) any party to the review,

such sum as it considers appropriate in respect of the costs reasonably incurred by the person or the party (as the case may be) in relation to the review and the application for review in question.

(2) Any costs awarded under subsection (1) shall be paid by and recoverable as a civil debt from—

(a) where the costs are awarded to any person under subsection (1)(a), such of the parties to the review in question as the Tribunal considers appropriate; or

(b) where the costs are awarded to any party to the review under subsection (1)(b), the other party to the review.

(3) Subject to any rules made by the Chief Justice under section 233, Order 62 of the Rules of the High Court (Cap. 4 sub. leg. A) applies to the award of costs, and to the taxation of any costs awarded, by the Tribunal under subsection (1).

(Amended E.R. 2 of 2017)

224. Notification of Tribunal determinations

(1) The Tribunal shall, as soon as reasonably practicable after the conclusion of a review, deliver—

(a) its determination in respect of the review, and the reasons for making the determination; and

(b) any order made under section 223 in relation to the review, and the reasons for making the order.

(2) Where any sitting of the Tribunal relating to a review, or any part thereof, is held in private, the Tribunal may by order prohibit the publication or disclosure of any determination or order, or any reasons for any determination or order, referred to in subsection (1)(a) or (b), or any part thereof.

(3) A person commits an offence if he, without reasonable excuse, fails to comply with an order of the Tribunal made pursuant to subsection (2) and is liable—

(a) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

225. Form and proof of orders of Tribunal

(1) An order made by the Tribunal shall be recorded in writing and signed by the chairman of the Tribunal.

(2) A document purporting to be an order of the Tribunal and to be signed by the chairman of the Tribunal shall, in the

absence of proof to the contrary, be regarded as an order of the Tribunal duly made, without proof of its making, or proof of signature, or proof that the person signing the order was in fact the chairman.

226. Orders of Tribunal may be registered in Court of First Instance

The Court of First Instance may, on notice in writing given by the Tribunal in the manner prescribed by rules made by the Chief Justice under section 233, register an order of the Tribunal in the Court of First Instance and the order shall, on registration, become for all purposes an order of the Court of First Instance made within the jurisdiction of the Court of First Instance.

227. Applications for stay of execution of specified decisions

(1) Subject to subsections (2) and (3), the making of an application for review does not by itself operate as a stay of execution of the specified decision to which the application relates.

(2) A person who has made an application for review or an application pursuant to section 217(4) may, at any time before the review or the application (as the case may be) is determined by the Tribunal, apply to the Tribunal for a stay of execution of the specified decision to which the application relates.

(3) On an application made under subsection (2), the Tribunal shall as soon as reasonably practicable conduct a hearing to determine the application, and may, where it considers appropriate, by order grant a stay of execution of the specified decision to which the application relates, subject to such conditions as to costs, payment of money into the Tribunal or otherwise as the Tribunal considers appropriate.

228. Applications for stay of execution of decisions of Tribunal

A party to a review may, at any time after the determination of the review, apply to the Tribunal for a stay of execution of a decision of the Tribunal relating to the review, whereupon the Tribunal may, where it considers appropriate, by order grant the stay, subject to such conditions as to costs, payment of money into the Tribunal or otherwise as the Tribunal considers appropriate.

Division 3—Appeals

229. Appeal to Court of Appeal

(1) A party to a review who is dissatisfied with a decision of the Tribunal relating to the review may appeal to the Court of Appeal against the decision on a point of law.

(2) In an appeal under subsection (1), the Court of Appeal may—

(a) allow the appeal;

(b) dismiss the appeal;

(c) vary or set aside the decision in question, and, where the decision is set aside, substitute for the decision any other decision it considers appropriate;

(d) remit the matter in question to the Tribunal with the directions it considers appropriate, which may include a direction to the Tribunal to conduct the review in question afresh for the purpose of determining any question specified by the Court of Appeal.

(3) Where the Court of Appeal varies, or substitutes any other decision for, a decision under subsection (2)(c), the decision as varied or the other decision substituting for the decision (as the case may be) may be any decision (whether more or less onerous) that the Tribunal had power to make in respect of the review in question, whether or not under the same provision as that under which the decision has been made.

(4) In an appeal under subsection (1), the Court of Appeal may make such order as to costs as it considers appropriate.

230. No stay of execution on appeal

Without prejudice to section 228, the lodging of an appeal under section 229 does not by itself operate as a stay of execution of a decision of the Tribunal unless the Court of Appeal otherwise orders, and any stay of execution may be subject to such conditions as to costs, payment of money into the Tribunal or otherwise as the Court of Appeal considers appropriate.

231. No other right of appeal

Subject to section 229 and section 50 of the High Court Ordinance (Cap. 4), any decision of the Tribunal shall be final and shall not be subject to appeal.

Division 4—Miscellaneous

232. Time when specified decisions to take effect

(1) Notwithstanding subsections (2) and (3) and any other provisions of this or any other Ordinance, no specified decision, other than a specified decision which is described in column 2 of Division 4 of Part 3 of Schedule 8 and to which the provision set out, opposite such description of the specified decision, in column 3 of that Division applies, takes effect at any time before—

(a) where there is any requirement in this or any other Ordinance for notice in writing in respect of the decision to be served, the notice has been served in accordance with such requirement; or

(b) where there is no such requirement, a notice in writing in respect of the decision has been served on the person in respect of whom it is made.

(2) A specified decision, other than a specified decision which is described in column 2 of Division 5 of Part 3 of Schedule 8 and to which the provision set out, opposite such description of the specified decision, in column 3 of that Division applies, takes effect—

(a) where, prior to the expiration of the period of 21 days specified in section 217(3), the person in respect of whom the decision is made notifies the relevant authority that he will not make an application for review of the decision, at the time when he so notifies the relevant authority;

(b) subject to paragraph (a), where the person does not make an application for review of the decision within the period of 21 days specified in section 217(3), at the time when the period so specified expires; or

(c) where the person makes an application for review of the decision within the period of 21 days specified in section 217(3)—

(i) where the decision is confirmed by the Tribunal, at the time when the decision is so confirmed;

(ii) where the decision is varied, or substituted by another decision, by the Tribunal, at the time when the decision is so varied or substituted, subject however to the terms of the variation or substitution; or

(iii) where the application is withdrawn, at the time when it is so withdrawn.

(3) Notwithstanding subsection (2) and any other provisions of this or any other Ordinance, but subject to subsection (1), the relevant authority may, where it considers appropriate in the interest of the investing public or in the public interest to do so, specify in the notice served in respect of a specified

decision any time, other than that at which the decision is apart from this subsection to take effect, as the time at which the decision is to take effect, in which case the decision takes effect at the time so specified.

(4) Nothing in this section affects the power of the Tribunal to grant a stay of execution of a specified decision under section 227.

233. Rules by Chief Justice

The Chief Justice may make rules—

(a) providing for the award of costs under section 223 and the taxation of those costs;

(b) prescribing the manner in which the Tribunal is to give notice to the Court of First Instance in respect of orders of the Tribunal pursuant to section 226;

(c) regulating the procedure for the hearing of appeals under section 229;

(d) requiring the payment of the fees specified in the rules for any matter relating to applications for review;

(e) providing for matters of procedure or other matters relating to applications for review or reviews, which are not provided for in this Part or in Part 1 of Schedule 8;

(f) providing for the issue or service of any document (however described) for the purposes of this Part or Part 1 of Schedule 8;

(g) prescribing any matter which this Part provides is, or may be, prescribed by rules made by the Chief Justice.

234. Amendment of Parts 2 and 3 of Schedule 8

The Chief Executive in Council may, by order published in the Gazette, amend Parts 2 and 3 of Schedule 8.

Part XII

Investor Compensation

(Format changes—E.R. 2 of 2017)

235. Interpretation of Part XII

In this Part, unless the context otherwise requires—

compensation (賠償) means compensation payable out of the compensation fund under rules made under section 244;

default (違責) means a default prescribed by rules made under section 244;

Futures Exchange Compensation Fund (期交所賠償基金) means the compensation fund established under Part VIII of the repealed Commodities Trading Ordinance;

Unified Exchange Compensation Fund (聯交所賠償基金) means the compensation fund established under Part X of the repealed Securities Ordinance.

236. Establishment of compensation fund

(1) The Commission shall establish and maintain a compensation fund, to be known as the Investor Compensation Fund in English and "投資者賠償基金" in Chinese, for the purpose of providing, in accordance with rules made under section 244, a measure of compensation to clients of a specified person who sustain a loss by reason of a default committed by the specified person or any of his associated persons in connection with specified securities or futures contracts.

(2) In this section—

associated person (相聯者), in relation to a specified person, means—

(a) a person employed or otherwise engaged by the specified person;

(b) a person (***first-mentioned person***) who may under section 164 receive or hold client assets of the specified person, or an employee of the first-mentioned person; or

(c) such other persons as may be prescribed by rules made under section 244;

specified person (指明人士) means—

(a) an intermediary licensed or registered for Type 1 or Type 2 regulated activity;

(b) an intermediary licensed for Type 8 regulated activity; or

(c) such other person as may be prescribed by rules made under section 244;

specified securities or futures contracts (指明證券或期貨合約) means any securities or futures contracts listed or traded or to be listed or traded on—

(a) a recognized stock market or recognized futures market; or

(b) such other markets as may be prescribed by rules made under section 244.

237. Money constituting the compensation fund

(1) The compensation fund shall consist of—

(a) all amounts paid to the Commission or a recognized investor compensation company in accordance with rules made under this Part;

(b) all amounts paid by the Commission into the compensation fund under subsection (2)(b);

(c) all amounts paid into the compensation fund under sections 74(2) or (9)(b), 75(2) or (9)(b) and 76(11) of Schedule 10;

(d) all assets (whether in cash or otherwise) recovered by the Commission or a recognized investor compensation company in exercise of a right of action conferred by section 243 or 87;

(e) all amounts borrowed under subsection (2)(a);

(f) any return or profit received on an investment made under section 241;

(g) all other amounts lawfully paid into the compensation fund.

(2) With the consent in writing of the Financial Secretary, the Commission may—

(a) for the purpose of the compensation fund, borrow from any authorized financial institution on such terms and at such rates of interest as it considers acceptable and charge any investments acquired under section 241 by way of security for any such loan;

(b) pay into the compensation fund from its reserves such amount of money as it considers appropriate.

238. Management of compensation fund

(1) Subject to this Part, the Commission shall be responsible for the management and administration of the compensation fund, including the determination of a claim for compensation.

(2) The Commission may realize any of the non-cash assets of the compensation fund at such times as it considers appropriate and the proceeds of realization shall become part of the compensation fund.

239. Money to be kept in account

The Commission shall open at one or more authorized financial institutions one or more accounts and shall, pending their application in accordance with this Part, pay into or transfer to such account or accounts all amounts forming part of the compensation fund.

240. Accounts of compensation fund

(1) The Commission shall keep proper accounts of the compensation fund.

(2) The Commission may, if it considers it necessary to do so—

(a) maintain separate accounts in respect of the amounts that are respectively paid into the compensation fund under sections 74, 75 and 76 of Schedule 10;

(b) maintain separate accounts in respect of the compensation fund—

(i) for different—

(A) recognized exchange companies;

(B) markets operated by recognized exchange companies;

(C) persons providing automated trading services; or

(D) classes of investors; or

(ii) for the better and more effectual management or administration of the fund;

(c) maintain sub-accounts in respect of the separate accounts referred to in paragraph (a) or (b) in such manner as it considers appropriate.

(3) The Commission shall in respect of the financial year beginning before and ending after the day on which this section commences, and in respect of each subsequent financial year, prepare—

(a) a financial statement made up to (and including) the last day of that year, in respect of the accounts of the compensation fund; and

(b) in the case where separate accounts are maintained under subsection (2)(a) or (b) or sub-accounts are maintained under subsection (2)(c)—

(i) a consolidated financial statement made up to (and including) the last day of that year, in respect of the separate accounts or sub-accounts (as the case may be); and

(ii) a separate financial statement made up to (and including) the last day of that year, in respect of each separate account or sub-account (as the case may be).

(4) A financial statement prepared under subsection (3) shall be signed by the chairman and the chief executive officer of the Commission. *(Amended 15 of 2006 s. 4)*

(5) The Commission shall appoint an auditor to audit the compensation fund.

(6) The auditor so appointed shall annually audit the accounts of the compensation fund and shall audit, and prepare an auditor's report in respect of, each financial statement prepared under subsection (3) and shall submit the report to the Commission.

(7) An auditor's report prepared under subsection (6) shall contain a statement made by the auditor as to whether in his opinion the financial statement gives a true and fair view of the matters to which the statement relates.

(8) The auditor appointed under this section may call for and inspect such books and records of the Commission or any recognized investor compensation company as he may require in order to perform his functions under this section.

(9) Not later than 4 months after the end of each financial year the Commission shall cause—

(a) a copy of—

(i) each audited financial statement in respect of that financial year; and

(ii) the auditor's report on each such financial statement,

to be sent to the Financial Secretary; and

(b) a copy of each such audited financial statement to be published in the Gazette.

(10) The Financial Secretary shall cause to be laid on the table of the Legislative Council any financial statement and report sent to him under subsection (9)(a).

(11) In this section, ***financial statement*** (財務報表) means a statement which contains all of the following documents—

(a) a revenue and expenditure account;

(b) a balance sheet; and

(c) a cash flow statement.

241. Investment of moneys

(1) The Commission may invest any money which forms part of the compensation fund and is not immediately required for any other purposes provided for by this Part—

(a) on fixed deposit with an authorized financial institution; or

(b) in securities in which trustees are authorized by law to invest trust funds.

(2) Any return or profit on an investment of moneys by the Commission under subsection (1) shall be added to the compensation fund.

(3) A fixed deposit receipt and other document evidencing the investment of moneys under subsection (1) may be kept in the office of the Commission or deposited for safe keeping with an authorized financial institution.

242. Payments out of the compensation fund

(1) Subject to this Part, there shall from time to time be paid out of the compensation fund as required and in such order as the Commission may determine one or more of the following amounts—

(a) all legal and other expenses incurred—

(i) in investigating or defending claims for compensation made under rules made under this Part;

(ii) in relation to the compensation fund;

(iii) in the exercise by the Commission of the rights, powers, and authorities vested in it by this Part or rules made under this Part in relation to the compensation fund;

(iv) in the performance by a recognized investor compensation company of a function transferred to it under section 80 or provided for under rules made under this Part;

(b) the expenses incurred in the management or administration of the compensation fund;

(c) the expenses incurred in obtaining insurance, surety, guarantee or other security, or in making any financial arrangement, in respect of claims for compensation made under rules made under this Part;

(d) interest on any sum borrowed under section 237(2)(a);

(e) the amounts of claims for compensation, costs of and incidental to the making and proving of such claims and interest on compensation, as allowed under rules made under this Part;

(f) all other money payable out of the compensation fund in accordance with rules made under this Part.

(2) Where the Commission considers that the amount at credit in either the Unified Exchange Compensation Fund or the Futures Exchange Compensation Fund is insufficient to enable—

(a) the payment of the amounts which the Commission considers to be necessary to meet any claims or likely claims against the Unified Exchange Compensation Fund or the Futures Exchange Compensation Fund (as the case may be); and

(b) the repayment of the amounts deposited in cash with the Commission under section 104 of the repealed Securities Ordinance or section 82 of the repealed Commodities Trading Ordinance (as the case may be),

then the Commission shall, subject to subsection (3), pay into the Unified Exchange Compensation Fund or the Futures Exchange Compensation Fund (as the case may be) out of the compensation fund such amount as it considers appropriate.

(3) The aggregate amounts paid under subsection (2) to the Unified Exchange Compensation Fund or the Futures Exchange Compensation Fund shall not exceed the respective

aggregate amounts paid into the compensation fund under section 74(2) or 75(2) of Schedule 10 (as the case may be).

243. Subrogation of the Commission to rights, etc. of claimant on payment from compensation fund

(1) Where the Commission makes any payment out of the compensation fund in respect of any claim for compensation made under rules made under this Part—

(a) subject to subsection (1A), the Commission shall be subrogated, to the extent which that payment bears to the loss sustained (without taking into account any compensation paid or payable out of the compensation fund for the loss) by the claimant by reason of the default on which the claim was based, to all the rights and remedies of the claimant in relation to the loss; and *(Amended 7 of 2004 s. 55)*

(b) the respective rights of the claimant and the Commission in bankruptcy or winding up or by legal proceedings or otherwise to receive in respect of the loss—

(i) any sum out of the assets of the person concerned who is in default; or

(ii) any property held on trust by that person for the claimant,

shall rank equally.

(1A) The Commission is not subrogated to any rights and remedies of the claimant in respect of compensation from the Deposit Protection Scheme Fund established by section 14 of the Deposit Protection Scheme Ordinance (Cap. 581). *(Added 7 of 2004 s. 55)*

(2) All assets (whether in cash or otherwise) recovered by the Commission under subsection (1) shall become part of the compensation fund.

244. Rules by Chief Executive in Council and Commission

(1) The Chief Executive in Council may make rules for the following matters—

(a) the means of funding the compensation fund;

(b) the maximum amount of compensation that may be paid to a person making a claim for compensation;

(c) the maintenance of sub-accounts under section 240(2)(c), payments to be made from such sub-accounts and the apportionment between different sub-accounts of expenses incurred in relation to the compensation fund and of interest earned on the fund;

(d) providing for the better carrying out of the objects and purposes of this Part.

(2) Without prejudice to section 398(7) and (8), the Commission may, subject to subsection (3), make rules which are not inconsistent with rules made by the Chief Executive in Council under subsection (1), for the following matters—

(a) the circumstances in which a person is entitled to claim compensation, including any matter referred to in section 235 or 236(2) which may be prescribed by rules made under this section;

(b) the manner in which the claim for compensation is to be made;

(c) the payment of costs of and incidental to the making and proving of a claim for compensation;

(d) the payment of interest on the amount of compensation;

(e) the information or documents to be supplied to the Commission for the purpose of enabling the Commission to determine the application;

(f) the persons or classes of persons who are not entitled to make a claim for compensation;

(g) the circumstances and manner in which the Commission may call for claims for compensation;

(h) the determination and payment of and the procedures for dealing with a claim for compensation;

(i) enabling the Commission—

(i) to submit a claim for compensation as a proof of debt in any winding-up or bankruptcy proceedings;

(ii) to pay compensation in the form of securities and to purchase securities for that purpose; and

(iii) to require the assignment of a claimant's rights of action as a pre-condition for the payment of compensation;

(j) the functions of a recognized investor compensation company in relation to the management or administration of the compensation fund;

(k) the formulation of proper accounting and auditing systems with respect to the management or administration of the compensation fund for which a recognized investor compensation company may be responsible upon a transfer of a function to it under section 80;

(l) arrangements that are to be made when a recognized investor compensation company is wound up;

(m) the obtaining of such insurance, surety, guarantee or other security or the making of such financial arrangement as may be necessary or appropriate for the better carrying out of the objects and purposes of this Part;

(n) providing for the better carrying out of the objects and purposes of this Part.

(3) The Commission shall consult the Financial Secretary before making rules under subsection (2) for the matters specified in paragraphs (a) and (f) of that subsection.

(4) In making any rules under subsection (1)(a), the Chief Executive in Council shall ensure that the funds of the compensation fund shall, so far as reasonably practicable, be borne by participants or any particular class of participants in the securities and futures market.

Part XIII

Market Misconduct Tribunal

(Format changes—E.R. 2 of 2012)

Division 1—Interpretation

245. Interpretation of Part XIII

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

associate (有聯繫者), in relation to a person, means—

(a) the person's spouse or reputed spouse, any person cohabiting with the person as a spouse, the person's brother, sister, parent, step-parent, child (natural or adopted) or step-child;

(b) any corporation of which the person is a director;

(c) any employee or partner of the person;

(d) where the person is a corporation, each of its directors and its related corporations and each director or employee of any of its related corporations;

(e) without limiting the circumstances in which paragraphs (a) to (d) apply, in circumstances concerning the securities of or other interest in a corporation, or rights arising out of the holding of such securities or such interest, any other person with whom the person has an agreement or arrangement—

(i) with respect to the acquisition, holding or disposal of such securities or such interest; or

(ii) under which they undertake to act together in exercising their voting power at general meetings of the corporation;

controller (控制人), in relation to a corporation, means any person—

(a) in accordance with whose directions or instructions the directors of the corporation or of another corporation of which it is a subsidiary are accustomed or obliged to act; or

(b) who, either alone or with any of his associates, is entitled to exercise or control the exercise of more than 33% of the voting power at general meetings of the corporation or of another corporation of which it is a subsidiary;

insider dealing (內幕交易) means insider dealing within the meaning of section 270;

judge (法官) means—

(a) a judge or a deputy judge of the Court of First Instance;

(b) a former Justice of Appeal of the Court of Appeal;

(c) a former judge or a former deputy judge of the Court of First Instance;

market misconduct (市場失當行為) means—

(a) insider dealing;

(b) false trading within the meaning of section 274;

(c) price rigging within the meaning of section 275;

(d) disclosure of information about prohibited transactions within the meaning of section 276;

(e) disclosure of false or misleading information inducing transactions within the meaning of section 277; or

(f) stock market manipulation within the meaning of section 278,

and includes attempting to engage in, or assisting, counselling or procuring another person to engage in, any of the conduct referred to in paragraphs (a) to (f);

Presenting Officer (提控官), in relation to any proceedings instituted under section 252 or any disclosure proceedings, means the person appointed under section 251(4) to conduct the proceedings; *(Amended 9 of 2012 s. 5)*

relevant overseas market (有關境外市場)—

(a) in relation to securities, means a stock market outside Hong Kong; or

(b) in relation to futures contracts, means a futures market outside Hong Kong;

relevant recognized market (有關認可市場)—

(a) in relation to securities, means a recognized stock market; or

(b) in relation to futures contracts, means a recognized futures market;

Tribunal (審裁處) means the Market Misconduct Tribunal established by section 251.

(2) In this subsection and sections 246 to 249 and Division 4, unless the context otherwise requires—

derivatives (衍生工具), in relation to listed securities, means—

(a) rights, options or interests (whether described as units or otherwise) in, or in respect of, the listed securities;

(b) contracts, the purpose or pretended purpose of which is to secure or increase a profit or avoid or reduce a loss, wholly or partly by reference to the price or value, or a change in the price or value, of—

(i) the listed securities; or

(ii) any rights, options or interests referred to in paragraph (a);

(c) rights, options or interests (whether described as units or otherwise) in, or in respect of—

(i) any rights, options or interests referred to in paragraph (a); or

(ii) any contracts referred to in paragraph (b);

(d) instruments or other documents creating, acknowledging or evidencing any rights, options or interests or any contracts referred to in paragraph (a), (b) or (c), including certificates of interest or participation in, temporary or interim certificates for, receipts (including depositary receipts) in respect of, or warrants to subscribe for or purchase—

(i) the listed securities; or

(ii) the rights, options or interests or the contracts,

whether or not the derivatives are listed and regardless of who issued or made them;

inside information (內幕消息), in relation to a corporation, means specific information that—

(a) is about—

(i) the corporation;

(ii) a shareholder or officer of the corporation; or

(iii) the listed securities of the corporation or their derivatives; and

(b) is not generally known to the persons who are accustomed or would be likely to deal in the listed securities of the corporation but would if generally known to them be likely to materially affect the price of the listed securities; *(Added 9 of 2012 s. 5)*

listed (上市) means listed on a recognized stock market, and for the purposes of this definition, securities shall continue to be regarded as listed during a period of suspension of dealings in those securities on the recognized stock market;

listed corporation (上市法團) means a corporation which has issued securities that are, at the time of any insider dealing in relation to the corporation, listed;

listed securities (上市證券) means—

(a) securities which, at the time of any insider dealing in relation to a corporation, have been issued by the corporation and are listed;

(b) securities which, at the time of any insider dealing in relation to a corporation, have been issued by the corporation and are not listed, but which, at that time, it is reasonably foreseeable will be and which, in fact, are subsequently listed;

(c) securities which, at the time of any insider dealing in relation to a corporation, have not been issued by the corporation and are not listed, but which, at that time, it is reasonably foreseeable will be and which, in fact, are subsequently so issued and listed;

securities (證券) means—

(a) shares, stocks, debentures, loan stocks, funds, bonds or notes of, or issued by, or which it is reasonably foreseeable will be issued by, a body, whether incorporated or unincorporated, or a government or municipal government authority;

(b) rights, options or interests (whether described as units or otherwise) in, or in respect of, such shares, stocks, debentures, loan stocks, funds, bonds or notes;

(c) certificates of interest or participation in, temporary or interim certificates for, receipts for, or warrants to subscribe for or purchase, such shares, stocks, debentures, loan stocks, funds, bonds or notes;

(d) interests, rights or property, whether in the form of an instrument or otherwise, commonly known as securities;

(e) interests, rights or property, whether in the form of an instrument or otherwise, prescribed by notice under section 392 as being regarded as securities in accordance with the terms of the notice.

(Amended 9 of 2012 s. 5)

(3) For the purposes of the definition of ***controller*** in subsection (1), where a person is entitled to exercise or control the exercise of more than 33% of the voting power at general meetings of a corporation and the corporation is entitled to exercise or control the exercise of any of the voting power at general meetings of another corporation (***the effective voting power***), then the effective voting power at general meetings of the other corporation shall be regarded as exercisable by the person.

(4) For the purposes of this Part, a person shall not be regarded as a person in accordance with whose directions or instructions the directors of a corporation are accustomed or obliged to act by reason only that the directors of the corporation act on advice given by him in a professional capacity.

246. Interest in securities (insider dealing)

For the purposes of sections 245(2) and 247 to 249 and Division 4, a reference to an interest in securities shall be construed as including an interest of any kind whatsoever in the securities, and for that purpose any restraint or restriction to which the exercise of a right attached to the interest may be subject shall be disregarded.

247. Connected with a corporation (insider dealing)

(1) For the purposes of Division 4, a person shall be regarded as connected with a corporation if, being an individual—

(a) he is a director or employee of the corporation or a related corporation of the corporation;

(b) he is a substantial shareholder of the corporation or a related corporation of the corporation;

(c) he occupies a position which may reasonably be expected to give him access to inside information in relation to the corporation by reason of— *(Amended 9 of 2012 s. 14)*

(i) a professional or business relationship existing between—

(A) himself, or his employer, or a corporation of which he is a director, or a firm of which he is a partner; and

(B) the corporation, a related corporation of the corporation, or an officer or substantial shareholder of either corporation; or

(ii) his being a director, employee or partner of a substantial shareholder of the corporation or a related corporation of the corporation;

(d) he has access to inside information in relation to the corporation and— *(Amended 9 of 2012 s. 14)*

(i) he has such access by reason of his being in such a position that he would be regarded as connected with another corporation by virtue of paragraph (a), (b) or (c); and

(ii) the inside information relates to a transaction (actual or contemplated) involving both those

corporations or involving one of them and the listed securities of the other or their derivatives, or to the fact that the transaction is no longer contemplated; or *(Amended 9 of 2012 s. 14)*

(e) he was, at any time within the 6 months preceding any insider dealing in relation to the corporation, a person who would be regarded as connected with the corporation by virtue of paragraph (a), (b), (c) or (d).

(2) For the purposes of Division 4, a corporation shall be regarded as a person connected with another corporation so long as any of its directors or employees is a person who would be regarded as connected with that other corporation by virtue of subsection (1).

(3) In subsection (1), notwithstanding any other provisions of this Ordinance, ***substantial shareholder*** (大股東), in relation to a corporation, means a person who has an interest in 5% or more of the total number of shares comprised in the relevant share capital of the corporation. *(Amended 28 of 2012 ss. 912 & 920)*

248. Connected with a corporation—possession of inside information obtained in privileged capacity (insider dealing)

(Amended 9 of 2012 s. 14)

(1) For the purposes of Division 4, where a public officer or a specified person in that capacity receives inside information in relation to a corporation, he shall be regarded as a person connected with the corporation. *(Amended 9 of 2012 s. 14)*

(2) In subsection (1), a reference to a specified person means a person who is—

(a) a member of the Executive Council;

(b) a member of the Legislative Council;

(c) a member of a board, commission, committee or other body appointed by or on behalf of the Chief Executive or the Chief Executive in Council under an Ordinance;

(d) an officer or employee of a recognized exchange company, a recognized clearing house or a recognized exchange controller;

(e) an exchange participant;

(f) an officer or employee of an exchange participant;

(g) an officer or employee of a body corporate incorporated by an Ordinance; or

(h) an officer or employee of a body corporate specified by the Financial Secretary under subsection (3),

whether, in the case of paragraph (a), (b), (c), (d), (f), (g) or (h), the person is such a member, officer or employee (as the case may be) on a temporary or permanent basis, and whether he is paid or unpaid.

(3) The Financial Secretary may, by notice published in the Gazette, specify any body corporate for the purposes of subsection (2)(h).

249. Dealing in listed securities or their derivatives (insider dealing)

For the purposes of section 245(2) and Division 4, a person shall be regarded as dealing in listed securities or their derivatives if, whether as principal or agent, he sells, purchases, exchanges or subscribes for, or agrees to sell, purchase, exchange or subscribe for, any listed securities or their derivatives or acquires or disposes of, or agrees to acquire or dispose of, the right to sell, purchase, exchange or subscribe for, any listed securities or their derivatives.

250. Interest in securities and beneficial ownership, etc. (market misconduct other than insider dealing)

(1) For the purposes of Division 5, a person shall be regarded as having an interest in securities if he has authority, whether formal or informal and whether express or implied, to dispose of or to exercise control over the disposal of the securities or, in the case of options in respect of the securities, to exercise the options.

(2) It is immaterial that the authority of a person referred to in subsection (1)—

(a) is, or is capable of being made, subject to restraint or restriction; or

(b) is exercisable jointly with another person.

(3) A person shall be regarded as having the authority referred to in subsection (1) where a corporation has the authority referred to in that subsection and—

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

(b) the person, or an associate of the person, is a controller of the corporation.

(4) Where a person—

(a) has entered into a contract to purchase securities;

(b) has a right to have securities transferred to him or to his order whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not; or

(c) has the right to acquire securities, or an interest in securities, under an option, whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not,

the person shall, to the extent to which he could do so on completing the contract, enforcing the right or exercising the option, be regarded as having the authority referred to in subsection (1).

(5) Where securities are subject to a trust, and a person who is not a trustee in those securities has an interest in those securities by virtue of subsection (4)(b), the interest of a trustee in those securities shall be disregarded for the purpose of determining whether the person has an interest in securities for the purposes of Division 5.

(6) The Commission may make rules to prescribe that an interest, being an interest of a person or of the persons included in a class of persons, shall be disregarded for the purpose of determining whether the person or the persons has or have an interest in securities for the purposes of Division 5.

(7) For the purposes of Division 5, a sale or purchase of securities does not involve a change in their beneficial ownership if a person who had an interest in the securities before the sale or purchase, or an associate of the person, has an interest in the securities after the sale or purchase.

Division 2—Market Misconduct Tribunal

251. Market Misconduct Tribunal

(1) There is established a Tribunal to be known as the Market Misconduct Tribunal which shall have jurisdiction to hear and determine in accordance with this Part and Schedule 9 any question or issue arising out of or in connection with the proceedings instituted under section 252.

Note—
The Tribunal also has jurisdiction under Part XIVA—see section 307H.

(Amended 9 of 2012 s. 6)

(2) Except as otherwise provided in this Part or in Schedule 9, the Tribunal—

(a) shall consist of a chairman and 2 other members; and

(b) shall be presided over by the chairman who shall sit with the 2 other members.

(3) The chairman of the Tribunal shall be a judge and the 2 other members of the Tribunal shall not be public officers.

(4) The Commission shall, in respect of any proceedings instituted under section 252 or any disclosure proceedings, appoint a person as the Presenting Officer to conduct the proceedings, and may appoint one or more persons to assist the Presenting Officer. *(Amended 9 of 2012 ss. 6 & 19)*

(5) A Presenting Officer shall be a counsel or solicitor. *(Amended 9 of 2012 s. 19)*

(6) Schedule 9 shall have effect in relation to the appointment of members of the Tribunal, the appointment and the role of Presenting Officers and of persons appointed to assist Presenting Officers, and to the proceedings and sittings of, and procedural and other matters concerning, the Tribunal.

(7) Where the Chief Executive considers appropriate, additional Tribunals may be established for the purposes of any proceedings instituted under section 252 or any disclosure proceedings, whereupon the provisions of this or any other Ordinance shall apply, subject to necessary modifications, to each of such additional Tribunals (including appointment of the chairman and other members of, and all matters concerning, each of such additional Tribunals) as they apply to the Tribunal. *(Amended 9 of 2012 s. 6)*

(8) There may be paid to a member of the Tribunal (other than the chairman if he or she is a judge within the meaning of paragraph (a) of the definition of ***judge*** in section 245(1)) an amount, as a fee for the member's services, that the Financial

Secretary considers appropriate, and that amount is a charge on the general revenue. *(Replaced 9 of 2012 s. 19)*

(8A) There may be paid by the Commission to a Presenting Officer and to a person appointed to assist a Presenting Officer an amount, as a fee for his or her services, that the Commission considers appropriate. *(Added 9 of 2012 s. 19)*

(9) Where a person who is a judge within the meaning of paragraph (a) of the definition of ***judge*** in section 245(1) is appointed as the chairman of the Tribunal, neither the appointment nor the service or removal of the person as the chairman affects—

(a) the tenure of office of, and the exercise of powers by, the person as a judge within the meaning of that paragraph;

(b) the person's rank, title, status, precedence, salary or other rights or privileges as a holder of that office;

(c) the terms and conditions to which the person is subject as a holder of that office.

252. Market misconduct proceedings

(1) Subject to section 252A, if it appears to the Commission that market misconduct has or may have taken place, the Commission may institute proceedings in the Tribunal concerning the matter. *(Replaced 9 of 2012 s. 20)*

(2) The Commission institutes proceedings under this section by giving the Tribunal a notice in writing containing a statement specifying the matters prescribed in Schedule 9. *(Replaced 9 of 2012 s. 20)*

(3) Without limiting the generality of section 251(1), the object of the proceedings instituted under this section is for the Tribunal to determine— *(Amended 9 of 2012 s. 20)*

(a) whether any market misconduct has taken place;

(b) the identity of any person who has engaged in the market misconduct; and

(c) the amount of any profit gained or loss avoided as a result of the market misconduct.

(4) Subject to subsections (5) and (6), the Tribunal may identify a person as having engaged in market misconduct pursuant to subsection (3)(b) if—

(a) he has perpetrated any conduct which constitutes the market misconduct;

(b) notwithstanding that he has not perpetrated any conduct which constitutes the market misconduct—

(i) the Tribunal identifies another person which is a corporation as having engaged in market misconduct pursuant to subsection (3)(b); and

(ii) the market misconduct occurred with his consent or connivance as an officer of the corporation; or

(c) notwithstanding that he has not perpetrated any conduct which constitutes the market misconduct—

(i) the Tribunal identifies any other person as having engaged in market misconduct pursuant to subsection (3)(b); and

(ii) he assisted or connived with that other person in the perpetration of any conduct which constitutes the market misconduct, with the knowledge that such conduct constitutes or might constitute market misconduct.

(5) The Tribunal shall not identify a person as having engaged in market misconduct pursuant to subsection (3)(b) if it is provided under any provision of this Part that the person

shall not by reason of that market misconduct be regarded as having engaged in market misconduct.

(6) The Tribunal shall not identify a person as having engaged in market misconduct pursuant to subsection (3)(b) without first giving the person a reasonable opportunity of being heard.

(7) Subject to section 261(3), the standard of proof required to determine any question or issue before the Tribunal shall be the standard of proof applicable to civil proceedings in a court of law.

(8)-(10) *(Repealed 9 of 2012 s. 20)*

252A. Consent of Secretary for Justice for market misconduct proceedings

(1) The Commission must not institute proceedings under section 252 unless it has obtained the consent of the Secretary for Justice.

(2) The Secretary for Justice may withhold the giving of consent under subsection (1) to proceedings under section 252 in respect of any conduct only if and so long as—

(a) proceedings for an offence under Part XIV are contemplated in respect of the same conduct; or

(b) proceedings for an indictable offence (other than an offence under Part XIV) are contemplated, or have been instituted, in respect of the same conduct and the institution of proceedings under section 252 would be likely to cause serious prejudice to the investigation or prosecution of that offence.

(3) To avoid doubt, the consent of the Secretary for Justice under subsection (1) does not preclude proceedings for any offence (other than an offence under Part XIV) in respect of the same conduct.

(4) Nothing in this section derogates from the powers of the Secretary for Justice in respect of the prosecution of criminal offences.

(Added 9 of 2012 s. 21)

253. Powers of Tribunal

(1) Subject to the provisions of Schedule 9 and any rules made by the Chief Justice under section 269, the Tribunal, for the purposes of any proceedings instituted under section 252, may, on its own motion or on the application of any party before it—

(a) receive and consider any material by way of oral evidence, written statements or documents, even if the material would not be admissible in evidence in civil or criminal proceedings in a court of law;

(b) by notice in writing signed by the chairman of the Tribunal require a person to attend before it at any sitting and to give evidence and produce any article, record or document in his possession relating to the subject matter of the proceedings;

(c) administer oaths;

(d) examine or cause to be examined on oath or otherwise a person attending before it and require the person to answer truthfully any question which the Tribunal considers appropriate for the purposes of the proceedings;

(e) order a witness to provide evidence in a truthful manner for the purposes of the proceedings by affidavit;

(f) order a person not to publish or otherwise disclose any material the Tribunal receives;

(g) prohibit the publication or disclosure of any material the Tribunal receives at any sitting, or any part of a sitting, which is held in private;

(h) determine the manner in which any material referred to in paragraph (a) is received;

(i) stay any of the proceedings on such grounds and on such terms and conditions as it considers appropriate having regard to the interests of justice;

(j) determine the procedure to be followed in the proceedings;

(k) exercise such other powers or make such other orders as may be necessary for or ancillary to the conduct of the proceedings or the carrying out of its functions.

(2) A person commits an offence if he, without reasonable excuse—

(a) fails to comply with an order, notice, prohibition or requirement of the Tribunal made or given under or pursuant to subsection (1);

(b) disrupts or otherwise misbehaves during any sitting of the Tribunal;

(c) having been required by the Tribunal under subsection (1) to attend before the Tribunal, leaves the place where his attendance is so required without the permission of the Tribunal;

(d) hinders or deters any person from attending before the Tribunal, giving evidence or producing any article, record or document, for the purposes of any proceedings instituted under section 252;

(e) threatens, insults or causes any loss to be suffered by any person who has attended before the Tribunal, on account of such attendance; or

(f) threatens, insults or causes any loss to be suffered by any member of the Tribunal, any Presenting Officer or any person assisting a Presenting Officer at any time on account of the performance of his functions in that capacity.

(3) A person who commits an offence under subsection (2) is liable—

(a) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(4) A person is not excused from complying with an order, notice, prohibition or requirement of the Tribunal made or given under or pursuant to subsection (1) only on the ground that to do so might tend to incriminate the person.

254. Further powers of Tribunal concerning evidence

(1) For the purposes of any proceedings instituted under section 252, the Tribunal may, on its own motion or on the application of the Presenting Officer appointed for the proceedings, authorize the Commission in writing to exercise any of the powers specified in subsection (2) and to provide the Tribunal with any of the records, documents and information obtained as a result of the exercise of the powers.

(2) The powers specified for the purposes of subsection (1) are the powers—

(a) to inspect any record or document of any person where the Tribunal has reasonable grounds to believe or suspect that the record or document may contain information relevant to the proceedings;

(b) to make copies or otherwise record details of any record or document referred to in paragraph (a) and, subject

to subsection (3), to take possession of the record or document for the period (not exceeding 2 days) necessary to do so;

(c) to require any person to give, within a specified time, any explanation or particulars in respect of any record or document referred to in paragraph (a) (including, in so far as applicable, a description of the circumstances under which it was prepared or created, details of all instructions given or received in connection with it, and an explanation of the reasons for the making of entries contained in it or the omission of entries from it);

(d) to require any person to give, within a specified time, information as to whether or not there is on any premises any record or document which may contain information relevant to the proceedings, and particulars as to the premises or the record or document;

(e) to require that any information, explanation or particulars given pursuant to this section be verified by statutory declaration and to take the declaration;

(f) to take a statement from a person whom the Tribunal has reasonable grounds to believe or suspect is able to provide information which is relevant for the purposes of the proceedings.

(3) The Commission shall, subject to any reasonable conditions it imposes as to security or otherwise, permit a person who would be entitled to inspect any record or document had the Commission not taken possession of it under subsection (2)(b), to inspect it and to make copies or otherwise record details of it at all reasonable times.

(4) A person shall produce a record or document in his possession to the Commission if the Commission seeks to inspect it, or exercise any other powers in respect of it, under this section.

(5) A person who is required under this section to give or provide any information, explanation or particulars shall comply with the requirement so far as it lies within his power to do so and shall, if requested, verify the information, explanation or particulars (as the case may be) by statutory declaration.

(6) A person commits an offence if—

(a) he, without reasonable excuse, contravenes subsection (4) or (5);

(b) he—

(i) in purported compliance with subsection (4) or (5), makes any statement which is false or misleading in a material particular; and

(ii) knows that, or is reckless as to whether, the statement is false or misleading in a material particular;

(c) he obstructs the Commission in the exercise of any of its powers under this section; or

(d) he, with intent to conceal, from the Tribunal, facts or matters capable of being disclosed by any record or document which is relevant to any proceedings instituted under section 252, destroys, falsifies, conceals or otherwise disposes of, or causes or permits the destruction, falsification, concealment or disposal of, such record or document.

(7) A person who commits an offence under subsection (6) is liable—

(a) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(8) A person is not excused from complying with subsection (4) or (5) only on the ground that to do so might tend to incriminate him.

255. Use of evidence received for purposes of market misconduct proceedings

(1) Notwithstanding any other provisions of this Ordinance, evidence given by any person at or for the purposes of any proceedings instituted under section 252 (including any material, record or document received by the Tribunal from the person or produced to the Tribunal by the person under section 253, and any record or document or information given, provided, produced or disclosed to the Tribunal by the person under section 254) shall be admissible in evidence for all the purposes of this Part (including any proceedings (civil or criminal) instituted under or pursuant to this Part) but, subject to subsection (2), shall not be admissible in evidence against that person for any other purposes in any proceedings (civil or criminal) in a court of law brought by or against him.

(2) The evidence given by any person at or for the purposes of any proceedings instituted under section 252 as referred to in subsection (1) shall be admissible in evidence against that person—

(a) in civil proceedings instituted under or pursuant to Part XI;

(b) in proceedings instituted under section 305;

(c) in civil proceedings in a court of law arising out of the giving of evidence at or for the purposes of the proceedings instituted under section 252;

(d) in criminal proceedings where the person is charged with an offence under section 219(2)(a), or under Part V of the Crimes Ordinance (Cap. 200), or for perjury,

in respect of answers given by that person to questions put to him at or for the purposes of the proceedings instituted under section 252.

256. Privileged information

Nothing in this Part and Schedule 9 requires an authorized financial institution, acting as the banker or financial adviser of a person whose conduct is the subject, whether wholly or in part, of any proceedings instituted under section 252, to disclose information as to the affairs of any of its customers other than that person.

257. Orders, etc. of Tribunal

(1) Subject to subsection (3), the Tribunal may at the conclusion of any proceedings instituted under section 252 make one or more of the following orders in respect of a person identified as having engaged in market misconduct pursuant to section 252(3)(b)—

(a) an order that the person shall not, without the leave of the Court of First Instance, be or continue to be a director, liquidator, or receiver or manager of the property or business, of a listed corporation or any other specified corporation or in any way, whether directly or indirectly, be concerned or take part in the management of a listed corporation or any other specified corporation for the period (not exceeding 5 years) specified in the order;

(b) an order that the person shall not, without the leave of the Court of First Instance, in Hong Kong, directly or indirectly, in any way acquire, dispose of or otherwise deal in any securities, futures contract or leveraged foreign exchange contract, or an interest in any securities, futures contract, leveraged foreign exchange

contract or collective investment scheme for the period (not exceeding 5 years) specified in the order;

(c) an order that the person shall not again perpetrate any conduct which constitutes such market misconduct as is specified in the order (whether the same as the market misconduct in question or not);

(d) an order that the person pay to the Government an amount not exceeding the amount of any profit gained or loss avoided by the person as a result of the market misconduct in question;

(e) without prejudice to any power of the Tribunal under section 260, an order that the person pay to the Government the sum the Tribunal considers appropriate for the costs and expenses reasonably incurred by the Government in relation or incidental to the proceedings; *(Amended 9 of 2012 s. 22)*

(f) without prejudice to any power of the Tribunal under section 260, an order that the person pay to the Commission the sum the Tribunal considers appropriate for the costs and expenses reasonably incurred by the Commission, whether in relation or incidental to—

(i) the proceedings;

(ii) any investigation of the person's conduct or affairs carried out before the proceedings were instituted; or

(iii) any investigation of the person's conduct or affairs carried out for the purposes of the proceedings; *(Replaced 9 of 2012 s. 22)*

(fa) where the proceedings were instituted as a result of an investigation under the Accounting and Financial Reporting Council Ordinance (Cap. 588), an order that the person pay to the Accounting and Financial

Reporting Council continued under section 6 of that Ordinance the sum the Tribunal considers appropriate for the costs and expenses in relation or incidental to the investigation reasonably incurred by the Council; *(Added 18 of 2006 s. 85. Amended L.N. 66 of 2022)*

(g) an order that any body which may take disciplinary action against the person as one of its members or regulatees be recommended to take disciplinary action against the person. *(Amended L.N. 66 of 2022)*

(1A) In subsection (1)(fa), the reference to an investigation under the Accounting and Financial Reporting Council Ordinance (Cap. 588) includes an investigation under the Financial Reporting Council Ordinance (Cap. 588) as in force from time to time before the day* on which section 3 of the Financial Reporting Council (Amendment) Ordinance 2021 (41 of 2021) comes into operation. *(Added L.N. 66 of 2022)*

(2) When making any order in respect of a person under subsection (1), the Tribunal may take into account any conduct by the person which—

(a) previously resulted in the person being convicted of an offence in Hong Kong;

(b) previously resulted in the person being identified by the Tribunal—

(i) under section 252(3)(b) as having engaged in any market misconduct; or

(ii) under section 307J(1)(b) as being in breach of a disclosure requirement; or *(Replaced 9 of 2012 s. 7)*

(c) at any time before the commencement of this Part resulted in the person being identified as an insider dealer in a determination under section 16(3), or in a written report prepared and issued under section 22(1), of the repealed Securities (Insider Dealing) Ordinance.

(3) The Tribunal shall not make an order in respect of a person under subsection (1) without first giving the person a reasonable opportunity of being heard.

(4) Where the Tribunal makes an order under subsection (1)(a), the Tribunal may specify a corporation by name or by reference to a relationship with any other corporation.

(5) The Tribunal may, in relation to any person, specify any market misconduct in an order under subsection (1)(c), whether or not there is, at the time when the order is made, likelihood that the person would perpetrate any conduct which constitutes the market misconduct.

(6) Where the Tribunal makes an order under subsection (1)(e) or (f) requiring the payment of costs as costs reasonably incurred in relation or incidental to any proceedings instituted under section 252, subject to any rules made by the Chief Justice under section 269, Order 62 of the Rules of the High Court (Cap. 4 sub. leg. A) applies to the taxation of the costs.

(7) The Tribunal shall by notice in writing notify a person of an order made in respect of him under subsection (1).

(8) An order made in respect of a person under subsection (1) takes effect at the time when it is notified to the person or at the time specified in the notice, whichever is the later.

(9) Where the Tribunal makes an order under subsection (1)(b), the Commission may notify any licensed person or registered institution of the order in such manner as it considers appropriate.

(10) A person commits an offence if he fails to comply with an order made under subsection (1)(a), (b) or (c) and is liable—

(a) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(Amended E.R. 2 of 2012)

Editorial Note:

* Operation date: 1 October 2022.

258. Further orders in respect of officers of corporation

(1) Subject to subsection (3), where a corporation has been identified as having engaged in market misconduct pursuant to section 252(3)(b) and the market misconduct is directly or indirectly attributable to a breach by any person as an officer of the corporation of the duty imposed on him by section 279, the Tribunal may make one or more of the orders referred to in section 257(1)(a) to (g) in respect of the person even if the person has not been identified as having engaged in market misconduct pursuant to section 252(3)(b).

(2) When making any order in respect of a person under subsection (1), the Tribunal may take into account any conduct by the person which—

(a) previously resulted in the person being convicted of an offence in Hong Kong;

(b) previously resulted in the person being identified by the Tribunal—

(i) under section 252(3)(b) as having engaged in any market misconduct; or

(ii) under section 307J(1)(b) as being in breach of a disclosure requirement; or *(Replaced 9 of 2012 s. 8)*

(c) at any time before the commencement of this Part resulted in the person being identified as an insider dealer in a determination under section 16(3), or in a

written report prepared and issued under section 22(1), of the repealed Securities (Insider Dealing) Ordinance.

(3) The Tribunal shall not make an order in respect of a person under subsection (1) without first giving the person a reasonable opportunity of being heard.

(4) Where the Tribunal makes under subsection (1) an order referred to in section 257(1)(a), the Tribunal may specify a corporation by name or by reference to a relationship with any other corporation.

(5) Where the Tribunal, in relation to any person, makes under subsection (1) an order referred to in section 257(1)(c), the Tribunal may specify any market misconduct in the order, whether or not there is, at the time when the order is made, likelihood that the person would perpetrate any conduct which constitutes the market misconduct.

(6) Where the Tribunal makes under subsection (1) an order referred to in section 257(1)(e) or (f) requiring the payment of costs as costs reasonably incurred in relation or incidental to any proceedings instituted under section 252, subject to any rules made by the Chief Justice under section 269, Order 62 of the Rules of the High Court (Cap. 4 sub. leg. A) applies to the taxation of the costs.

(7) The Tribunal shall by notice in writing notify a person of an order made in respect of him under subsection (1).

(8) An order made in respect of a person under subsection (1) takes effect at the time when it is notified to the person or at the time specified in the notice, whichever is the later.

(9) Where the Tribunal makes under subsection (1) an order referred to in section 257(1)(b), the Commission may notify any licensed person or registered institution of the order in such manner as it considers appropriate.

(10) Where an order referred to in section 257(1)(a), (b) or (c) is made in respect of a person under subsection (1), the person commits an offence if he fails to comply with the order and is liable—

(a) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(Amended E.R. 2 of 2012)

259. Interest on moneys payable under order referred to in section 257(1)(d)

Where the Tribunal makes an order referred to in section 257(1)(d), whether under section 257(1) or 258(1), requiring the payment of money by a person, the Tribunal may also order that the payment shall carry compound interest calculated—

(a) from the date of occurrence of the market misconduct in question; and

(b) at the rate from time to time applicable to judgment debts under section 49 of the High Court Ordinance (Cap. 4) and with such rests and in such manner as the Tribunal considers appropriate.

260. Costs

(1) Subject to subsection (4), at the conclusion of any proceedings instituted under section 252 or as soon as reasonably practicable after the conclusion of the proceedings, the Tribunal may by order award to—

(a) any person whose attendance, whether as a witness or otherwise, has been necessary or required for the purposes of the proceedings;

(b) any person whose conduct is the subject, whether wholly or in part, of the proceedings,

such sum as it considers appropriate in respect of the costs reasonably incurred by the person in relation to the proceedings.

(2) Any costs awarded under this section are a charge on the general revenue.

(3) Subject to any rules made by the Chief Justice under section 269, Order 62 of the Rules of the High Court (Cap. 4 sub. leg. A) applies to the award of costs, and to the taxation of any costs awarded, by the Tribunal under this section.

(4) Subsection (1)(a) and (b) does not apply to—

(a) a person who has by virtue of section 252(4)(a), (b) or (c) been identified as having engaged in market misconduct pursuant to section 252(3)(b);

(b) a person whose conduct the Tribunal considers has caused, whether wholly or in part, the Tribunal to investigate or consider his conduct during the course of the proceedings in question;

(c) a person whom the Tribunal considers has by his conduct caused, whether wholly or in part, the institution of the proceedings.

(Amended E.R. 2 of 2012)

261. Contempt dealt with by Tribunal

(1) The Tribunal shall have the same powers as the Court of First Instance to punish for contempt.

(2) Without limiting the generality of the powers of the Tribunal under subsection (1), the Tribunal shall have the same powers as the Court of First Instance to punish for contempt, as if it were contempt of court, a person who—

(a) without reasonable excuse, commits any conduct falling within the description of section 253(2)(a), (b), (c), (d), (e) or (f); or *(Amended 9 of 2012 s. 23)*

(b) commits any conduct falling within the description of section 254(6)(a), (b), (c) or (d). *(Amended 9 of 2012 s. 23)*

(c) *(Repealed 9 of 2012 s. 23)*

(3) The Tribunal shall, in the exercise of its powers to punish for contempt under this section, adopt the same standard of proof as the Court of First Instance in the exercise of the same powers to punish for contempt.

(4) Notwithstanding anything in this section and any other provisions of this Ordinance—

(a) no power may be exercised under or pursuant to this section to determine whether to punish any person for contempt in respect of any conduct if—

(i) criminal proceedings have previously been instituted against the person under section 253(2) or 254(6) in respect of the same conduct; and *(Amended 9 of 2012 s. 23)*

(ii) (A) those criminal proceedings remain pending; or

(B) by reason of the previous institution of those criminal proceedings, no criminal proceedings may again be lawfully instituted against that person under such section in respect of the same conduct;

(b) no criminal proceedings may be instituted against any person under section 253(2) or 254(6) in respect of any conduct if— *(Amended 9 of 2012 s. 23)*

(i) any power has previously been exercised under or pursuant to this section to determine whether to punish the person for contempt in respect of the same conduct; and

(ii) (A) proceedings arising from the exercise of such power remain pending; or

(B) by reason of the previous exercise of such power, no power may again be lawfully exercised under or pursuant to this section to determine whether to punish the person for contempt in respect of the same conduct.

262. Report of Tribunal

(1) The Tribunal shall, after the conduct of any proceedings instituted under section 252, prepare a written report in respect of the proceedings, which shall contain—

(a) any of its determinations made pursuant to section 252(3) and any order made under section 257 or 258, and the reasons for making such determinations and order; and

(b) any order made under section 259 or 260, and the reasons for making such order.

(2) The Tribunal shall issue the report prepared under subsection (1)—

(a) by giving a copy of the report to the Commission; and *(Replaced 9 of 2012 s. 24)*

(b) except where the Tribunal sat in private for the whole or any part of its proceedings, by— *(Amended 9 of 2012 s. 24)*

(i) publishing the report so that copies of the report are available to the public;

(ii) giving a copy of the report, so far as reasonably practicable, to any person whose conduct was directly in question in the proceedings; and *(Amended 9 of 2012 s. 24)*

(iii)-(iv) *(Repealed 9 of 2012 s. 24)*

(v) where the Tribunal considers appropriate, giving a copy of the report to any body which may take disciplinary action against the person identified as having engaged in market misconduct pursuant to section 252(3)(b), as one of its members or regulatees. *(Amended L.N. 66 of 2022)*

(3) Where the Tribunal sat in private for the whole or any part of its proceedings, the Commission may, if the Commission is of the opinion that it is in the public interest to do so, cause the whole or any part of the report to be made available to the public or to a particular person or body in the manner it directs. *(Amended 9 of 2012 s. 24)*

(4) A person is not liable to civil or criminal proceedings for publishing a true and accurate account or a fair and accurate summary of a report of the Tribunal issued or made available under subsection (2)(b) or (3).

263. Form and proof of orders of Tribunal

(1) An order made by the Tribunal shall be recorded in writing and signed by the chairman of the Tribunal.

(2) A document purporting to be an order of the Tribunal and to be signed by the chairman of the Tribunal shall, in the absence of proof to the contrary, be regarded as an order of the Tribunal duly made, without proof of its making, or proof of signature, or proof that the person signing the order was in fact the chairman.

264. Orders of Tribunal may be registered in Court of First Instance

(1) The Court of First Instance may, on notice in writing given by the Tribunal in the manner prescribed by rules made by the Chief Justice under section 269, register an order of the Tribunal in the Court of First Instance and the order shall, on registration, become for all purposes an order of the Court of First Instance made within the jurisdiction of the Court of First Instance.

(2) Where an order is made under section 257(1)(a), or an order referred to in section 257(1)(a) is made under section 258(1), the order shall be filed by the Tribunal with the Registrar of Companies, as soon as reasonably practicable after it is made.

265. Applications for stay of execution of orders of Tribunal under section 257, 258, 259 or 260

Any person in respect of whom an order has been made under section 257, 258, 259 or 260 may apply to the Tribunal for a stay of execution of the order, whereupon the Tribunal may, where it considers appropriate, by order grant the stay, subject to such conditions as to costs, payment of money into the Tribunal or otherwise as the Tribunal considers appropriate.

Division 3—Appeals, etc.

266. Appeal to Court of Appeal

(1) Where the Tribunal has made any finding or determination for the purposes of any proceedings instituted under section 252, and the Commission, or a person identified as having engaged in market misconduct pursuant to section 252(3)(b), is dissatisfied with the finding or determination, the Commission or the person (as the case may be) may, after the Tribunal has made orders (if any) under section 257, 258, 259 or 260

for the purposes of the proceedings, appeal to the Court of Appeal against the finding or determination— *(Amended 9 of 2012 s. 25)*

(a) on a point of law; or

(b) with the leave of the Court of Appeal, on a question of fact.

(2) A person in respect of whom an order has been made under section 257, 258, 259, 260 or 265 may appeal to the Court of Appeal against the order.

267. Powers of Court of Appeal on appeal

(1) In an appeal under section 266(1), the Court of Appeal may—

(a) allow the appeal;

(b) dismiss the appeal;

(c) vary or set aside the finding or determination, and, where the finding or determination is set aside, substitute for the finding or determination any other finding or determination it considers appropriate;

(d) remit the matter in question to the Tribunal with the directions it considers appropriate, which may include a direction to the Tribunal to conduct the proceedings in question afresh for the purpose of determining any question specified by the Court of Appeal.

(2) In an appeal under section 266(2), the Court of Appeal may—

(a) confirm, vary or set aside the order appealed against; and

(b) where the order is set aside, substitute for the order any other order it considers appropriate.

(3) Where the Court of Appeal varies, or substitutes any other finding, determination or order for, a finding, determination

or order under subsection (1)(c) or (2)(a) or (b), the finding, determination or order as varied or the other finding, determination or order substituting for the finding, determination or order (as the case may be) may be—

(a) in the case of subsection (1)(c), any finding or determination (whether more or less onerous) that the Tribunal had power to make for the purposes of the proceedings in question; or

(b) in the case of subsection (2)(a) or (b), any order (whether more or less onerous) that the Tribunal had power to make in respect of the appellant,

whether or not under the same provision as that under which the finding, determination or order has been made.

(4) Where on appeal the Court of Appeal remits any matter to the Tribunal under section 267(1)(d), unless the Court of Appeal otherwise directs, members of the Tribunal disposing of the matter may be the same as, or different from, those of the Tribunal from which the appeal lies.

(5) In an appeal under section 266, the Court of Appeal may make such order as to costs as it considers appropriate.

268. No stay of execution on appeal

Without prejudice to section 265, neither the lodging of an appeal nor the filing of an application for leave to appeal under section 266 by itself operates as a stay of execution of a finding or determination or an order (as the case may be) of the Tribunal unless the Court of Appeal otherwise orders, and any stay of execution may be subject to such conditions as to costs, payment of money into the Tribunal or otherwise as the Court of Appeal considers appropriate.

269. Rules by Chief Justice

The Chief Justice may make rules—

(a) providing for the taxation of costs required to be paid under an order referred to in section 257(1)(e) or (f), whether made under section 257(1) or 258(1), and for the award of costs under section 260 and the taxation of those costs;

(b) prescribing the manner in which the Tribunal is to give notice to the Court of First Instance in respect of orders of the Tribunal pursuant to section 264;

(c) regulating the procedure for—

(i) applying for leave to appeal, and the hearing of applications for leave to appeal, under section 266;

(ii) the hearing of appeals under that section;

(d) requiring the payment of the fees specified in the rules for any matter relating to the proceedings instituted under section 252;

(e) providing for matters of procedure or other matters relating to the proceedings instituted under section 252, which are not provided for in this Part or in Schedule 9;

(f) providing for the issue or service of any document (however described) for the purposes of this Part or Schedule 9;

(g) prescribing any matter which this Part provides is, or may be, prescribed by rules made by the Chief Justice.

Division 4—Insider dealing

270. Insider dealing

(1) Insider dealing in relation to a listed corporation takes place—

(a) when a person connected with the corporation and having information which he knows is inside information in relation to the corporation— *(Amended 9 of 2012 s. 14)*

(i) deals in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives; or

(ii) counsels or procures another person to deal in such listed securities or derivatives, knowing or having reasonable cause to believe that the other person will deal in them;

(b) when a person who is contemplating or has contemplated making, whether with or without another person, a take-over offer for the corporation and who knows that the information that the offer is contemplated or is no longer contemplated is inside information in relation to the corporation— *(Amended 9 of 2012 s. 14)*

(i) deals in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives, otherwise than for the purpose of the take-over; or

(ii) counsels or procures another person to deal in such listed securities or derivatives, otherwise than for the purpose of the take-over;

(c) when a person connected with the corporation and knowing that any information is inside information in relation to the corporation, discloses the information, directly or indirectly, to another person, knowing or having reasonable cause to believe that the other person will make use of the information for the purpose of

dealing, or of counselling or procuring another person to deal, in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives;

(d) when a person who is contemplating or has contemplated making, whether with or without another person, a take-over offer for the corporation and who knows that the information that the offer is contemplated or is no longer contemplated is inside information in relation to the corporation, discloses the information, directly or indirectly, to another person, knowing or having reasonable cause to believe that the other person will make use of the information for the purpose of dealing, or of counselling or procuring another person to deal, in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives;

(e) when a person who has information which he knows is inside information in relation to the corporation and which he received, directly or indirectly, from a person whom he knows is connected with the corporation and whom he knows or has reasonable cause to believe held the information as a result of being connected with the corporation— *(Amended 9 of 2012 s. 14)*

(i) deals in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives; or

(ii) counsels or procures another person to deal in such listed securities or derivatives; or

(f) when a person having received, directly or indirectly, from a person whom he knows or has reasonable cause to believe is contemplating or is no longer contemplating

making a take-over offer for the corporation, information to that effect which he knows is inside information in relation to the corporation— *(Amended 9 of 2012 s. 14)*

(i) deals in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives; or

(ii) counsels or procures another person to deal in such listed securities or derivatives.

(2) Insider dealing in relation to a listed corporation also takes place when a person who knowingly has inside information in relation to the corporation in any of the circumstances described in subsection (1)— *(Amended 9 of 2012 s. 14)*

(a) counsels or procures another person to deal in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives, knowing or having reasonable cause to believe that the other person will deal in such listed securities or derivatives outside Hong Kong on a stock market other than a recognized stock market; or

(b) discloses the inside information to another person knowing or having reasonable cause to believe that the other person or some other person will make use of the inside information for the purpose of dealing, or of counselling or procuring any other person to deal, in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives, outside Hong Kong on a stock market other than a recognized stock market.

(Amended 9 of 2012 s. 14)

271. Insider dealing—certain persons not to be regarded as having engaged in market misconduct

(1) A person shall not be regarded as having engaged in market misconduct by reason of an insider dealing taking place through his dealing in or counselling or procuring another person to deal in listed securities or derivatives if he establishes that he dealt in or counselled or procured the other person to deal in the listed securities or derivatives in question (as the case may be)—

(a) for the sole purpose of acquiring shares required for his being qualified as a director or intending director of a corporation;

(b) in the performance in good faith of an underwriting agreement for the listed securities or derivatives in question; or

(c) in the performance in good faith of his functions as a liquidator, receiver or trustee in bankruptcy.

(2) A corporation shall not be regarded as having engaged in market misconduct by reason of an insider dealing taking place through its dealing in or counselling or procuring another person to deal in listed securities or derivatives if it establishes that—

(a) although one or more of its directors or employees had the inside information in relation to the corporation the listed securities of which were, or the derivatives of the listed securities of which were, the listed securities or derivatives in question, each person who took the decision for it to deal in or counsel or procure the other person to deal in such listed securities or derivatives (as the case may be) did not have the inside information up to (and including) the time when it dealt in or

counselled or procured the other person to deal in such listed securities or derivatives (as the case may be);

(b) arrangements then existed to secure that—

(i) the inside information was, up to (and including) the time when it dealt in or counselled or procured the other person to deal in such listed securities or derivatives (as the case may be), not communicated to any person who took the decision; and

(ii) none of its directors or employees who had the inside information gave advice concerning the decision to any person who took the decision at any time before it dealt in or counselled or procured the other person to deal in such listed securities or derivatives (as the case may be); and

(c) the inside information was in fact not so communicated to any person who took the decision and none of its directors or employees who had the inside information in fact so gave the advice to any person who took the decision. *(Amended 9 of 2012 s. 14)*

(3) A person shall not be regarded as having engaged in market misconduct by reason of an insider dealing taking place through his dealing in or counselling or procuring another person to deal in listed securities or derivatives or his disclosure of information if he establishes that the purpose for which he dealt in or counselled or procured the other person to deal in the listed securities or derivatives in question or disclosed the information in question (as the case may be) was not, or, where there was more than one purpose, the purposes for which he dealt in or counselled or procured the other person to deal in the listed securities or derivatives in question or disclosed the information in question (as the case may be) did not include, the purpose of securing or increasing a profit or avoiding or reducing a loss, whether for himself

or another, by using inside information. *(Amended 9 of 2012 s. 14)*

(4) A person shall not be regarded as having engaged in market misconduct by reason of an insider dealing taking place through his dealing in or counselling or procuring another person to deal in listed securities or derivatives if he establishes that—

(a) he dealt in or counselled or procured the other person to deal in the listed securities or derivatives in question (as the case may be) as agent;

(b) he did not select or advise on the selection of such listed securities or derivatives; and

(c) he—

(i) did not know that the person for whom he acted as agent was a person connected with the corporation the listed securities of which were, or the derivatives of the listed securities of which were, such listed securities or derivatives; or

(ii) did not know that the person for whom he acted as agent had the inside information in question. *(Amended 9 of 2012 s. 14)*

(5) A person shall not be regarded as having engaged in market misconduct by reason of an insider dealing taking place through his dealing in or counselling or procuring another person to deal in listed securities or derivatives if he establishes that—

(a) at the time when he dealt in or counselled or procured the other person to deal in the listed securities or derivatives in question, the dealing in question was not required to be recorded on a recognized stock market or to be notified to a recognized exchange company under its rules; and

(b) (i) where the insider dealing took place through his dealing in listed securities or derivatives—

(A) he and the other party to the dealing in question entered into the dealing directly with each other; and

(B) at the time when he entered into the dealing, the other party to the dealing knew, or ought reasonably to have known, of the inside information in question; or

(ii) where the insider dealing took place through his counselling or procuring another person to deal in listed securities or derivatives—

(A) he counselled or procured the other party to the dealing in question to enter into the dealing directly with him; and

(B) at the time when he counselled or procured the other party to enter into the dealing, the other party knew, or ought reasonably to have known, of the inside information in question. *(Amended 9 of 2012 s. 14)*

(6) A person shall not be regarded as having engaged in market misconduct by reason of an insider dealing taking place through his dealing in listed securities or derivatives if he establishes that—

(a) he entered into the dealing in question, otherwise than as a person who has counselled or procured the other party to the dealing to deal in listed securities or their derivatives; and

(b) at the time when he entered into the dealing, the other party to the dealing knew, or ought reasonably to have known, that he was a person connected with the corporation the listed securities of which were, or the

derivatives of the listed securities of which were, the listed securities or derivatives in question.

(7) A person shall not be regarded as having engaged in market misconduct by reason of an insider dealing taking place through his counselling or procuring another person to deal in listed securities or derivatives if he establishes that—

(a) the other person did not counsel or procure the other party to the dealing in question to deal in listed securities or their derivatives; and

(b) at the time when he counselled or procured the other person to deal in the listed securities or derivatives in question, the other party to the dealing in question knew, or ought reasonably to have known, that the other person was a person connected with the corporation the listed securities of which were, or the derivatives of the listed securities of which were, such listed securities or derivatives.

(8) A person shall not be regarded as having engaged in market misconduct by reason of an insider dealing taking place through his dealing in or counselling or procuring another person to deal in listed securities or derivatives if he establishes that—

(a) he acted—

(i) in connection with any dealing in listed securities or their derivatives (whether by himself or another person) which was under consideration or was the subject of negotiation, or in the course of a series of such dealings; and

(ii) with a view to facilitating the accomplishment of the dealing or the series of dealings; and

(b) the inside information in question was market information arising directly out of his involvement in the

dealing or the series of dealings. *(Amended 9 of 2012 s. 14)*

(9) A person shall not be regarded as having engaged in market misconduct by reason of an insider dealing taking place through his dealing in or counselling or procuring another person to deal in listed securities or derivatives if he establishes that the dealing in question is a market contract.

(10) For the purposes of subsection (8), ***market information*** (市場消息) means information consisting of one or more of the following facts—

(a) that there has been or is to be any dealing in listed securities or derivatives of listed securities of a particular kind, or that any such dealing is under consideration or is the subject of negotiation;

(b) that there has not been or is not to be any dealing in listed securities or derivatives of listed securities of a particular kind;

(c) the quantity of listed securities or derivatives of listed securities in which there is or is to be any dealing, or in which any dealing is under consideration or is the subject of negotiation;

(d) the price (or range of prices) at which listed securities or derivatives of listed securities have been or are to be dealt in, or the price (or range of prices) at which listed securities or derivatives of listed securities in which any dealing is under consideration or is the subject of negotiation may be dealt in;

(e) the identity of the persons involved or likely to be involved in any capacity in any dealing in listed securities or derivatives of listed securities.

272. Insider dealing—certain trustees and personal representatives

not to be regarded as having engaged in market misconduct

A person who is a trustee or personal representative shall not be regarded as having engaged in market misconduct by reason of an insider dealing taking place through his dealing in or counselling or procuring another person to deal in listed securities or derivatives if he establishes that—

(a) he acted on advice obtained in good faith from another person;

(b) that other person appeared to him to be an appropriate person from whom to seek the advice; and

(c) it did not appear to him that, had that other person dealt in the listed securities or derivatives in question, an insider dealing would take place.

273. Insider dealing—certain persons exercising right to subscribe for or acquire securities or derivatives not to be regarded as having engaged in market misconduct

A person shall not be regarded as having engaged in market misconduct by reason of an insider dealing taking place through his dealing in listed securities or derivatives if he establishes that—

(a) he dealt in the listed securities or derivatives in question by way of his exercise of a right to subscribe for or otherwise acquire such listed securities or derivatives; and

(b) the right was granted to him or was derived from securities or their derivatives that were held by him before he became aware of any inside information in relation to the corporation the listed securities of which were, or the derivatives of the listed securities of which were, such listed securities or derivatives. *(Amended 9 of 2012 s. 14)*

Division 5—Other market misconduct

274. False trading

(1) False trading takes place when, in Hong Kong or elsewhere, a person does anything or causes anything to be done, with the intention that, or being reckless as to whether, it has, or is likely to have, the effect of creating a false or misleading appearance—

(a) of active trading in securities or futures contracts traded on a relevant recognized market or by means of authorized automated trading services; or

(b) with respect to the market for, or the price for dealings in, securities or futures contracts traded on a relevant recognized market or by means of authorized automated trading services.

(2) False trading takes place when, in Hong Kong, a person does anything or causes anything to be done, with the intention that, or being reckless as to whether, it has, or is likely to have, the effect of creating a false or misleading appearance—

(a) of active trading in securities or futures contracts traded on a relevant overseas market; or

(b) with respect to the market for, or the price for dealings in, securities or futures contracts traded on a relevant overseas market.

(3) False trading takes place when, in Hong Kong or elsewhere, a person takes part in, is concerned in, or carries out, directly or indirectly, one or more transactions (whether or not any of them is a dealing in securities or futures contracts), with the intention that, or being reckless as to whether, it or they has or have, or is or are likely to have, the effect of creating an artificial price, or maintaining at a level that is artificial

(whether or not it was previously artificial) a price, for dealings in securities or futures contracts traded on a relevant recognized market or by means of authorized automated trading services.

(4) False trading takes place when, in Hong Kong, a person takes part in, is concerned in, or carries out, directly or indirectly, one or more transactions (whether or not any of them is a dealing in securities or futures contracts), with the intention that, or being reckless as to whether, it or they has or have, or is or are likely to have, the effect of creating an artificial price, or maintaining at a level that is artificial (whether or not it was previously artificial) a price, for dealings in securities or futures contracts traded on a relevant overseas market.

(5) Without limiting the general nature of the conduct which constitutes false trading under subsection (1) or (2), where a person—

(a) enters into or carries out, directly or indirectly, any transaction of sale or purchase, or any transaction which purports to be a transaction of sale or purchase, of securities that does not involve a change in the beneficial ownership of them;

(b) offers to sell securities at a price that is substantially the same as the price at which he has made or proposes to make, or knows that an associate of his has made or proposes to make, an offer to purchase the same or substantially the same number of them; or

(c) offers to purchase securities at a price that is substantially the same as the price at which he has made or proposes to make, or knows that an associate of his has made or proposes to make, an offer to sell the same or substantially the same number of them,

then, unless the transaction in question is an off-market transaction, the person shall, for the purposes of subsections (1) and (2), be regarded as doing something or causing something to be done, with the intention that, or being reckless as to whether, it has, or is likely to have, the effect of creating a false or misleading appearance—

(i) where the securities are traded on a relevant recognized market or by means of authorized automated trading services, of active trading in securities so traded or with respect to the market for, or the price for dealings in, securities so traded; or

(ii) where the securities are traded on a relevant overseas market, of active trading in securities so traded or with respect to the market for, or the price for dealings in, securities so traded.

(6) A person shall not be regarded as having engaged in market misconduct by reason of false trading taking place through the commission of an act referred to in subsection (5)(a), (b) or (c) if he establishes that the purpose for which he committed the act was not, or, where there was more than one purpose, the purposes for which he committed the act did not include, the purpose of creating a false or misleading appearance of active trading in securities, or with respect to the market for, or the price for dealings in, securities, referred to in subsection (1) or (2) (as the case may be).

(7) In subsection (5), ***off-market transaction*** (場外交易) means a transaction which—

(a) in the case of securities traded on a relevant recognized market, is not required to be recorded on the relevant recognized market, or to be notified, under the rules of the person by whom the relevant recognized market is operated, to such person;

(b) in the case of securities traded by means of authorized automated trading services, is not required to be recorded by means of authorized automated trading services, or to be notified, under the rules of the person by whom the authorized automated trading services are operated, to such person; or

(c) in the case of securities traded on a relevant overseas market, is not required to be recorded on the relevant overseas market, or to be notified, under the rules of the person by whom the relevant overseas market is operated, to such person.

(8) In this section—

(a) a reference to a transaction of sale or purchase, in relation to securities, includes an offer to sell or purchase securities and an invitation (however expressed) that expressly or impliedly invites a person to offer to sell or purchase securities; and

(b) a reference to entering into or carrying out a transaction of sale or purchase shall, in the case of an offer or an invitation referred to in paragraph (a), be construed as a reference to making the offer or the invitation (as the case may be).

275. Price rigging

(1) Price rigging takes place when, in Hong Kong or elsewhere, a person—

(a) enters into or carries out, directly or indirectly, any transaction of sale or purchase of securities that does not involve a change in the beneficial ownership of those securities, which has the effect of maintaining, increasing, reducing, stabilizing, or causing fluctuations in, the price of securities traded on a relevant recognized

market or by means of authorized automated trading services; or

(b) enters into or carries out, directly or indirectly, any fictitious or artificial transaction or device, with the intention that, or being reckless as to whether, it has the effect of maintaining, increasing, reducing, stabilizing, or causing fluctuations in, the price of securities, or the price for dealings in futures contracts, that are traded on a relevant recognized market or by means of authorized automated trading services.

(2) Price rigging takes place when, in Hong Kong, a person—

(a) enters into or carries out, directly or indirectly, any transaction of sale or purchase of securities that does not involve a change in the beneficial ownership of those securities, which has the effect of maintaining, increasing, reducing, stabilizing, or causing fluctuations in, the price of securities traded on a relevant overseas market; or

(b) enters into or carries out, directly or indirectly, any fictitious or artificial transaction or device, with the intention that, or being reckless as to whether, it has the effect of maintaining, increasing, reducing, stabilizing, or causing fluctuations in, the price of securities, or the price for dealings in futures contracts, that are traded on a relevant overseas market.

(3) For the purposes of subsections (1)(b) and (2)(b), the fact that a transaction is, or at any time was, intended to have effect according to its terms is not conclusive in determining whether the transaction is, or was, not fictitious or artificial.

(4) A person shall not be regarded as having engaged in market misconduct by reason of price rigging taking place through any transaction of sale or purchase of securities referred to in

subsection (1)(a) or (2)(a) if he establishes that the purpose for which the securities were sold or purchased was not, or, where there was more than one purpose, the purposes for which the securities were sold or purchased did not include, the purpose of creating a false or misleading appearance with respect to the price of securities.

(5) In this section—

(a) a reference to a transaction of sale or purchase, in relation to securities, includes an offer to sell or purchase securities and an invitation (however expressed) that expressly or impliedly invites a person to offer to sell or purchase securities; and

(b) a reference to entering into or carrying out a transaction of sale or purchase shall, in the case of an offer or an invitation referred to in paragraph (a), be construed as a reference to making the offer or the invitation (as the case may be).

276. Disclosure of information about prohibited transactions

(1) Disclosure of information about prohibited transactions takes place when a person discloses, circulates or disseminates, or authorizes or is concerned in the disclosure, circulation or dissemination of, information to the effect that the price of securities of a corporation, or the price for dealings in futures contracts, that are traded on a relevant recognized market or by means of authorized automated trading services will be maintained, increased, reduced or stabilized, or is likely to be maintained, increased, reduced or stabilized, because of a prohibited transaction relating to securities of either the corporation or a related corporation of the corporation or to the futures contracts (as the case may be), if he, or an associate of his—

(a) has entered into or carried out, directly or indirectly, the prohibited transaction; or

(b) has received, or expects to receive, directly or indirectly, a benefit as a result of the disclosure, circulation or dissemination of the information.

(2) A person shall not be regarded as having engaged in market misconduct by reason of disclosure of information about prohibited transactions on the basis that he, or an associate of his, received, or expected to receive, directly or indirectly, a benefit referred to in subsection (1)(b), if he establishes that—

(a) the benefit which he or the associate of his (as the case may be) received, or expected to receive, was not from a person who has entered into or carried out, directly or indirectly, the prohibited transaction in question, or an associate of such person; or

(b) the benefit which he or the associate of his (as the case may be) received, or expected to receive, was from a person who has entered into or carried out, directly or indirectly, the prohibited transaction in question, or an associate of such person, but up to (and including) the time of the disclosure, circulation or dissemination of the information he has acted in good faith.

(3) In this section—

(a) a reference to a prohibited transaction means any conduct or transaction which constitutes market misconduct or a contravention of any of the provisions of Divisions 2 to 4 of Part XIV; and

(b) a reference to any person having entered into or carried out the prohibited transaction shall be construed accordingly.

277. Disclosure of false or misleading information inducing

transactions

(1) Disclosure of false or misleading information inducing transactions takes place when, in Hong Kong or elsewhere, a person discloses, circulates or disseminates, or authorizes or is concerned in the disclosure, circulation or dissemination of, information that is likely—

(a) to induce another person to subscribe for securities, or deal in futures contracts, in Hong Kong;

(b) to induce the sale or purchase in Hong Kong of securities by another person; or

(c) to maintain, increase, reduce or stabilize the price of securities, or the price for dealings in futures contracts, in Hong Kong,

if—

(i) the information is false or misleading as to a material fact, or is false or misleading through the omission of a material fact; and

(ii) the person knows that, or is reckless or negligent as to whether, the information is false or misleading as to a material fact, or is false or misleading through the omission of a material fact.

(2) A person shall not be regarded as having engaged in market misconduct by reason of disclosure of false or misleading information inducing transactions if the disclosure has taken place by reason only of the issue or reproduction of the information and he establishes that—

(a) the issue or reproduction of the information took place in the ordinary course of a business (whether or not carried on by him), the principal purpose of which was issuing or reproducing materials provided by others;

(b) the contents of the information were not, wholly or partly, devised—

(i) where the business was carried on by him, by himself or any officer, employee or agent of his; or

(ii) where the business was not carried on by him, by himself;

(c) for the purposes of the issue or reproduction—

(i) where the business was carried on by him, he or any officer, employee or agent of his; or

(ii) where the business was not carried on by him, he,

did not select, add to, modify or otherwise exercise control over the contents of the information; and

(d) at the time of the issue or reproduction, he did not know that the information was false or misleading as to a material fact or was false or misleading through the omission of a material fact.

(3) A person shall not be regarded as having engaged in market misconduct by reason of disclosure of false or misleading information inducing transactions if the disclosure has taken place by reason only of the re-transmission of the information and he establishes that—

(a) the re-transmission of the information took place in the ordinary course of a business (whether or not carried on by him), the normal conduct of which involved the re-transmission of information to other persons within an information system or from one information system to another information system (wherever situated), whether directly or by facilitating the establishment of links between such other persons and third parties;

(b) the contents of the information were not, wholly or partly, devised—

(i) where the business was carried on by him, by himself or any officer, employee or agent of his; or

(ii) where the business was not carried on by him, by himself;

(c) for the purposes of the re-transmission—

(i) where the business was carried on by him, he or any officer, employee or agent of his; or

(ii) where the business was not carried on by him, he,

did not select, add to, modify or otherwise exercise control over the contents of the information;

(d) the re-transmission of the information was accompanied by a message to the effect, or was effected following acknowledgment by the persons to whom it was re-transmitted of their understanding, that—

(i) where the business was carried on by him, he or any officer, employee or agent of his; or

(ii) where the business was not carried on by him, the person who carried on the business or any officer, employee or agent of that person,

did not devise the contents of the information, and neither took responsibility for it nor endorsed its accuracy; and

(e) at the time of the re-transmission—

(i) he did not know that the information was false or misleading as to a material fact or was false or misleading through the omission of a material fact; or

(ii) he knew that the information was false or misleading as to a material fact or was false or

misleading through the omission of a material fact, but—

(A) where the business was carried on by him, in the circumstances of the case he could not reasonably be expected to prevent the re-transmission; or

(B) where the business was not carried on by him, in the circumstances of the case he has taken all reasonable steps to bring the fact that the information was so false or misleading to the attention of a person in a position to take steps to cause the re-transmission to be prevented (even if the re-transmission in fact took place).

(4) A person shall not be regarded as having engaged in market misconduct by reason of disclosure of false or misleading information inducing transactions if the disclosure has taken place by reason only of the live broadcast of the information and he establishes that—

(a) the broadcast of the information took place in the ordinary course of the business of a broadcaster (whether or not he was such broadcaster);

(b) the contents of the information were not, wholly or partly, devised—

(i) where he was the broadcaster, by himself or any officer, employee or agent of his; or

(ii) where he was not the broadcaster, by himself;

(c) for the purposes of the broadcast—

(i) where he was the broadcaster, he or any officer, employee or agent of his; or

(ii) where he was not the broadcaster, he,

did not select, add to, modify or otherwise exercise control over the contents of the information;

(d) in relation to the broadcast—

(i) where he was the broadcaster, he; or

(ii) where he was not the broadcaster, he believed and had reasonable grounds to believe that the broadcaster,

acted in accordance with the terms and conditions of the licence (if any) by which he or the broadcaster (as the case may be) became entitled to broadcast as a broadcaster and with any code of practice or guidelines (however described) issued under or pursuant to the Telecommunications Ordinance (Cap. 106) or the Broadcasting Ordinance (Cap. 562) and applicable to him or the broadcaster (as the case may be) as a broadcaster; and

(e) at the time of the broadcast—

(i) he did not know that the information was false or misleading as to a material fact or was false or misleading through the omission of a material fact; or

(ii) he knew that the information was false or misleading as to a material fact or was false or misleading through the omission of a material fact, but—

(A) where he was the broadcaster, in the circumstances of the case he could not reasonably be expected to prevent the broadcast; or

(B) where he was not the broadcaster, in the circumstances of the case he has taken all

reasonable steps to bring the fact that the information was so false or misleading to the attention of a person in a position to take steps to cause the broadcast to be prevented (even if the broadcast in fact took place).

(5) In this section, ***issue*** (發出), in relation to any material (including any information), includes publishing, circulating, distributing or otherwise disseminating the material or the contents thereof, whether

(a) by any visit in person;

(b) in a newspaper, magazine, journal or other publication;

(c) by the display of posters or notices;

(d) by means of circulars, brochures, pamphlets or handbills;

(e) by an exhibition of photographs or cinematograph films;

(f) by way of sound or television broadcasting;

(g) by any information system or other electronic device; or

(h) by any other means, whether mechanically, electronically, magnetically, optically, manually or by any other medium, or by way of production or transmission of light, image or sound or any other medium,

and also includes causing or authorizing the material to be issued.

278. Stock market manipulation

(1) Stock market manipulation takes place when, in Hong Kong or elsewhere—

(a) a person enters into or carries out, directly or indirectly, 2 or more transactions in securities of a corporation that by themselves or in conjunction with any other

transaction increase, or are likely to increase, the price of any securities traded on a relevant recognized market or by means of authorized automated trading services, with the intention of inducing another person to purchase or subscribe for, or to refrain from selling, securities of the corporation or of a related corporation of the corporation;

(b) a person enters into or carries out, directly or indirectly, 2 or more transactions in securities of a corporation that by themselves or in conjunction with any other transaction reduce, or are likely to reduce, the price of any securities traded on a relevant recognized market or by means of authorized automated trading services, with the intention of inducing another person to sell, or to refrain from purchasing, securities of the corporation or of a related corporation of the corporation; or

(c) a person enters into or carries out, directly or indirectly, 2 or more transactions in securities of a corporation that by themselves or in conjunction with any other transaction maintain or stabilize, or are likely to maintain or stabilize, the price of any securities traded on a relevant recognized market or by means of authorized automated trading services, with the intention of inducing another person to sell, purchase or subscribe for, or to refrain from selling, purchasing or subscribing for, securities of the corporation or of a related corporation of the corporation.

(2) Stock market manipulation takes place when, in Hong Kong—

(a) a person enters into or carries out, directly or indirectly, 2 or more transactions in securities of a corporation that by themselves or in conjunction with any other transaction increase, or are likely to increase, the

price of any securities traded on a relevant overseas market, with the intention of inducing another person to purchase or subscribe for, or to refrain from selling, securities of the corporation or of a related corporation of the corporation;

(b) a person enters into or carries out, directly or indirectly, 2 or more transactions in securities of a corporation that by themselves or in conjunction with any other transaction reduce, or are likely to reduce, the price of any securities traded on a relevant overseas market, with the intention of inducing another person to sell, or to refrain from purchasing, securities of the corporation or of a related corporation of the corporation; or

(c) a person enters into or carries out, directly or indirectly, 2 or more transactions in securities of a corporation that by themselves or in conjunction with any other transaction maintain or stabilize, or are likely to maintain or stabilize, the price of any securities traded on a relevant overseas market, with the intention of inducing another person to sell, purchase or subscribe for, or to refrain from selling, purchasing or subscribing for, securities of the corporation or of a related corporation of the corporation.

(3) In this section—

(a) a reference to a transaction includes an offer and an invitation (however expressed); and

(b) a reference to entering into or carrying out a transaction shall, in the case of an offer or an invitation referred to in paragraph (a), be construed as a reference to making the offer or the invitation (as the case may be).

Division 6—Miscellaneous

279. Duty of officers of corporations

Every officer of a corporation shall take all reasonable measures from time to time to ensure that proper safeguards exist to prevent the corporation from acting in a way which would result in the corporation perpetrating any conduct which constitutes market misconduct.

280. Transactions relating to market misconduct not void or voidable

A transaction is not void or voidable by reason only that any market misconduct has taken place in relation to or as a result of it.

281. Civil liability for market misconduct

(1) Subject to subsection (2), a person who has committed a relevant act in relation to market misconduct shall, whether or not he also incurs any other liability (whether under this Part or otherwise), be liable to pay compensation by way of damages to any other person for any pecuniary loss sustained by the other person as a result of the market misconduct, whether or not the loss arises from the other person having entered into a transaction or dealing at a price affected by the market misconduct.

(2) No person shall be liable to pay compensation under subsection (1) unless it is fair, just and reasonable in the circumstances of the case that he should be so liable.

(3) For the purposes of this section, a person shall, subject to subsection (4), be regarded as having committed a relevant act in relation to market misconduct if—

(a) he has perpetrated any conduct which constitutes market misconduct;

(b) (i) another person which is a corporation has committed a relevant act in relation to market misconduct under paragraph (a); and

(ii) the market misconduct occurred with his consent or connivance as an officer of the corporation; or

(c) (i) any other person has committed a relevant act in relation to market misconduct under paragraph (a); and

(ii) he assisted or connived with that other person in the perpetration of any conduct which constitutes the market misconduct, with the knowledge that such conduct constitutes or might constitute market misconduct.

(4) For the purposes of this section, where it is provided under any provision of this Part that a person shall not by reason of any market misconduct be regarded as having engaged in market misconduct, the person shall not, in relation to that market misconduct, be regarded as having committed a relevant act in relation to market misconduct.

(5) A person may bring an action under subsection (1) even though the person against whom the action is brought—

(a) is not a person whose conduct has been the subject, whether wholly or in part, of any proceedings instituted under section 252 in respect of the market misconduct from which the pecuniary loss of the person bringing the action is alleged to result; or

(b) has not been identified by the Tribunal pursuant to section 252(3)(b) as having engaged in the market misconduct.

(6) For the avoidance of doubt, where a court has jurisdiction to determine an action brought under subsection (1), it may, where it is, apart from this section, within its jurisdiction to

entertain an application for an injunction, grant an injunction in addition to, or in substitution for, damages, on such terms and conditions as it considers appropriate.

(7) Without prejudice to section 62 of the Evidence Ordinance (Cap. 8), in an action brought under subsection (1)—

(a) the fact that there is a determination by the Tribunal pursuant to section 252(3)(a) that market misconduct has taken place;

(b) the fact that there is a determination by the Tribunal pursuant to section 252(3)(b) identifying a person (whether or not a party to the action) as having engaged in market misconduct,

shall, in so far the determination is still subsisting, be admissible in evidence for the purpose of proving, where to do so is relevant to any issue in the action—

(i) in the case of a determination referred to in paragraph (a), that the market misconduct has taken place; or

(ii) in the case of a determination referred to in paragraph (b), that the person has engaged in market misconduct.

(8) In an action brought under subsection (1), where the fact that there is a determination referred to in subsection (7)(a) or (b) is admissible in evidence under subsection (7)—

(a) then—

(i) in the case of a determination referred to in subsection (7)(a), the market misconduct that is the subject of the determination shall, unless the contrary is proved, be taken to have taken place; or

(ii) in the case of a determination referred to in subsection (7)(b), the person that is the subject of the determination shall, unless the contrary

is proved, be taken to have engaged in market misconduct; and

(b) without prejudice to the reception of any other admissible evidence as evidence of the determination or for the purpose of identifying the facts on which the determination was based, the contents of a report of the Tribunal containing the determination and published under section 262(2)(b)(i), or the contents of a copy of a report of the Tribunal containing the determination and made available under subsection (9), shall also be admissible in evidence for such purpose.

(9) Where in an action brought under subsection (1)—

(a) the fact that there is a determination referred to in subsection (7)(a) or (b) is admissible in evidence under subsection (7); and

(b) a report of the Tribunal containing the determination has not been published under section 262(2)(b)(i),

the court having jurisdiction to determine the action may, where it considers appropriate, require that a copy of the report be made available to the court to enable it to be used for the purposes of subsection (8)(b), whereupon—

(i) the Tribunal shall cause a copy of the report to be made available to the court to enable it to be used for the purposes of subsection (8)(b); and

(ii) the contents of the report shall be admissible for the purpose specified in subsection (8)(b).

(10) In this section, a reference to a transaction includes an offer and an invitation (however expressed).

(11) Nothing in this section affects, limits or diminishes any rights conferred on a person, or any liabilities a person may incur, under the common law or any other enactment.

282. Conduct not to constitute market misconduct

(1) Notwithstanding anything in this Part, a person shall not be regarded as having engaged in market misconduct by reason of any market misconduct under this Part if he establishes that the conduct in question is, according to the rules made under subsection (2), not to be regarded as constituting market misconduct.

(2) For the purposes of subsection (1), the Commission, after consultation with the Financial Secretary, may, where it considers it is in the public interest to do so, make rules to prescribe the circumstances in which any conduct that would otherwise constitute market misconduct under this Part shall not be regarded as constituting market misconduct.

(3) Notwithstanding anything in this Part, where—

(a) it is alleged that a person has engaged in market misconduct under section 274, 275 or 278 by reason of any conduct; and

(b) it is so alleged on the basis that the conduct was carried out not in respect of securities or futures contracts traded on a relevant recognized market or by means of authorized automated trading services, but in respect of securities or futures contracts traded on a relevant overseas market,

the person shall not be regarded as having engaged in the market misconduct unless it is proved that in any place in which such relevant overseas market is situated the conduct would have been unlawful had it been carried out there.

283. No further proceedings after Part XIV criminal proceedings

Notwithstanding anything in this Part, no proceedings may be instituted against any person under section 252 in respect of any

conduct if—

(a) criminal proceedings have previously been instituted against the person under Part XIV in respect of the same conduct; and

(b) (i) those criminal proceedings remain pending; or

(ii) by reason of the previous institution of those criminal proceedings, no criminal proceedings may again be lawfully instituted against that person under Part XIV in respect of the same conduct.

284. Market misconduct regarded as contravention of provisions of this Part

Where a person is by reference to any conduct identified in a determination made pursuant to section 252(3)(b) as having engaged in market misconduct, the person shall be regarded as having, by reason of the conduct, contravened the provisions of this Part, and any reference in this Ordinance to contravention of a provision of this Ordinance (however expressed) shall have application accordingly.

Part XIV

Offences Relating to Dealings in Securities and Futures Contracts, etc.

(Format changes—E.R. 2 of 2012)

Division 1—Interpretation

285. Interpretation of Part XIV

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

associate (有聯繫者), in relation to a person, means—

(a) the person's spouse or reputed spouse, any person cohabiting with the person as a spouse, the person's brother, sister, parent, step-parent, child (natural or adopted) or step-child;

(b) any corporation of which the person is a director;

(c) any employee or partner of the person;

(d) where the person is a corporation, each of its directors and its related corporations and each director or employee of any of its related corporations;

(e) without limiting the circumstances in which paragraphs (a) to (d) apply, in circumstances concerning the securities of or other interest in a corporation, or rights arising out of the holding of such securities or such interest, any other person with whom the person has an agreement or arrangement—

(i) with respect to the acquisition, holding or disposal of such securities or such interest; or

(ii) under which they undertake to act together in exercising their voting power at general meetings of the corporation;

controller (控制人), in relation to a corporation, means any person—

(a) in accordance with whose directions or instructions the directors of the corporation or of another corporation of which it is a subsidiary are accustomed or obliged to act; or

(b) who, either alone or with any of his associates, is entitled to exercise or control the exercise of more than 33% of the voting power at general meetings of the corporation or of another corporation of which it is a subsidiary;

relevant overseas market (有關境外市場)—

(a) in relation to securities, means a stock market outside Hong Kong; or

(b) in relation to futures contracts, means a futures market outside Hong Kong;

relevant recognized market (有關認可市場)—

(a) in relation to securities, means a recognized stock market; or

(b) in relation to futures contracts, means a recognized futures market.

(2) In this subsection and sections 286 to 289 and Division 2, unless the context otherwise requires—

derivatives (衍生工具), in relation to listed securities, means—

(a) rights, options or interests (whether described as units or otherwise) in, or in respect of, the listed securities;

(b) contracts, the purpose or pretended purpose of which is to secure or increase a profit or avoid or reduce a loss, wholly or partly by reference to the price or value, or a change in the price or value, of—

(i) the listed securities; or

(ii) any rights, options or interests referred to in paragraph (a);

(c) rights, options or interests (whether described as units or otherwise) in, or in respect of—

(i) any rights, options or interests referred to in paragraph (a); or

(ii) any contracts referred to in paragraph (b);

(d) instruments or other documents creating, acknowledging or evidencing any rights, options or interests or any contracts referred to in paragraph (a), (b) or (c), including certificates of interest or participation in, temporary or interim certificates for, receipts (including depositary receipts) in respect of, or warrants to subscribe for or purchase—

(i) the listed securities; or

(ii) the rights, options or interests or the contracts,

whether or not the derivatives are listed and regardless of who issued or made them;

inside information (內幕消息), in relation to a corporation, means specific information that—

(a) is about—

(i) the corporation;

(ii) a shareholder or officer of the corporation; or

(iii) the listed securities of the corporation or their derivatives; and

(b) is not generally known to the persons who are accustomed or would be likely to deal in the listed securities of the corporation but would if generally known to them be likely to materially affect the price of the listed securities; *(Added 9 of 2012 s. 9)*

listed (上市) means listed on a recognized stock market, and for the purposes of this definition, securities shall continue to be regarded as listed during a period of suspension of dealings in those securities on the recognized stock market;

listed corporation (上市法團) means a corporation which has issued securities that are, at the time of the relevant contravention in relation to the corporation, listed;

listed securities (上市證券) means—

(a) securities which, at the time of the relevant contravention in relation to a corporation, have been issued by the corporation and are listed;

(b) securities which, at the time of the relevant contravention in relation to a corporation, have been issued by the corporation and are not listed, but which, at that time, it is reasonably foreseeable will be and which, in fact, are subsequently listed;

(c) securities which, at the time of the relevant contravention in relation to a corporation, have not been issued by the corporation and are not listed, but which, at that time, it is reasonably foreseeable will be and which, in fact, are subsequently so issued and listed;

relevant contravention (違例事件) means a contravention of any of the provisions of Division 2;

securities (證券) means—

(a) shares, stocks, debentures, loan stocks, funds, bonds or notes of, or issued by, or which it is reasonably

foreseeable will be issued by, a body, whether incorporated or unincorporated, or a government or municipal government authority;

(b) rights, options or interests (whether described as units or otherwise) in, or in respect of, such shares, stocks, debentures, loan stocks, funds, bonds or notes;

(c) certificates of interest or participation in, temporary or interim certificates for, receipts for, or warrants to subscribe for or purchase, such shares, stocks, debentures, loan stocks, funds, bonds or notes;

(d) interests, rights or property, whether in the form of an instrument or otherwise, commonly known as securities;

(e) interests, rights or property, whether in the form of an instrument or otherwise, prescribed by notice under section 392 as being regarded as securities in accordance with the terms of the notice.

(Amended 9 of 2012 s. 9)

(3) For the purposes of the definition of ***controller*** in subsection (1), where a person is entitled to exercise or control the exercise of more than 33% of the voting power at general meetings of a corporation and the corporation is entitled to exercise or control the exercise of any of the voting power at general meetings of another corporation (***the effective voting power***), then the effective voting power at general meetings of the other corporation shall be regarded as exercisable by the person.

(4) For the purposes of this Part, a person shall not be regarded as a person in accordance with whose directions or instructions the directors of a corporation are accustomed or obliged to act by reason only that the directors of the corporation act on advice given by him in a professional capacity.

286. Interest in securities (insider dealing offence)

For the purposes of sections 285(2) and 287 to 289 and Division 2, a reference to an interest in securities shall be construed as including an interest of any kind whatsoever in the securities, and for that purpose any restraint or restriction to which the exercise of a right attached to the interest may be subject shall be disregarded.

287. Connected with a corporation (insider dealing offence)

(1) For the purposes of Division 2, a person shall be regarded as connected with a corporation if, being an individual—

(a) he is a director or employee of the corporation or a related corporation of the corporation;

(b) he is a substantial shareholder of the corporation or a related corporation of the corporation;

(c) he occupies a position which may reasonably be expected to give him access to inside information in relation to the corporation by reason of— *(Amended 9 of 2012 s. 14)*

(i) a professional or business relationship existing between—

(A) himself, or his employer, or a corporation of which he is a director, or a firm of which he is a partner; and

(B) the corporation, a related corporation of the corporation, or an officer or substantial shareholder of either corporation; or

(ii) his being a director, employee or partner of a substantial shareholder of the corporation or a related corporation of the corporation;

(d) he has access to inside information in relation to the corporation and— *(Amended 9 of 2012 s. 14)*

(i) he has such access by reason of his being in such a position that he would be regarded as connected with another corporation by virtue of paragraph (a), (b) or (c); and

(ii) the inside information relates to a transaction (actual or contemplated) involving both those corporations or involving one of them and the listed securities of the other or their derivatives, or to the fact that the transaction is no longer contemplated; or *(Amended 9 of 2012 s. 14)*

(e) he was, at any time within the 6 months preceding the relevant contravention in relation to the corporation, a person who would be regarded as connected with the corporation by virtue of paragraph (a), (b), (c) or (d).

(2) For the purposes of Division 2, a corporation shall be regarded as a person connected with another corporation so long as any of its directors or employees is a person who would be regarded as connected with that other corporation by virtue of subsection (1).

(3) In subsection (1), notwithstanding any other provisions of this Ordinance, ***substantial shareholder*** (大股東), in relation to a corporation, means a person who has an interest in 5% or more of the total number of shares comprised in the relevant share capital of the corporation. *(Amended 28 of 2012 ss. 912 & 920)*

288. Connected with a corporation—possession of inside information obtained in privileged capacity (insider dealing offence)

(Amended 9 of 2012 s. 14)

(1) For the purposes of Division 2, where a public officer or a specified person in that capacity receives inside information in relation to a corporation, he shall be regarded as a person connected with the corporation. *(Amended 9 of 2012 s. 14)*

(2) In subsection (1), a reference to a specified person means a person who is—

(a) a member of the Executive Council;

(b) a member of the Legislative Council;

(c) a member of a board, commission, committee or other body appointed by or on behalf of the Chief Executive or the Chief Executive in Council under an Ordinance;

(d) an officer or employee of a recognized exchange company, a recognized clearing house or a recognized exchange controller;

(e) an exchange participant;

(f) an officer or employee of an exchange participant;

(g) an officer or employee of a body corporate incorporated by an Ordinance; or

(h) an officer or employee of a body corporate specified by the Financial Secretary under subsection (3),

whether, in the case of paragraph (a), (b), (c), (d), (f), (g) or (h), the person is such a member, officer or employee (as the case may be) on a temporary or permanent basis, and whether he is paid or unpaid.

(3) The Financial Secretary may, by notice published in the Gazette, specify any body corporate for the purposes of subsection (2)(h).

289. Dealing in listed securities or their derivatives (insider dealing offence)

For the purposes of section 285(2) and Division 2, a person shall be regarded as dealing in listed securities or their derivatives if, whether as principal or agent, he sells, purchases, exchanges or subscribes for, or agrees to sell, purchase, exchange or subscribe for, any listed securities or their derivatives or acquires or disposes of, or agrees to acquire or dispose of, the right to sell, purchase, exchange or subscribe for, any listed securities or their derivatives.

290. Interest in securities and beneficial ownership, etc. (market misconduct offences other than insider dealing offence)

(1) For the purposes of Division 3, a person shall be regarded as having an interest in securities if he has authority, whether formal or informal and whether express or implied, to dispose of or to exercise control over the disposal of the securities or, in the case of options in respect of the securities, to exercise the options.

(2) It is immaterial that the authority of a person referred to in subsection (1)—

(a) is, or is capable of being made, subject to restraint or restriction; or

(b) is exercisable jointly with another person.

(3) A person shall be regarded as having the authority referred to in subsection (1) where a corporation has the authority referred to in that subsection and—

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

(b) the person, or an associate of the person, is a controller of the corporation.

(4) Where a person—

(a) has entered into a contract to purchase securities;

(b) has a right to have securities transferred to him or to his order whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not; or

(c) has the right to acquire securities, or an interest in securities, under an option, whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not,

the person shall, to the extent to which he could do so on completing the contract, enforcing the right or exercising the option, be regarded as having the authority referred to in subsection (1).

(5) Where securities are subject to a trust, and a person who is not a trustee in those securities has an interest in those securities by virtue of subsection (4)(b), the interest of a trustee in those securities shall be disregarded for the purpose of determining whether the person has an interest in securities for the purposes of Division 3.

(6) The Commission may make rules to prescribe that an interest, being an interest of a person or of the persons included in a class of persons, shall be disregarded for the purpose of determining whether the person or the persons has or have an interest in securities for the purposes of Division 3.

(7) For the purposes of Division 3, a sale or purchase of securities does not involve a change in their beneficial ownership if a person who had an interest in the securities before the sale or purchase, or an associate of the person, has an interest in the securities after the sale or purchase.

Division 2—Insider dealing offence

291. Offence of insider dealing

(1) A person connected with a listed corporation and having information which he knows is inside information in relation to the corporation shall not— *(Amended 9 of 2012 s. 14)*

(a) deal in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives; or

(b) counsel or procure another person to deal in such listed securities or derivatives, knowing or having reasonable cause to believe that the other person will deal in them.

(2) A person who is contemplating or has contemplated making, whether with or without another person, a take-over offer for a listed corporation and who knows that the information that the offer is contemplated or is no longer contemplated is inside information in relation to the corporation shall not— *(Amended 9 of 2012 s. 14)*

(a) deal in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives, otherwise than for the purpose of the take-over; or

(b) counsel or procure another person to deal in such listed securities or derivatives, otherwise than for the purpose of the take-over.

(3) A person connected with a listed corporation and knowing that any information is inside information in relation to the corporation shall not disclose the information, directly or indirectly, to another person, knowing or having reasonable cause to believe that the other person will make use of the information for the purpose of dealing, or of counselling or procuring another person to deal, in the listed securities of the corporation or their derivatives, or in the listed securities of

a related corporation of the corporation or their derivatives. *(Amended 9 of 2012 s. 14)*

(4) A person who is contemplating or has contemplated making, whether with or without another person, a take-over offer for a listed corporation and who knows that the information that the offer is contemplated or is no longer contemplated is inside information in relation to the corporation shall not disclose the information, directly or indirectly, to another person, knowing or having reasonable cause to believe that the other person will make use of the information for the purpose of dealing, or of counselling or procuring another person to deal, in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives. *(Amended 9 of 2012 s. 14)*

(5) A person who has information which he knows is inside information in relation to a listed corporation and which he received, directly or indirectly, from a person whom he knows is connected with the corporation and whom he knows or has reasonable cause to believe held the information as a result of being connected with the corporation shall not— *(Amended 9 of 2012 s. 14)*

(a) deal in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives; or

(b) counsel or procure another person to deal in such listed securities or derivatives.

(6) A person who has received, directly or indirectly, from a person whom he knows or has reasonable cause to believe is contemplating or is no longer contemplating making a take-over offer for a listed corporation, information to that effect which he knows is inside information in relation to the corporation shall not— *(Amended 9 of 2012 s. 14)*

(a) deal in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives; or

(b) counsel or procure another person to deal in such listed securities or derivatives.

(7) A person who knowingly has inside information in relation to a listed corporation in any of the circumstances described in subsection (1), (2), (3), (4), (5) or (6) shall not— *(Amended 9 of 2012 s. 14)*

(a) counsel or procure another person to deal in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives, knowing or having reasonable cause to believe that the other person will deal in such listed securities or derivatives outside Hong Kong on a stock market other than a recognized stock market; or

(b) disclose the inside information to another person knowing or having reasonable cause to believe that the other person or some other person will make use of the inside information for the purpose of dealing, or of counselling or procuring any other person to deal, in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives, outside Hong Kong on a stock market other than a recognized stock market. *(Amended 9 of 2012 s. 14)*

(8) Subject to sections 292, 293 and 294, a person who contravenes subsection (1), (2), (3), (4), (5), (6) or (7) commits an offence.

292. Insider dealing offence—general defences

(1) Where a person is charged with an offence under section 291(8) in respect of a contravention of section 291 taking place through his dealing in or counselling or procuring another person to deal in listed securities or derivatives, it is a defence to the charge for the person to prove that he dealt in or counselled or procured the other person to deal in the listed securities or derivatives in question (as the case may be)—

(a) for the sole purpose of acquiring shares required for his being qualified as a director or intending director of a corporation;

(b) in the performance in good faith of an underwriting agreement for the listed securities or derivatives in question; or

(c) in the performance in good faith of his functions as a liquidator, receiver or trustee in bankruptcy.

(2) Where a corporation is charged with an offence under section 291(8) in respect of a contravention of section 291 taking place through its dealing in or counselling or procuring another person to deal in listed securities or derivatives, it is a defence to the charge for the corporation to prove that—

(a) although one or more of its directors or employees had the inside information in relation to the corporation the listed securities of which were, or the derivatives of the listed securities of which were, the listed securities or derivatives in question, each person who took the decision for it to deal in or counsel or procure the other person to deal in such listed securities or derivatives (as the case may be) did not have the inside information up to (and including) the time when it dealt in or counselled or procured the other person to deal in such listed securities or derivatives (as the case may be);

(b) arrangements then existed to secure that—

(i) the inside information was, up to (and including) the time when it dealt in or counselled or procured the other person to deal in such listed securities or derivatives (as the case may be), not communicated to any person who took the decision; and

(ii) none of its directors or employees who had the inside information gave advice concerning the decision to any person who took the decision at any time before it dealt in or counselled or procured the other person to deal in such listed securities or derivatives (as the case may be); and

(c) the inside information was in fact not so communicated to any person who took the decision and none of its directors or employees who had the inside information in fact so gave the advice to any person who took the decision. *(Amended 9 of 2012 s. 14)*

(3) Where a person is charged with an offence under section 291(8) in respect of a contravention of section 291 taking place through his dealing in or counselling or procuring another person to deal in listed securities or derivatives or his disclosure of information, it is a defence to the charge for the person to prove that the purpose for which he dealt in or counselled or procured the other person to deal in the listed securities or derivatives in question or disclosed the information in question (as the case may be) was not, or, where there was more than one purpose, the purposes for which he dealt in or counselled or procured the other person to deal in the listed securities or derivatives in question or disclosed the information in question (as the case may be) did not include, the purpose of securing or increasing a profit or avoiding or reducing a loss, whether for himself or another, by using inside information. *(Amended 9 of 2012 s. 14)*

(4) Where a person is charged with an offence under section 291(8) in respect of a contravention of section 291 taking place through his dealing in or counselling or procuring another person to deal in listed securities or derivatives, it is a defence to the charge for the person to prove that—

(a) he dealt in or counselled or procured the other person to deal in the listed securities or derivatives in question (as the case may be) as agent;

(b) he did not select or advise on the selection of such listed securities or derivatives; and

(c) he—

(i) did not know that the person for whom he acted as agent was a person connected with the corporation the listed securities of which were, or the derivatives of the listed securities of which were, such listed securities or derivatives; or

(ii) did not know that the person for whom he acted as agent had the inside information in question. *(Amended 9 of 2012 s. 14)*

(5) Where a person is charged with an offence under section 291(8) in respect of a contravention of section 291 taking place through his dealing in or counselling or procuring another person to deal in listed securities or derivatives, it is a defence to the charge for the person to prove that—

(a) at the time when he dealt in or counselled or procured the other person to deal in the listed securities or derivatives in question, the dealing in question was not required to be recorded on a recognized stock market or to be notified to a recognized exchange company under its rules; and

(b) (i) where the contravention took place through his dealing in listed securities or derivatives—

(A) he and the other party to the dealing in question entered into the dealing directly with each other; and

(B) at the time when he entered into the dealing, the other party to the dealing knew, or ought reasonably to have known, of the inside information in question; or

(ii) where the contravention took place through his counselling or procuring another person to deal in listed securities or derivatives—

(A) he counselled or procured the other party to the dealing in question to enter into the dealing directly with him; and

(B) at the time when he counselled or procured the other party to enter into the dealing, the other party knew, or ought reasonably to have known, of the inside information in question. *(Amended 9 of 2012 s. 14)*

(6) Where a person is charged with an offence under section 291(8) in respect of a contravention of section 291 taking place through his dealing in listed securities or derivatives, it is a defence to the charge for the person to prove that—

(a) he entered into the dealing in question, otherwise than as a person who has counselled or procured the other party to the dealing to deal in listed securities or their derivatives; and

(b) at the time when he entered into the dealing, the other party to the dealing knew, or ought reasonably to have known, that he was a person connected with the corporation the listed securities of which were, or the derivatives of the listed securities of which were, the listed securities or derivatives in question.

(7) Where a person is charged with an offence under section 291(8) in respect of a contravention of section 291 taking place through his counselling or procuring another person to deal in listed securities or derivatives, it is a defence to the charge for the person to prove that—

(a) the other person did not counsel or procure the other party to the dealing in question to deal in listed securities or their derivatives; and

(b) at the time when he counselled or procured the other person to deal in the listed securities or derivatives in question, the other party to the dealing in question knew, or ought reasonably to have known, that the other person was a person connected with the corporation the listed securities of which were, or the derivatives of the listed securities of which were, such listed securities or derivatives.

(8) Where a person is charged with an offence under section 291(8) in respect of a contravention of section 291 taking place through his dealing in or counselling or procuring another person to deal in listed securities or derivatives, it is a defence to the charge for the person to prove that—

(a) he acted—

(i) in connection with any dealing in listed securities or their derivatives (whether by himself or another person) which was under consideration or was the subject of negotiation, or in the course of a series of such dealings; and

(ii) with a view to facilitating the accomplishment of the dealing or the series of dealings; and

(b) the inside information in question was market information arising directly out of his involvement in the

dealing or the series of dealings. *(Amended 9 of 2012 s. 14)*

(9) Where a person is charged with an offence under section 291(8) in respect of a contravention of section 291 taking place through his dealing in or counselling or procuring another person to deal in listed securities or derivatives, it is a defence to the charge for the person to prove that the dealing in question is a market contract.

(10) For the purposes of subsection (8), ***market information*** (市場消息) means information consisting of one or more of the following facts—

(a) that there has been or is to be any dealing in listed securities or derivatives of listed securities of a particular kind, or that any such dealing is under consideration or is the subject of negotiation;

(b) that there has not been or is not to be any dealing in listed securities or derivatives of listed securities of a particular kind;

(c) the quantity of listed securities or derivatives of listed securities in which there is or is to be any dealing, or in which any dealing is under consideration or is the subject of negotiation;

(d) the price (or range of prices) at which listed securities or derivatives of listed securities have been or are to be dealt in, or the price (or range of prices) at which listed securities or derivatives of listed securities in which any dealing is under consideration or is the subject of negotiation may be dealt in;

(e) the identity of the persons involved or likely to be involved in any capacity in any dealing in listed securities or derivatives of listed securities.

293. Insider dealing offence—defences for certain trustees and personal representatives

Where a person who is a trustee or personal representative is charged with an offence under section 291(8) in respect of a contravention of section 291 taking place through his dealing in or counselling or procuring another person to deal in listed securities or derivatives, it is a defence to the charge for the person to prove that—

(a) he acted on advice obtained in good faith from another person;

(b) that other person appeared to him to be an appropriate person from whom to seek the advice; and

(c) it did not appear to him that, had that other person dealt in the listed securities or derivatives in question, a contravention of section 291 would take place.

294. Insider dealing offence—defences for certain persons exercising right to subscribe for or acquire securities or derivatives

Where a person is charged with an offence under section 291(8) in respect of a contravention of section 291 taking place through his dealing in listed securities or derivatives, it is a defence to the charge for the person to prove that—

(a) he dealt in the listed securities or derivatives in question by way of his exercise of a right to subscribe for or otherwise acquire such listed securities or derivatives; and

(b) the right was granted to him or was derived from securities or their derivatives that were held by him before he became aware of any inside information in relation to the corporation the listed securities of which were, or the derivatives of the listed securities of which

were, such listed securities or derivatives. *(Amended 9 of 2012 s. 14)*

Division 3—Other market misconduct offences

295. Offence of false trading

(1) A person shall not, in Hong Kong or elsewhere, do anything or cause anything to be done, with the intention that, or being reckless as to whether, it has, or is likely to have, the effect of creating a false or misleading appearance—

(a) of active trading in securities or futures contracts traded on a relevant recognized market or by means of authorized automated trading services; or

(b) with respect to the market for, or the price for dealings in, securities or futures contracts traded on a relevant recognized market or by means of authorized automated trading services.

(2) A person shall not, in Hong Kong, do anything or cause anything to be done, with the intention that, or being reckless as to whether, it has, or is likely to have, the effect of creating a false or misleading appearance—

(a) of active trading in securities or futures contracts traded on a relevant overseas market; or

(b) with respect to the market for, or the price for dealings in, securities or futures contracts traded on a relevant overseas market.

(3) A person shall not, in Hong Kong or elsewhere, take part in, be concerned in, or carry out, directly or indirectly, one or more transactions (whether or not any of them is a dealing in securities or futures contracts), with the intention that, or being reckless as to whether, it or they has or have, or is or are likely to have, the effect of creating an artificial price,

or maintaining at a level that is artificial (whether or not it was previously artificial) a price, for dealings in securities or futures contracts traded on a relevant recognized market or by means of authorized automated trading services.

(4) A person shall not, in Hong Kong, take part in, be concerned in, or carry out, directly or indirectly, one or more transactions (whether or not any of them is a dealing in securities or futures contracts), with the intention that, or being reckless as to whether, it or they has or have, or is or are likely to have, the effect of creating an artificial price, or maintaining at a level that is artificial (whether or not it was previously artificial) a price, for dealings in securities or futures contracts traded on a relevant overseas market.

(5) Without limiting the generality of subsection (1) or (2), where a person—

(a) enters into or carries out, directly or indirectly, any transaction of sale or purchase, or any transaction which purports to be a transaction of sale or purchase, of securities that does not involve a change in the beneficial ownership of them;

(b) offers to sell securities at a price that is substantially the same as the price at which he has made or proposes to make, or knows that an associate of his has made or proposes to make, an offer to purchase the same or substantially the same number of them; or

(c) offers to purchase securities at a price that is substantially the same as the price at which he has made or proposes to make, or knows that an associate of his has made or proposes to make, an offer to sell the same or substantially the same number of them,

then, unless the transaction in question is an off-market transaction, the person shall, for the purposes of subsections

(1) and (2), be regarded as doing something or causing something to be done, with the intention that, or being reckless as to whether, it has, or is likely to have, the effect of creating a false or misleading appearance—

(i) where the securities are traded on a relevant recognized market or by means of authorized automated trading services, of active trading in securities so traded or with respect to the market for, or the price for dealings in, securities so traded; or

(ii) where the securities are traded on a relevant overseas market, of active trading in securities so traded or with respect to the market for, or the price for dealings in, securities so traded.

(6) Subject to subsection (7), a person who contravenes subsection (1), (2), (3) or (4) commits an offence.

(7) Where a person is charged with an offence under subsection (6) in respect of a contravention of subsection (1) or (2) taking place through the commission of an act referred to in subsection (5)(a), (b) or (c), it is a defence to the charge for the person to prove that the purpose for which he committed the act was not, or, where there was more than one purpose, the purposes for which he committed the act did not include, the purpose of creating a false or misleading appearance of active trading in securities, or with respect to the market for, or the price for dealings in, securities, referred to in subsection (1) or (2) (as the case may be).

(8) In subsection (5), ***off-market transaction*** (場外交易) means a transaction which—

(a) in the case of securities traded on a relevant recognized market, is not required to be recorded on the relevant recognized market, or to be notified, under the rules of

the person by whom the relevant recognized market is operated, to such person;

(b) in the case of securities traded by means of authorized automated trading services, is not required to be recorded by means of authorized automated trading services, or to be notified, under the rules of the person by whom the authorized automated trading services are operated, to such person; or

(c) in the case of securities traded on a relevant overseas market, is not required to be recorded on the relevant overseas market, or to be notified, under the rules of the person by whom the relevant overseas market is operated, to such person.

(9) In this section—

(a) a reference to a transaction of sale or purchase, in relation to securities, includes an offer to sell or purchase securities and an invitation (however expressed) that expressly or impliedly invites a person to offer to sell or purchase securities; and

(b) a reference to entering into or carrying out a transaction of sale or purchase shall, in the case of an offer or an invitation referred to in paragraph (a), be construed as a reference to making the offer or the invitation (as the case may be).

296. Offence of price rigging

(1) A person shall not, in Hong Kong or elsewhere—

(a) enter into or carry out, directly or indirectly, any transaction of sale or purchase of securities that does not involve a change in the beneficial ownership of those securities, which has the effect of maintaining, increasing, reducing, stabilizing, or causing fluctuations

in, the price of securities traded on a relevant recognized market or by means of authorized automated trading services; or

(b) enter into or carry out, directly or indirectly, any fictitious or artificial transaction or device, with the intention that, or being reckless as to whether, it has the effect of maintaining, increasing, reducing, stabilizing, or causing fluctuations in, the price of securities, or the price for dealings in futures contracts, that are traded on a relevant recognized market or by means of authorized automated trading services.

(2) A person shall not, in Hong Kong—

(a) enter into or carry out, directly or indirectly, any transaction of sale or purchase of securities that does not involve a change in the beneficial ownership of those securities, which has the effect of maintaining, increasing, reducing, stabilizing, or causing fluctuations in, the price of securities traded on a relevant overseas market; or

(b) enter into or carry out, directly or indirectly, any fictitious or artificial transaction or device, with the intention that, or being reckless as to whether, it has the effect of maintaining, increasing, reducing, stabilizing, or causing fluctuations in, the price of securities, or the price for dealings in futures contracts, that are traded on a relevant overseas market.

(3) For the purposes of subsections (1)(b) and (2)(b), the fact that a transaction is, or at any time was, intended to have effect according to its terms is not conclusive in determining whether the transaction is, or was, not fictitious or artificial.

(4) Subject to subsection (5), a person who contravenes subsection (1) or (2) commits an offence.

(5) Where a person is charged with an offence under subsection (4) in respect of a contravention of subsection (1)(a) or (2)(a) taking place through any transaction of sale or purchase of securities, it is a defence to the charge for the person to prove that the purpose for which the securities were sold or purchased was not, or, where there was more than one purpose, the purposes for which the securities were sold or purchased did not include, the purpose of creating a false or misleading appearance with respect to the price of securities.

(6) In this section—

(a) a reference to a transaction of sale or purchase, in relation to securities, includes an offer to sell or purchase securities and an invitation (however expressed) that expressly or impliedly invites a person to offer to sell or purchase securities; and

(b) a reference to entering into or carrying out a transaction of sale or purchase shall, in the case of an offer or an invitation referred to in paragraph (a), be construed as a reference to making the offer or the invitation (as the case may be).

297. Offence of disclosure of information about prohibited transactions

(1) A person shall not disclose, circulate or disseminate, or authorize or be concerned in the disclosure, circulation or dissemination of, information to the effect that the price of securities of a corporation, or the price for dealings in futures contracts, that are traded on a relevant recognized market or by means of authorized automated trading services will be maintained, increased, reduced or stabilized, or is likely to be maintained, increased, reduced or stabilized, because of a prohibited transaction relating to securities of either the corporation or a related corporation of the corporation

or to the futures contracts (as the case may be), if he, or an associate of his—

(a) has entered into or carried out, directly or indirectly, the prohibited transaction; or

(b) has received, or expects to receive, directly or indirectly, a benefit as a result of the disclosure, circulation or dissemination of the information.

(2) Subject to subsection (3), a person who contravenes subsection (1) commits an offence.

(3) Where a person is charged with an offence under subsection (2) in respect of a contravention of subsection (1) on the basis that he, or an associate of his, received, or expected to receive, directly or indirectly, a benefit referred to in subsection (1)(b), it is a defence to the charge for the person to prove that—

(a) the benefit which he or the associate of his (as the case may be) received, or expected to receive, was not from a person who has entered into or carried out, directly or indirectly, the prohibited transaction in question, or an associate of such person; or

(b) the benefit which he or the associate of his (as the case may be) received, or expected to receive, was from a person who has entered into or carried out, directly or indirectly, the prohibited transaction in question, or an associate of such person, but up to (and including) the time of the disclosure, circulation or dissemination of the information he has acted in good faith.

(4) In this section—

(a) a reference to a prohibited transaction means any conduct or transaction which constitutes market misconduct or a contravention of any of the provisions of Divisions 2 to 4; and

(b) a reference to any person having entered into or carried out the prohibited transaction shall be construed accordingly.

298. Offence of disclosure of false or misleading information inducing transactions

(1) A person shall not, in Hong Kong or elsewhere, disclose, circulate or disseminate, or authorize or be concerned in the disclosure, circulation or dissemination of, information that is likely—

(a) to induce another person to subscribe for securities, or deal in futures contracts, in Hong Kong;

(b) to induce the sale or purchase in Hong Kong of securities by another person; or

(c) to maintain, increase, reduce or stabilize the price of securities, or the price for dealings in futures contracts, in Hong Kong,

if—

(i) the information is false or misleading as to a material fact, or is false or misleading through the omission of a material fact; and

(ii) the person knows that, or is reckless as to whether, the information is false or misleading as to a material fact, or is false or misleading through the omission of a material fact.

(2) Subject to subsections (3) to (5), a person who contravenes subsection (1) commits an offence.

(3) Where a person is charged with an offence under subsection (2) in respect of a contravention of subsection (1) taking place by reason only of the issue or reproduction of information, it is a defence to the charge for the person to prove that—

(a) the issue or reproduction of the information took place in the ordinary course of a business (whether or not carried on by him), the principal purpose of which was issuing or reproducing materials provided by others;

(b) the contents of the information were not, wholly or partly, devised—

(i) where the business was carried on by him, by himself or any officer, employee or agent of his; or

(ii) where the business was not carried on by him, by himself;

(c) for the purposes of the issue or reproduction—

(i) where the business was carried on by him, he or any officer, employee or agent of his; or

(ii) where the business was not carried on by him, he,

did not select, add to, modify or otherwise exercise control over the contents of the information; and

(d) at the time of the issue or reproduction, he did not know that the information was false or misleading as to a material fact or was false or misleading through the omission of a material fact.

(4) Where a person is charged with an offence under subsection (2) in respect of a contravention of subsection (1) taking place by reason only of the re-transmission of information, it is a defence to the charge for the person to prove that—

(a) the re-transmission of the information took place in the ordinary course of a business (whether or not carried on by him), the normal conduct of which involved the re-transmission of information to other persons within an information system or from one information system to another information system (wherever situated), whether

directly or by facilitating the establishment of links between such other persons and third parties;

(b) the contents of the information were not, wholly or partly, devised—

(i) where the business was carried on by him, by himself or any officer, employee or agent of his; or

(ii) where the business was not carried on by him, by himself;

(c) for the purposes of the re-transmission—

(i) where the business was carried on by him, he or any officer, employee or agent of his; or

(ii) where the business was not carried on by him, he,

did not select, add to, modify or otherwise exercise control over the contents of the information;

(d) the re-transmission of the information was accompanied by a message to the effect, or was effected following acknowledgment by the persons to whom it was re-transmitted of their understanding, that—

(i) where the business was carried on by him, he or any officer, employee or agent of his; or

(ii) where the business was not carried on by him, the person who carried on the business or any officer, employee or agent of that person,

did not devise the contents of the information, and neither took responsibility for it nor endorsed its accuracy; and

(e) at the time of the re-transmission—

(i) he did not know that the information was false or misleading as to a material fact or was false or

misleading through the omission of a material fact; or

(ii) he knew that the information was false or misleading as to a material fact or was false or misleading through the omission of a material fact, but—

(A) where the business was carried on by him, in the circumstances of the case he could not reasonably be expected to prevent the re-transmission; or

(B) where the business was not carried on by him, in the circumstances of the case he has taken all reasonable steps to bring the fact that the information was so false or misleading to the attention of a person in a position to take steps to cause the re-transmission to be prevented (even if the re-transmission in fact took place).

(5) Where a person is charged with an offence under subsection (2) in respect of a contravention of subsection (1) taking place by reason only of the live broadcast of information, it is a defence to the charge for the person to prove that—

(a) the broadcast of the information took place in the ordinary course of the business of a broadcaster (whether or not he was such broadcaster);

(b) the contents of the information were not, wholly or partly, devised—

(i) where he was the broadcaster, by himself or any officer, employee or agent of his; or

(ii) where he was not the broadcaster, by himself;

(c) for the purposes of the broadcast—

(i) where he was the broadcaster, he or any officer, employee or agent of his; or

(ii) where he was not the broadcaster, he,

did not select, add to, modify or otherwise exercise control over the contents of the information;

(d) in relation to the broadcast—

(i) where he was the broadcaster, he; or

(ii) where he was not the broadcaster, he believed and had reasonable grounds to believe that the broadcaster,

acted in accordance with the terms and conditions of the licence (if any) by which he or the broadcaster (as the case may be) became entitled to broadcast as a broadcaster and with any code of practice or guidelines (however described) issued under or pursuant to the Telecommunications Ordinance (Cap. 106) or the Broadcasting Ordinance (Cap. 562) and applicable to him or the broadcaster (as the case may be) as a broadcaster; and

(e) at the time of the broadcast—

(i) he did not know that the information was false or misleading as to a material fact or was false or misleading through the omission of a material fact; or

(ii) he knew that the information was false or misleading as to a material fact or was false or misleading through the omission of a material fact, but—

(A) where he was the broadcaster, in the circumstances of the case he could not

reasonably be expected to prevent the broadcast; or

(B) where he was not the broadcaster, in the circumstances of the case he has taken all reasonable steps to bring the fact that the information was so false or misleading to the attention of a person in a position to take steps to cause the broadcast to be prevented (even if the broadcast in fact took place).

(6) In this section, ***issue*** (發出), in relation to any material (including any information), includes publishing, circulating, distributing or otherwise disseminating the material or the contents thereof, whether—

(a) by any visit in person;

(b) in a newspaper, magazine, journal or other publication;

(c) by the display of posters or notices;

(d) by means of circulars, brochures, pamphlets or handbills;

(e) by an exhibition of photographs or cinematograph films;

(f) by way of sound or television broadcasting;

(g) by any information system or other electronic device; or

(h) by any other means, whether mechanically, electronically, magnetically, optically, manually or by any other medium, or by way of production or transmission of light, image or sound or any other medium,

and also includes causing or authorizing the material to be issued.

299. Offence of stock market manipulation

(1) A person shall not, in Hong Kong or elsewhere—

(a) enter into or carry out, directly or indirectly, 2 or more transactions in securities of a corporation that by themselves or in conjunction with any other transaction increase, or are likely to increase, the price of any securities traded on a relevant recognized market or by means of authorized automated trading services, with the intention of inducing another person to purchase or subscribe for, or to refrain from selling, securities of the corporation or of a related corporation of the corporation;

(b) enter into or carry out, directly or indirectly, 2 or more transactions in securities of a corporation that by themselves or in conjunction with any other transaction reduce, or are likely to reduce, the price of any securities traded on a relevant recognized market or by means of authorized automated trading services, with the intention of inducing another person to sell, or to refrain from purchasing, securities of the corporation or of a related corporation of the corporation; or

(c) enter into or carry out, directly or indirectly, 2 or more transactions in securities of a corporation that by themselves or in conjunction with any other transaction maintain or stabilize, or are likely to maintain or stabilize, the price of any securities traded on a relevant recognized market or by means of authorized automated trading services, with the intention of inducing another person to sell, purchase or subscribe for, or to refrain from selling, purchasing or subscribing for, securities of the corporation or of a related corporation of the corporation.

(2) A person shall not, in Hong Kong—

(a) enter into or carry out, directly or indirectly, 2 or more transactions in securities of a corporation that by

themselves or in conjunction with any other transaction increase, or are likely to increase, the price of any securities traded on a relevant overseas market, with the intention of inducing another person to purchase or subscribe for, or to refrain from selling, securities of the corporation or of a related corporation of the corporation;

(b) enter into or carry out, directly or indirectly, 2 or more transactions in securities of a corporation that by themselves or in conjunction with any other transaction reduce, or are likely to reduce, the price of any securities traded on a relevant overseas market, with the intention of inducing another person to sell, or to refrain from purchasing, securities of the corporation or of a related corporation of the corporation; or

(c) enter into or carry out, directly or indirectly, 2 or more transactions in securities of a corporation that by themselves or in conjunction with any other transaction maintain or stabilize, or are likely to maintain or stabilize, the price of any securities traded on a relevant overseas market, with the intention of inducing another person to sell, purchase or subscribe for, or to refrain from selling, purchasing or subscribing for, securities of the corporation or of a related corporation of the corporation.

(3) A person who contravenes subsection (1) or (2) commits an offence.

(4) In this section—

(a) a reference to a transaction includes an offer and an invitation (however expressed); and

(b) a reference to entering into or carrying out a transaction shall, in the case of an offer or an invitation referred to

in paragraph (a), be construed as a reference to making the offer or the invitation (as the case may be).

Division 4—Other offences

300. Offence involving fraudulent or deceptive devices, etc. in transactions in securities, futures contracts or leveraged foreign exchange trading

(1) A person shall not, directly or indirectly, in a transaction involving securities, futures contracts or leveraged foreign exchange trading—

(a) employ any device, scheme or artifice with intent to defraud or deceive; or

(b) engage in any act, practice or course of business which is fraudulent or deceptive, or would operate as a fraud or deception.

(2) A person who contravenes subsection (1) commits an offence.

(3) In this section, a reference to a transaction includes an offer and an invitation (however expressed).

301. Offence of disclosure of false or misleading information inducing others to enter into leveraged foreign exchange contracts

(1) A person shall not, in Hong Kong or elsewhere, disclose, circulate or disseminate, or authorize or be concerned in the disclosure, circulation or dissemination of, information that is likely to induce another person to enter into a leveraged foreign exchange contract in Hong Kong, if—

(a) the information is false or misleading as to a material fact, or is false or misleading through the omission of a material fact; and

(b) the person knows that, or is reckless as to whether, the information is false or misleading as to a material fact, or is false or misleading through the omission of a material fact.

(2) Subject to subsections (3) to (5), a person who contravenes subsection (1) commits an offence.

(3) Where a person is charged with an offence under subsection (2) in respect of a contravention of subsection (1) taking place by reason only of the issue or reproduction of information, it is a defence to the charge for the person to prove that—

(a) the issue or reproduction of the information took place in the ordinary course of a business (whether or not carried on by him), the principal purpose of which was issuing or reproducing materials provided by others;

(b) the contents of the information were not, wholly or partly, devised—

(i) where the business was carried on by him, by himself or any officer, employee or agent of his; or

(ii) where the business was not carried on by him, by himself;

(c) for the purposes of the issue or reproduction—

(i) where the business was carried on by him, he or any officer, employee or agent of his; or

(ii) where the business was not carried on by him, he,

did not select, add to, modify or otherwise exercise control over the contents of the information; and

(d) at the time of the issue or reproduction, he did not know that the information was false or misleading as to a material fact or was false or misleading through the omission of a material fact.

(4) Where a person is charged with an offence under subsection (2) in respect of a contravention of subsection (1) taking place by reason only of the re-transmission of information, it is a defence to the charge for the person to prove that—

(a) the re-transmission of the information took place in the ordinary course of a business (whether or not carried on by him), the normal conduct of which involved the re-transmission of information to other persons within an information system or from one information system to another information system (wherever situated), whether directly or by facilitating the establishment of links between such other persons and third parties;

(b) the contents of the information were not, wholly or partly, devised—

(i) where the business was carried on by him, by himself or any officer, employee or agent of his; or

(ii) where the business was not carried on by him, by himself;

(c) for the purposes of the re-transmission—

(i) where the business was carried on by him, he or any officer, employee or agent of his; or

(ii) where the business was not carried on by him, he,

did not select, add to, modify or otherwise exercise control over the contents of the information;

(d) the re-transmission of the information was accompanied by a message to the effect, or was effected following acknowledgment by the persons to whom it was re-transmitted of their understanding, that—

(i) where the business was carried on by him, he or any officer, employee or agent of his; or

(ii) where the business was not carried on by him, the person who carried on the business or any officer, employee or agent of that person,

did not devise the contents of the information, and neither took responsibility for it nor endorsed its accuracy; and

(e) at the time of the re-transmission—

(i) he did not know that the information was false or misleading as to a material fact or was false or misleading through the omission of a material fact; or

(ii) he knew that the information was false or misleading as to a material fact or was false or misleading through the omission of a material fact, but—

(A) where the business was carried on by him, in the circumstances of the case he could not reasonably be expected to prevent the re-transmission; or

(B) where the business was not carried on by him, in the circumstances of the case he has taken all reasonable steps to bring the fact that the information was so false or misleading to the attention of a person in a position to take steps to cause the re-transmission to be prevented (even if the re-transmission in fact took place).

(5) Where a person is charged with an offence under subsection (2) in respect of a contravention of subsection (1) taking place by reason only of the live broadcast of information, it is a defence to the charge for the person to prove that—

(a) the broadcast of the information took place in the ordinary course of the business of a broadcaster (whether or not he was such broadcaster);

(b) the contents of the information were not, wholly or partly, devised—

(i) where he was the broadcaster, by himself or any officer, employee or agent of his; or

(ii) where he was not the broadcaster, by himself;

(c) for the purposes of the broadcast—

(i) where he was the broadcaster, he or any officer, employee or agent of his; or

(ii) where he was not the broadcaster, he,

did not select, add to, modify or otherwise exercise control over the contents of the information;

(d) in relation to the broadcast—

(i) where he was the broadcaster, he; or

(ii) where he was not the broadcaster, he believed and had reasonable grounds to believe that the broadcaster,

acted in accordance with the terms and conditions of the licence (if any) by which he or the broadcaster (as the case may be) became entitled to broadcast as a broadcaster and with any code of practice or guidelines (however described) issued under or pursuant to the Telecommunications Ordinance (Cap. 106) or the Broadcasting Ordinance (Cap. 562) and applicable to him or the broadcaster (as the case may be) as a broadcaster; and

(e) at the time of the broadcast—

(i) he did not know that the information was false or misleading as to a material fact or was false or misleading through the omission of a material fact; or

(ii) he knew that the information was false or misleading as to a material fact or was false or misleading through the omission of a material fact, but—

(A) where he was the broadcaster, in the circumstances of the case he could not reasonably be expected to prevent the broadcast; or

(B) where he was not the broadcaster, in the circumstances of the case he has taken all reasonable steps to bring the fact that the information was so false or misleading to the attention of a person in a position to take steps to cause the broadcast to be prevented (even if the broadcast in fact took place).

(6) In this section, ***issue*** (發出), in relation to any material (including any information), includes publishing, circulating, distributing or otherwise disseminating the material or the contents thereof, whether—

(a) by any visit in person;

(b) in a newspaper, magazine, journal or other publication;

(c) by the display of posters or notices;

(d) by means of circulars, brochures, pamphlets or handbills;

(e) by an exhibition of photographs or cinematograph films;

(f) by way of sound or television broadcasting;

(g) by any information system or other electronic device; or

(h) by any other means, whether mechanically, electronically, magnetically, optically, manually or by any other medium, or by way of production or transmission of light, image or sound or any other medium,

and also includes causing or authorizing the material to be issued.

302. Offence of falsely representing dealings in futures contracts on behalf of others, etc.

(1) A person shall not represent to another person that he has on behalf of the other person dealt in, or facilitated or arranged for any dealing in, a futures contract traded on a recognized futures market or by means of authorized automated trading services, if—

(a) in fact he has not so dealt in, or facilitated or arranged for the dealing in, the futures contract; and

(b) he knows that, or is reckless as to whether, in fact he has not so dealt in, or facilitated or arranged for the dealing in, the futures contract.

(2) A person shall not represent to another person that he has dealt in, or facilitated or arranged for any dealing in, a contract or other instrument substantially resembling a futures contract on behalf of the other person in accordance with the rules of a futures market outside Hong Kong, if—

(a) in fact he has not so dealt in, or facilitated or arranged for the dealing in, the contract or other instrument; and

(b) he knows that, or is reckless as to whether, in fact he has not so dealt in, or facilitated or arranged for the dealing in, the contract or other instrument.

(3) A person who contravenes subsection (1) or (2) commits an offence.

Division 5—Miscellaneous

303. Penalties

(1) A person who commits an offence under this Part is liable—

(a) on conviction on indictment to a fine of $10,000,000 and to imprisonment for 10 years; or

(b) on summary conviction to a fine of $1,000,000 and to imprisonment for 3 years.

(2) Where a person is convicted of an offence under this Part, the court before which the person is so convicted may, in addition to any penalty specified in subsection (1), make one or more of the following orders in respect of the person—

(a) an order that the person shall not, without the leave of the court, be or continue to be a director, liquidator, or receiver or manager of the property or business, of a listed corporation or any other specified corporation or in any way, whether directly or indirectly, be concerned or take part in the management of a listed corporation or any other specified corporation for the period (not exceeding 5 years) specified in the order;

(b) an order that the person shall not, without the leave of the court, in Hong Kong, directly or indirectly, in any way acquire, dispose of or otherwise deal in any securities, futures contract or leveraged foreign exchange contract, or an interest in any securities, futures contract, leveraged foreign exchange contract or collective investment scheme for the period (not exceeding 5 years) specified in the order;

(c) an order that any body which may take disciplinary action against the person as one of its members or regulatees be recommended to take disciplinary action

against the person; *(Amended 6 of 2014 s. 67; L.N. 66 of 2022)*

(d) an order that the person pay to the Government an amount not exceeding the amount of any profit gained or loss avoided by the person as a result of the commission of the offence in question. *(Added 6 of 2014 s. 67)*

(3) When making any order in respect of a person under subsection (2), the court may take into account any conduct by the person which—

(a) previously resulted in the person being convicted of an offence in Hong Kong;

(b) previously resulted in the person being identified by the Tribunal—

(i) under section 252(3)(b) as having engaged in any market misconduct; or

(ii) under section 307J(1)(b) as being in breach of a disclosure requirement; or *(Replaced 9 of 2012 s. 10)*

(c) at any time before the commencement of Part XIII resulted in the person being identified as an insider dealer in a determination under section 16(3), or in a written report prepared and issued under section 22(1), of the repealed Securities (Insider Dealing) Ordinance.

(4) Where the court makes an order under subsection (2)(a), the court may specify a corporation by name or by reference to a relationship with any other corporation.

(5) Where the court makes an order under subsection (2)(a), the order shall be filed by the court with the Registrar of Companies, as soon as reasonably practicable after it is made.

(6) Where the court makes an order under subsection (2)(b), the Commission may notify any licensed person or registered

institution of the order in such manner as it considers appropriate.

(7) A person commits an offence if he fails to comply with an order made under subsection (2)(a) or (b) and is liable—

(a) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(8) An order under subsection (2)(d) may be enforced in the same manner as a judgment of the High Court in its civil jurisdiction. *(Added 6 of 2014 s. 67)*

304. Transactions relating to contravention of Divisions 2 to 4 not void or voidable

A transaction is not void or voidable by reason only that a contravention of any of the provisions of Divisions 2 to 4 has taken place in relation to or as a result of it.

305. Civil liability for contravention of this Part

(1) Subject to subsections (2) and (3), a person who contravenes any of the provisions of Divisions 2 to 4 shall, whether or not he also incurs any other liability (whether under section 303 or otherwise), be liable to pay compensation by way of damages to any other person for any pecuniary loss sustained by the other person as a result of the contravention, whether or not the loss arises from the other person having entered into a transaction or dealing at a price affected by the contravention.

(2) No person shall be liable to pay compensation under subsection (1) unless it is fair, just and reasonable in the circumstances of the case that he should be so liable.

(3) A defence under this Part to a charge for an offence in respect of a contravention of any of the provisions of Divisions 2 to 4 shall also be a defence in an action brought under subsection (1) in respect of the same contravention.

(4) A person may bring an action under subsection (1) in respect of a contravention of any of the provisions of Divisions 2 to 4 even though the person against whom the action is brought has not been charged with or convicted of an offence by reason of the contravention.

(5) For the avoidance of doubt, where a court has jurisdiction to determine an action brought under subsection (1), it may, where it is, apart from this section, within its jurisdiction to entertain an application for an injunction, grant an injunction in addition to, or in substitution for, damages, on such terms and conditions as it considers appropriate.

(6) Without prejudice to section 62 of the Evidence Ordinance (Cap. 8), in an action brought under subsection (1)—

(a) the fact that there is a determination by the Market Misconduct Tribunal pursuant to section 252(3)(a) that market misconduct has taken place;

(b) the fact that there is a determination by the Market Misconduct Tribunal pursuant to section 252(3)(b) identifying a person (whether or not a party to the action) as having engaged in market misconduct,

shall, in so far the determination is still subsisting, be admissible in evidence for the purpose of proving, where to do so is relevant to any issue in the action—

(i) in the case of a determination referred to in paragraph (a), that the market misconduct has taken place; or

(ii) in the case of a determination referred to in paragraph (b), that the person has engaged in market misconduct.

(7) In an action brought under subsection (1), where the fact that there is a determination referred to in subsection (6)(a) or (b) is admissible in evidence under subsection (6)—

(a) then—

(i) in the case of a determination referred to in subsection (6)(a), the market misconduct that is the subject of the determination shall, unless the contrary is proved, be taken to have taken place; or

(ii) in the case of a determination referred to in subsection (6)(b), the person that is the subject of the determination shall, unless the contrary is proved, be taken to have engaged in market misconduct; and

(b) without prejudice to the reception of any other admissible evidence as evidence of the determination or for the purpose of identifying the facts on which the determination was based, the contents of a report of the Market Misconduct Tribunal containing the determination and published under section 262(2)(b)(i), or the contents of a copy of a report of the Market Misconduct Tribunal containing the determination and made available under subsection (8), shall also be admissible in evidence for such purpose.

(8) Where in an action brought under subsection (1)—

(a) the fact that there is a determination referred to in subsection (6)(a) or (b) is admissible in evidence under subsection (6); and

(b) a report of the Market Misconduct Tribunal containing the determination has not been published under section 262(2)(b)(i),

the court having jurisdiction to determine the action may, where it considers appropriate, require that a copy of the

report be made available to the court to enable it to be used for the purposes of subsection (7)(b), whereupon—

(i) the Market Misconduct Tribunal shall cause a copy of the report to be made available to the court to enable it to be used for the purposes of subsection (7)(b); and

(ii) the contents of the report shall be admissible for the purpose specified in subsection (7)(b).

(9) In this section, a reference to a transaction includes an offer and an invitation (however expressed).

(10) Nothing in this section affects, limits or diminishes any rights conferred on a person, or any liabilities a person may incur, under the common law or any other enactment.

306. Conduct not to constitute offences

(1) Notwithstanding anything in this Part, where a person is charged with an offence under this Part (other than section 300 or 302) by reason of any conduct, it is a defence to the charge for the person to prove that the conduct is, according to the rules made under subsection (2), not to be regarded as constituting an offence.

(2) For the purposes of subsection (1), the Commission, after consultation with the Financial Secretary, may, where it considers it is in the public interest to do so, make rules to prescribe the circumstances in which any conduct that would otherwise constitute an offence under this Part (other than section 300 or 302) shall not be regarded as constituting such an offence.

(3) Notwithstanding anything in this Part, where—

(a) a person is charged with an offence under section 295, 296 or 299 by reason of any conduct; and

(b) the person is charged on the basis that the conduct was carried out not in respect of securities or futures contracts traded on a relevant recognized market or by means of authorized automated trading services, but in respect of securities or futures contracts traded on a relevant overseas market,

the person shall not be convicted of the offence unless the prosecution proves that in any place in which such relevant overseas market is situated the conduct would have constituted a criminal offence had it been carried out there.

307. No further proceedings after Part XIII market misconduct proceedings

(1) Notwithstanding anything in this Part, no criminal proceedings may be instituted against any person under this Part in respect of any conduct if— *(Amended 9 of 2012 s. 26)*

(a) proceedings have previously been instituted against the person under section 252 in respect of the same conduct; and

(b) (i) those proceedings remain pending; or

(ii) by reason of the previous institution of those proceedings, no proceedings may again be lawfully instituted against that person under section 252 in respect of the same conduct.

(2) Subsection (1) does not apply in relation to any proceedings instituted under section 252 without the consent of the Secretary for Justice under section 252A(1). *(Added 9 of 2012 s. 26)*

Part XIVA

Disclosure of Inside Information

(Part XIVA added 9 of 2012 s. 3)

(Format changes—E.R. 1 of 2013)

Division 1—Interpretation

307A. Interpretation of Part XIVA

(1) In this Part—

breach of a disclosure requirement (違反披露規定)—see subsection (2) and section 307G(2);

derivatives (衍生工具), in relation to listed securities, means any of the following (whether or not they are listed and regardless of who issued or made them)—

(a) rights, options or interests (whether described as units or otherwise) in, or in respect of, the listed securities;

(b) contracts, the purpose or pretended purpose of which is to secure or increase a profit or avoid or reduce a loss, wholly or partly by reference to the price or value, or a change in the price or value, of—

(i) the listed securities; or

(ii) any rights, options or interests referred to in paragraph (a);

(c) rights, options or interests (whether described as units or otherwise) in, or in respect of—

(i) any rights, options or interests referred to in paragraph (a); or

(ii) any contracts referred to in paragraph (b);

(d) instruments or other documents creating, acknowledging or evidencing any rights, options or interests or any contracts referred to in paragraph (a), (b) or (c), including certificates of interest or participation in, temporary or interim certificates for, receipts (including depositary receipts) in respect of, or warrants to subscribe for or purchase—

(i) the listed securities; or

(ii) the rights, options or interests or the contracts;

inside information (內幕消息), in relation to a listed corporation, means specific information that—

(a) is about—

(i) the corporation;

(ii) a shareholder or officer of the corporation; or

(iii) the listed securities of the corporation or their derivatives; and

(b) is not generally known to the persons who are accustomed or would be likely to deal in the listed securities of the corporation but would if generally known to them be likely to materially affect the price of the listed securities;

listed (上市) means listed on a recognized stock market—see also subsection (3);

listed corporation (上市法團) means a corporation which has issued securities that are, at the time of the breach of a disclosure requirement in relation to the corporation, listed;

listed securities (上市證券) means—

(a) securities which, at the time of a breach of a disclosure requirement in relation to a corporation, have been issued by the corporation and are listed;

(b) securities which, at the time of a breach of a disclosure requirement in relation to a corporation, have been issued by the corporation and are not listed, but which, at that time, it is reasonably foreseeable will be and which, in fact, are subsequently listed; or

(c) securities which, at the time of a breach of a disclosure requirement in relation to a corporation, have not been issued by the corporation and are not listed, but which, at that time, it is reasonably foreseeable will be and which, in fact, are subsequently so issued and listed;

securities (證券) means—

(a) shares, stocks, debentures, loan stocks, funds, bonds or notes of, or issued by, or which it is reasonably foreseeable will be issued by, a body, whether incorporated or unincorporated, or a government or municipal government authority;

(b) rights, options or interests (whether described as units or otherwise) in, or in respect of, such shares, stocks, debentures, loan stocks, funds, bonds or notes;

(c) certificates of interest or participation in, temporary or interim certificates for, receipts for, or warrants to subscribe for or purchase, such shares, stocks, debentures, loan stocks, funds, bonds or notes;

(d) interests, rights or property, whether in the form of an instrument or otherwise, commonly known as securities; or

(e) interests, rights or property, whether in the form of an instrument or otherwise, prescribed by notice under section 392 as being regarded as securities in accordance with the terms of the notice;

Tribunal (審裁處) means the Market Misconduct Tribunal established by section 251.

(2) For the purposes of this Part—

(a) a breach of a disclosure requirement takes place if any of the requirements in section 307B or 307C is contravened in relation to a listed corporation; and

(b) in those circumstances, the listed corporation is in breach of the disclosure requirement.

Note—
Section 307G(2) provides that, in certain circumstances, an officer of a listed corporation may also be in breach of a disclosure requirement.

(3) For the purposes of this Part, securities listed on a recognized stock market are to continue to be regarded as listed during any period of suspension of dealings in those securities on that market.

Division 2—Disclosure of Inside Information

307B. Requirement for listed corporations to disclose inside information

(1) A listed corporation must, as soon as reasonably practicable after any inside information has come to its knowledge, disclose the information to the public.

(2) For the purposes of subsection (1), inside information has come to the knowledge of a listed corporation if—

(a) information has, or ought reasonably to have, come to the knowledge of an officer of the corporation in the course of performing functions as an officer of the corporation; and

(b) a reasonable person, acting as an officer of the corporation, would consider that the information is inside information in relation to the corporation.

(3) Without limiting subsection (1), a listed corporation fails to disclose the inside information required under that subsection if—

(a) the information disclosed is false or misleading as to a material fact, or is false or misleading through the omission of a material fact; and

(b) an officer of the corporation knows or ought reasonably to have known that, or is reckless or negligent as to whether, the information disclosed is false or misleading as to a material fact, or is false or misleading through the omission of a material fact.

(4) This section is subject to sections 307C, 307D, 307E and 307F.

(5) This section is also subject to sections 150 and 153(2) of the Financial Institutions (Resolution) Ordinance (Cap. 628). *(Added 23 of 2016 s. 216. Amended E.R. 2 of 2017)*

307C. Manner of disclosure

(1) A disclosure under section 307B must be made in a manner that can provide for equal, timely and effective access by the public to the inside information disclosed.

(2) Without limiting the manner of disclosure permitted under subsection (1), a listed corporation complies with that subsection if it has disseminated the inside information required to be disclosed under section 307B through an electronic publication system operated by a recognized exchange company for disseminating information to the public.

307D. Exceptions to disclosure requirement

(1) A listed corporation is not required to disclose any inside information under section 307B if and so long as the

disclosure is prohibited under, or would constitute a contravention of a restriction imposed by, an enactment or an order of a court.

(2) A listed corporation is not required to disclose any inside information under section 307B if and so long as—

(a) the corporation takes reasonable precautions for preserving the confidentiality of the information;

(b) the confidentiality of the information is preserved; and

(c) one or more of the following applies—

(i) the information concerns an incomplete proposal or negotiation;

(ii) the information is a trade secret;

(iii) the information concerns the provision of liquidity support from the Exchange Fund established by the Exchange Fund Ordinance (Cap. 66) or from an institution which performs the functions of a central bank (including such an institution of a place outside Hong Kong) to the corporation or, if the corporation is a member of a group of companies, to any other member of the group;

(iv) the disclosure is waived by the Commission under section 307E(1), and any condition imposed under section 307E(2) in relation to the waiver is complied with.

(3) For the purposes of subsection (2)—

(a) a listed corporation has not failed to take reasonable precautions for preserving the confidentiality of any inside information only because the corporation has, in the ordinary course of business, disclosed the information to any person who—

(i) requires the information to perform the person's functions in relation to the corporation; and

(ii) by virtue of any enactment, rule of law, contract, or the articles of association of the corporation, is under a duty to the corporation not to disclose the information to any other person; and

(b) in those circumstances, the confidentiality of the information is to be regarded as having been preserved.

(4) Despite subsection (2)(b), a listed corporation is not in breach of a disclosure requirement in respect of inside information the confidentiality of which is not preserved if—

(a) the corporation has taken reasonable measures to monitor the confidentiality of the information; and

(b) the corporation discloses the information in accordance with section 307C as soon as reasonably practicable after the corporation becomes aware that the confidentiality of the information has not been preserved.

307E. Waiver

(1) The Commission may, on an application by a listed corporation, grant a waiver in relation to the disclosure of any inside information required to be disclosed under section 307B if the Commission is satisfied that the disclosure—

(a) is prohibited under, or would constitute a contravention of a restriction imposed by, the legislation of a place outside Hong Kong;

(b) is prohibited under, or would constitute a contravention of a restriction imposed by, an order of a court exercising jurisdiction under the law of a place outside Hong Kong;

(c) would constitute a contravention of a restriction imposed by a law enforcement agency of a place outside Hong Kong; or

(d) would constitute a contravention of a restriction imposed by a government authority of a place outside Hong Kong in the exercise of a power conferred by the legislation of that place.

(2) The Commission may grant a waiver under subsection (1) subject to any condition that it considers appropriate to impose.

307F. Commission may make rules to prescribe circumstances in which disclosure requirement does not apply

(1) The Commission may, if it considers it is in the public interest to do so, make rules to prescribe the circumstances in which a listed corporation is not required to disclose any inside information under section 307B.

(2) The Commission must consult the Financial Secretary before making rules under subsection (1).

307G. Duty of officers of listed corporations

(1) Every officer of a listed corporation must take all reasonable measures from time to time to ensure that proper safeguards exist to prevent a breach of a disclosure requirement in relation to the corporation.

(2) If a listed corporation is in breach of a disclosure requirement, an officer of the corporation—

(a) whose intentional, reckless or negligent conduct has resulted in the breach; or

(b) who has not taken all reasonable measures from time to time to ensure that proper safeguards exist to prevent the breach,

is also in breach of the disclosure requirement.

Division 3—Disclosure Proceedings in Market Misconduct Tribunal

307H. Jurisdiction of Tribunal under this Part

The Tribunal has jurisdiction to hear and determine in accordance with this Part, Part XIII and Schedule 9 any question or issue arising out of or in connection with any proceedings instituted under section 307I.

307I. Institution of disclosure proceedings

(1) If it appears to the Commission that a breach of a disclosure requirement has or may have taken place, the Commission may institute proceedings (***disclosure proceedings***) in the Tribunal concerning the matter.

(2) The Commission institutes disclosure proceedings by giving the Tribunal a notice in writing containing a statement specifying the matters prescribed in Schedule 9.

307J. Object and conduct of disclosure proceedings

(1) Without limiting section 307H, the object of disclosure proceedings is for the Tribunal to determine—

(a) whether a breach of a disclosure requirement has taken place; and

(b) the identity of any person who is in breach of the disclosure requirement.

(2) Subject to section 261(3), the standard of proof required to determine any question or issue before the Tribunal in disclosure proceedings is the standard of proof applicable to civil proceedings in a court of law.

(3) Sections 253 and 254 apply to disclosure proceedings as if a reference in those sections to proceedings instituted under section 252 were a reference to disclosure proceedings.

307K. Right to be heard

Before the Tribunal—

(a) identifies a person under section 307J(1)(b); or

(b) makes an order under section 307N(1) in respect of a person,

the Tribunal must give the person a reasonable opportunity of being heard.

307L. Use of evidence received for purposes of disclosure proceedings

(1) Despite any other provision of this Ordinance, evidence given by any person at or for the purposes of any disclosure proceedings (including any material, record or document received by the Tribunal from the person or produced to the Tribunal by the person under section 253, and any record or document or information given, provided, produced or disclosed to the Tribunal by the person under section 254)—

(a) is admissible in evidence for all the purposes of this Part, including in the disclosure proceedings, any proceedings (civil or criminal) arising out of the disclosure proceedings and any action brought under section 307Z(1); but

(b) subject to subsection (2), is not admissible in evidence against the person for any other purposes in any other proceedings (civil or criminal) in a court of law brought by or against the person.

(2) Evidence referred to in subsection (1) is admissible in evidence against the person—

(a) in civil proceedings instituted under or pursuant to Part XI;

(b) in civil proceedings in a court of law arising out of the giving of evidence at or for the purposes of the disclosure proceedings; or

(c) in criminal proceedings where the person is charged with an offence under section 219(2)(a), or under Part V of the Crimes Ordinance (Cap. 200), or for perjury, in respect of answers given by the person to questions put to the person at or for the purposes of the disclosure proceedings.

307M. Privileged information

Nothing in this Part, Part XIII or Schedule 9 requires an authorized financial institution, acting as the banker or financial adviser of a person whose conduct is the subject, whether wholly or in part, of any disclosure proceedings, to disclose information as to the affairs of any of its customers other than that person.

307N. Orders of Tribunal

(1) Subject to section 307K, at the conclusion of any disclosure proceedings the Tribunal may make one or more of the following orders in respect of a person identified under section 307J(1)(b) as being in breach of a disclosure requirement—

(a) an order that, for the period (not exceeding 5 years) specified in the order, the person must not, without the leave of the Court of First Instance—

(i) be or continue to be a director, liquidator, or receiver or manager of the property or business, of a listed corporation or any other specified corporation; or

(ii) in any way, whether directly or indirectly, be concerned or take part in the management of a listed corporation or any other specified corporation;

(b) an order that, for the period (not exceeding 5 years) specified in the order, the person must not, without the leave of the Court of First Instance, in Hong Kong, directly or indirectly, in any way acquire, dispose of or otherwise deal in any securities, futures contract or leveraged foreign exchange contract, or an interest in any securities, futures contract, leveraged foreign exchange contract or collective investment scheme;

(c) an order that the person must not again perpetrate any conduct that constitutes a breach of a disclosure requirement;

(d) if the person is a listed corporation or is in breach of the disclosure requirement as a director or chief executive of a listed corporation, an order that the person pay to the Government a regulatory fine not exceeding $8,000,000;

(e) without prejudice to any power of the Tribunal under section 307P, an order that the person pay to the Government the sum the Tribunal considers appropriate for the costs and expenses reasonably incurred by the Government in relation or incidental to the proceedings;

(f) without prejudice to any power of the Tribunal under section 307P, an order that the person pay to the Commission the sum the Tribunal considers appropriate for the costs and expenses reasonably incurred by the Commission, whether in relation or incidental to—

(i) the proceedings;

(ii) any investigation of the person's conduct or affairs carried out before the proceedings were instituted; or

(iii) any investigation of the person's conduct or affairs carried out for the purposes of the proceedings;

(g) an order that any body which may take disciplinary action against the person as one of its members or regulatees be recommended to take disciplinary action against the person; *(Amended L.N. 66 of 2022)*

(h) if the person is a listed corporation, any order that the Tribunal considers necessary to ensure that a breach of a disclosure requirement does not again take place in respect of the corporation including, but not limited to, an order that the corporation appoint an independent professional adviser approved by the Commission to review the corporation's procedure for compliance with this Part or to advise the corporation on matters relating to compliance with this Part;

(i) if the person is an officer of a listed corporation, any order that the Tribunal considers necessary to ensure that the officer does not again perpetrate any conduct that constitutes a breach of a disclosure requirement including, but not limited to, an order that the officer undergo a training program approved by the Commission on compliance with this Part, directors' duties and corporate governance.

(2) When making an order in respect of a person under subsection (1), the Tribunal may take into account any conduct by the person which—

(a) previously resulted in the person being convicted of an offence in Hong Kong;

(b) previously resulted in the person being identified by the Tribunal—

(i) under section 252(3)(b) as having engaged in any market misconduct; or

(ii) under section 307J(1)(b) as being in breach of a disclosure requirement; or

(c) at any time before the commencement# of Part XIII resulted in the person being identified as an insider dealer in a determination under section 16(3), or in a written report prepared and issued under section 22(1), of the repealed Securities (Insider Dealing) Ordinance.

(3) The Tribunal must not impose a regulatory fine on a person under subsection (1)(d) unless, in all the circumstances of the case, the fine is proportionate and reasonable in relation to the breach of the disclosure requirement. For that purpose, the Tribunal may take into account, in addition to any conduct referred to in subsection (2), any of the following matters—

(a) the seriousness of the conduct that resulted in the person being in breach of the disclosure requirement;

(b) whether or not that conduct was intentional, reckless or negligent;

(c) whether that conduct may have damaged the integrity of the securities and futures market;

(d) whether that conduct may have damaged the interest of the investing public;

(e) whether that conduct resulted in any benefit to the person or any other person, including any profit gained or loss avoided;

(f) the person's financial resources.

(4) An order made under subsection (1)(a) may specify a corporation by name or by reference to a relationship with any other corporation.

(5) Subject to any rules made by the Chief Justice under section 307X, Order 62 of the Rules of the High Court (Cap. 4 sub. leg. A) applies to the taxation of any sum ordered under subsection (1)(e) or (f) for costs reasonably incurred in relation or incidental to the proceedings.

(6) In this section—

chief executive (最高行政人員) has the meaning given by section 308(1).

Editorial Note:

Commencement date: 1 April 2003.

307O. Notice and effect of orders of Tribunal

(1) The Tribunal must by notice in writing notify a person of an order made in respect of the person under section 307N(1).

(2) The order takes effect at the time when it is notified to the person or at the time specified in the notice, whichever is the later.

(3) If the Tribunal makes an order under section 307N(1)(b), the Commission may notify any licensed person or registered institution of the order in any manner the Commission considers appropriate.

(4) A person who fails to comply with an order made under section 307N(1)(a), (b) or (c) commits an offence and is liable—

(a) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

307P. Costs

(1) Subject to subsection (4), at the conclusion of any disclosure proceedings, or as soon as reasonably practicable after the conclusion of the proceedings, the Tribunal may by order award to any of the following persons a sum it considers appropriate in respect of the costs reasonably incurred by the person in relation to the proceedings—

(a) a person whose attendance, whether as a witness or otherwise, has been necessary or required for the purposes of the proceedings;

(b) a person whose conduct is the subject, whether wholly or in part, of the proceedings.

(2) Any costs awarded under this section are a charge on the general revenue.

(3) Subject to any rules made by the Chief Justice under section 307X, Order 62 of the Rules of the High Court (Cap. 4 sub. leg. A) applies to the award of costs, and to the taxation of any costs awarded, by the Tribunal under this section.

(4) Subsection (1)(a) and (b) does not apply to—

(a) a person who has been identified under section 307J(1)(b) as being in breach of a disclosure requirement;

(b) a person whose conduct the Tribunal considers has caused, whether wholly or in part, the Tribunal to investigate or consider the person's conduct during the course of the disclosure proceedings; or

(c) a person whom the Tribunal considers has by the person's conduct caused, whether wholly or in part, the institution of the disclosure proceedings.

307Q. Report of Tribunal

(1) After the conduct of any disclosure proceedings, the Tribunal must prepare a written report of the proceedings, which must contain—

(a) any determinations under section 307J(1) and orders under section 307N, and the reasons for making the determinations and orders; and

(b) any order under section 307P and the reasons for making the order.

(2) The Tribunal must issue the report prepared under subsection (1)—

(a) by giving a copy of the report to the Commission; and

(b) except where the Tribunal sat in private for the whole or any part of its proceedings, by—

(i) publishing the report so that copies of the report are available to the public;

(ii) giving a copy of the report, so far as reasonably practicable, to any person whose conduct was directly in question in the proceedings;

(iii) where the Tribunal considers appropriate, giving a copy of the report to any body which may take disciplinary action against a person who is a member or regulatee of the body and who is identified under section 307J(1)(b) as being in breach of a disclosure requirement. *(Amended L.N. 66 of 2022)*

(3) Where the Tribunal sat in private for the whole or any part of its proceedings, the Commission may, if the Commission is of the opinion that it is in the public interest to do so, cause the whole or any part of the report to be made available to the public or to a particular person or body in the manner the Commission directs.

(4) A person is not liable to civil or criminal proceedings for publishing a true and accurate account or a fair and accurate summary of a report of the Tribunal issued or made available under subsection (2)(b) or (3).

307R. Form and proof of orders of Tribunal

Section 263 applies to an order of the Tribunal in disclosure proceedings.

307S. Registration and filing of orders of Tribunal

(1) Section 264(1) applies to an order of the Tribunal in disclosure proceedings.

(2) The Tribunal must file an order made under section 307N(1)(a) with the Registrar of Companies as soon as reasonably practicable after it is made.

307T. Stay of execution of orders of Tribunal

On application by a person in respect of whom an order has been made under section 307N or 307P, the Tribunal may by order grant a stay of execution of the order, subject to any conditions as to costs, payment of money into the Tribunal or otherwise, as the Tribunal considers appropriate.

307U. Appeal to Court of Appeal

(1) If the Tribunal has made any finding or determination for the purposes of any disclosure proceedings and the Commission,

or a person identified under section 307J(1)(b) as being in breach of a disclosure requirement, is dissatisfied with the finding or determination, the Commission or the person may, after the Tribunal has made orders (if any) under section 307N or 307P for the purposes of the proceedings, appeal to the Court of Appeal against the finding or determination—

(a) on a point of law; or

(b) with the leave of the Court of Appeal, on a question of fact.

(2) A person in respect of whom an order has been made under section 307N or 307P may appeal to the Court of Appeal against the order.

307V. Powers of Court of Appeal on appeal

(1) In an appeal under section 307U(1), the Court of Appeal may—

(a) allow the appeal;

(b) dismiss the appeal;

(c) vary or set aside the finding or determination and, if the finding or determination is set aside, substitute for the finding or determination any other finding or determination it considers appropriate; or

(d) remit the matter in question to the Tribunal with the directions it considers appropriate, which may include a direction to the Tribunal to conduct the proceedings afresh for the purpose of determining any question specified by the Court of Appeal.

(2) In an appeal under section 307U(2), the Court of Appeal may—

(a) confirm, vary or set aside the order appealed against; and

(b) if the order is set aside, substitute for the order any other order it considers appropriate.

(3) If the Court of Appeal varies, or substitutes any other finding, determination or order for a finding, determination or order under subsection (1)(c) or (2)(a) or (b), the finding, determination or order as varied or the other finding, determination or order substituting for the finding, determination or order may be—

(a) in the case of subsection (1)(c), any finding or determination (whether more or less onerous) that the Tribunal had power to make for the purposes of the proceedings in question; or

(b) in the case of subsection (2)(a) or (b), any order (whether more or less onerous) that the Tribunal had power to make in respect of the appellant,

whether or not under the same provision as that under which the finding, determination or order has been made.

(4) If the Court of Appeal remits a matter to the Tribunal under subsection (1)(d), the Tribunal may be constituted by the same members as, or different members from, those that originally dealt with the matter, unless the Court of Appeal otherwise directs.

(5) In an appeal under section 307U, the Court of Appeal may make any order as to costs that it considers appropriate.

307W. No stay of execution on appeal

(1) Without prejudice to section 307T, neither the lodging of an appeal nor the filing of an application for leave to appeal under section 307U by itself operates as a stay of execution of a finding, determination or order of the Tribunal unless the Court of Appeal otherwise orders.

(2) A stay of execution ordered under subsection (1) may be subject to any conditions as to costs, payment of money into the Tribunal or otherwise, as the Court of Appeal considers appropriate.

307X. Rules by Chief Justice

The Chief Justice may make rules—

(a) providing for the taxation of costs required to be paid under an order referred to in section 307N(1)(e) or (f) and for the award of costs under section 307P and the taxation of those costs;

(b) regulating the procedure for—

(i) applying for leave to appeal, and the hearing of applications for leave to appeal, under section 307U; and

(ii) the hearing of appeals under that section;

(c) requiring the payment of the fees specified in the rules for any matter relating to disclosure proceedings;

(d) providing for matters of procedure or other matters relating to disclosure proceedings which are not provided for in this Part, Part XIII or Schedule 9;

(e) providing for the issue or service of any document (however described) for the purposes of this Part or Schedule 9; and

(f) prescribing any matter which this Part provides is, or may be, prescribed by rules made by the Chief Justice.

Division 4—Civil Liability for Breach of a Disclosure Requirement

307Y. Interpretation and application

(1) In this Division—

transaction (交易) includes an offer and an invitation (however expressed).

(2) Nothing in this Division affects, limits or diminishes any rights conferred on a person, or any liabilities a person may incur, under the common law or any other enactment.

307Z. Civil liability for breach of a disclosure requirement

(1) Subject to subsection (2), a person who is in breach of a disclosure requirement is liable to pay compensation by way of damages to any other person for any pecuniary loss sustained by the other person as a result of the breach.

(2) A person is not liable to pay compensation under subsection (1) unless it is fair, just and reasonable in the circumstances of the case that the person should be so liable.

(3) Subsection (1) applies—

(a) whether or not the loss arises from the other person having entered into a transaction or dealing at a price affected by the breach of the disclosure requirement; and

(b) whether or not the person who is in breach of the disclosure requirement incurs any other liability (under this Part or otherwise).

(4) To avoid doubt, a court that has jurisdiction to determine an action brought under subsection (1) may grant an injunction in addition to, or in substitution for, damages, on any terms and conditions that it considers appropriate, if apart from this section the court has jurisdiction to grant an injunction.

307ZA. Evidentiary provisions

(1) In an action brought under section 307Z(1)—

(a) the fact that there is a determination by the Tribunal under section 307J(1)(a) that a breach of a disclosure requirement has taken place is admissible in evidence for the purpose of proving that a breach of a disclosure requirement has taken place; and

(b) the fact that there is a determination by the Tribunal under section 307J(1)(b) identifying a person as being in breach of a disclosure requirement is admissible in evidence for the purpose of proving that the person is in breach of a disclosure requirement.

(2) In an action brought under section 307Z(1), if the fact that there is a determination referred to in subsection (1) is admissible in evidence under that subsection—

(a) then—

(i) in the case of a determination referred to in subsection (1)(a), the breach that is the subject of the determination is to be taken, unless the contrary is proved, to have taken place; and

(ii) in the case of a determination referred to in subsection (1)(b), the person who is the subject of the determination is to be taken, unless the contrary is proved, to be in breach of the disclosure requirement; and

(b) the contents of either of the following are admissible in evidence for the purpose of identifying the facts on which the determination was based—

(i) a report of the Tribunal containing the determination and published under section 307Q(2)(b)(i); or

(ii) a copy of a report of the Tribunal containing the determination and made available under subsection (4).

(3) Subsection (2)(b) is without prejudice to the reception of any other admissible evidence as evidence of the determination or for the purpose of identifying the facts on which the determination was based.

(4) If, in an action brought under section 307Z(1)—

(a) the fact that there is a determination referred to in subsection (1) is admissible in evidence under that subsection; and

(b) a report of the Tribunal containing the determination has not been published under section 307Q(2)(b)(i),

the court may require that a copy of the report be made available to the court to enable it to be used for the purposes of subsection (2)(b) and the Tribunal must cause a copy of the report to be made available to the court accordingly.

(5) Nothing in this section limits section 62 of the Evidence Ordinance (Cap. 8).

Part XV

Disclosure of Interests

(Format changes—E.R. 2 of 2012)

Division 1—Preliminary

308. Interpretation of Part XV

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

associated corporation (相聯法團), in relation to a listed corporation, means a corporation—

(a) which is a subsidiary or holding company of the listed corporation or a subsidiary of the listed corporation's holding company; or

(b) (not being a subsidiary of the listed corporation) in which the listed corporation has an interest in the shares of a class comprised in its share capital exceeding in number one-fifth of the number of the issued shares of that class; *(Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)*

cash settled equity derivatives (現金結算股本衍生工具) means equity derivatives other than physically settled equity derivatives;

chief executive (最高行政人員) means the person employed or otherwise engaged by a corporation who, either alone or together with one or more persons, is or will be responsible under the immediate authority of the board of directors for the conduct of the business of the corporation;

contract multiplier (合約乘數), in relation to a stock futures contract, means the number specified by the recognized

exchange company operating the futures market on which the stock futures contract is traded to be the contract multiplier for that stock futures contract under the rules of the recognized exchange company;

custodian (保管人) means a corporation the principal business of which is to act as a custodian of securities or other property for another person, whether on trust or by contract;

deliver (交付), in relation to any shares or debentures, means deliver the shares or debentures either physically or by electronic means and, in the case of unissued shares, means deliver the shares after they are issued; and ***take delivery*** (提取) shall be construed accordingly;

duty of disclosure (披露責任)—

(a) for the purposes of, and otherwise in relation to, Divisions 2 to 6, means the duty of disclosure arising under section 310 which has to be performed in accordance with section 324; or

(b) for the purposes of, and otherwise in relation to, Divisions 7 to 10, means the duty of disclosure arising under section 341 which has to be performed in accordance with section 347;

equity derivatives (股本衍生工具) means any—

(a) rights, options or interests (whether described as units or otherwise) in, or in respect of, underlying shares;

(b) contracts, the purpose or pretended purpose of which is to secure or increase a profit or avoid or reduce a loss, wholly or partly by reference to the price or value, or a change in the price or value, of—

(i) underlying shares; or

(ii) any rights, options or interests referred to in paragraph (a);

(c) rights, options or interests (whether described as units or otherwise) in, or in respect of—

(i) any rights, options or interests referred to in paragraph (a); or

(ii) any contracts referred to in paragraph (b); or

(d) instruments or other documents creating, acknowledging or evidencing any rights, options or interests or any contracts referred to in paragraph (a), (b) or (c), including stock futures contracts, certificates of interest or participation in, temporary or interim certificates for, receipts (including depositary receipts) in respect of, or warrants to subscribe for or purchase—

(i) underlying shares; or

(ii) the rights, options or interests or the contracts,

whether or not—

(i) the rights, options or interests, the contracts or the instruments or documents are traded on a recognized stock market or a recognized futures market;

(ii) the rights, options or interests, the contracts or the instruments or documents are, where the underlying shares are shares in a listed corporation, issued or made available by the listed corporation; or

(iii) the obligations under the rights, options or interests, the contracts or the instruments or documents are settled by payment of cash or by delivery of the underlying shares or otherwise;

Exchange Company (交易所公司) means the Exchange Company within the meaning of the repealed Securities (Disclosure of Interests) Ordinance;

founder (成立人), in relation to a discretionary trust, means a person who—

(a) has directly or indirectly provided, or undertaken to provide, property for the purpose of the trust; or

(b) has entered into a reciprocal arrangement or understanding (whether having legal effect or not) with another person leading, directly or indirectly, to the creation of the trust, or has procured another person, directly or indirectly, to create the trust,

and whose consent is required as a condition (whether having legal effect or not) to the exercise by any trustee of his discretion in connection with the trust property, or in accordance with whose wishes (whether having legal effect or not) any trustee is accustomed, or would be expected, to act;

Hong Kong register (香港登記冊), in relation to a listed corporation, means the register of members, or a branch register, of the listed corporation that is kept in Hong Kong;

inspector (審查員) means an inspector appointed under section 356 or 357;

issued voting shares (已發行的有投票權股份), in relation to a listed corporation, means the listed corporation's issued shares of a class which carry rights to vote in all circumstances at general meetings of the corporation; *(Added 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)*

listed (上市) means listed on a recognized stock market;

listed corporation (上市法團) means any corporation which has any of its securities listed;

notifiable interest (須具報權益) has the meaning assigned to it by section 311(3);

notifiable percentage level (須具報百分率水平) has the meaning assigned to it by section 315(1);

off-exchange transaction (場外交易) means any transaction, arrangement or occurrence of an event (other than an on-

exchange transaction) under which a person becomes, or ceases to be, interested in shares;

on-exchange transaction (場內交易) means any transaction conducted on a recognized stock market or a recognized futures market under which a person becomes, or ceases to be, interested in shares;

physically settled equity derivatives (實物結算股本衍生工具) means equity derivatives that are, or are to be, settled by delivery of the underlying shares, including equity derivatives in respect of which the holder, writer or issuer of the equity derivatives may choose to settle by payment of cash or by delivery of the underlying shares;

qualified lender (合資格借出人) means a person who is—

(a) an authorized financial institution;

(b) an insurer authorized under the Insurance Ordinance (Cap. 41); *(Amended 12 of 2015 s. 141)*

(c) an exchange participant of a recognized exchange company;

(d) an intermediary licensed or registered for Type 1 or Type 8 regulated activity; or

(e) a corporation authorized under the law of any place outside Hong Kong recognized for the purposes of section 313(13), 317(6), 323(6) or (7) or 341(5) by the Commission to carry on business—

(i) as a bank;

(ii) as an insurance company; or

(iii) in an activity that is in the opinion of the Commission equivalent to any of the regulated activities carried on by an intermediary referred to in paragraph (d);

register of directors' and chief executives' interests and short positions (董事及最高行政人員權益及淡倉登記冊) means the register kept under section 352;

register of interests in shares and short positions (股份權益及淡倉登記冊) means the register kept under section 336 including, except where the context otherwise requires, that part of the register kept under section 337;

regulations (規例) means regulations made under section 376;

relevant event (有關事件)—

(a) for the purposes of, and otherwise in relation to, Divisions 2 to 6, means—

(i) in a case under section 310(1)(a) or (b) or (4)(a) or (b), the event or change referred to in such section;

(ii) in a case under section 310(2)(a), the event in consequence of which the corporation becomes a listed corporation;

(iii) in a case under section 310(2)(b), the event in consequence of which the listed corporation's shares of a particular class become voting shares; *(Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)*

(iv) in a case under section 310(2)(c) or (5), the commencement of this Part; or

(v) in a case under section 310(3) or (6), the taking effect of the regulation providing for the reduction referred to in such section; or

(b) for the purposes of, and otherwise in relation to, Divisions 7 to 10, means—

(i) in a case under section 341(1)(a), (b), (c), (d), (e) or (f), the event referred to in such section;

(ii) in a case under section 341(2)(a), the event in consequence of which the corporation becomes a listed corporation;

(iii) in a case under section 341(2)(b), the commencement of this Part;

(iv) in a case under section 341(2)(c), the event in consequence of which the person becomes a director or chief executive of a listed corporation; or

(v) in a case under section 341(2)(d), the event in consequence of which the corporation becomes an associated corporation of a listed corporation;

relevant exchange company (有關交易所公司) means the Stock Exchange Company; *(Replaced 6 of 2014 s. 63)*

relevant time (有關時間) means the time of the occurrence of the relevant event;

rights issue (供股) means an offer or issue by a listed corporation of shares in the listed corporation (whether issued or unissued) to all persons holding issued shares in the listed corporation at a certain date (other than a person whose address is in a place where such offer or issue is not permitted under the law of that place) in proportion to the number of those issued shares held by them at that date, but does not include an offer or issue of shares in the listed corporation in lieu of all or part of a cash dividend;

short position (淡倉) means the position which a person has—

(a) where the person is the holder, writer or issuer of any equity derivatives, by virtue of which the person—

(i) has a right to require another person to take delivery of the underlying shares of the equity derivatives;

(ii) is under an obligation to deliver the underlying shares of the equity derivatives to another person, if called upon to do so;

(iii) has a right to receive from another person an amount if the price of the underlying shares of the equity derivatives declines; or

(iv) has a right to avoid or reduce a loss if the price of the underlying shares of the equity derivatives declines,

before or on a certain date or within a certain period, whether in any case the right or obligation is conditional or absolute; or

(b) where the person is the borrower of shares under a securities borrowing and lending agreement, by virtue of which the person is under an obligation to deliver shares to another person who has lent shares, if called upon to do so, before or on a certain date or within a certain period, whether or not the obligation to deliver shares is to be settled by payment of cash or by delivery of shares or otherwise;

specified percentage level (指明百分率水平) has the meaning assigned to it by section 315(2);

stock futures contract (股票期貨合約) means a contract which is of a class approved by the Commission as stock futures contracts for trading on a recognized futures market;

target corporation (目標法團), in relation to an agreement to which section 317 applies, means the particular listed corporation which is the target corporation for that agreement;

underlying shares (相關股份), in relation to any equity derivatives and subject to subsection (5), means—

(a) for the purposes of, and otherwise in relation to, Divisions 2 to 6—

(i) the voting shares in the listed corporation concerned which may be required to be delivered to, or by, the holder, writer or issuer of the equity derivatives on the exercise of rights or fulfilment of obligations under the equity derivatives, whether in any case the rights or obligations are conditional or absolute; or

(ii) the voting shares in the listed corporation concerned by reference to the price or value of which, wholly or partly, the price or value of the equity derivatives is derived or determined; or

(b) for the purposes of, and otherwise in relation to, Divisions 7 to 10—

(i) the shares in the listed corporation concerned, or any associated corporation of the listed corporation, which may be required to be delivered to, or by, the holder, writer or issuer of the equity derivatives on the exercise of rights or fulfilment of obligations under the equity derivatives, whether in any case the rights or obligations are conditional or absolute; or

(ii) the shares in the listed corporation concerned, or any associated corporation of the listed corporation, by reference to the price or value of which, wholly or partly, the price or value of the equity derivatives is derived or determined,

whether in any case those shares are issued or unissued; *(Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)*

voting shares (有投票權股份), in relation to a listed corporation—

(a) means the listed corporation's issued voting shares; and

(b) includes the listed corporation's unissued shares of a class which, if issued, would carry rights to vote in all circumstances at general meetings of the corporation. *(Added 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)*

(Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)

(2) The temporary suspension of voting rights in respect of shares comprised in a class of the issued shares in a listed corporation does not affect the application of this Part in relation to interests in those or any other shares comprised in that class. *(Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)*

(3) In section 317, and also in references elsewhere in this Part to an agreement to which that section applies, ***agreement*** (協議) includes any agreement or arrangement, and a reference in that section to provisions of an agreement—

(a) accordingly includes a reference to undertakings, expectations or understandings operative under any arrangement; and

(b) (without prejudice to paragraph (a)) also includes a reference to any provisions, whether express or implied and whether absolute or not.

(4) For the purposes of any provision of this Part which provides that an officer of a corporation who is in default is liable to a fine or penalty, the expression ***every officer of it who is in default*** (其每名違責的高級人員) means every officer of the corporation who knowingly and wilfully authorizes or permits the default, refusal or contravention referred to in that provision.

(5) In the case of equity derivatives—

(a) where—

(i) no less than 5 listed corporations' shares will be required to be delivered on the exercise of rights or fulfilment of obligations under the equity derivatives; and

(ii) at the time of the issue of the equity derivatives, no more than—

(A) subject to sub-subparagraph (B), 30%; or

(B) where any other percentage is prescribed by regulations for the purposes of this subsection, such other percentage,

of the value of all the shares which, but for this subsection, would have been the underlying shares of the equity derivatives is represented by the shares in any one of those listed corporations; or

(b) where—

(i) the prices or values of no less than 5 listed corporations' shares play a part in the derivation or determination of the price or value of the equity derivatives; and

(ii) at the time of the issue of the equity derivatives, no more than—

(A) subject to sub-subparagraph (B), 30%; or

(B) where any other percentage is prescribed by regulations for the purposes of this subsection, such other percentage,

of the price or value of the equity derivatives is derived from or determined by the prices or values of the shares in any one of those listed corporations,

those equity derivatives are taken to have no underlying shares.

(6) In subsection (5), a reference to shares shall be construed as—

(a) for the purposes of, and otherwise in relation to, Divisions 2 to 6, a reference to voting shares in the listed corporation concerned; or *(Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)*

(b) for the purposes of, and otherwise in relation to, Divisions 7 to 10, a reference to shares in the listed corporation concerned.

(7) In subsections (5) and (6), a reference to a listed corporation includes a reference to a corporation that is listed on a specified stock exchange.

309. Exemptions

(1) The Commission may, after consultation with the Financial Secretary, publish guidelines for the exemption of any person from all or any of the provisions of this Part.

(2) The Commission may, upon the application of a corporation, having regard to the guidelines published under subsection (1) and imposing such conditions as it considers appropriate, exempt the applicant corporation, and any other person in relation to that corporation, from all or any of the provisions of this Part.

(3) The Commission may, upon the application of the holder, writer or issuer, or the prospective holder, writer or issuer, of any equity derivatives, having regard to the guidelines published under subsection (1) and imposing such conditions as it considers appropriate, exempt the applicant, and any other person who is taken to have an interest or short position in the underlying shares of the equity derivatives by virtue of the holding, writing or issuing of the equity derivatives, from all or any of the provisions of this Part.

(4) The Commission may from time to time—

(a) suspend or withdraw an exemption granted under subsection (2) or (3) on the ground that the conditions subject to which the exemption was granted have not been complied with or on such other ground as the Commission considers appropriate; or

(b) amend any condition imposed under subsection (2) or (3).

(5) The Commission shall publish, by the use of the Internet, such particulars of the exemptions granted, suspended or withdrawn under this section as it considers appropriate. *(Amended 9 of 2012 s. 43)*

(6) Guidelines published under subsection (1) are not subsidiary legislation.

Division 2—Disclosure of interests and short positions

310. Duty of disclosure: cases in which it may arise

(1) Where—

(a) a person acquires an interest in, or ceases to be interested in, voting shares in a listed corporation (whether or not having or retaining an interest in other voting shares in the listed corporation); or

(b) any change occurs affecting facts relevant to the application of section 313 to a person's existing interest (or part thereof) in shares of any description in a listed corporation,

then in the circumstances specified in section 313(1), he comes under the duty of disclosure.

(2) Where a person is—

(a) interested in voting shares in a corporation at the time when the corporation becomes a listed corporation;

(b) interested in a listed corporation's shares of a particular class at the time when the listed corporation's shares of that class become voting shares; or

(c) interested in voting shares in a listed corporation at the commencement of this Part, if such interest has not previously been disclosed to the listed corporation and the Exchange Company under the Securities (Disclosure of Interests) Ordinance (Cap. 396) before its repeal under section 406,

then in the circumstances specified in section 313(2), he comes under the duty of disclosure.

(3) Where a person is interested in voting shares in a listed corporation at the time when there is a reduction in the notifiable percentage level made by regulations, then in the circumstances specified in section 313(3), he comes under the duty of disclosure.

(4) Where—

(a) a person comes to have, or ceases to have, a short position in voting shares in a listed corporation (whether or not having or retaining a short position in other voting shares in the listed corporation); or

(b) any change occurs affecting facts relevant to the application of section 313 to a person's existing short position (or part thereof) in shares of any description in a listed corporation,

then in the circumstances specified in section 313(4), he comes under the duty of disclosure.

(5) Where a person has a short position in voting shares in a listed corporation at the commencement of this Part, then in

the circumstances specified in section 313(5), he comes under the duty of disclosure.

(6) Where a person has a short position in voting shares in a listed corporation at the time when there is a reduction in the specified percentage level made by regulations, then in the circumstances specified in section 313(6), he comes under the duty of disclosure.

(7) The existence of the duty of disclosure in a particular case depends (in part) on the circumstances obtaining before and after whatever is in that case the relevant time.

(8) This section is subject to sections 151 and 153(3) of the Financial Institutions (Resolution) Ordinance (Cap. 628). *(Added 23 of 2016 s. 217. Amended E.R. 2 of 2017)*

(Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)

311. Interests to be disclosed

(1) Subject to subsection (2), the interests to be taken into account for the purposes of the duty of disclosure arising under section 310 are those in voting shares in the listed corporation concerned.

(2) In subsection (1), a reference to interests in voting shares in the listed corporation concerned includes a reference to interests in such voting shares, which are the underlying shares of equity derivatives, that a person has, or ceases to have, by virtue of— *(Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)*

(a) the holding, writing or issuing by him of the equity derivatives;

(b) the exercise by, or against, him of rights under the equity derivatives; or

(c) the assignment by him, or the lapsing without exercise, of rights under the equity derivatives.

(3) A person has a notifiable interest at any time when the aggregate number of voting shares in the listed corporation concerned in which the person is interested, when expressed as a percentage of the number of issued voting shares in the listed corporation at that time, is equal to or more than the notifiable percentage level for the time being.

(Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)

312. Short positions to be disclosed

The short positions to be taken into account for the purposes of the duty of disclosure arising under section 310 are those in voting shares in the listed corporation concerned.

(Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)

313. Circumstances in which duty of disclosure arises

(1) The circumstances referred to in section 310(1) are those where—

(a) the person has a notifiable interest immediately after the relevant time, but did not have a notifiable interest immediately before the relevant time;

(b) the person had a notifiable interest immediately before the relevant time, but does not have a notifiable interest immediately after the relevant time;

(c) the person had a notifiable interest immediately before the relevant time, and has a notifiable interest immediately after the relevant time, but the percentage levels of his interest immediately before and immediately after the relevant time are not the same; or

(d) the person had a notifiable interest immediately before the relevant time, and has a notifiable interest immediately after the relevant time, but the nature of his interest (or part thereof) immediately before and immediately after the relevant time is not the same.

(2) The circumstances referred to in section 310(2) are those where the person has a notifiable interest immediately after the relevant time.

(3) The circumstances referred to in section 310(3) are those where the person has a notifiable interest immediately after the relevant time, but did not have a notifiable interest immediately before the relevant time.

(4) The circumstances referred to in section 310(4) are those where the person had a notifiable interest immediately before the relevant time, and has a notifiable interest immediately after the relevant time, and—

(a) the person—

(i) did not have a short position in voting shares in the listed corporation concerned immediately before the relevant time; or

(ii) had a short position in such voting shares immediately before the relevant time of a percentage level less than the specified percentage level,

but has a short position in such voting shares immediately after the relevant time of a percentage level equal to or more than the specified percentage level;

(b) the person had a short position in such voting shares immediately before the relevant time of a percentage level equal to or more than the specified percentage level, but does not have a short position in such voting shares immediately after the relevant time of

a percentage level equal to or more than the specified percentage level; or

(c) the person had a short position in such voting shares immediately before the relevant time of a percentage level equal to or more than the specified percentage level, and has a short position in such voting shares immediately after the relevant time of a percentage level equal to or more than the specified percentage level, but the percentage levels of his short position immediately before and immediately after the relevant time are not the same. *(Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)*

(5) The circumstances referred to in section 310(5) are those where the person has a notifiable interest immediately after the relevant time, and has a short position in voting shares in the listed corporation concerned immediately after the relevant time of a percentage level equal to or more than the specified percentage level. *(Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)*

(6) The circumstances referred to in section 310(6) are those where—

(a) the person had a notifiable interest immediately before the relevant time, and has a notifiable interest immediately after the relevant time; and

(b) the person had a short position in voting shares in the listed corporation concerned immediately before the relevant time of a percentage level less than the specified percentage level, but has a short position in such voting shares immediately after the relevant time of a percentage level equal to or more than the specified percentage level. *(Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)*

(7) A person who would otherwise come under a duty of disclosure in the circumstances specified in subsection (1)(c) is not under such a duty where—

(a) the percentage level of his interest in voting shares in the listed corporation concerned, calculated in accordance with section 314(1), immediately after the relevant time is the same as or less than the percentage level of his interest in such voting shares at the time of the relevant event giving rise to the last notification given by him where the duty of disclosure arose in the circumstances specified in subsection (1)(c); and

(b) the difference between—

(i) the percentage figure of his interest in such voting shares, calculated in accordance with subsection (14)(a), at all times since the relevant event giving rise to the last notification given by him where the duty of disclosure arose in the circumstances specified in subsection (1)(c); and

(ii) the percentage figure of his interest in such voting shares disclosed in the last notification given by him where the duty of disclosure arose in the circumstances specified in subsection (1)(c),

is less than 0.5%. *(Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)*

(8) A person who would otherwise come under a duty of disclosure in the circumstances specified in subsection (1)(d) is not under such a duty where the percentage level of his interest (excluding that part of his interest the nature of which has changed immediately after the relevant time) in voting shares in the listed corporation concerned, calculated in accordance with section 314(1) (by construing the reference in that section to the aggregate number of all the voting

shares in which a person is interested as a reference to the aggregate number of the voting shares the nature of the person's interest in which has not changed), immediately after the relevant time— *(Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)*

(a) is the same as the percentage level of his interest in such voting shares at the time of the relevant event giving rise to the last notification given by him where the duty of disclosure arose in the circumstances specified in subsection (1)(a), (c) or (d) (whichever is the latest); or

(b) is the same as or less than the percentage level of his interest in such voting shares at the time of the relevant event giving rise to the last notification given by him where the duty of disclosure arose in the circumstances specified in subsection (1)(c), and the difference between— *(Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)*

(i) the percentage figure of his interest in such voting shares, calculated in accordance with subsection (14)(a) (by construing the reference in that subsection to section 314(1) in the manner aforementioned in this subsection), at all times since the relevant event giving rise to the last notification given by him where the duty of disclosure arose in the circumstances specified in subsection (1)(c); and

(ii) the percentage figure of his interest in such voting shares disclosed in the last notification given by him where the duty of disclosure arose in the circumstances specified in subsection (1)(c),

is less than 0.5%. *(Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)*

(9) A person who would otherwise come under a duty of disclosure in the circumstances specified in subsection (4)(c) is not under such a duty where—

(a) the percentage level of his short position in voting shares in the listed corporation concerned, calculated in accordance with section 314(4), immediately after the relevant time is the same as or less than the percentage level of his short position in such voting shares at the time of the relevant event giving rise to the last notification given by him where the duty of disclosure arose in the circumstances specified in subsection (4)(c); and

(b) the difference between—

(i) the percentage figure of his short position in such voting shares calculated in accordance with subsection (14)(b) at all times since the relevant event giving rise to the last notification given by him where the duty of disclosure arose in the circumstances specified in subsection (4)(c); and

(ii) the percentage figure of his short position in such voting shares disclosed in the last notification given by him where the duty of disclosure arose in the circumstances specified in subsection (4)(c),

is less than 0.5%. *(Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)*

(10) Subject to subsection (11), a qualified corporation which would otherwise come under a duty of disclosure in the circumstances specified in subsection (1) or (4) is not under such a duty if its holding company (or where its holding company is a qualified corporation of another holding company, that other holding company)—

(a) is, at the relevant time, taken under section 316(2)—

(i) to be interested in any voting shares in which the qualified corporation is interested; and

(ii) to have a short position in any voting shares in which the qualified corporation has a short position; and *(Amended 19 of 2015 s. 2)*

(b) accordingly complies with the duty of disclosure.

(11) If a corporation ceases to be a qualified corporation of its holding company and in such circumstances the holding company is regarded as having ceased to be interested, or have a short position, in voting shares under section 316(6), the corporation is taken to have acquired that interest or come to have that short position (as the case may be). *(Amended 19 of 2015 s. 2)*

(12) In subsections (10), (11) and (13), ***qualified corporation*** (合資格法團), in relation to a holding company, means a wholly owned subsidiary of the holding company (whether or not the holding company is itself a wholly owned subsidiary of another holding company).

(13) In subsection (1)(d), a reference to the nature of a person's interest as being not the same includes a reference to a change in the nature of—

(a) the person's title to voting shares in the listed corporation concerned;

(b) any of the person's interest whether legal or equitable in such voting shares;

(c) any of the person's interest in such voting shares, which are the underlying shares of equity derivatives, on the exercise by, or against, him of rights under the equity derivatives; or

(d) any of the person's interest in such voting shares in such other circumstances as are prescribed by rules

made under section 377 for the purposes of this section, *(Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)*

but does not include a reference to a change in the nature of the person's interest in such voting shares— *(Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)*

(i) on delivery of the voting shares to him, if his equitable interest in those voting shares is notifiable, or has previously been notified to the listed corporation concerned and the relevant exchange company, under any provision of this Division or Division 3 or 4;

(ii) due to a change in the terms on which rights under any equity derivatives may be exercised resulting from a change in the number of the underlying shares in issue;

(iii) on—

(A) the exercise of rights to subscribe for voting shares granted to him as part of a rights issue; or

(B) delivery of voting shares to him pursuant to a rights issue;

(iv) where another person, being a qualified lender, comes to have an interest in those voting shares by way of security; or

(v) where the person is a holding company, due to the acquisition of an interest in those voting shares by a qualified corporation of the person from another qualified corporation of the person. *(Amended 19 of 2015 s. 2)*

(14) For the purposes of—

(a) subsections (7)(b) and (8)(b) and section 326(1)(b), ***percentage figure*** (百分率數字) means the percentage

figure referred to in section 314(1) before rounding down, if applicable, to the next whole number; and

(b) subsection (9)(b) and section 326(1)(c), ***percentage figure*** (百分率數字) means the percentage figure referred to in section 314(4) before rounding down, if applicable, to the next whole number.

314. Percentage level in relation to notifiable interests and short positions

(1) Subject to subsections (2), (3) and (5), ***percentage level*** (百分率水平), in section 313(1)(c), (7) and (8), means the percentage figure found by expressing the aggregate number of all the voting shares in the listed corporation concerned in which the person is interested immediately before or immediately after (as the case may be) the relevant time as a percentage of the number of issued voting shares in that listed corporation and rounding that figure down, if it is not a whole number, to the next whole number.

(2) For the purposes of subsection (1) and section 311(3), where the listed corporation concerned grants to the person rights to subscribe for, or offers to the person, as part of a rights issue, voting shares, the number of issued voting shares in the listed corporation at all times from the grant or offer (as the case may be) up to the completion or termination of the rights issue (whichever is the earlier) is taken to be the aggregate of— *(Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)*

(a) the number of issued voting shares in the listed corporation immediately before the grant or offer (as the case may be); and

(b) the number of new voting shares to be issued upon the completion of the rights issue.

(3) In determining the aggregate number of voting shares in the listed corporation in which a person is interested for the purposes of subsection (1) and section 311(3), there shall be disregarded any short position which that person has in such voting shares which, if included in the calculation of the aggregate number of such voting shares in which the person is interested, would reduce the aggregate number of such voting shares.

(4) Subject to subsection (5), ***percentage level*** (百分率水平), in sections 313(4), (5), (6) and (9), 325(3) and 326(1)(j), means the percentage figure found by expressing the aggregate number of all the voting shares in the listed corporation concerned in which the person has a short position immediately before or immediately after (as the case may be) the relevant time as a percentage of the number of issued voting shares in that listed corporation and rounding that figure down, if it is not a whole number, to the next whole number.

(5) Where the listed corporation's share capital is divided into different classes of shares—

(a) a reference in this section and section 311(3) to the aggregate number of voting shares in the listed corporation in which the person is interested or has a short position shall be construed as a reference to the aggregate number of the voting shares in each of the classes taken separately; and

(b) a reference in this section to a percentage of the number of the listed corporation's issued voting shares is to be construed as a reference to a percentage of the number of the issued voting shares in each of the classes taken separately.

(6) In subsection (2), ***completion*** (完成), in relation to a rights issue, means the issue of voting shares in the listed corporation pursuant to the rights issue.

(Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)

315. Notifiable percentage level and specified percentage level

(1) A reference to notifiable percentage level in this Part shall be construed as a reference to—

(a) subject to paragraph (b), 5%; or

(b) where any other percentage is prescribed by regulations for the purposes of this subsection, such other percentage,

and different percentages may be prescribed in relation to corporations of different classes or descriptions.

(2) A reference to specified percentage level in this Part shall be construed as a reference to—

(a) subject to paragraph (b), 1%; or

(b) where any other percentage is prescribed by regulations for the purposes of this subsection, such other percentage.

316. Notification of family and corporate interests and short positions

(1) For the purposes of this Division and Divisions 3 and 4, a person is taken—

(a) to be interested in any voting shares in which his spouse, or any minor child (natural or adopted) of his, is interested; and

(b) to have a short position in any voting shares in which his spouse, or any minor child (natural or adopted) of his, has a short position.

(2) For the purposes of this Division and Divisions 3 and 4, a person is taken—

(a) to be interested in any voting shares in which a corporation is interested; and

(b) to have a short position in any voting shares in which a corporation has a short position,

if—

(i) that corporation or its directors are accustomed or obliged to act in accordance with his directions or instructions; or

(ii) subject to subsection (5), he is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of that corporation.

(3) Where—

(a) a person is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of a corporation; and

(b) that corporation is entitled to exercise or control the exercise of any of the voting power at general meetings of another corporation (***the effective voting power***),

then, for the purposes of subsection (2)(ii), the effective voting power is taken as exercisable by that person.

(4) For the purposes of subsections (2) and (3), a person is entitled to exercise or control the exercise of voting power if—

(a) he has a right (whether subject to conditions or not) the exercise of which would make him so entitled; or

(b) he is under an obligation (whether subject to conditions or not) the fulfilment of which would make him so entitled.

(5) For the purposes of subsections (2) and (3), a person is not taken—

(a) to be interested in any voting shares in which a corporation is interested; or

(b) to have a short position in any voting shares in which a corporation has a short position,

if—

(i) that corporation is interested in those voting shares or has a short position in those voting shares (as the case may be) by reason only of its obligation or power to invest in, manage, deal in or hold interests in those voting shares on behalf of its customers in the ordinary course of its business as an investment manager, custodian or trustee;

(ii) to the extent that the corporation has any right or power to vote in respect of those voting shares arising from or by reason of its capacity as an investment manager, custodian or trustee, such right or power is exercisable by that corporation independently without any reference to the person or any related corporation of the person; and

(iii) when performing its functions as an investment manager, custodian or trustee, the power of that corporation to invest in, manage, deal in or hold interests in those voting shares is exercised by that corporation independently without any reference to the person or any related corporation of the person.

(6) A person who is taken to be interested, or have a short position, in voting shares under subsection (2) shall be regarded as having ceased to be interested, or have a short position, in the voting shares if subsection (2)(i) or (ii) no longer applies.

(7) In subsection (5)—

(a) ***investment manager*** (投資經理) means—

(i) an intermediary licensed or registered for Type 9 regulated activity; or

(ii) a corporation which is licensed, registered or exempt in a place outside Hong Kong recognized for the purposes of this section by the Commission for an activity which is equivalent to Type 9 regulated activity,

and is authorized to manage investments in securities for another person under a written agreement; and

(b) ***trustee*** (受託人) means a corporation the principal business of which is to hold property belonging to another person under the provisions of a trust deed.

(Amended 19 of 2015 s. 2)

317. Agreement to acquire interests in particular listed corporation

(1) This section applies in relation to an agreement between 2 or more persons which includes provisions for the acquisition by any one or more of them of interests in voting shares in a particular listed corporation (***the target corporation***), if— *(Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)*

(a) the agreement also includes provisions imposing obligations or restrictions on any one or more of the parties to it with respect to their use, retention or disposal of their interests in voting shares in the target corporation acquired in pursuance of the agreement (whether or not together with any other interests of theirs in the voting shares in the target corporation to which the agreement relates); or

(b) the agreement provides for the making of a loan, or the providing of security for a loan, by a controlling person or a director of the target corporation to any person on the understanding or with the knowledge that such loan (or part thereof) would be used or applied for the acquisition of an interest in voting shares in the target corporation,

and an interest in voting shares in the target corporation is in fact acquired by any of the parties in pursuance of such agreement. *(Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)*

(2) In subsection (1)(a), a reference to the use of interests in voting shares in the target corporation shall be construed as a reference to the exercise of any rights, or of any control or influence, arising from those interests (including the right to enter into any agreement for the exercise, or for the control of the exercise, of any of those rights by another person). *(Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)*

(3) Once any interest in voting shares in the target corporation has been acquired in pursuance of an agreement to which this section applies, this section continues to apply to the agreement irrespective of— *(Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)*

(a) whether or not any further acquisitions of interests in voting shares in the target corporation take place in pursuance of the agreement; *(Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)*

(b) any change in the persons who are for the time being parties to it; and

(c) any variation of the agreement,

so long as the agreement continues to include provisions of any description referred to in subsection (1)(a) or (b).

(4) In subsection (3), a reference to the agreement includes a reference to any agreement having effect (whether directly or indirectly) in substitution for an earlier agreement.

(5) In subsection (1), a reference to an agreement, in so far as subsection (1)(a) applies, does not include—

(a) a reference to an agreement which is not legally binding unless it involves mutuality in the undertakings, expectations or understandings of the parties to it; and

(b) a reference to an agreement to underwrite or sub-underwrite any offer of voting shares in a corporation, if the agreement is confined to that purpose and any matters incidental to it. *(Amended 19 of 2015 s. 2)*

(6) In subsection (1), a reference to an agreement, in so far as subsection (1)(b) applies, does not include a reference to an agreement under which a controlling person or a director of the target corporation makes the loan in the ordinary course of his business as a qualified lender.

(7) For the purposes of this section, ***controlling person*** (控權人士), in relation to a corporation, means a person who, either alone or with any of his associates—

(a) is entitled to exercise or control the exercise of not less than—

(i) subject to subparagraph (ii), 30%; or

(ii) where any other percentage is prescribed by rules made under section 397 for the purposes of this subsection, such other percentage,

of the voting power at general meetings of the corporation;

(b) has the right to nominate any of the directors of the corporation; or

(c) has an interest in shares carrying the right to—

(i) veto any resolution; or

(ii) amend, modify, limit or add conditions to any resolution,

at general meetings of the corporation.

318. Interests of parties to agreement

(1) In the case of an agreement to which section 317 applies, each party to the agreement is taken (for the purposes of the duty of disclosure) to be interested in any voting shares in the target corporation in which any other party to the agreement is interested apart from the agreement (whether or not the interest of the other party in question was acquired, or includes any interest which was acquired, in pursuance of the agreement).

(2) For the purposes of subsection (1) and sections 319 and 326(6)(b), an interest of a party to such an agreement in voting shares in the target corporation is an interest apart from the agreement if he is interested in those voting shares otherwise than by the application of this section and section 317 in relation to the agreement. *(Amended 19 of 2015 s. 2)*

(3) Accordingly, any such interest of the party to the agreement (apart from the agreement) includes, for the purposes of subsection (1) and section 319, any interest which he is taken to have under section 316 or by the application of this section and section 317 in relation to any other agreement with respect to voting shares in the target corporation to which he is a party.

(Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)

319. Duty of parties to agreement acting together to keep each other informed

(1) A person who is a party to an agreement to which section 317

applies is subject to the requirements of this section at any time when—

(a) the target corporation is a listed corporation, and he knows it to be so;

(b) the shares in the target corporation to which the agreement relates consist of or include voting shares in the target corporation, and he knows that to be the case; and *(Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)*

(c) he knows the facts which make the agreement one to which section 317 applies.

(2) A person who is subject to the requirements of this section is under a duty to give notification to every other party to the agreement of the relevant particulars of his interest apart from the agreement (if any) in voting shares in the target corporation— *(Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)*

(a) on his first becoming subject to the requirements of this section; and

(b) on each occurrence after that time and while he is still subject to those requirements of any event or change referred to in section 310(1), (2) or (3) (as it applies to his case otherwise than by reference to interests which he is taken to have under section 318 as applying to that agreement).

(3) The relevant particulars to be notified under subsection (2) are the number of voting shares (if any) in the target corporation which the person giving the notification would be required to state as his interest if he were under the duty of disclosure with respect to that interest (apart from the agreement) immediately after the time when the duty to give notification

under subsection (2) arose. *(Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)*

(4) A person who is a party to an agreement to which section 317 applies is under a duty to give notification to every other party to the agreement of his current address—

(a) on his first becoming subject to the requirements of this section; and

(b) on any change in his address occurring after that time and while he is still subject to those requirements.

(5) If a person is under a duty to give any notification required by this section to any other person, the notification shall be given within 3 business days after the day on which that duty arises.

320. Circumstances in which persons have interests or short positions in voting shares by attribution

(Amended 19 of 2015 s. 2)

(1) In sections 310 to 313—

(a) a reference to a person acquiring an interest in, or ceasing to be interested in, voting shares in a listed corporation includes a reference to his becoming or ceasing to be interested in those voting shares by virtue of another person's interest;

(b) a reference to the nature of a person's interest in voting shares in a listed corporation as being not the same includes a reference to a change in the nature of his interest in those voting shares by virtue of a change in the nature of another person's interest; and

(c) a reference to a person coming to have a short position in, or ceasing to have a short position in, voting shares in a listed corporation includes a reference to his

coming to have or ceasing to have a short position in those voting shares by virtue of another person's short position. *(Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)*

(2) Subsection (1) applies where—

(a) a person becomes or ceases to be interested in voting shares in a listed corporation;

(b) the nature of a person's interest in such voting shares changes; or

(c) a person comes to have or ceases to have a short position in such voting shares, *(Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)*

under section 316 or 318 (as the case may be) whether—

(i) by virtue of the fact that the other person who is interested, or has a short position, in those voting shares becomes or ceases to be a person by reference to whose interests or short positions (if any) he is taken to have an interest or short position (as the case may be) under section 316 or 318;

(ii) in consequence of the fact that the other person has become or ceased to be interested in those voting shares, the nature of the other person's interest in those voting shares has changed, or the other person has come to have or ceased to have a short position in those voting shares (as the case may be);

(iii) in consequence of the fact that he himself becomes or ceases to be a party to an agreement to which section 317 applies to which the other person interested in those voting shares is for the time being a party; or

(iv) in consequence of the fact that an agreement to which both he and the other person are parties becomes or ceases to be one to which section 317 applies.

(3) Upon—

(a) a person becoming or ceasing to be interested in voting shares in a listed corporation;

(b) a change in the nature of a person's interest in such voting shares; or

(c) a person coming to have or ceasing to have a short position in such voting shares, *(Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)*

(as the case may be) in the circumstances specified in subsection (2), the person shall be deemed to know that he has acquired an interest in those voting shares or has ceased to be interested in those voting shares, or that the nature of his interest in those voting shares has changed, or that he has come to have a short position in those voting shares or has ceased to have a short position in those voting shares (as the case may be), when he knows both— *(Amended 19 of 2015 s. 2)*

(i) the relevant facts with respect to the other person's interest or short position (as the case may be) in those voting shares; and

(ii) the relevant facts by virtue of which he himself has become or ceased to be interested, or come to have or ceased to have a short position (as the case may be) in those voting shares under section 316 or 318.

(4) A person has the knowledge referred to in subsection (3)(i) if he knows (whether contemporaneously or not) either—

(a) of the fact that the other person is interested in those voting shares, or the nature of the other person's interest

in those voting shares changes, or the other person has a short position in those voting shares (as the case may be) at any material time; or

(b) of the fact that the other person has become or ceased to be interested in those voting shares, or the nature of the other person's interest in those voting shares has changed, or the other person has come to have or ceased to have a short position in those voting shares (as the case may be) at any material time.

(5) A person shall be deemed to know of the fact that—

(a) the other person is interested in those voting shares or the nature of the other person's interest in those voting shares changes (as the case may be); or

(b) the other person has become or ceased to be interested in those voting shares or the nature of the other person's interest in those voting shares has changed (as the case may be),

if he has been notified under section 319 of facts which indicate that the other person is or has become or ceased to be interested in those voting shares or the nature of the other person's interest in those voting shares changes or has changed (as the case may be), whether on the other person's own account or by virtue of a third party's interest in them.

(6) In subsection (4), ***material time*** (關鍵時間) means any time at which the interests or short positions (as the case may be) of the person concerned which are taken to be his under section 316 or 318 fall or fell to be so taken.

(Amended 19 of 2015 s. 2)

321. Notification by agents

Where a person authorizes another person (***the agent***)—

(a) to acquire or dispose of, on his behalf, interests in voting shares in a listed corporation; or

(b) to have or cease to have, on his behalf, short positions in such voting shares,

he shall secure that the agent notifies him immediately of acquisitions or disposals of interests, or having or ceasing to have short positions, effected by the agent which will or may give rise to any duty of disclosure or any duty to give notification under any provision of this Division or Division 3 or 4 with respect to his interests or short positions in those voting shares.

(Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013; 19 of 2015 s. 2)

Division 3—Interests and short positions to be notified or disregarded

322. Interests and short positions to be taken into account for the purpose of notification

(1) This section applies, subject to section 323, in determining for the purposes of Divisions 2, 4 and 5 whether a person has, or ceases to have, an interest or short position in voting shares in a listed corporation that is notifiable. *(Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)*

(2) A reference to an interest in voting shares shall be construed as including a reference to an interest of any kind whatsoever in the voting shares, and for that purpose any restraint or restriction to which the exercise of a right attached to the interest may be subject shall be disregarded.

(3) In construing a reference to a short position in voting shares, any restraint or restriction to which the exercise of a right or the settlement of an obligation, by virtue of the short position, may be subject shall be disregarded.

(4) Where property is held on trust and an interest, or short position, in voting shares is comprised in that property— *(Amended 19 of 2015 s. 2)*

(a) a beneficiary of the trust who apart from this section does not have an interest, or short position, in the voting shares is taken to have such an interest or short position (as the case may be); and

(b) in the case of a discretionary trust, the founder of the trust is taken to have an interest or short position (as the case may be) in the voting shares.

(5) A person is taken to have an interest in voting shares if— *(Amended 19 of 2015 s. 2)*

(a) he enters into a contract for their purchase by him (whether for cash or other consideration); or

(b) he is entitled to—

(i) exercise any right conferred by the holding of the voting shares; or

(ii) control the exercise of any such right.

(6) For the purposes of subsection (5)(b), a person is taken to be entitled to exercise or control the exercise of any right conferred by the holding of voting shares if— *(Amended 19 of 2015 s. 2)*

(a) he has a right (whether subject to conditions or not) the exercise of which would make him so entitled; or

(b) he is under an obligation (whether subject to conditions or not) the fulfilment of which would make him so entitled.

(7) A person is taken to have an interest in voting shares if, otherwise than by virtue of having an interest under a trust— *(Amended 19 of 2015 s. 2)*

(a) he has a right to subscribe for the voting shares or call for delivery of the voting shares to himself or to his order; or

(b) he has a right to acquire an interest in the voting shares or is under an obligation to take delivery of the voting shares,

whether in any case the right or obligation is conditional or absolute.

(8) A person who is the holder, writer or issuer of equity derivatives is taken to have an interest in voting shares which are the underlying shares of the equity derivatives if, by virtue of his holding, writing or issuing of the equity derivatives— *(Amended 19 of 2015 s. 2)*

(a) he has a right to require another person to deliver the underlying shares to him;

(b) he is under an obligation to take delivery of the underlying shares;

(c) he has a right to receive from another person an amount if the price of the underlying shares increases; or

(d) he has a right to avoid or reduce a loss if the price of the underlying shares increases,

before or on a certain date or within a certain period, whether in any case the right or obligation is conditional or absolute.

(9) The number of voting shares in which a person is taken to be interested under subsection (8) is— *(Amended 19 of 2015 s. 2)*

(a) the number of the underlying shares of the equity derivatives—

(i) which he has a right to require another person to deliver to him; or

(ii) of which he is under an obligation to take delivery;

(b) the number of the underlying shares of the equity derivatives by reference to which, wholly or partly, the amount which he has a right to receive or the loss which he has a right to avoid or reduce, by virtue of his holding, writing or issuing of the equity derivatives, is derived or determined; or

(c) in the case of a stock futures contract, the contract multiplier which is to be used in calculating the amount he may receive in respect of his holding of the stock futures contract,

whether in any case the right or obligation is conditional or absolute. *(Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)*

(10) A person shall be regarded as having ceased to be interested in voting shares if— *(Amended 19 of 2015 s. 2)*

(a) he delivers the voting shares to another person or to another person's order— *(Amended 19 of 2015 s. 2)*

(i) in accordance with a contract under which he agreed to sell the voting shares to the other person;

(ii) in fulfilling an obligation to do so when called upon by the other person to deliver the voting shares; or

(iii) pursuant to a right to require the other person to take delivery of the voting shares;

(b) his right to subscribe for or call for delivery of the voting shares lapses or he assigns such a right to another person;

(c) his obligation to take delivery of the voting shares lapses or he assigns such an obligation to another person; or

(d) he receives from another person an amount, or avoids or reduces a loss, on assignment or settlement of any cash settled equity derivatives.

(11) The number of voting shares in which a person is regarded as having ceased to be interested under subsection (10)(d) is— *(Amended 19 of 2015 s. 2)*

(a) the number of the underlying shares which are to be used in calculating the amount he may receive, or the loss he may avoid or reduce; or

(b) in the case of a stock futures contract, the contract multiplier which is to be used in calculating the amount he may receive in respect of his holding of the stock futures contract. *(Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)*

(12) The number of voting shares in which a person is regarded as having a short position by virtue of his holding, writing or issuing of any equity derivatives is— *(Amended 19 of 2015 s. 2)*

(a) the number of the underlying shares of the equity derivatives which he is entitled, or may be required, to deliver;

(b) in the case of cash settled equity derivatives, the number of the underlying shares which are to be used in calculating the amount he may receive, or the loss he may avoid or reduce; or

(c) in the case of a stock futures contract, the contract multiplier which is to be used in calculating the amount he may receive in respect of his holding of the stock futures contract. *(Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)*

(13) The number of voting shares in which a person is regarded as having a short position under a securities borrowing and

lending agreement is the number of voting shares which he is obliged to deliver under the securities borrowing and lending agreement, if called upon to do so, whether or not the obligation to deliver voting shares may be settled by payment of cash or by delivery of voting shares or otherwise. *(Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)*

(14) Persons having a joint interest or short position are taken each of them to have that interest or short position (as the case may be).

(15) It is immaterial that voting shares in which a person has an interest or short position are unidentifiable.

(Amended 19 of 2015 s. 2)

323. Interests and short positions to be disregarded for the purpose of notification

(1) The following interests, and short positions, in voting shares in a listed corporation shall be disregarded for the purposes of Divisions 2 to 4— *(Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)*

(a) where property is held on trust and an interest in voting shares is comprised in that property— *(Amended 19 of 2015 s. 2)*

(i) an interest in reversion or remainder;

(ii) an interest of a bare trustee; and

(iii) any discretionary interest;

(b) an exempt custodian interest;

(c) subject to subsection (4), an interest in voting shares comprised in the property under— *(Amended 19 of 2015 s. 2)*

(i) a collective investment scheme authorized under section 104;

(ii) a pension scheme or a provident fund scheme registered under section 21 or 21A of the Mandatory Provident Fund Schemes Ordinance (Cap. 485); or

(iii) a qualified overseas scheme,

of a holder, trustee or custodian of the scheme;

(d) an interest of a person subsisting by virtue of—

(i) a charitable scheme made by order of any court of competent jurisdiction; or

(ii) the vesting of a deceased's estate in any judicial officer between the time of death of the deceased and the grant of letters of administration;

(e) an interest for the life of himself, or of another, of a person under a settlement in the case of which the property comprised in the settlement consists of or includes voting shares, and the following conditions are satisfied— *(Amended 19 of 2015 s. 2)*

(i) the settlement is irrevocable; and

(ii) the settlor has no interest in any income arising under, or property comprised in, the settlement;

(f) an exempt security interest;

(g) an interest in voting shares of a recognized clearing house; *(Amended 19 of 2015 s. 2)*

(h) an interest in voting shares of the Registrar of the High Court held in his official capacity; *(Amended 19 of 2015 s. 2)*

(i) an interest in voting shares of an intermediary licensed or registered for Type 1 regulated activity where— *(Amended 19 of 2015 s. 2)*

(i) the interest is acquired by the intermediary as an agent only for the purposes of a transaction entered into in the ordinary course of his business as such an intermediary;

(ii) the principal in that transaction is a person other than a related corporation of the intermediary;

(iii) the interest is acquired from a person other than a related corporation of the intermediary; and

(iv) the intermediary has been interested in the voting shares for not more than 3 business days; *(Amended 19 of 2015 s. 2)*

(j) such interests or interests of such a class, or such short positions or short positions of such a class, as are prescribed by regulations for the purposes of this section; and

(k) subject to section 377, such interests or interests of such a class, or such short positions or short positions of such a class, as are prescribed by rules made under section 377 for the purposes of this section.

(2) A person is not taken to be interested in voting shares under section 322(5)(b) by reason only that he— *(Amended 19 of 2015 s. 2)*

(a) has been appointed as a proxy to vote at a specified meeting of the listed corporation or of any class of its members and at any adjournment of that meeting; or

(b) has been appointed by a corporation to act as its representative at a meeting of the listed corporation or of any class of its members.

(3) For the purposes of subsection (1)(b), an interest in voting shares is an exempt custodian interest if— *(Amended 19 of 2015 s. 2)*

(a) it is held by a corporation which carries on a business of holding securities in custody for another person, whether on trust or by contract; and

(b) the corporation has no authority to exercise discretion in dealing in the interest, or in exercising rights attached to the interest.

(4) An interest in voting shares of a holder, trustee or custodian of a scheme referred to in subsection (1)(c)(i), (ii) or (iii), comprised in the property under the scheme, shall not be disregarded under subsection (1)(c) if the holder, trustee or custodian (as the case may be) is also a manager of the scheme. *(Amended 19 of 2015 s. 2)*

(5) For the purposes of subsection (1)(c), ***qualified overseas scheme*** (合資格海外計劃) means a collective investment scheme, pension scheme or provident fund scheme which—

(a) is established in a place outside Hong Kong recognized for the purposes of this section by the Commission by notice published in the Gazette; and

(b) is authorized by or registered with the authority (if any) responsible for the authorization or registration of such scheme in the place where it is established, and complies with the requirements of such authority,

but does not include—

(i) an arrangement operated by a person otherwise than by way of business;

(ii) an arrangement under which less than 100 persons hold, or have the right to become holders of, interests (whether described as units or otherwise) that entitle the holders, directly or indirectly, to the income or property of the arrangement;

(iii) an arrangement under which less than 50 persons hold, or have the right to become holders of, interests (whether described as units or otherwise) that entitle the holders, directly or indirectly, to 75% or more of the income or property of the arrangement; and

(iv) such other arrangement as may be specified by the Commission by notice published in the Gazette.

(6) An interest in voting shares is an exempt security interest for the purposes of subsection (1)(f) if it is held by a qualified lender by way of security only for the purposes of a transaction entered into in the ordinary course of his business as such a qualified lender. *(Amended 19 of 2015 s. 2)*

(7) An interest in voting shares shall cease to be an exempt security interest for the purposes of subsection (1)(f), and the qualified lender holding the interest in the voting shares by way of security shall be taken to have acquired that interest for the purposes of Divisions 2 to 5, when— *(Amended 19 of 2015 s. 2)*

(a) the qualified lender—

(i) becomes entitled to exercise voting rights in respect of the interest in the voting shares held as security as a result of, or following, a default by the person giving the interest in the voting shares as security; and

(ii) has—

(A) evidenced an intention to exercise the voting rights or control their exercise; or

(B) taken any step to exercise the voting rights or control their exercise; or

(b) the power of sale in respect of the interest in the voting shares held as security becomes exercisable, and the

qualified lender or its agent offers the interest in the voting shares held as security, or any part of that interest, for sale. *(Amended 19 of 2015 s. 2)*

(8) For the purposes of subsection (1), a person shall not be considered as not being a bare trustee in respect of any property by reason only that—

(a) the person for whose benefit the property is held is not absolutely entitled thereto as against the trustee only because he is a minor or is a person under a disability; or

(b) the trustee has the right to resort to the property to satisfy any outstanding charge or lien or for the payment of any duty, tax, cost or other outgoings.

(9) A notice published pursuant to subsection (5)(a) or (iv) is not subsidiary legislation.

Division 4—Requirements for giving notification

324. Notification to be given

(1) Where a person comes under a duty of disclosure under section 310, he shall give notification to the listed corporation concerned and to the relevant exchange company of—

(a) the interests which he has, or ceases to have, in voting shares in the listed corporation; and

(b) the short position (if any) which he has, or ceases to have, in such voting shares. *(Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)*

(2) A notification required by this section shall be given to the listed corporation concerned and the relevant exchange company at the same time or (if it is not practicable to do so) one immediately after the other.

(3) The Commission may, by notice published in the Gazette, specify the form in respect of a notification required by this section, either generally or in any particular case, and, without limiting the generality of the foregoing, may in the form—

(a) notwithstanding section 397(1), include directions and instructions relating to the manner in which the form is to be completed, signed, executed and authenticated; and

(b) specify documents by which it is to be accompanied.

(4) For the purposes of subsection (3), the Commission may specify any form by referring in a notice published in the Gazette to the form as separately published by such electronic means as the Commission considers appropriate, instead of setting out the form in a notice published in the Gazette, whereupon the Commission shall for all purposes be regarded as having duly specified the form under subsection (3).

(5) For the purposes of subsection (3), the Commission may specify that different forms are to be used in different circumstances.

(6) Subject to subsection (7), where the Commission has specified any form under subsection (3) in respect of a notification required by this section to be given when a duty of disclosure arises under section 310, the duty shall not be regarded as having been performed unless the notification—

(a) is in the form specified;

(b) is completed, signed, executed and authenticated in accordance with such directions and instructions as are included in the form; and

(c) is accompanied by such documents as are specified in the form.

(7) A notification required by this section shall not by reason of any deviation from a form specified in respect of it by notice

published pursuant to subsection (3) cease to be regarded as being in that form, if the deviation does not affect the substance of the form.

(8) A notice published pursuant to subsection (3) is not subsidiary legislation.

325. Time of notification

(1) A notification required by section 324 shall be given, where the duty of disclosure arises under section 310(1) or (4)—

(a) in the case that at the time at which the relevant event occurs the person concerned knows of its occurrence, within 3 business days after the day on which the relevant event occurs; or

(b) otherwise, within 3 business days after the day on which the occurrence of the relevant event comes to his knowledge.

(2) A notification required by section 324 shall be given, where the duty of disclosure arises under section 310(2) or (3)—

(a) within 10 business days after the day on which the relevant event occurs; or

(b) in the case that at the time at which the relevant event occurs the person concerned is not aware that he has a notifiable interest, within 10 business days after the day on which he becomes aware that he has such an interest.

(3) A notification required by section 324 shall be given, where the duty of disclosure arises under section 310(5) or (6)—

(a) within 10 business days after the day on which the relevant event occurs; or

(b) in the case that at the time at which the relevant event occurs the person concerned is not aware that he has a short position of a percentage level equal to or more

than the specified percentage level, within 10 business days after the day on which he becomes aware that he has such a short position.

326. Particulars to be contained in notification

(1) Where a duty of disclosure arises under section 310, a person shall, in performing the duty of disclosure, specify in the notification his name and address, and (so far as he is aware)—

(a) the date on which the relevant event occurred and—

(i) the date (if later) on which he became aware of the occurrence of the relevant event; or

(ii) in the case referred to in section 325(2)(b) or (3)(b), the date on which he became aware that he has the interest or short position (as the case may be) in the voting shares in the listed corporation concerned; *(Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)*

(b) the total number and class of—

(i) voting shares in the listed corporation concerned in which he was interested immediately before the relevant time specifying the percentage figure of his interest in the voting shares in each class; and

(ii) such voting shares in which he is interested immediately after the relevant time specifying the percentage figure of his interest in the voting shares in each class; *(Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)*

(c) the total number and class of—

(i) voting shares in the listed corporation concerned in which he had a short position immediately before

the relevant time specifying the percentage figure of his short position in the voting shares in each class; and

(ii) such voting shares in which he has a short position immediately after the relevant time specifying the percentage figure of his short position in the voting shares in each class; *(Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)*

(d) the circumstances in which he comes under the duty of disclosure;

(e) where the duty of disclosure arises under section 310(1) or (4), the total number and class of voting shares in the listed corporation in which— *(Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)*

(i) he has acquired an interest, or ceased to have an interest, at the relevant time;

(ii) he has come to have, or ceased to have, a short position at the relevant time; or

(iii) the nature of his interest changes at the relevant time;

(f) where he acquires or disposes of the interest referred to in paragraph (e)(i)—

(i) through an on-exchange transaction, the highest price and the average price paid or received per voting share for the interest he acquires or disposes of (or, in the case that no price is paid or received, that fact); or

(ii) through an off-exchange transaction, the nature of the consideration given or received, and the highest amount and the average amount of the consideration given or received per voting share,

for the interest he acquires or disposes of (or, in the case that no consideration is given or received, that fact);

(g) the capacity in which the interest, or short position, in voting shares in the listed corporation is held immediately after the relevant time and, if the interest or short position in the voting shares is held in more than one capacity, the number of voting shares held in each capacity; *(Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)*

(h) where the duty of disclosure arises in the circumstances in which the nature of his interest in voting shares in the listed corporation is not the same immediately before and immediately after the relevant time, the nature of his interest immediately before and immediately after the relevant time; *(Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)*

(i) where he is taken to be interested or have a short position in voting shares in the listed corporation under section 316(1), 316(2) or 322(14)— *(Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)*

(i) the number and class of the voting shares; and

(ii) the name and address of, and his relationship with, each of the other persons having an interest or short position in the voting shares,

in which he is so taken to be interested or have a short position under each of those sections taken separately;

(j) where—

(i) he no longer has a notifiable interest; or

(ii) he has a notifiable interest, but he no longer has a short position of a percentage level equal to or more than the specified percentage level,

the fact that he no longer has such an interest or short position; and

(k) such other information as may be required in the form specified for the purpose.

(2) Where any voting shares the particulars of which have to be specified in a notification by a person under subsection (1)(b), (c), (e), (h) or (i) are the underlying shares of equity derivatives, the person shall also specify separately in the notification the total number of— *(Amended 19 of 2015 s. 2)*

(a) voting shares which are the underlying shares of any of the following categories of equity derivatives that are listed or traded on a recognized stock market or traded on a recognized futures market, in which he was interested, or had a short position, immediately before the relevant time— *(Amended 19 of 2015 s. 2)*

(i) cash settled equity derivatives; or

(ii) physically settled equity derivatives;

(b) voting shares which are the underlying shares of any of the following categories of equity derivatives that are neither listed or traded on a recognized stock market nor traded on a recognized futures market, in which he was interested, or had a short position, immediately before the relevant time— *(Amended 19 of 2015 s. 2)*

(i) cash settled equity derivatives; or

(ii) physically settled equity derivatives;

(c) voting shares which are the underlying shares of any of the equity derivatives referred to in paragraph

(a) in which he is interested, or has a short position, immediately after the relevant time; and

(d) voting shares which are the underlying shares of any of the equity derivatives referred to in paragraph (b) in which he is interested, or has a short position, immediately after the relevant time.

(3) In determining the number of voting shares in which a person is interested for the purposes of this section— *(Amended 19 of 2015 s. 2)*

(a) there shall be disregarded any short position which that person has in the voting shares which, if included in the calculation of the number of voting shares in which the person is interested, would reduce the number of the voting shares in which the person is interested; and

(b) particulars of the voting shares in which that person has a short position, or has ceased to have a short position, shall be specified separately in the notification.

(4) Unless a corporation is—

(a) a listed corporation;

(b) a wholly owned subsidiary of a listed corporation;

(c) a corporation listed on a specified stock exchange; or

(d) a wholly owned subsidiary of a corporation listed on a specified stock exchange,

it shall, in performing a duty of disclosure arising under section 310, also specify in the notification the name and address of any person in accordance with whose directions or instructions it, or its directors, are accustomed or obliged to act.

(5) For the purposes of subsection (4), a person shall not be regarded as a person in accordance with whose directions or instructions a corporation or its directors are accustomed

or obliged to act by reason only that the corporation or its directors act on advice given by him in a professional capacity.

(6) A notification given by a person who is for the time being a party to an agreement to which section 317 applies shall also—

(a) state that the person giving the notification is a party to such an agreement;

(b) include—

(i) the names and (so far as he is aware) the addresses of the other parties to the agreement, identifying them as such; and

(ii) the number and class of voting shares in which each of those other parties is interested (apart from the agreement);

(c) state whether or not any of the voting shares to which the notification relates are voting shares in which he is interested by the application of sections 317 and 318 and, if so, the total number and class of those voting shares;

(d) include a copy of any written agreement, contract, document or other instrument which records any terms or details of the agreement to which section 317 applies; and

(e) (where there is no written agreement, contract, document or other instrument of the type referred to in paragraph (d) or where the agreement is only partly recorded in writing) include a written memorandum recording the material terms of the agreement to which section 317 applies, which are not otherwise recorded in writing, including, but not limited to—

(i) any cash or other consideration involved; and

(ii) the identity of all persons between whom such cash or other consideration is passed or is intended to pass.

(7) A notification given by a person in consequence of his ceasing to be interested in any voting shares by virtue of the fact that he or any other person has ceased to be a party to an agreement to which section 317 applies shall also— *(Amended 19 of 2015 s. 2)*

(a) state that he or that other person (as the case may be) has ceased to be a party to the agreement; and

(b) (in the latter case) include the name and (so far as he is aware) the address of that other person.

(8) Nothing in subsection (1) or (2) shall require details of the price that has been paid or may be payable, or the consideration that has been given or may be given, for or under equity derivatives (where the underlying shares of the equity derivatives are voting shares which are the subject of the disclosure) to be specified in the notification.

(Amended 19 of 2015 s. 2)

327. Duty to publish and notify Monetary Authority of information given under Division 4

(1) Upon receipt of any information under any provision of this Division or any regulations made, or rules made by the Commission, for the purposes of this Division, the relevant exchange company shall forthwith publish such information in such manner and for such period as may be approved by the Commission.

(2) Whenever a listed corporation that is, or is the holding company of, an authorized financial institution receives information from a person under any provision of this

Division, the listed corporation is under a duty to notify the Monetary Authority of that information.

(3) If a listed corporation is under a duty to give any notification required by subsection (2), the notification shall be given before the end of the business day after the day on which that duty arises.

(4) If default is made in complying with subsection (2) or (3), the listed corporation concerned and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 1.

328. Offences for non-compliance with notification requirements

A person—

(a) who, without reasonable excuse, fails to perform, within the period specified in section 325(1)(a) or (b), (2)(a) or (b) or (3)(a) or (b) (as the case may be), a duty of disclosure arising under Division 2 in accordance with the provisions of this Part applicable to that duty;

(b) who—

(i) in purported performance of any such duty makes to a listed corporation or to the relevant exchange company a statement which is false or misleading in a material particular; and

(ii) knows that, or is reckless as to whether, the statement is false or misleading in a material particular;

(c) who, without reasonable excuse, fails to perform, within the period specified in section 319(5), a duty to give another person a notification required by section 319 in accordance with the provisions of this Part applicable to that duty; or

(d) who, without reasonable excuse, fails to comply with section 321 to secure the giving of notification to him by the agent,

commits an offence and is liable—

(i) on conviction on indictment to a fine at level 6 and to imprisonment for 2 years; or

(ii) on summary conviction to a fine at level 3 and to imprisonment for 6 months.

Division 5—Listed corporation's powers to investigate ownership

329. Power of listed corporation to investigate ownership of interests in its voting shares, etc.

(1) A listed corporation may carry out an investigation in relation to—

(a) any interest in its voting shares;

(b) any short position in its voting shares; or

(c) where its voting shares are the underlying shares of any equity derivatives, any interest in those equity derivatives, *(Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)*

by requiring, by notification, a person whom the listed corporation knows or has reasonable cause to believe to be interested in those voting shares or equity derivatives or have a short position in those voting shares or, at any time during the 3 years immediately before the day on which the notification is given, to have been interested in those voting shares or equity derivatives or had a short position in those voting shares—

(i) to confirm that fact or to indicate whether or not it is the case (as the case may be); and

(ii) where he has, or has during that time had, an interest in those voting shares or equity derivatives or a short position in those voting shares, to give such further information as may be required in accordance with subsection (2).

(2) A notification under subsection (1) may require the person to whom it is addressed—

(a) to give particulars of—

(i) his own present interest in those voting shares or equity derivatives or his own present short position in those voting shares; or

(ii) his own past interest in those voting shares or equity derivatives or his own past short position in those voting shares (which he had at any time during the 3-year period referred to in subsection (1));

(b) where—

(i) his interest in those voting shares or equity derivatives is a present interest and any other person has an interest in those voting shares or equity derivatives; or

(ii) in any case, any other person had an interest in those voting shares or equity derivatives during that 3-year period at any time when he himself had an interest in those voting shares or equity derivatives,

to give (so far as he is aware) such particulars with respect to the other person's interest as may be required by the notification;

(c) where his interest in those voting shares or equity derivatives was a past interest, to give (so far as he is aware) particulars of the identity of the person who had that interest immediately upon his ceasing to have it;

(d) where—

(i) his short position in those voting shares is a present short position and any other person has an interest or short position in those voting shares; or

(ii) in any case, any other person had an interest or short position in those voting shares during that 3-year period at any time when he himself had a short position in those voting shares,

to give (so far as he is aware) such particulars with respect to the other person's interest or short position as may be required by the notification; or

(e) where his short position in those voting shares was a past short position, to give (so far as he is aware) particulars of the identity of the person who had that short position or had an interest in those voting shares immediately upon his ceasing to have that short position.

(3) The particulars referred to in subsection (2)(a), (b) and (d) include—

(a) particulars of the identity of persons interested in the voting shares or equity derivatives in question, or having a short position in the voting shares in question; and

(b) particulars of whether persons interested in the same voting shares are or were—

(i) parties to any agreement to which section 317 applies; or

(ii) parties to any agreement or arrangement relating to the exercise of any rights conferred by the holding of the voting shares.

(4) A notification under subsection (1) shall require any information given in response to the notification to be given within such reasonable time as may be specified in the notification.

(5) The Financial Secretary may by notice published in the Gazette exempt a person from the operation of this section.

(6) A notice published pursuant to subsection (5) is not subsidiary legislation.

(7) Sections 316 to 318 and 322 (with the omission of the reference in section 322 to section 323) apply—

(a) for the purposes of construing—

(i) references in this section to a person interested in voting shares and to an interest in voting shares respectively; and

(ii) references in this section to a person having a short position in voting shares and to a short position in voting shares respectively,

as they apply for the purposes of Divisions 2 to 4; and

(b) for the purposes of this Division as if, in those sections, a reference to an interest in voting shares includes, where those voting shares are the underlying shares of any equity derivatives, an interest in those equity derivatives.

(8) This section applies in relation to a person who has or previously had, or is or was entitled to acquire, a right to subscribe for shares in a listed corporation which would on issue be voting shares in that corporation as it applies in relation to a person who is or was interested in such voting

shares; and in this section, a reference to an interest in voting shares and to voting shares shall be construed accordingly in any such case as including a reference respectively to any such right and shares which would on issue be such voting shares. *(Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)*

(Amended 19 of 2015 s. 2)

330. Duty to notify relevant exchange company, Commission and Monetary Authority of information given under section 329

(1) Whenever in pursuance of a requirement imposed by a listed corporation on a person under section 329 the listed corporation receives any information, the listed corporation is under a duty to notify the relevant exchange company and the Commission of that information.

(2) Upon receipt of any information under subsection (1), the relevant exchange company shall forthwith publish such information in such manner and for such period as may be approved by the Commission.

(3) Whenever in pursuance of a requirement imposed by a listed corporation that is, or is the holding company of, an authorized financial institution on a person under section 329 the listed corporation receives any information, the listed corporation is under a duty (in addition to the duty imposed by subsection (1)) to notify the Monetary Authority of that information.

(4) If a listed corporation is under a duty to give any notification required by subsection (1) or (3), the notification shall be given before the end of the business day after the day on which that duty arises.

(5) If default is made in complying with subsection (1), (3) or (4), the listed corporation concerned and every officer of it who is

in default commit an offence and each is liable on conviction to a fine at level 1.

331. Listed corporation to investigate ownership of interests in its voting shares, etc. on requisition by members

(Amended 19 of 2015 s. 2)

(1) A listed corporation may be required to exercise its powers under section 329 on the requisition of members of the corporation holding, at the date of the deposit of the requisition, in aggregate not less than 10% of the total number of issued voting shares in the corporation. *(Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)*

(2) The requisition must—

(a) state that the requisitionists are requiring the listed corporation to exercise its powers under section 329;

(b) specify the manner in which they require those powers to be exercised; and

(c) give reasonable grounds for requiring the listed corporation to exercise those powers in the manner specified,

and, subject to subsection (3), must be signed by the requisitionists and deposited at the listed corporation's registered office.

(3) The requisition may consist of several documents in like form each signed by one or more requisitionists.

(4) On the deposit of a requisition complying with this section, it is the duty of the listed corporation to exercise its powers under section 329 in the manner specified in the requisition.

(5) If default is made in complying with subsection (4), the listed corporation concerned and every officer of it who is in default commit an offence and each is liable—

(a) on conviction on indictment to a fine at level 6; or

(b) on summary conviction to a fine at level 3.

(6) In this section and in sections 332 and 333, a reference to a corporation's registered office shall, where the corporation does not have a registered office in Hong Kong, be deemed to be a reference to the corporation's principal place of business in Hong Kong.

332. Listed corporation to report to members

(1) On the conclusion of an investigation carried out by a listed corporation in pursuance of a requisition under section 331, it is the duty of the corporation to cause a report of the information received in pursuance of that investigation to be prepared.

(2) The report prepared under subsection (1) shall be made available at the listed corporation's registered office within 10 business days after the conclusion of the investigation.

(3) Where—

(a) a listed corporation carries out an investigation in pursuance of a requisition under section 331; and

(b) the investigation is not concluded before the end of 3 months beginning with the day next following the date of the deposit of the requisition,

it is the duty of the listed corporation to cause to be prepared, in respect of that period and each successive period of 3 months ending before the conclusion of the investigation, an interim report of the information received during the respective period in pursuance of the investigation.

(4) Each report prepared under subsection (3) shall be—

(a) made available at the listed corporation's registered office within 10 business days after the end of the period to which it relates; and

(b) published by the listed corporation at such time, in such manner and for such period as may be specified by the Commission by notice published in the Gazette.

(5) *(Repealed 28 of 2012 ss. 912 & 920)*

(6) The listed corporation shall, within 3 business days after making any report prepared under this section available at its registered office, notify the requisitionists that the report is so available.

(7) An investigation carried out by a listed corporation in pursuance of a requisition under section 331 shall be regarded for the purposes of this section as concluded when the listed corporation has made all such inquiries as are necessary or expedient for the purposes of the requisition and, in the case of each such inquiry, either a response has been received by the corporation or the time allowed for a response has expired.

(8) A report prepared under this section—

(a) shall be kept at the corporation's registered office from the day on which it is first made available there in accordance with subsection (2) or (4) until the expiry of 6 years beginning with the day next following that day; and

(b) shall be made available for inspection in accordance with section 335 so long as it is so kept.

(9) If default is made in complying with subsection (1), (2), (3), (4)(a) or (b), (6) or (8)(a), the listed corporation concerned and every officer of it who is in default commit an offence and each is liable—

(a) on conviction on indictment to a fine at level 6; or

(b) on summary conviction to a fine at level 3.

(10) A notice published pursuant to subsection (4)(b) is not subsidiary legislation.

333. Duty to deliver report prepared under section 332 to relevant exchange company, Commission and Monetary Authority

(1) Whenever a report is prepared under section 332, the listed corporation is under a duty to deliver a copy of the report to the relevant exchange company and the Commission.

(2) Upon receipt of any report under subsection (1), the relevant exchange company shall forthwith publish such report in such manner and for such period as may be approved by the Commission.

(3) Whenever a report is prepared under section 332 by a listed corporation that is, or is the holding company of, an authorized financial institution, the listed corporation is under a duty (in addition to the duty imposed by subsection (1)) to deliver a copy of the report to the Monetary Authority.

(4) The duty imposed on a listed corporation by subsection (1) or (3) shall be performed before the end of the business day after the day on which the report is first made available at the corporation's registered office.

(5) If default is made in complying with subsection (1), (3) or (4), the listed corporation concerned and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 1.

334. Offences for failure to provide information required by listed corporation

(1) Subject to subsection (2), a person—

(a) who, without reasonable excuse, fails to comply with a notification under section 329; or

(b) who—

(i) in purported compliance with such a notification, makes any statement which is false or misleading in a material particular; and

(ii) knows that, or is reckless as to whether, the statement is false or misleading in a material particular,

commits an offence and is liable—

(i) on conviction on indictment to a fine at level 6 and to imprisonment for 2 years; or

(ii) on summary conviction to a fine at level 3 and to imprisonment for 6 months.

(2) A person is not obliged to comply with a notification under section 329 if he is for the time being exempted by the Financial Secretary under section 329(5).

335. Inspection of reports

(1) Any report which is required by section 332(8)(b) to be made available for inspection in accordance with this section shall, during business hours (subject to such reasonable restrictions as the corporation concerned may in general meeting impose, but so that not less than 2 hours in each day are allowed for inspection), be open to inspection by any member of the corporation without charge or by any other person on payment of $10, or such less sum as the corporation may determine, for each inspection.

(2) Any member of the corporation or any other person may require a copy of any such report, or any part of it, on payment of $2, or such less sum as the corporation may

determine, for each page required to be copied; and the corporation shall cause any copy so required by a member or person to be sent to him within 10 business days after the day on which the requirement is received by the corporation.

(3) If an inspection of any report required under this section is refused or a copy so required is not sent within the period specified in subsection (2), the corporation and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 1 and, in the case of a continuing offence, to a further fine of $200 for every day during which the offence continues.

(4) In the case of a refusal of an inspection of any report required under this section, the Court of First Instance may by order compel an immediate inspection of it.

(5) In the case of a failure to send within the period specified in subsection (2) a copy required under this section, the Court of First Instance may by order direct that the copy required shall be sent to the person requiring it.

(6) The Commission may by rules amend the sum specified in subsection (1) or (2).

Division 6—Keeping of register

336. Register of interests in shares and short positions

(1) Every listed corporation shall keep a register of interests in shares and short positions.

(2) Whenever a listed corporation receives information from a person given in performance of a duty imposed on him by any provision of Divisions 2 to 5, the listed corporation is under a duty to record in the register, against the person's name, the information received and the date of the entry.

(3) Without prejudice to subsection (2), where a listed corporation receives a notification which includes a statement that the person giving the notification, or any other person, has ceased to be a party to an agreement to which section 317 applies, the listed corporation is under a duty to record that information against the name of the person who has ceased to be a party to that agreement in every place where his name appears in the register as a party to that agreement (including any entry relating to him made against another person's name).

(4) A duty imposed by subsection (2) or (3) shall be performed within 3 business days after the day on which that duty arises.

(5) A listed corporation is not, by virtue of anything done for the purposes of this section, affected with notice of, or put upon enquiry as to, the rights of any person in relation to any shares or equity derivatives.

(6) The register must be so made up that the entries against the several names recorded in it appear in chronological order.

(7) Unless the register is in such form as to constitute in itself an index, the listed corporation shall keep an index of the names recorded in the register which shall in respect of each name contain a sufficient indication to enable the information recorded against it to be readily found.

(8) The listed corporation shall, within 10 business days after the day on which a name is recorded in the register, make any necessary alteration in the index.

(9) If a listed corporation that is not an open-ended fund company ceases to be a listed corporation, it must, subject to section 283 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), continue to keep the register and any index until the end of the period of 6 years beginning with the day next following that on which it ceases to be a

listed corporation. *(Amended 28 of 2012 ss. 912 & 920; 16 of 2016 s. 14)*

(10) The register and any index—

(a) shall be kept—

(i) if the corporation's register of members is kept at its registered office, at the corporation's registered office;

(ii) if the corporation's register of members is not so kept, at the corporation's registered office or the place where the register of members is kept; or

(iii) if the corporation does not have a registered office in Hong Kong, at the corporation's principal place of business in Hong Kong; and

(b) shall, for the purposes of Divisions 2 to 5 and for the purposes of—

(i) enabling members of the public to ascertain—

(A) the identities and the particulars of persons who are or were the true owners of, or have or had any interest or short position in, voting shares in the listed corporation; *(Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)*

(B) the nature and the particulars of the interest or short position; and

(C) the capacity in which a person holds or held the interest or short position; and

(ii) providing the investing public with information to enable them to make informed investment decisions,

be made available for inspection in accordance with section 340. *(Amended 28 of 2012 ss. 912 & 920)*

(11) *(Repealed 28 of 2012 ss. 912 & 920)*

(12) The corporation shall send notice in the form specified by the Commission for the purposes of this section to the Registrar of Companies of—

(a) the place where the register is kept; and

(b) any change in that place,

unless the register has at all times been kept at the corporation's registered office.

(13) The duty imposed by subsection (12) shall be performed within 10 business days after the day on which the register is so kept or the change takes place (as the case may be).

(14) If default is made in complying with any provision of this section, the listed corporation concerned and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 1 and, in the case of a continuing offence, to a further fine of $200 for every day during which the offence continues.

(15) For the purposes of this section, a reference to books and papers in section 283 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) shall be construed as including a reference to the register and index required to be kept by a corporation under this section. *(Amended 28 of 2012 ss. 912 & 920)*

337. Registration of interests and short positions disclosed under section 329

(1) Whenever in pursuance of a requirement imposed by a listed corporation on a person under section 329 the listed corporation receives any information, the listed corporation is under a duty to record, against the name of the person interested in those voting shares or having a short position in those voting shares (as the case may be), in a separate

part of its register of interests in shares and short positions— *(Amended 19 of 2015 s. 2)*

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

(b) any information received in pursuance of the requirement.

(2) Section 336(4) to (14) applies in relation to any part of the register kept in accordance with subsection (1) as it applies in relation to the remainder of the register.

338. Removal of entries from register

(1) A corporation may remove an entry against a person's name from its register of interests in shares and short positions if more than 6 years have expired since the date of the entry being made, and either—

(a) that entry recorded the fact that the person in question had ceased to have an interest notifiable under any provision of this Division or Divisions 2 to 5 in voting shares in the corporation; or *(Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)*

(b) it has been superseded by a later entry made under section 336 against the same person's name,

and, in a case under paragraph (a), the corporation may also remove that person's name from the register.

(2) If a person in pursuance of a duty imposed on him by any provision of this Division or Divisions 2 to 5 gives to a listed corporation the name and address of another person as being interested in voting shares in the corporation or having a short position in such voting shares, the corporation shall, within 10 business days after the day on which it was given that information, notify the other person that he has been so

named and shall include in that notification— *(Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)*

(a) particulars of any entry relating to him made, in consequence of its being given that information, by the corporation in its register of interests in shares and short positions; and

(b) a statement informing him of his right to apply to have the entry removed in accordance with the following provisions of this section.

(3) A person who has been notified by a listed corporation under subsection (2) that an entry relating to him has been made in the corporation's register of interests in shares and short positions may apply in writing to the corporation for the removal of that entry from the register; and the corporation shall remove the entry if satisfied that the information in pursuance of which the entry was made was incorrect.

(4) If a person who is identified in a corporation's register of interests in shares and short positions as being a party to an agreement to which section 317 applies (whether by an entry against his own name or by an entry relating to him made against another person's name as referred to in subsection (2)(a)) ceases to be a party to that agreement, he may apply in writing to the corporation for the inclusion of that information in the register; and if the corporation is satisfied that he has ceased to be a party to that agreement, it shall record that information (if not already recorded) in every place where his name appears as a party to that agreement in the register.

(5) If an application under subsection (3) or (4) is refused (in a case under subsection (4), otherwise than on the ground that the information has already been recorded), the applicant may apply to the Court of First Instance for an order directing the corporation to remove the entry in question from the register or to include the information in question in the register (as

the case may be); and the Court of First Instance may, if it considers appropriate, make such an order.

(6) Where a name or an entry is removed from a corporation's register of interests in shares and short positions in pursuance of subsection (1) or (3) or an order under subsection (5), the corporation shall within 10 business days after the date of that removal make any necessary alteration in any index.

(7) If default is made in complying with subsection (2) or (6), the corporation concerned and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 1 and, in the case of a continuing offence, to a further fine of $200 for every day during which the offence continues.

339. Otherwise, entries not to be removed from register

(1) Entries in a corporation's register of interests in shares and short positions shall not be removed except in accordance with section 338.

(2) If an entry is removed from a corporation's register of interests in shares and short positions in contravention of subsection (1), the corporation shall restore that entry to the register as soon as reasonably practicable.

(3) If default is made in complying with subsection (1) or (2), the corporation concerned and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 1 and, in the case of a continuing offence, to a further fine of $200 for every day during which the offence continues.

340. Inspection of register

(1) Any register of interests in shares and short positions shall, during business hours (subject to such reasonable restrictions

as the corporation concerned may in general meeting impose, but so that not less than 2 hours in each day are allowed for inspection), be open to inspection by any member of the corporation without charge or by any other person on payment of $10, or such less sum as the corporation may determine, for each inspection.

(2) Any member of the corporation or any other person may require a copy of any such register, or any part of it, on payment of $2, or such less sum as the corporation may determine, for each page required to be copied; and the corporation shall cause any copy so required by a member or person to be sent to him within 10 business days after the day on which the requirement is received by the corporation.

(3) If an inspection of the register required under this section is refused or a copy so required is not sent within the period specified in subsection (2), the corporation and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 1 and, in the case of a continuing offence, to a further fine of $200 for every day during which the offence continues.

(4) In the case of a refusal of an inspection of the register required under this section, the Court of First Instance may by order compel an immediate inspection of it.

(5) In the case of a failure to send within the period specified in subsection (2) a copy required under this section, the Court of First Instance may by order direct that the copy required shall be sent to the person requiring it.

(6) The Commission may by rules amend the sum specified in subsection (1) or (2).

Division 7—Disclosure of interests and short positions of directors and chief executives

341. Duty of disclosure by director and chief executive

(1) A director or chief executive of a listed corporation comes under a duty of disclosure on the occurrence, while he is a director or chief executive of the listed corporation, of any of the following events—

(a) any event in consequence of which he becomes, or ceases to be, interested in shares in or debentures of the listed corporation or any associated corporation of the listed corporation (whether or not having or retaining an interest in other shares in or debentures of that corporation);

(b) the entering into by him of a contract to sell any such shares or debentures;

(c) the assignment by him of a right granted to him by the listed corporation to subscribe for shares in or debentures of the listed corporation;

(d) the grant to him by another corporation, being an associated corporation of the listed corporation, of a right to subscribe for shares in or debentures of that associated corporation, the exercise of such a right granted to him and the assignment by him of such a right so granted;

(e) any event in consequence of which the nature of his interest (or part thereof) in shares in or debentures of the listed corporation or any associated corporation of the listed corporation, which has previously been notified to the listed corporation and the relevant exchange company where the duty of disclosure arose under paragraph (a), (b), (c) or (d) or subsection (2), changes; and

(f) any event in consequence of which he comes to have or ceases to have a short position in shares in the listed corporation or any associated corporation of the listed corporation (whether or not having or retaining a short position in other shares in that corporation).

(2) A person who—

(a) is a director or chief executive of a corporation when the corporation becomes a listed corporation and at that time—

(i) is interested in shares in or debentures of the listed corporation or any associated corporation of the listed corporation; or

(ii) has a short position in shares in the listed corporation or any associated corporation of the listed corporation;

(b) at the commencement of this Part is a director or chief executive of a listed corporation and at that time—

(i) is interested in shares in or debentures of the listed corporation or any associated corporation of the listed corporation, and that interest has not previously been disclosed to the listed corporation and the Exchange Company under the Securities (Disclosure of Interests) Ordinance (Cap. 396) before its repeal under section 406; or

(ii) has a short position in shares in the listed corporation or any associated corporation of the listed corporation;

(c) becomes a director or chief executive of a listed corporation and at the time when he does so—

(i) is interested in shares in or debentures of the listed corporation or any associated corporation of the listed corporation; or

(ii) has a short position in shares in the listed corporation or any associated corporation of the listed corporation; or

(d) is a director or chief executive of a listed corporation when a corporation becomes an associated corporation of the listed corporation and at that time—

(i) is interested in shares in or debentures of the associated corporation; or

(ii) has a short position in shares in the associated corporation,

comes under a duty of disclosure.

(3) A person who would otherwise come under a duty of disclosure under subsection (2) is not under such a duty where the occurrence of the relevant event comes to his knowledge after he has ceased to be a director or chief executive.

(4) Nothing in this section operates so as to impose a duty with respect to shares in a corporation which is the wholly owned subsidiary of another corporation. *(Amended 28 of 2012 ss. 912 & 920)*

(4A) This section is subject to sections 151 and 153(3) of the Financial Institutions (Resolution) Ordinance (Cap. 628). *(Added 23 of 2016 s. 218. Amended E.R. 2 of 2017)*

(5) In subsection (1)(e), a reference to a change in the nature of the interest of a director or chief executive in shares or debentures includes a reference to a change in the nature of—

(a) his title to the shares or debentures;

(b) any of his interest whether legal or equitable in the shares or debentures; or

(c) any of his interest in the shares, which are the underlying shares of equity derivatives, on the exercise by, or against, him of rights under the equity derivatives,

but does not include a reference to a change in the nature of his interest in the shares or debentures—

(i) on delivery of the shares or debentures to him, if his equitable interest in those shares or debentures is notifiable, or has previously been notified to the listed corporation concerned and the relevant exchange company, under any provision of this Division or Division 8 or 9;

(ii) due to a change in the terms on which rights under any equity derivatives may be exercised resulting from a change in the number of the underlying shares in issue; or

(iii) where another person, being a qualified lender, comes to have an interest in his shares or debentures by way of security.

342. Interests to be disclosed by director and chief executive

(1) Subject to subsection (2), the interests to be taken into account for the purposes of the duty of disclosure arising under section 341 are those in shares in and debentures of the listed corporation concerned or any associated corporation of the listed corporation (whether issued or unissued).

(2) In subsection (1), a reference to interests in shares in the listed corporation concerned or any associated corporation of the listed corporation includes a reference to interests in such shares, which are the underlying shares of equity derivatives, that a person has, or ceases to have, by virtue of—

(a) the holding, writing or issuing by him of the equity derivatives;

(b) the exercise by, or against, him of rights under the equity derivatives; or

(c) the assignment by him, or the lapsing without exercise, of rights under the equity derivatives.

343. Short positions to be disclosed by director and chief executive

The short positions to be taken into account for the purposes of the duty of disclosure arising under section 341 are those in shares in the listed corporation concerned or any associated corporation of the listed corporation.

344. Notification of family and corporate interests and short positions by director and chief executive

(1) For the purposes of this Division and Divisions 8 and 9—

(a) a director or chief executive of a listed corporation is taken—

(i) to be interested in any shares or debentures in which his spouse (not being herself or himself a director or chief executive of the listed corporation) is interested; and

(ii) to have a short position in any shares in which his spouse (not being herself or himself a director or chief executive of the listed corporation) has a short position; and

(b) the same applies with respect to—

(i) an interest which a minor child (natural or adopted) of a director or chief executive of a listed corporation (such child not being himself or herself a director or chief executive of the listed corporation) has in shares or debentures; and

(ii) a short position which a minor child (natural or adopted) of a director or chief executive of a listed corporation (such child not being himself or herself a director or chief executive of the listed corporation) has in shares.

(2) For the purposes of this Division and Divisions 8 and 9—

(a) a contract, assignment or right of subscription entered into, exercised or made by, or a grant made to, the spouse of a director or chief executive of a listed corporation (not being herself or himself a director or chief executive of the listed corporation) shall be taken also to have been entered into, exercised or made by, or as having been made to (as the case may be) the director or chief executive; and

(b) the same applies with respect to a contract, assignment or right of subscription entered into, exercised or made by, or a grant made to, a minor child (natural or adopted) of a director or chief executive of a listed corporation (such child not being himself or herself a director or chief executive of the listed corporation).

(3) For the purposes of this Division and Divisions 8 and 9, a person is taken—

(a) to be interested in any shares in or debentures of the listed corporation or any associated corporation of the listed corporation in which a corporation is interested; and

(b) to have a short position in any shares in the listed corporation or any associated corporation of the listed corporation in which a corporation has a short position,

if—

(i) that corporation or its directors are accustomed or obliged to act in accordance with his directions or instructions; or

(ii) he is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of that corporation.

(4) Where—

(a) a person is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of a corporation; and

(b) that corporation is entitled to exercise or control the exercise of any of the voting power at general meetings of another corporation (***the effective voting power***),

then, for the purposes of subsection (3)(ii), the effective voting power is taken as exercisable by that person.

(5) For the purposes of subsections (3) and (4), a person is entitled to exercise or control the exercise of voting power if—

(a) he has a right (whether subject to conditions or not) the exercise of which would make him so entitled; or

(b) he is under an obligation (whether subject to conditions or not) the fulfilment of which would make him so entitled.

(6) A person who is taken to be interested in shares or debentures, or have a short position in shares, under subsection (3) shall be regarded as having ceased to be interested in the shares or debentures, or have a short position in the shares, if subsection (3)(i) or (ii) no longer applies.

Division 8—Interests and short positions to be notified by director and chief executive or disregarded

345. Interests and short positions to be taken into account for the purpose of notification by director and chief executive

(1) This section applies, subject to section 346, in determining for the purposes of Divisions 7 and 9 whether a person has, or ceases to have, an interest in shares in or debentures of, or short position in shares in, a listed corporation or any associated corporation of the listed corporation that is notifiable.

(2) A reference to an interest in shares or debentures shall be construed as including a reference to an interest of any kind whatsoever in the shares or debentures, and for that purpose any restraint or restriction to which the exercise of a right attached to the interest may be subject shall be disregarded.

(3) In construing a reference to a short position in shares, any restraint or restriction to which the exercise of a right or the settlement of an obligation, by virtue of the short position, may be subject shall be disregarded.

(4) Where property is held on trust and an interest in shares or debentures, or short position in shares, is comprised in that property—

(a) a beneficiary of the trust who apart from this section does not have an interest in the shares or debentures, or a short position in the shares, is taken to have such an interest or short position (as the case may be); and

(b) in the case of a discretionary trust, the founder of the trust is taken to have an interest in the shares or debentures or a short position in the shares (as the case may be).

(5) A person is taken to have an interest in shares or debentures if—

(a) he enters into a contract for their purchase by him (whether for cash or other consideration); or

(b) he is entitled to—

(i) exercise any right conferred by the holding of the shares or debentures; or

(ii) control the exercise of any such right.

(6) For the purposes of subsection (5)(b), a person is taken to be entitled to exercise or control the exercise of any right conferred by the holding of shares or debentures if—

(a) he has a right (whether subject to conditions or not) the exercise of which would make him so entitled; or

(b) he is under an obligation (whether subject to conditions or not) the fulfilment of which would make him so entitled.

(7) A person is taken to have an interest in shares or debentures if, otherwise than by virtue of having an interest under a trust—

(a) he has a right to subscribe for the shares or debentures or call for delivery of the shares or debentures to himself or to his order; or

(b) he has a right to acquire an interest in the shares or debentures or is under an obligation to take delivery of the shares or debentures,

whether in any case the right or obligation is conditional or absolute.

(8) A person who is the holder, writer or issuer of equity derivatives is taken to have an interest in shares which are the underlying shares of the equity derivatives if, by virtue of his holding, writing or issuing of the equity derivatives—

(a) he has a right to require another person to deliver the underlying shares to him;

(b) he is under an obligation to take delivery of the underlying shares;

(c) he has a right to receive from another person an amount if the price of the underlying shares increases; or

(d) he has a right to avoid or reduce a loss if the price of the underlying shares increases,

before or on a certain date or within a certain period, whether in any case the right or obligation is conditional or absolute.

(9) The number of shares in which a person is taken to be interested under subsection (8) is—

(a) the number of the underlying shares of the equity derivatives—

(i) which he has a right to require another person to deliver to him; or

(ii) of which he is under an obligation to take delivery;

(b) the number of the underlying shares of the equity derivatives by reference to which, wholly or partly, the amount which he has a right to receive or the loss which he has a right to avoid or reduce, by virtue of his holding, writing or issuing of the equity derivatives, is derived or determined; or

(c) in the case of a stock futures contract, the contract multiplier which is to be used in calculating the amount he may receive in respect of his holding of the stock futures contract,

whether in any case the right or obligation is conditional or absolute.

(10) A person shall be regarded as having ceased to be interested in shares or debentures if—

(a) he delivers the shares or debentures to another person or to another person's order—

(i) in accordance with a contract under which he agreed to sell the shares or debentures to the other person;

(ii) in fulfilling an obligation to do so when called upon by the other person to deliver the shares or debentures; or

(iii) pursuant to a right to require the other person to take delivery of the shares or debentures;

(b) his right to subscribe for or call for delivery of the shares or debentures lapses or he assigns such a right to another person;

(c) his obligation to take delivery of the shares or debentures lapses or he assigns such an obligation to another person; or

(d) he receives from another person an amount, or avoids or reduces a loss, on assignment or settlement of any cash settled equity derivatives.

(11) The number of shares in which a person is regarded as having ceased to be interested under subsection (10)(d) is—

(a) the number of the underlying shares which are to be used in calculating the amount he may receive, or the loss he may avoid or reduce; or

(b) in the case of a stock futures contract, the contract multiplier which is to be used in calculating the amount he may receive in respect of his holding of the stock futures contract.

(12) The number of shares in which a person is regarded as having a short position by virtue of his holding, writing or issuing of any equity derivatives is—

(a) the number of the underlying shares of the equity derivatives which he is entitled, or may be required, to deliver;

(b) in the case of cash settled equity derivatives, the number of the underlying shares which are to be used in calculating the amount he may receive, or the loss he may avoid or reduce; or

(c) in the case of a stock futures contract, the contract multiplier which is to be used in calculating the amount he may receive in respect of his holding of the stock futures contract.

(13) The number of shares in which a person is regarded as having a short position under a securities borrowing and lending agreement is the number of shares which he is obliged to deliver under the securities borrowing and lending agreement, if called upon to do so, whether or not the obligation to deliver shares may be settled by payment of cash or by delivery of shares or otherwise.

(14) Persons having a joint interest or short position are taken each of them to have that interest or short position (as the case may be).

(15) It is immaterial that shares in which a person has an interest or short position are unidentifiable.

346. Interests and short positions to be disregarded for the purpose of notification by director and chief executive

(1) The following interests, and short positions, in shares in or debentures of a listed corporation or any associated

corporation of the listed corporation shall be disregarded for the purposes of Divisions 7 to 9—

(a) so long as a person is entitled to receive income from trust property comprising shares or debentures during the lifetime of himself or another person, an interest in the shares or debentures in reversion or remainder;

(b) an interest of a person in shares or debentures if, and so long as, he holds the shares or debentures as a bare trustee;

(c) subject to subsection (3), an interest in shares or debentures comprised in the property under—

(i) a collective investment scheme authorized under section 104;

(ii) a pension scheme or a provident fund scheme registered under section 21 or 21A of the Mandatory Provident Fund Schemes Ordinance (Cap. 485); or

(iii) a qualified overseas scheme,

of a holder, trustee or custodian of the scheme;

(d) an interest of a person subsisting by virtue of—

(i) a charitable scheme made by order of any court of competent jurisdiction; or

(ii) the vesting of a deceased's estate in any judicial officer between the time of death of the deceased and the grant of letters of administration; and

(e) such interests or interests of such a class, or such short positions or short positions of such a class, as are prescribed by regulations for the purposes of this section.

(2) A person is not taken to be interested in shares or debentures under section 345(5)(b) by reason only that he—

(a) has been appointed as a proxy to vote at a specified meeting of the listed corporation or associated corporation or of any class of its members and at any adjournment of that meeting; or

(b) has been appointed by a corporation to act as its representative at a meeting of the listed corporation or associated corporation or of any class of its members.

(3) An interest in shares or debentures of a holder, trustee or custodian of a scheme referred to in subsection (1)(c)(i), (ii) or (iii), comprised in the property under the scheme, shall not be disregarded under subsection (1)(c) if the holder, trustee or custodian (as the case may be) is also a manager of the scheme.

(4) For the purposes of subsection (1)(c), ***qualified overseas scheme*** (合資格海外計劃) means a collective investment scheme, pension scheme or provident fund scheme which—

(a) is established in a place outside Hong Kong recognized for the purposes of this section by the Commission by notice published in the Gazette; and

(b) is authorized by or registered with the authority (if any) responsible for the authorization or registration of such scheme in the place where it is established, and complies with the requirements of such authority,

but does not include—

(i) an arrangement operated by a person otherwise than by way of business;

(ii) an arrangement under which less than 100 persons hold, or have the right to become holders of, interests (whether described as units or otherwise) that entitle the holders,

directly or indirectly, to the income or property of the arrangement;

(iii) an arrangement under which less than 50 persons hold, or have the right to become holders of, interests (whether described as units or otherwise) that entitle the holders, directly or indirectly, to 75% or more of the income or property of the arrangement; and

(iv) such other arrangement as may be specified by the Commission by notice published in the Gazette.

(5) For the purposes of subsection (1), a person shall not be considered as not being a bare trustee in respect of any property by reason only that—

(a) the person for whose benefit the property is held is not absolutely entitled thereto as against the trustee only because he is a minor or is a person under a disability; or

(b) the trustee has the right to resort to the property to satisfy any outstanding charge or lien or for the payment of any duty, tax, cost or other outgoings.

(6) A notice published pursuant to subsection (4)(a) or (iv) is not subsidiary legislation.

Division 9—Requirements for giving notification by director and chief executive

347. Notification to be given by director and chief executive

(1) Where a person comes under a duty of disclosure under section 341, he shall give notification to the listed corporation concerned and to the relevant exchange company of—

(a) the interests which he has, or ceases to have, in shares in or debentures of the listed corporation or any associated corporation of the listed corporation; and

(b) the short position (if any) which he has, or ceases to have, in shares in the listed corporation or any associated corporation of the listed corporation.

(2) A notification required by this section shall be given to the listed corporation concerned and the relevant exchange company at the same time or (if it is not practicable to do so) one immediately after the other.

(3) The Commission may, by notice published in the Gazette, specify the form in respect of a notification required by this section, either generally or in any particular case, and, without limiting the generality of the foregoing, may in the form—

(a) notwithstanding section 397(1), include directions and instructions relating to the manner in which the form is to be completed, signed, executed and authenticated; and

(b) specify documents by which it is to be accompanied.

(4) For the purposes of subsection (3), the Commission may specify any form by referring in a notice published in the Gazette to the form as separately published by such electronic means as the Commission considers appropriate, instead of setting out the form in a notice published in the Gazette, whereupon the Commission shall for all purposes be regarded as having duly specified the form under subsection (3).

(5) For the purposes of subsection (3), the Commission may specify that different forms are to be used in different circumstances.

(6) Subject to subsection (7), where the Commission has specified any form under subsection (3) in respect of a notification required by this section to be given when a duty of disclosure

arises under section 341, the duty shall not be regarded as having been performed unless the notification—

(a) is in the form specified;

(b) is completed, signed, executed and authenticated in accordance with such directions and instructions as are included in the form; and

(c) is accompanied by such documents as are specified in the form.

(7) A notification required by this section shall not by reason of any deviation from a form specified in respect of it by notice published pursuant to subsection (3) cease to be regarded as being in that form, if the deviation does not affect the substance of the form.

(8) A notice published pursuant to subsection (3) is not subsidiary legislation.

348. Time of notification by director and chief executive

(1) A notification required by section 347 shall be given, where the duty of disclosure arises under section 341(1)(a), (b), (c), (d), (e) or (f)—

(a) in the case that at the time at which the relevant event occurs the person concerned knows of its occurrence, within 3 business days after the day on which the relevant event occurs; or

(b) otherwise, within 3 business days after the day on which the occurrence of the relevant event comes to his knowledge.

(2) A notification required by section 347 shall be given, where the duty of disclosure arises under section 341(2)—

(a) within 10 business days after the day on which the relevant event occurs; or

(b) in the case that at the time at which the relevant event occurs the person concerned is not aware—

(i) that he has an interest in shares in or debentures of the listed corporation concerned or any associated corporation of the listed corporation; or

(ii) that he has a short position in shares in the listed corporation or any associated corporation of the listed corporation,

within 10 business days after the day on which he becomes aware that he has such an interest or short position (as the case may be).

349. Particulars to be contained in notification by director and chief executive

(1) Where a duty of disclosure arises under section 341, a person shall, in performing the duty of disclosure, specify in the notification his name, identifying him also as a director or chief executive (as the case may be), and his address, and (so far as he is aware)—

(a) the date on which the relevant event occurred and—

(i) the date (if later) on which he became aware of the occurrence of the relevant event; or

(ii) in the case referred to in section 348(2)(b), the date on which he became aware that he has the interest in the shares in or debentures of, or the short position in the shares in, the listed corporation or the associated corporation of the listed corporation (as the case may be);

(b) subject to subsection (3), the total number and class of—

(i) shares in the listed corporation and any associated corporation of the listed corporation in which he was interested immediately before the relevant time specifying the percentage figure of his interest in the shares in each class; and

(ii) shares in the listed corporation and any associated corporation of the listed corporation in which he is interested immediately after the relevant time specifying the percentage figure of his interest in the shares in each class;

(c) subject to subsection (3), the amount of—

(i) debentures of the listed corporation and any associated corporation of the listed corporation in which he was interested immediately before the relevant time; and

(ii) debentures of the listed corporation and any associated corporation of the listed corporation in which he is interested immediately after the relevant time;

(d) subject to subsection (3), the total number and class of—

(i) shares in the listed corporation and any associated corporation of the listed corporation in which he had a short position immediately before the relevant time specifying the percentage figure of his short position in the shares in each class; and

(ii) shares in the listed corporation and any associated corporation of the listed corporation in which he has a short position immediately after the relevant time specifying the percentage figure of his short position in the shares in each class;

(e) the circumstances in which he comes under the duty of disclosure;

(f) where the duty of disclosure arises under section 341(1)—

(i) the number and class of shares in the listed corporation or any associated corporation of the listed corporation in which—

(A) he has acquired an interest, or ceased to have an interest, at the relevant time;

(B) he has come to have, or ceased to have, a short position at the relevant time; or

(C) the nature of his interest changes at the relevant time; and

(ii) the amount of debentures of the listed corporation or any associated corporation of the listed corporation in which—

(A) he has acquired an interest, or ceased to have an interest, at the relevant time; or

(B) the nature of his interest changes at the relevant time;

(g) where he acquires or disposes of the interest referred to in paragraph (f)(i)(A)—

(i) through an on-exchange transaction, the highest price and the average price paid or received per share for the interest he acquires or disposes of (or, in the case that no price is paid or received, that fact); or

(ii) through an off-exchange transaction, the nature of the consideration given or received, and the highest amount and the average amount of the consideration given or received per share, for the

interest he acquires or disposes of (or, in the case that no consideration is given or received, that fact);

(h) where he acquires or disposes of the interest referred to in paragraph (f)(ii)(A)—

(i) through an on-exchange transaction, the highest price and the average price paid or received per unit for the interest he acquires or disposes of (or, in the case that no price is paid or received, that fact); or

(ii) through an off-exchange transaction, the nature of the consideration given or received, and the highest amount and the average amount of the consideration given or received per unit, for the interest he acquires or disposes of (or, in the case that no consideration is given or received, that fact);

(i) subject to subsection (3), the capacity in which the interest in shares in or debentures of, or the short position in shares in, the listed corporation or any associated corporation of the listed corporation is held immediately after the relevant time and, if the interest in the shares or debentures, or the short position in the shares, is held in more than one capacity, the number of shares or amount of debentures held in each capacity;

(j) subject to subsection (3), where the duty of disclosure arises on the occurrence of an event in consequence of which the nature of his interest in shares in or debentures of the listed corporation or any associated corporation of the listed corporation changes, the nature of his interest immediately before and immediately after the relevant time;

(k) subject to subsection (3), where he is taken to be interested in shares in or debentures of, or have a short position in shares in, the listed corporation or any associated corporation of the listed corporation under section 344(1), 344(2), 344(3) or 345(14)—

(i) the number and class of the shares or amount of the debentures; and

(ii) the name and address of, and his relationship with, each of the other persons having an interest in the shares or debentures or having a short position in the shares,

in which he is so taken to be interested or have a short position under each of those sections taken separately;

(l) where he no longer has an interest in shares in or debentures of, or a short position in shares in, the listed corporation or any associated corporation of the listed corporation, the fact that he no longer has such an interest or short position; and

(m) such other information as may be required in the form specified for the purpose.

(2) Where any shares the particulars of which have to be specified in a notification by a person under subsection (1)(b), (d), (f), (j) or (k) are the underlying shares of equity derivatives, the person shall also specify, subject to subsection (3), separately in the notification—

(a) the total number of shares which are the underlying shares of any of the following categories of equity derivatives that are listed or traded on a recognized stock market or traded on a recognized futures market, in which he was interested, or had a short position, immediately before the relevant time—

(i) cash settled equity derivatives (specifying separately if they are futures or options); or

(ii) physically settled equity derivatives (specifying separately if they are futures or options);

(b) the total number of shares which are the underlying shares of any of the following categories of equity derivatives that are neither listed or traded on a recognized stock market nor traded on a recognized futures market, in which he was interested, or had a short position, immediately before the relevant time—

(i) cash settled equity derivatives (specifying separately if they are futures or options); or

(ii) physically settled equity derivatives (specifying separately if they are futures or options);

(c) the total number of shares which are the underlying shares of any of the equity derivatives referred to in paragraph (a) in which he is interested, or has a short position, immediately after the relevant time;

(d) the total number of shares which are the underlying shares of any of the equity derivatives referred to in paragraph (b) in which he is interested, or has a short position, immediately after the relevant time;

(e) the period within which rights under each of the equity derivatives may be exercised (***exercise period***); and

(f) the expiry date of the exercise period.

(3) Where a duty of disclosure arises under section 341(1)—

(a) subsection (1)(b), (c) and (d) shall apply in relation to a person as if a reference to the listed corporation and any associated corporation of the listed corporation in that subsection was a reference to the corporation—

(i) in the shares in or debentures of which he has acquired an interest, or ceased to have an interest, at the relevant time;

(ii) in the shares in or debentures of which he has come to have, or ceased to have, a short position at the relevant time; or

(iii) the nature of his interest in the shares in or debentures of which changes at the relevant time;

(b) the particulars required to be specified under subsection (1)(i), (j) or (k) or (2) shall relate only to—

(i) the shares in which—

(A) he has (or is taken to have) acquired an interest, or ceased to have an interest, at the relevant time;

(B) he has (or is taken to have) come to have, or ceased to have, a short position at the relevant time; or

(C) the nature of his interest changes (or is taken to change) at the relevant time; and

(ii) the debentures in which—

(A) he has (or is taken to have) acquired an interest, or ceased to have an interest, at the relevant time; or

(B) the nature of his interest changes (or is taken to change) at the relevant time.

(4) Where a duty of disclosure arises under section 341(2)(a)(i), (b)(i), (c)(i) or (d)(i), a person shall, in performing the duty of disclosure, also specify in the notification—

(a) in respect of his interest in the shares which are the subject of the disclosure acquired—

(i) through an on-exchange transaction, the highest price and the average price paid per share for the interest acquired within 4 months immediately before the day on which the relevant event occurred; or

(ii) through an off-exchange transaction, the nature of the consideration given, and the highest amount and the average amount of the consideration given per share, for the interest acquired within 4 months immediately before the day on which the relevant event occurred; and

(b) in respect of his interest in the debentures which are the subject of the disclosure acquired—

(i) through an on-exchange transaction, the highest price and the average price paid per unit for the interest acquired within 4 months immediately before the day on which the relevant event occurred; or

(ii) through an off-exchange transaction, the nature of the consideration given, and the highest amount and the average amount of the consideration given per unit, for the interest acquired within 4 months immediately before the day on which the relevant event occurred.

(5) For the purposes of subsection (1)(b), ***percentage figure*** (百分率數字), subject to subsections (6) and (7), means the percentage figure found by expressing the number of all the shares in the listed corporation concerned or the associated corporation of the listed corporation in which the person is interested immediately before or immediately after (as the case may be) the relevant time as a percentage of the number of the issued shares in the listed corporation or associated corporation (as the case may be).

(6) For the purposes of subsection (5), where the listed corporation concerned or the associated corporation of the listed corporation grants to the person rights to subscribe for, or offers to the person, its shares, as part of a rights issue, the number of the issued shares in the listed corporation or associated corporation (as the case may be) at all times from the grant or offer (as the case may be) up to the completion or termination of the rights issue (whichever is the earlier) is taken to be the aggregate of—

(a) the number of the issued shares in the listed corporation or associated corporation (as the case may be) immediately before the grant or offer (as the case may be); and

(b) the number of the new shares to be issued upon the completion of the rights issue.

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

(a) in determining the number of shares in which a person is interested, there shall be disregarded any short position which that person has in the shares which, if included in the calculation of the number of shares in which the person is interested, would reduce the number of shares in which the person is interested; and

(b) the particulars of the shares in which that person has a short position, or has ceased to have a short position, shall be specified separately in the notification.

(8) For the purposes of subsection (1)(d), ***percentage figure*** (百分率數字) means the percentage figure found by expressing the number of all the shares in the listed corporation concerned or the associated corporation of the listed corporation in which the person has a short position immediately before or immediately after (as the case may be) the relevant time as

a percentage of the number of the issued shares in the listed corporation or associated corporation (as the case may be).

(9) Where the share capital of the listed corporation or the associated corporation of the listed corporation is divided into different classes of shares—

(a) a reference in this section to the number of shares in the listed corporation or associated corporation (as the case may be) in which the person is interested or has a short position shall be construed as a reference to the number of the shares in each of the classes taken separately; and

(b) a reference in this section to a percentage of the number of the issued shares in the listed corporation or associated corporation (as the case may be) shall be construed as a reference to a percentage of the number of the issued shares in each of the classes taken separately.

(10) In subsection (6), ***completion*** (完成), in relation to a rights issue, means the issue of shares in the listed corporation or the associated corporation of the listed corporation pursuant to the rights issue.

(11) Where an event on the occurrence of which a director or chief executive comes under a duty of disclosure under section 341 arises from the grant by the listed corporation, or any associated corporation of the listed corporation, of debentures or rights to subscribe for debentures, or the exercise or assignment of those rights so granted, the notification shall also specify—

(a) the—

(i) price paid or received—

(A) for the grant of those debentures or those rights; or

(B) on the exercise or assignment of those rights,

(or, in the case that no price is paid or received, that fact); or

(ii) consideration given or received—

(A) for the grant of those debentures or those rights; or

(B) on the exercise or assignment of those rights,

(or, in the case that no consideration is given or received, that fact),

(as the case may be);

(b) the period within which those rights may be exercised (***exercise period***); and

(c) the expiry date of the exercise period.

(12) Where an event on the occurrence of which a director or chief executive comes under a duty of disclosure under section 341 arises from the grant by the listed corporation, or any associated corporation of the listed corporation, of equity derivatives or rights under any equity derivatives, or the exercise or assignment of those rights so granted, the notification shall also specify the—

(a) price paid or received—

(i) for the grant of those equity derivatives or those rights; or

(ii) on the exercise or assignment of those rights,

(or, in the case that no price is paid or received, that fact); or

(b) consideration given or received—

(i) for the grant of those equity derivatives or those rights; or

(ii) on the exercise or assignment of those rights,

(or, in the case that no consideration is given or received, that fact),

(as the case may be);

(13) Subject to subsection (12), nothing in this section shall require details of the price that has been paid or may be payable, or the consideration that has been given or may be given, for or under equity derivatives (where the underlying shares of the equity derivatives are shares which are the subject of the disclosure) to be specified in the notification.

350. Duty to publish and notify Monetary Authority of information given under Division 9

(1) Upon receipt of any information under any provision of this Division or any regulations made, or rules made by the Commission, for the purposes of this Division, the relevant exchange company shall forthwith publish such information in such manner and for such period as may be approved by the Commission.

(2) Whenever a listed corporation that is, or is the holding company of, an authorized financial institution receives information from a director or chief executive under any provision of this Division, the listed corporation is under a duty to notify the Monetary Authority of that information.

(3) If a listed corporation is under a duty to give any notification required by subsection (2), the notification shall be given before the end of the business day after the day on which that duty arises.

(4) If default is made in complying with subsection (2) or (3), the listed corporation concerned and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 1.

351. Offences for non-compliance with notification requirements by director and chief executive

A person—

(a) who, without reasonable excuse, fails to perform, within the period specified in section 348(1)(a) or (b) or (2)(a) or (b) (as the case may be), a duty of disclosure arising under Division 7 in accordance with the provisions of this Part applicable to that duty; or

(b) who—

(i) in purported performance of any such duty makes to a listed corporation or to the relevant exchange company a statement which is false or misleading in a material particular; and

(ii) knows that, or is reckless as to whether, the statement is false or misleading in a material particular,

commits an offence and is liable—

(i) on conviction on indictment to a fine at level 6 and to imprisonment for 2 years; or

(ii) on summary conviction to a fine at level 3 and to imprisonment for 6 months.

Division 10—Keeping of register of directors' and chief executives' interests and short positions

352. Register of directors' and chief executives' interests and short positions

(1) Every listed corporation shall keep a register of directors' and chief executives' interests and short positions.

(2) Whenever a listed corporation receives information from a director or chief executive given in performance of a duty of disclosure imposed on him by any provision of Divisions 7 to 9, the listed corporation is under a duty to record in the register, against the director's name or the chief executive's name (as the case may be), the information received and the date of the entry.

(3) The listed corporation is also under a duty, whenever it grants to a director or chief executive a right to subscribe for shares in or debentures of the listed corporation, to record in the register against his name—

(a) the date on which the right is granted;

(b) the period during which, or the time at which, the right is exercisable;

(c) the consideration for the grant (or, if there is no consideration, that fact); and

(d) the description of the shares or debentures involved, the number of those shares or amount of those debentures, and the price to be paid for them (or the consideration, if otherwise than in money).

(4) Whenever the right referred to in subsection (3) is exercised by a director or chief executive, the listed corporation is under a duty to record in the register against his name—

(a) that fact (identifying the right);

(b) the number of shares or amount of debentures in respect of which it is exercised; and

(c) if—

(i) they were registered in his name, that fact; or

(ii) they were not registered in his name, the name or names of the person or persons in whose name or names they were registered, together (if they

were registered in the names of 2 persons or more) with the number of the shares or amount of the debentures registered in the name of each of them.

(5) A duty imposed by subsection (2), (3) or (4) shall be performed within 3 business days after the day on which that duty arises.

(6) A listed corporation is not, by virtue of anything done for the purposes of this section, affected with notice of, or put upon enquiry as to, the rights of any person in relation to any shares or debentures or equity derivatives.

(7) The register must be so made up that the entries against the several names recorded in it appear in chronological order.

(8) Unless the register is in such form as to constitute in itself an index, the listed corporation shall keep an index of the names recorded in the register which shall in respect of each name contain a sufficient indication to enable the information recorded against it to be readily found.

(9) The listed corporation shall, within 10 business days after the day on which a name is recorded in the register, make any necessary alteration in the index.

(10) If a listed corporation that is not an open-ended fund company ceases to be a listed corporation, it must, subject to section 283 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), continue to keep the register and any index until the end of the period of 6 years beginning with the day next following that on which it ceases to be a listed corporation. *(Amended 28 of 2012 ss. 912 & 920; 16 of 2016 s. 15)*

(11) The register and any index—

(a) shall be kept at the place where the corporation's register of interests in shares and short positions is kept; and

(b) shall, for the purposes of Divisions 7 to 9 and for the purposes of—

(i) enabling members of the public to ascertain—

(A) the identities and the particulars of directors and chief executives (as well as their spouses and minor children) who have or had any interest or short position in shares in, or any interest in debentures of, the listed corporation or any associated corporation of the listed corporation;

(B) the nature and the particulars of the interest or short position; and

(C) the capacity in which a person holds or held the interest or short position; and

(ii) providing the investing public with information to enable them to make informed investment decisions,

be made available for inspection in accordance with section 355. *(Amended 28 of 2012 ss. 912 & 920)*

(12) *(Repealed 28 of 2012 ss. 912 & 920)*

(13) The corporation shall send notice in the form specified by the Commission for the purposes of this section to the Registrar of Companies of—

(a) the place where the register is kept; and

(b) any change in that place,

unless the register has at all times been kept at the corporation's registered office.

(14) The duty imposed by subsection (13) shall be performed within 10 business days after the day on which the register is so kept or the change takes place (as the case may be).

(15) The register shall be produced at the commencement of the corporation's annual general meeting and remain open and accessible during the continuance of the meeting to any person attending the meeting.

(16) If default is made in complying with any provision of this section, the listed corporation concerned and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 1 and, in the case of a continuing offence, to a further fine of $200 for every day during which the offence continues.

(17) For the purposes of this section, a reference to books and papers in section 283 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) shall be construed as including a reference to the register and index required to be kept by a corporation under this section. *(Amended 28 of 2012 ss. 912 & 920)*

353. Removal of entries from register of directors' and chief executives' interests and short positions

(1) A corporation may remove an entry against a person's name from its register of directors' and chief executives' interests and short positions if more than 6 years have expired since the date of the entry being made, and either—

(a) that entry recorded the fact that the person in question had ceased to have an interest notifiable under any provision of this Division or Divisions 7 to 9 in shares in or debentures of the corporation or any associated corporation of the corporation; or

(b) it has been superseded by a later entry made under section 352 against the same person's name,

and, in a case under paragraph (a), the corporation may also remove that person's name from the register.

(2) If a person in pursuance of a duty imposed on him by any provision of this Division or Divisions 7 to 9 gives to a listed corporation the name and address of another person as being interested in shares in or debentures of, or having a short position in shares in, the corporation or any associated corporation of the corporation, the corporation shall, within 10 business days after the day on which it was given that information, notify the other person that he has been so named and shall include in that notification—

(a) particulars of any entry relating to him made, in consequence of its being given that information, by the corporation in its register of directors' and chief executives' interests and short positions; and

(b) a statement informing him of his right to apply to have the entry removed in accordance with the following provisions of this section.

(3) A person who has been notified by a listed corporation under subsection (2) that an entry relating to him has been made in the corporation's register of directors' and chief executives' interests and short positions may apply in writing to the corporation for the removal of that entry from the register; and the corporation shall remove the entry if satisfied that the information in pursuance of which the entry was made was incorrect.

(4) If an application under subsection (3) is refused, the applicant may apply to the Court of First Instance for an order directing the corporation to remove the entry in question from the register; and the Court of First Instance may, if it considers appropriate, make such an order.

(5) Where a name or an entry is removed from a corporation's register of directors' and chief executives' interests and short positions in pursuance of subsection (1) or (3) or an order under subsection (4), the corporation shall within 10 business

days after the date of that removal make any necessary alteration in any index.

(6) If default is made in complying with subsection (2) or (5), the corporation concerned and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 1 and, in the case of a continuing offence, to a further fine of $200 for every day during which the offence continues.

354. Otherwise, entries not to be removed from register of directors' and chief executives' interests and short positions

(1) Entries in a corporation's register of directors' and chief executives' interests and short positions shall not be removed except in accordance with section 353.

(2) If an entry is removed from a corporation's register of directors' and chief executives' interests and short positions in contravention of subsection (1), the corporation shall restore that entry to the register as soon as reasonably practicable.

(3) If default is made in complying with subsection (1) or (2), the corporation concerned and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 1 and, in the case of a continuing offence, to a further fine of $200 for every day during which the offence continues.

355. Inspection of register of directors' and chief executives' interests and short positions

(1) Any register of directors' and chief executives' interests and short positions shall, during business hours (subject to such reasonable restrictions as the corporation concerned may in general meeting impose, but so that not less than 2 hours in each day are allowed for inspection), be open to inspection by any member of the corporation without charge or by any

other person on payment of $10, or such less sum as the corporation may determine, for each inspection.

(2) Any member of the corporation or any other person may require a copy of any such register, or any part of it, on payment of $2, or such less sum as the corporation may determine, for each page required to be copied; and the corporation shall cause any copy so required by a member or person to be sent to him within 10 business days after the day on which the requirement is received by the corporation.

(3) If an inspection of the register required under this section is refused or a copy so required is not sent within the period specified in subsection (2), the corporation and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 1 and, in the case of a continuing offence, to a further fine of $200 for every day during which the offence continues.

(4) In the case of a refusal of an inspection of the register required under this section, the Court of First Instance may by order compel an immediate inspection of it.

(5) In the case of a failure to send within the period specified in subsection (2) a copy required under this section, the Court of First Instance may by order direct that the copy required shall be sent to the person requiring it.

(6) The Commission may by rules amend the sum specified in subsection (1) or (2).

Division 11—Power to investigate listed corporation's ownership

356. Power to investigate ownership of listed corporation

(1) If it appears to the Financial Secretary that there are reasonable grounds to conduct an investigation for the

purposes of determining the true persons who are or have been financially interested in the success or failure (real or apparent) of a listed corporation or able to control or materially influence its policy, he may appoint one or more inspectors to investigate and report for such purposes—

(a) on the ownership of shares in or debentures of the listed corporation;

(b) on persons who have or had an interest or short position in the shares in, or an interest in the debentures of, the listed corporation;

(c) where the shares in the listed corporation are the underlying shares of any equity derivatives, on persons who have or had an interest in those equity derivatives; and

(d) otherwise with respect to the listed corporation.

(2) The Financial Secretary may, on appointing an inspector under this section, define the scope of the investigation (whether with respect to the matter or the period to which it is to extend or otherwise) and, in particular, may limit the investigation to matters connected with particular shares or debentures or equity derivatives.

(3) If application for an investigation under this section with respect to particular shares in or debentures of a listed corporation, or particular equity derivatives the underlying shares of which are shares in a listed corporation, is made to the Financial Secretary by members of the listed corporation, and the number of applicants or the number of shares held by them is not less than the number required for an application for the appointment of inspectors under section 840(2) of the Companies Ordinance (Cap. 622)— *(Amended 28 of 2012 ss. 912 & 920)*

(a) the Financial Secretary may appoint an inspector to conduct the investigation if he is satisfied that there are reasonable grounds for conducting the investigation; and

(b) the Financial Secretary shall not, on appointing an inspector, exclude from the scope of the investigation any matter which the application seeks to have included, except in so far as the Financial Secretary is satisfied that it is unreasonable for that matter to be investigated.

(4) Subject to the terms of his appointment, an inspector's powers extend to the investigation of any circumstances suggesting the existence of an arrangement or understanding which, though not legally binding, is or was observed or likely to be observed in practice and which is relevant to the purposes of the investigation.

(5) Before appointing an inspector upon application under subsection (3), the Financial Secretary—

(a) shall give the applicants an estimate of the amount of the costs and expenses that may be incurred in connection with the investigation; and

(b) may require the applicants to give security in such amount as he may specify, which shall not be greater than the amount of the estimated costs and expenses, for payment of the costs and expenses of the investigation.

(6) Sections 316 to 318 and 322 (with the omission of the reference in section 322 to section 323) apply, in relation to any person who is subject to the requirements of Divisions 2 to 4—

(a) for the purposes of construing—

(i) references in this Division and Division 12 to a person interested in shares and to an interest in shares respectively; and

(ii) references in this Division and Division 12 to a person having a short position in shares and to a short position in shares respectively,

as they apply for the purposes of Divisions 2 to 4; and

(b) for the purposes of this Division and Division 12 as if, in those sections, a reference to an interest in shares includes, where those shares are the underlying shares of any equity derivatives, an interest in those equity derivatives.

(7) Sections 344 and 345 (with the omission of the reference in section 345 to section 346) apply, in relation to any person who is subject to the requirements of Divisions 7 to 9—

(a) for the purposes of construing—

(i) references in this Division and Division 12 to a person interested in shares or debentures and to an interest in shares or debentures respectively; and

(ii) references in this Division and Division 12 to a person having a short position in shares and to a short position in shares respectively,

as they apply for the purposes of Divisions 7 to 9; and

(b) for the purposes of this Division and Division 12 as if, in those sections, a reference to an interest in shares includes, where those shares are the underlying shares of any equity derivatives, an interest in those equity derivatives.

357. Investigation of contraventions of sections 341 to 349

(1) If it appears to the Financial Secretary that there are circumstances suggesting that contraventions of any provision of sections 341 to 349 may have occurred in relation to the shares in or debentures of a listed corporation or, where the

shares in a listed corporation are the underlying shares of any equity derivatives, to those equity derivatives, he may appoint one or more inspectors to carry out such investigations as are requisite to establish whether or not such contraventions have occurred and to report the result of the investigations to him.

(2) The Financial Secretary may, on appointing an inspector under this section, limit the period to which the investigation is to extend or confine it to shares or debentures or equity derivatives of a particular class, or both.

358. Inspector's powers during investigation

(1) If an inspector considers it necessary for the purposes of his investigation to investigate also—

(a) the ownership of shares in or debentures of any other corporation which is or has been an associated corporation of the listed corporation concerned;

(b) persons who have or had an interest or short position in the shares in, or an interest in the debentures of, the other corporation; and

(c) where the shares in the other corporation are the underlying shares of any equity derivatives, persons who have or had an interest in those equity derivatives,

he shall have power to do so, and shall report on the ownership of those shares or debentures and persons who have or had an interest in those shares or debentures or equity derivatives or a short position in those shares, so far as he considers that the results of his investigation with respect to those shares or debentures or equity derivatives are relevant to the investigation of—

(i) the ownership of shares in or debentures of the listed corporation;

(ii) persons who have or had an interest or short position in the shares in, or an interest in the debentures of, the listed corporation; or

(iii) where the shares in the listed corporation are the underlying shares of any equity derivatives, persons who have or had an interest in those equity derivatives.

(2) An inspector may at any time in the course of his investigation, without the necessity of making an interim report, inform the Financial Secretary of matters coming to his knowledge as a result of the investigation tending to show that an offence has been committed.

359. Production of records and evidence to inspectors

(1) When an inspector has been appointed under section 356 or 357, it is the duty of—

(a) all officers and agents of the listed corporation concerned; and

(b) all officers and agents of any other corporation, if—

(i) the ownership of shares in or debentures of the other corporation;

(ii) persons who have or had an interest or short position in the shares in, or an interest in the debentures of, the other corporation; or

(iii) where the shares in the other corporation are the underlying shares of any equity derivatives, persons who have or had an interest in those equity derivatives,

are investigated under section 358,

to—

(i) produce to the inspector all records of or relating to the listed corporation or the other corporation (as the case may be) which are in their possession;

(ii) attend before the inspector when required to do so; and

(iii) otherwise give the inspector all assistance in connection with the investigation which they are reasonably able to give.

(2) If an inspector considers that a person other than an officer or agent of the listed corporation or the other corporation is or may be in possession of information concerning the shares in or debentures of the listed corporation or the other corporation, or the equity derivatives the underlying shares of which are shares in the listed corporation or the other corporation, he may require that person to—

(a) produce to him any records of or relating to the listed corporation or the other corporation (as the case may be) which are in that person's possession;

(b) attend before him; and

(c) otherwise give him all assistance in connection with the investigation which that person is reasonably able to give,

and it shall be the duty of that person to comply with the requirement.

(3) An inspector may—

(a) examine on oath the officers and agents of the listed corporation or the other corporation, and any such person referred to in subsection (2), with respect to the shares in or debentures of the listed corporation or the other corporation, or the equity derivatives the underlying shares of which are shares in the listed corporation or the other corporation; and

(b) administer an oath accordingly.

(4) A person is not excused from answering a question put to him under this section by an inspector only on the ground that the answer might tend to incriminate the person, but if the answer might tend to incriminate him and he so claims before giving the answer, the question and answer shall not be admissible in evidence against him in criminal proceedings in a court of law other than those in which he is charged with an offence under Part V of the Crimes Ordinance (Cap. 200), or for perjury, in respect of the answer.

(5) Where an inspector requires a person to answer a question put to him under this section, the inspector shall ensure that the person has first been informed or reminded (as the case may be) of the limitations imposed by subsection (4) on the admissibility in evidence of the requirement and of the question and answer.

(6) In this section and sections 360 and 361—

(a) a reference to officers or to agents includes a reference to past, as well as present, officers or agents (as the case may be); and

(b) ***agents*** (代理人), in relation to a corporation, includes its bankers and solicitors and persons employed or otherwise engaged by it as auditors, whether those persons are or are not officers of the corporation.

360. Delegation of powers by inspectors

(1) An inspector may, by instrument in writing, delegate to any person the powers conferred by section 359 to require the production of any records and to put questions to officers and agents otherwise than on oath, or either of those powers.

(2) Where 2 or more inspectors are appointed in respect of the same investigation, the power conferred by this section may be exercised by any of them.

361. Obstruction of inspectors

(1) When an inspector is appointed under section 356 or 357, this section applies in relation to—

(a) any officer or agent of the listed corporation concerned;

(b) any officer or agent of any other corporation, if—

(i) the ownership of shares in or debentures of the other corporation;

(ii) persons who have or had an interest or short position in the shares in, or an interest in the debentures of, the other corporation; or

(iii) where the shares in the other corporation are the underlying shares of any equity derivatives, persons who have or had an interest in those equity derivatives,

are investigated under section 358; and

(c) any such person referred to in section 359(2).

(2) If that officer, agent or person (as the case may be) refuses to comply with an inspector's requirement to—

(a) produce to the inspector any records which it is his duty under section 359 to produce;

(b) attend before the inspector; or

(c) answer any question put to him by an inspector with respect to the shares in or debentures of the listed corporation or the other corporation, or the equity derivatives the underlying shares of which are the shares in the listed corporation or the other corporation,

the inspector may, by originating summons or originating motion, make an application to the Court of First Instance in respect of the refusal.

(3) The Court of First Instance may then inquire into the case and—

(a) if the Court is satisfied that there is no reasonable excuse for the officer, agent or person (as the case may be) not to comply with the requirement under subsection (2), order the officer, agent or person (as the case may be) to comply with the requirement within the period specified by the Court; and

(b) if the Court is satisfied that the refusal was without reasonable excuse, punish the officer, agent or person (as the case may be), and any other person knowingly involved in the refusal, in the same manner as if he and, where applicable, that other person had been guilty of contempt of court.

(4) In this section, a reference to an inspector includes a reference to any person to whom the powers of an inspector are delegated under section 360.

362. Inspector's reports

(1) An inspector may, and if so directed by the Financial Secretary shall, make interim reports to the Financial Secretary, and on the conclusion of an investigation shall make a final report to the Financial Secretary.

(2) Any such report shall be made within such time and in such manner as the Financial Secretary may direct.

(3) The Financial Secretary may, if he considers appropriate—

(a) forward a copy of any report made by an inspector to the registered office or principal place of business in Hong Kong of the listed corporation or the other

corporation (as the case may be) which is the subject of the report;

(b) on request and on payment of such fee as is prescribed by regulations for the purposes of this section, furnish a copy of any such report to—

(i) any member of the listed corporation or the other corporation (as the case may be) which is the subject of the report;

(ii) any person whose conduct is referred to in the report;

(iii) the auditors of the listed corporation or the other corporation (as the case may be);

(iv) the applicants for the investigation; or

(v) any other person whose financial interests appear to the Financial Secretary to be affected by the matters dealt with in the report, whether as a creditor of the listed corporation or the other corporation (as the case may be) or otherwise; and

(c) cause any such report to be published.

363. Expenses of investigation of affairs of corporation

(1) The expenses of and incidental to an investigation by an inspector shall be defrayed in the first instance out of the general revenue, but the following persons shall, to the following extent, be liable to repay such expenses to the Government—

(a) any person who is convicted by a court on a prosecution instituted as a result of the investigation shall be liable to such extent (if any) as may be ordered by such court;

(b) the listed corporation or the other corporation (as the case may be) dealt with by the investigation shall be

liable to such extent (if any) as the Financial Secretary may direct;

(c) the director and the chief executive of the listed corporation or the other corporation (as the case may be) dealt with by the investigation shall be liable to such extent (if any) as the Financial Secretary may direct;

(d) any person who has an interest or short position notifiable under any provision of Divisions 2 to 5 in voting shares in the listed corporation or the other corporation (as the case may be) dealt with by the investigation shall be liable to such extent (if any) as the Financial Secretary may direct; and *(Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)*

(e) the applicants for the investigation, where the inspector was appointed under section 356(3), shall be liable to such extent (if any), subject to the limit of the estimate given under section 356(5), as the Financial Secretary may direct.

(2) An inspector appointed under section 356(3) may, if he considers appropriate, and shall if the Financial Secretary so directs, include in a report made by him a recommendation as to the directions (if any) he considers appropriate, in the light of his investigation, to be given under subsection (1)(b), (c), (d) or (e).

(3) A person to whom a direction is given under subsection (1)(b), (c), (d) or (e) may appeal against the direction to the Court of First Instance.

(4) Notwithstanding rule 3(3) of Order 55 of the Rules of the High Court (Cap. 4 sub. leg. A), a direction under subsection (1)(b), (c), (d) or (e) shall not take effect, if an appeal against the direction is made under subsection (3), until the appeal is withdrawn, abandoned or determined.

(5) Any person liable under paragraph (a), (b), (c), (d) or (e) of subsection (1) shall be entitled to contribution from any other person liable under the same paragraph, according to the amount of their respective liabilities thereunder or, if an appeal is made, according to the amount of their respective liabilities as determined by the Court of First Instance.

(Amended E.R. 2 of 2012)

364. Power to obtain information as to those interested in shares, etc.

(1) If it appears to the Financial Secretary that—

(a) there are reasonable grounds to investigate—

(i) the ownership of shares in or debentures of a listed corporation;

(ii) persons who have or had an interest or short position in the shares in, or an interest in the debentures of, a listed corporation; and

(iii) where the shares in the listed corporation are the underlying shares of any equity derivatives, persons who have or had an interest in those equity derivatives; and

(b) it is unnecessary to appoint an inspector for the purpose,

the Financial Secretary may require any person whom he has reasonable cause to believe to have, or to be able to obtain, any information as to—

(i) the present and past interests in those shares or debentures or equity derivatives;

(ii) the names and addresses of the persons interested and of any persons who act or have acted on their behalf in relation to those shares or debentures or equity derivatives;

(iii) the present and past short positions in those shares; or

(iv) the names and addresses of the persons having those short positions and of any persons who act or have acted on their behalf in relation to those short positions,

to give any such information to the Financial Secretary.

(2) For the purposes of subsection (1), a person shall be deemed to have an interest in shares or debentures if—

(a) he has any right—

(i) to acquire or dispose of the shares or debentures or any interest in them; or

(ii) to vote in respect of them;

(b) his consent is necessary for the exercise of any right referred to in paragraph (a) of any other person; or

(c) any other person having any right referred to in paragraph (a) can be required, or is accustomed or obliged, to exercise the other person's right in accordance with his directions or instructions.

(3) For the purposes of subsection (1), a person shall be deemed to have an interest in equity derivatives if—

(a) he has any right to acquire or dispose of the equity derivatives or any interest in them;

(b) his consent is necessary for the exercise of the right referred to in paragraph (a) of any other person; or

(c) any other person having the right referred to in paragraph (a) can be required, or is accustomed or obliged, to exercise the other person's right in accordance with his directions or instructions.

(4) A person—

(a) who, without reasonable excuse, fails to give information required of him under this section; or

(b) who—

(i) in giving such information makes any statement which is false or misleading in a material particular; and

(ii) knows that, or is reckless as to whether, the statement is false or misleading in a material particular,

commits an offence and is liable—

(i) on conviction on indictment to a fine at level 6 and to imprisonment for 2 years; or

(ii) on summary conviction to a fine at level 3 and to imprisonment for 6 months.

365. Privileged information

Nothing in sections 356 to 364 shall require disclosure to the Financial Secretary, or to an inspector appointed by him, by an authorized financial institution acting as a corporation's banker or financial adviser of information as to the affairs of any of its customers other than the corporation concerned.

Division 12—Orders imposing restrictions on shares, etc.

366. Power of Court of First Instance to impose restrictions on voting shares, etc. in case of failure to provide information required by listed corporation

(Amended 19 of 2015 s. 2)

(1) Where—

(a) a notification is given by a listed corporation under section 329 to a person who is or was interested in voting shares in the corporation that are registered on the Hong Kong register; and

(b) that person fails to give the corporation any information required by the notification within the time specified in it,

the listed corporation may apply to the Court of First Instance for an order directing that the voting shares in question be subject to the restrictions under this Division. *(Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013; 19 of 2015 s. 2)*

(2) Where—

(a) a notification is given by a listed corporation under section 329 to a person who is or was interested in equity derivatives; and

(b) that person fails to give the corporation any information required by the notification within the time specified in it,

the listed corporation may apply to the Court of First Instance for an order directing that the equity derivatives in question be subject to the restrictions under this Division.

(3) An order under subsection (1) or (2) (as the case may be) may be made notwithstanding any power contained in the applicant corporation's constitution enabling the listed corporation itself to impose similar restrictions on the voting shares or equity derivatives in question. *(Amended 28 of 2012 ss. 912 & 920; 19 of 2015 s. 2)*

367. Power of Financial Secretary to impose restrictions on shares, etc. in case of conviction of offences for non-compliance of notification requirements

(1) Where a person is convicted of an offence under section 328 or 351, the Financial Secretary may by order direct that—

(a) the shares in relation to which the offence was committed that are registered on the Hong Kong register; or

(b) if the shares in relation to which the offence was committed are unissued shares, those unissued shares which on issue are to be registered on the Hong Kong register,

shall, until further order, be subject to the restrictions under this Division.

(2) Without prejudice to subsection (1), where a person is convicted of an offence under section 328 or 351 and the shares in relation to which the offence was committed are the underlying shares of any equity derivatives, the Financial Secretary may by order direct that the equity derivatives shall, until further order, be subject to the restrictions under this Division.

(3) An order under subsection (1) or (2) (as the case may be) may be made notwithstanding any power contained in a corporation's constitution enabling the corporation itself to impose similar restrictions on the shares or equity derivatives in question. *(Amended 28 of 2012 ss. 912 & 920)*

368. Power of Financial Secretary to impose restrictions on shares, etc. in connection with investigation

(1) If, in connection with an investigation under section 356, 357 or 358, it appears to the Financial Secretary that there is difficulty in finding out the relevant facts about any shares (whether issued or unissued), he may by order direct that—

(a) the shares registered on the Hong Kong register; or

(b) the unissued shares which on issue are to be registered on the Hong Kong register,

shall, until further order, be subject to the restrictions under this Division.

(2) If, in connection with an investigation under section 356, 357 or 358, it appears to the Financial Secretary that there is

difficulty in finding out the relevant facts about any equity derivatives, he may by order direct that the equity derivatives shall, until further order, be subject to the restrictions under this Division.

369. Consequence of order imposing restrictions

(1) So long as any shares are directed to be subject to the restrictions under this Division—

(a) any transfer of those shares;

(b) in the case of unissued shares—

(i) any transfer of the right to be issued with those shares; and

(ii) any issue of those shares;

(c) any cancellation of those shares or of the relevant certificates for those rights; and

(d) any removal of the registration of those shares to a register of members other than the Hong Kong register,

are void.

(2) Where shares are subject to the restrictions of subsection (1), any agreement to transfer—

(a) those shares; or

(b) in the case of unissued shares, the right to be issued with those shares,

is void (except an agreement to sell those shares on the making of an order under section 371(4)).

(3) So long as any equity derivatives are directed to be subject to the restrictions under this Division—

(a) any transfer or assignment of—

(i) those equity derivatives; or

(ii) any rights under those equity derivatives;

(b) the exercise of any rights under those equity derivatives; and

(c) any removal of the registration of those equity derivatives to a register of holders of equity derivatives other than a register maintained in Hong Kong,

are void.

(4) Where equity derivatives are subject to the restrictions of subsection (3), any agreement to—

(a) transfer or assign—

(i) those equity derivatives; or

(ii) any rights under those equity derivatives; or

(b) exercise any rights under those equity derivatives,

is void (except an agreement to sell those equity derivatives on the making of an order under section 371(4)).

370. Offences for attempted evasion of restrictions

(1) A person who—

(a) exercises or purports to exercise any right to dispose of—

(i) any shares or equity derivatives; or

(ii) any right to be issued with any shares or any right under any equity derivatives,

knowing that such shares or equity derivatives are for the time being subject to the restrictions under this Division; or

(b) having an interest in any shares or equity derivatives which, to his knowledge, are for the time being subject to the restrictions under this Division, or being entitled

to any right to be issued with other shares or under other equity derivatives in right of them, enters into any agreement which is void under section 369(2) or (4),

commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months.

(2) If—

(a) any shares in a corporation are registered as transferred;

(b) any shares in a corporation are issued;

(c) any shares in a corporation are cancelled; or

(d) the registration of any shares in a corporation is removed to a register of members other than the Hong Kong register,

in contravention of the restrictions under this Division, the corporation and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 3 and to imprisonment for 6 months.

(3) If—

(a) any equity derivatives, or any rights under any equity derivatives, are registered as transferred or assigned;

(b) any rights under any equity derivatives are registered as having been exercised; or

(c) the registration of any equity derivatives is removed to a register of holders of equity derivatives other than a register maintained in Hong Kong,

in contravention of the restrictions under this Division, the corporation maintaining such register and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 3 and to imprisonment for 6 months.

371. Relaxation and removal of restrictions

(1) Where shares or equity derivatives are by order made subject to the restrictions under this Division, application may be made to the Court of First Instance (in any case) or the Financial Secretary (if the order applying the restrictions was made by the Financial Secretary under section 367 or 368) for an order directing that the shares or equity derivatives (as the case may be) shall cease to be so subject.

(2) If the order applying the restrictions was made—

(a) by the Court of First Instance under section 366 or subsection (14)(a), the application under subsection (1) may be made by any person aggrieved or by the corporation concerned; or

(b) by the Financial Secretary under section 367 or 368, the application under subsection (1) may be made by any person aggrieved.

(3) The Financial Secretary has a right to be heard, and to call evidence, at the hearing of the application to the Court of First Instance under subsection (1).

(4) Subject to this section, an order of the Court of First Instance or the Financial Secretary directing that shares or equity derivatives (as the case may be) shall cease to be subject to the restrictions may be made only if—

(a) the Court of First Instance or the Financial Secretary (as the case may be) is satisfied that—

(i) all relevant facts about the interests in the shares or equity derivatives have been disclosed to the corporation concerned or an inspector (as the case may be); and

(ii) no unfair advantage has accrued to any person as a result of the earlier failure to make that disclosure; or

(b) the shares or equity derivatives are to be sold and the Court of First Instance (in any case) or the Financial Secretary (if the order applying the restrictions was made by the Financial Secretary under section 367 or 368) approves the sale.

(5) Where shares or equity derivatives are by order made subject to the restrictions under this Division, the Court of First Instance may on application order that the shares or equity derivatives shall be sold, subject to the Court's approval as to the sale, and may further order that the shares or equity derivatives shall cease to be subject to the restrictions.

(6) An application to the Court of First Instance under subsection (5) may be made—

(a) by the Financial Secretary (unless the restrictions were imposed by court order under section 366 or subsection (14)(a)); or

(b) by the corporation concerned.

(7) The Financial Secretary has a right to be heard, and to call evidence, at the hearing of the application under subsection (5).

(8) Where an order has been made under subsection (5), the Court of First Instance may on application make such further order relating to the sale of the shares or equity derivatives as it considers appropriate.

(9) An application to the Court of First Instance under subsection (8) may be made—

(a) by the Financial Secretary (unless the restrictions were imposed by court order under section 366 or subsection (14)(a));

(b) by the corporation concerned;

(c) by the person appointed by, or in pursuance of, the order to effect the sale; or

(d) by any person interested in the shares or equity derivatives.

(10) The Financial Secretary has a right to be heard, and to call evidence, at the hearing of the application under subsection (8).

(11) Where equity derivatives are by order made subject to the restrictions under this Division, the Court of First Instance may on application order that rights under the equity derivatives shall be exercised, subject to the Court's approval as to the manner in which, and the time at which, those rights are to be exercised, and may further order that the equity derivatives shall cease to be subject to the restrictions.

(12) An application to the Court of First Instance under subsection (11) may be made—

(a) by the Financial Secretary (unless the restrictions were imposed by court order under section 366 or subsection (14)(a));

(b) by the corporation concerned; or

(c) by any person interested in the equity derivatives.

(13) The Financial Secretary has a right to be heard, and to call evidence, at the hearing of the application under subsection (11).

(14) Where an order has been made under subsection (11), the Court of First Instance may further order, in the case of the exercise of a right under the equity derivatives to call

for delivery of shares, or to require another person to take delivery of shares, that the shares due to be delivered on the exercise of the right shall, upon delivery, be—

(a) subject to the restrictions under this Division; or

(b) sold.

(15) In this section, ***the corporation concerned*** (有關法團)—

(a) in relation to shares in a corporation that are subject to the restrictions under this Division, means that corporation; or

(b) in relation to equity derivatives that are subject to the restrictions under this Division, where the underlying shares of those equity derivatives are shares in a corporation, means that corporation.

372. Further provisions on sale by court order of restricted shares, etc.

(1) Subject to subsection (2), where shares or equity derivatives are sold in pursuance of an order of the Court of First Instance, or with the approval of the Court of First Instance or the Financial Secretary, under section 371, the proceeds of the sale, less the costs of the sale, shall be paid into court.

(2) Where a right under equity derivatives is exercised in pursuance of an order of the Court of First Instance under section 371(11) and—

(a) an amount is received on settlement of the equity derivatives, the proceeds, less the costs incurred in exercising the right; or

(b) shares are sold in pursuance of an order of the Court of First Instance under section 371(14)(b), the proceeds of the sale, less the costs of the sale and the costs incurred in exercising the right,

shall be paid into court.

(3) Any person who had an interest in the shares or equity derivatives from which the proceeds, which have been paid into court under subsection (1) or (2), were derived may apply to the Court of First Instance for an order that the whole or a part of those proceeds be paid to him.

(4) The Financial Secretary has a right to be heard, and to call evidence, at the hearing of an application under subsection (3).

(5) The Court of First Instance may on application under subsection (3)—

(a) if it is satisfied that—

(i) the applicant was interested in the shares or equity derivatives at the time of the sale or (in the case of the exercise of any right under equity derivatives) at the time of the exercise of the right, and no other person had an interest in the shares or equity derivatives at that time; and

(ii) all relevant facts about the applicant's interest in the shares or equity derivatives have been disclosed to the corporation concerned or an inspector (as the case may be),

order the payment to the applicant, subject to subsection (6), of the whole of the proceeds, together with any interest thereon;

(b) if it is satisfied that—

(i) the applicant was interested in the shares or equity derivatives at the time of the sale or (in the case of the exercise of any right under equity derivatives) at the time of the exercise of the right, and another person also had an interest in the shares or equity derivatives at that time; and

(ii) all relevant facts about the applicant's interest in the shares or equity derivatives have been disclosed to the corporation concerned or an inspector (as the case may be) by the applicant,

order the payment to the applicant, subject to subsection (6), of such part of the proceeds as is equal to the proportion which the value of the applicant's interest in the shares or equity derivatives bears to the total value of the shares or equity derivatives, together with any interest thereon; or

(c) make such other order as it considers appropriate.

(6) On making an order under subsection (5) or section 371(5), (8), (11) or (14)(b), the Court of First Instance may further order that the costs of the applicant, and the costs of the Financial Secretary (where appropriate), be paid out of the proceeds.

Division 13—Miscellaneous

373. Liability of members for offences by corporations

Where the affairs of a corporation are managed by its members, section 390(1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the corporation.

374. Mandatory electronic filing of notifications and reports

(1) This section applies to the following documents (***specified documents***)—

(a) a notification required by section 324;

(b) a notification required by section 327(2);

(c) a notification required by section 330(1) or (3);

(d) a report required to be delivered by section 333(1) or (3);

(e) a notification required by section 347;

(f) a notification required by section 350(2).

(2) Despite section 400, a specified document that is required to be given or delivered to a person specified in column 1 of the following table is to be regarded as duly given or delivered only if it is sent to the person specified opposite that person in column 2 of the table—

(a) by means of an electronic transmission system approved under subsection (4); and

(b) in accordance with the directions and instructions for the use of that system published under subsection (5).

Table

Column 1	Column 2
The relevant exchange company	The relevant exchange company
A listed corporation	The relevant exchange company
The Commission	The relevant exchange company
The Monetary Authority	The Monetary Authority

(3) As soon as practicable after receiving a specified document under subsection (2), the relevant exchange company must send a copy of it to the Commission and (except for a notification under section 330(1) or a report under section 333(1)) to the listed corporation concerned—

(a) by means of an electronic transmission system approved under subsection (4); and

(b) in accordance with the directions and instructions for the use of that system published under subsection (5).

(4) The Commission may from time to time approve one or more electronic transmission systems for the purposes of subsections (2) and (3).

(5) As soon as practicable after approving an electronic transmission system under subsection (4), the Commission must publish, in the manner it considers appropriate, directions and instructions for the use of that system.

(6) To avoid doubt, a document (other than a specified document) that is to be given, delivered, issued or sent for the purposes of this Part is to be regarded as duly given, delivered, issued or sent if it is sent in the manner (as appropriate) specified in section 400.

(Replaced 6 of 2014 s. 64)

375. Form of registers and indices

(1) Any register or index required by this Part to be kept by a corporation may be kept either by making entries in a bound book or by recording the matters in question in any other manner.

(2) For the purposes of subsection (1), the corporation may record the matters in question otherwise than in a legible form so long as the recording is capable of being reproduced in a legible form.

(3) If any register or index required by this Part to be kept by a corporation is kept by the corporation by recording the matters in question otherwise than in a legible form, any duty imposed on the corporation by this Part to allow inspection of, or to furnish a copy of, the register or index or any part of

it shall be deemed to be a duty to allow inspection of, or to furnish, a reproduction of the recording or of the relevant part of it in a legible form.

(4) If any such register or index is not kept by making entries in a bound book, but by some other means, adequate precautions shall be taken for guarding against falsification and facilitating its discovery.

(5) If default is made in complying with subsection (4), the corporation concerned and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 1 and, in the case of a continuing offence, to a further fine of $200 for every day during which the offence continues.

376. Regulations by Chief Executive in Council

(1) The Chief Executive in Council may make regulations to—

(a) prescribe anything required or permitted by any provision of this Part to be prescribed by regulations;

(b) provide for exclusions from the requirement to give notification under any provision of this Part;

(c) provide for any other matters for the better carrying out of the objects and purposes of this Part.

(2) Without limiting the generality of the regulations which may be made under subsection (1), such regulations may include any savings, transitional, incidental, supplemental, evidential and consequential provisions (whether involving the provisions of any principal legislation or provisions of any subsidiary legislation).

377. Rules by Commission

The Commission may, after consultation with the Financial Secretary, make rules which are not inconsistent with regulations

made by the Chief Executive in Council under section 376, to—

(a) prescribe interests and short positions in voting shares in a listed corporation, that are or are to be dealt with pursuant to the provisions of a securities borrowing and lending agreement, to be disregarded for the purposes of section 323 subject to such conditions as may be specified in the rules;

(b) prescribe circumstances of change in the nature of interests for the purposes of section 313(13);

(c) provide for exclusions, subject to such conditions as may be specified in the rules, from the requirement to give notification under any provision of this Part in respect of interests, or short positions, in voting shares in a listed corporation that are or are to be dealt with pursuant to the provisions of a securities borrowing and lending agreement.

(Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)

Part XVI

Miscellaneous

(Format changes—E.R. 2 of 2012)

Division 1—Secrecy(general), conflict of interests, and immunity

(Amended 6 of 2014 s. 38)

378. Preservation of secrecy, etc.

(1) Subject to subsection (13A), except in the performance of a function under, or for the purpose of carrying into effect or doing anything required or authorized under, any of the relevant provisions, a specified person— *(Amended 6 of 2014 s. 39)*

(a) shall preserve and aid in preserving secrecy with regard to any matter coming to his knowledge by virtue of his appointment under any of the relevant provisions, or in the performance of any function under or in carrying into effect any of the relevant provisions, or in the course of assisting any other person in the performance of any function under or in carrying into effect any of the relevant provisions;

(b) shall not communicate any such matter to any other person; and

(c) shall not suffer or permit any other person to have access to any record or document which is in his possession by virtue of the appointment, or the performance of any such function under or the carrying into effect of any such provisions, or the assistance to the other person

in the performance of any such function under or in carrying into effect any such provisions.

(2) Nothing in subsection (1) applies to—

(a) the disclosure of information which has already been made available to the public;

(b) the disclosure of information with a view to the institution of, or otherwise for the purposes of, any criminal proceedings, or any investigation carried out under the relevant provisions or otherwise, in Hong Kong; *(Amended 6 of 2014 s. 39)*

(c) the disclosure of information for the purpose of seeking advice from, or giving advice by, counsel or a solicitor or other professional adviser acting or proposing to act in a professional capacity in connection with any matter arising under any of the relevant provisions;

(d) the disclosure of information by a person in connection with any judicial or other proceedings to which the person is a party;

(e) the disclosure of information in accordance with an order of a court, or in accordance with a law or a requirement made under a law;

(ea) the disclosure of information to the Hong Kong Deposit Protection Board established by section 3 of the Deposit Protection Scheme Ordinance (Cap. 581) for the purpose of enabling or assisting the Board to perform its functions under section 5(a), (d) and (e) of that Ordinance; *(Added 7 of 2004 s. 55)*

(f) the communication of any information or opinion to which section 381(1) applies (whether with or without reference to section 381(2))—

(i) to the Commission in the manner described in section 381(1);

(ii) where section 381(4) applies, to the Insurance Authority or the Monetary Authority (as the case may be) in the manner described in section 381(4).

(3) Notwithstanding subsection (1), the Commission may disclose information—

(a) in the form of a summary compiled from any information in the possession of the Commission, including information provided by persons under any of the relevant provisions, if the summary is so compiled as to prevent particulars relating to the business or identity, or the trading particulars, of any person from being ascertained from it;

(b) to a person who is a liquidator appointed under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32); *(Amended 28 of 2012 ss. 912 & 920)*

(ba) to a person who is a liquidator appointed under the OFC rules; *(Added 16 of 2016 s. 16)*

(c) to the Market Misconduct Tribunal;

(d) to the Securities and Futures Appeals Tribunal;

(ea) to the Anti-Money Laundering and Counter-Terrorist Financing Review Tribunal established under section 55 of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615); *(Added 15 of 2011 s. 90. Amended 4 of 2018 s. 45)*

(eb) to the Resolution Compensation Tribunal; *(Added 23 of 2016 s. 219)*

(ec) to the Resolvability Review Tribunal; *(Added 23 of 2016 s. 219)*

(ed) to a resolution authority, for the purpose of enabling or assisting the resolution authority to perform its functions under the Financial Institutions (Resolution) Ordinance (Cap. 628); *(Added 23 of 2016 s. 219. Amended E.R. 2 of 2017)*

(e) to the Monetary Authority, if—

(i) the information relates to—

(A) any business of a registered institution which constitutes a regulated activity for which the registered institution is registered; or

(B) any business of an associated entity that is an authorized financial institution, which is that of receiving or holding client assets of the intermediary of which the associated entity is an associated entity; or

(ii) in the opinion of the Commission the condition specified in subsection (5) is satisfied;

(f) if in the opinion of the Commission the condition specified in subsection (5) is satisfied, to—

(i) the Chief Executive;

(ii) the Financial Secretary;

(iii) the Secretary for Justice;

(iv) *(Repealed L.N. 106 of 2002)*;

(v) the Insurance Authority;

(vi) the Registrar of Companies;

(vii) the Official Receiver;

(viii) the Mandatory Provident Fund Schemes Authority;

(ix) the Privacy Commissioner for Personal Data;

(x) the Ombudsman;

(xi) a public officer authorized by the Financial Secretary under subsection (12);

(xia) the Accounting and Financial Reporting Council continued under section 6 of the Accounting and Financial Reporting Council Ordinance (Cap. 588); *(Added 18 of 2006 s. 86. Amended L.N. 66 of 2022)*

(xii) an inspector appointed by the Financial Secretary to investigate the affairs of a corporation;

(xiii) a recognized exchange company;

(xiv) a recognized clearing house;

(xv) a recognized exchange controller;

(xvi) a recognized investor compensation company;

(xvii) a person authorized to provide authorized automated trading services under section 95(2);

(g) if in the opinion of the Commission the condition specified in subsection (5) is satisfied—

(i) to an authority or regulatory organization outside Hong Kong which, or to a companies inspector outside Hong Kong who, in the opinion of the Commission satisfies the requirements referred to in subsection (6)(a) and (b);

(ii) to any body prescribed by rules made under section 397 for the purposes of this subparagraph, with a view to its taking of, or otherwise for the purposes of, any disciplinary action against any of its members or regulatees; *(Replaced L.N. 66 of 2022)*

(ga) to an authority in a place outside Hong Kong, if—

(i) that authority performs functions in that place broadly comparable to those of a resolution authority in Hong Kong; and

(ii) in the opinion of the Commission—

(A) that authority is subject to adequate secrecy provisions in that place; and

(B) the information is necessary to enable or assist that authority to perform functions in that place broadly comparable to those of a resolution authority in Hong Kong; *(Added 23 of 2016 s. 219)*

(h) to a person who is or was an auditor appointed under any provision of this Ordinance, for the purpose of enabling or assisting the Commission to perform its functions under any of the relevant provisions;

(i) where the information is obtained by an investigator under section 183, to—

(i) the Financial Secretary;

(ii) the Secretary for Justice;

(iia) the Resolution Compensation Tribunal; *(Added 23 of 2016 s. 219)*

(iib) the Resolvability Review Tribunal; *(Added 23 of 2016 s. 219)*

(iic) a resolution authority, for the purpose of enabling or assisting the resolution authority to perform its functions under the Financial Institutions (Resolution) Ordinance (Cap. 628); *(Added 23 of 2016 s. 219. Amended E.R. 2 of 2017)*

(iii) the Commissioner of Police;

(iv) the Commissioner of the Independent Commission Against Corruption;

(v) the Market Misconduct Tribunal;

(vi) the Securities and Futures Appeals Tribunal;

(j) for the purpose of, or otherwise in connection with, an audit required by section 16;

(k) with the consent of the person from whom the information was obtained or received and, if the information relates to a different person, also with the consent of the person to whom the information relates.

(4) Notwithstanding subsection (1), a person who is or was an auditor appointed in relation to a licensed corporation or an associated entity of a licensed corporation under section 159 or 160, and a person who is or was an employee or agent of such auditor, may disclose information obtained or received by him in the course of performing his duties as such auditor or as an employee or agent of such auditor (as the case may be)—

(a) for the purposes of any judicial or other proceedings arising out of the performance of his duties as such auditor or as an employee or agent of such auditor (as the case may be);

(b) in the case of a person who is or was an employee or agent of an auditor, to the auditor.

(5) The condition referred to in subsection (3)(e), (f) and (g) is that—

(a) it is desirable or expedient that the information should be disclosed pursuant to subsection (3)(e), (f) or (g) (as the case may be) in the interest of the investing public or in the public interest; or

(b) the disclosure will enable or assist the recipient of the information to perform its or his functions and it is not contrary to the interest of the investing public or to the public interest that the information should be so disclosed.

(6) Where the Commission is satisfied, for the purposes of subsection (3)(g)(i), that an authority, regulatory organization or companies inspector outside Hong Kong—

(a) performs any function similar to a function of the Commission or the Registrar of Companies, or regulates, supervises or investigates banking, insurance or other financial services or the affairs of corporations; and

(b) is subject to adequate secrecy provisions,

the Commission shall as soon as reasonably practicable thereafter cause the name of the authority, regulatory organization or companies inspector (as the case may be) to be published in the Gazette.

(7) Where information is disclosed by a specified person pursuant to subsection (1), or in any of the circumstances described in subsection (2), (3) or (4) (other than subsections (2)(a), (3)(a), (g)(i), (ga) and (k) and (4)(b))— *(Amended 19 of 2015 s. 27; 23 of 2016 s. 219)*

(a) the person to whom that information is so disclosed; or

(b) any other person obtaining or receiving the information, whether directly or indirectly, from the person referred to in paragraph (a),

shall not disclose the information, or any part thereof, to any other person, unless—

(i) the Commission consents to the disclosure;

(ia) if the specified person is a recognized exchange company, the Commission or the recognized exchange

company consents to the disclosure; *(Added 19 of 2015 s. 27)*

(ii) the information or the part thereof (as the case may be) has already been made available to the public;

(iii) the disclosure is for the purpose of seeking advice from, or giving advice by, counsel or a solicitor or other professional adviser acting or proposing to act in a professional capacity in connection with any matter arising under any of the relevant provisions;

(iv) the disclosure is in connection with any judicial or other proceedings to which the person or the other person referred to in paragraph (a) or (b) (as the case may be) is a party; or

(v) the disclosure is in accordance with an order of a court, or in accordance with a law or a requirement made under a law.

(8) Where information is disclosed to an auditor in the circumstances described in subsection (4)(b)—

(a) the auditor; or

(b) any other person obtaining or receiving the information, whether directly or indirectly, from the auditor,

shall not disclose the information, or any part thereof, to any other person, unless—

(i) in the case of the auditor, the disclosure is for the purpose described in subsection (4)(a);

(ii) the Commission consents to the disclosure;

(iii) the information or the part thereof (as the case may be) has already been made available to the public;

(iv) the disclosure is for the purpose of seeking advice from, or giving advice by, counsel or a solicitor or

other professional adviser acting or proposing to act in a professional capacity in connection with any matter arising under any of the relevant provisions;

(v) the disclosure is in connection with any judicial or other proceedings to which the auditor or the other person referred to in paragraph (a) or (b) (as the case may be) is a party; or

(vi) the disclosure is in accordance with an order of a court, or in accordance with a law or a requirement made under a law.

(9) The Commission, in disclosing any information in any of the circumstances described in subsection (3) or in granting any consent pursuant to subsection (7)(i) or (ia) or (8)(ii), may impose such conditions as it considers appropriate. *(Amended 19 of 2015 s. 27)*

(9A) A recognized exchange company, in granting a consent pursuant to subsection (7)(ia), may impose any condition that it considers appropriate. *(Added 19 of 2015 s. 27)*

(10) A person who contravenes subsection (1) commits an offence and is liable—

(a) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(11) Where a person discloses any information in contravention of subsection (7) or (8) and, at the time of disclosure— *(Amended 6 of 2014 s. 39 and E.R. 2 of 2015)*

(a) in the case of a contravention of subsection (7), the person knew or ought reasonably to have known that the information was previously disclosed to the person or to any other person (as the case may be) pursuant to

subsection (1) or in any of the circumstances described in subsection (2), (3) or (4) (other than subsections (2)(a), (3)(a), (g)(i), (ga) and (k) and (4)(b)), unless the person proves that the person had reasonable grounds to believe that subsection (7)(i), (ia), (ii), (iii), (iv) or (v) applied to the disclosure of the information by the person; or *(Amended 19 of 2015 s. 27; 23 of 2016 s. 219)*

(b) in the case of a contravention of subsection (8), the person knew or ought reasonably to have known that the information was previously disclosed to the person or an auditor (as the case may be) in the circumstances described in subsection (4)(b), unless the person proves that the person had reasonable grounds to believe that subsection (8)(i), (ii), (iii), (iv), (v) or (vi) applied to the disclosure of the information by the person,

the person commits an offence and is liable— *(Amended 6 of 2014 s. 39 and E.R. 2 of 2015)*

(i) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(ii) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(12) The Financial Secretary may authorize any public officer as a person to whom information may be disclosed under subsection (3)(f)(xi).

(13) Any matter published under subsection (6) is not subsidiary legislation.

(13A) This section does not apply to a person referred to in section 381A(1) in respect of—

(a) a matter that comes to the person's knowledge—

(i) because of a reason referred to in section 381A(2)(a)(i); or

(ii) as described in section 381A(2)(a)(ii) or (iii); or

(b) a record or document that is in the person's possession because of a reason referred to in section 381A(2)(c)(i), (ii) or (iii). *(Added 6 of 2014 s. 39)*

(14) *(Repealed 9 of 2012 s. 44)*

(15) In this section—

companies inspector (公司審查員), in relation to a place outside Hong Kong, means a person whose functions under the laws of that place include the investigation of the affairs of a corporation carrying on business in that place;

specified person (指明人士) means—

(a) the Commission;

(b) any person who is or was a member, an employee, or a consultant, agent or adviser, of the Commission; or

(c) any person who is or was—

(i) a person appointed under any of the relevant provisions;

(ii) a person performing any function under or carrying into effect any of the relevant provisions; or

(iii) a person assisting any other person in the performance of any function under or in carrying into effect any of the relevant provisions.

379. Avoidance of conflict of interests

(1) Subject to subsection (2), any member of the Commission or any person performing any function under any of the relevant provisions shall not directly or indirectly effect or cause to be effected, on his own account or for the benefit of any other person, a transaction regarding any securities, structured product, futures contract, leveraged foreign exchange contract,

or an interest in any securities, structured product, futures contract, leveraged foreign exchange contract or collective investment scheme— *(Amended 8 of 2011 s. 11)*

(a) which transaction he knows is or is connected with a transaction or a person that is the subject of any investigation or proceedings by the Commission under any of the relevant provisions or the subject of other proceedings under any provision of this Ordinance; or

(b) which transaction he knows is otherwise being considered by the Commission.

(2) Subsection (1) does not apply to any transaction which a holder of securities or a structured product effects or causes to be effected by reference to any of his rights as such holder— *(Amended 8 of 2011 s. 11)*

(a) to exchange the securities or structured product or to convert the securities or structured product to another form of securities or structured product; *(Replaced 8 of 2011 s. 11)*

(b) to participate in a scheme of arrangement sanctioned by the Court of First Instance under the OFC rules, the Companies Ordinance (Cap. 622) or the relevant Ordinance; *(Amended 28 of 2012 ss. 912 & 920; 16 of 2016 s. 17)*

(c) to subscribe for other securities or another structured product or dispose of a right to subscribe for other securities or another structured product;

(d) to charge or pledge the securities or structured product to secure the repayment of money;

(e) to realize the securities or structured product for the purpose of repaying money secured under paragraph (d); or

(f) to realize the securities or structured product in the course of performing a duty imposed by law. *(Amended 8 of 2011 s. 11)*

(3) Any member of the Commission or any person performing any function under any of the relevant provisions shall forthwith inform the Commission if, in the course of performing any function under any such provisions, he is required to consider any matter relating to—

(a) any securities, futures contract, leveraged foreign exchange contract, structured product, or an interest in any securities, futures contract, leveraged foreign exchange contract, collective investment scheme or structured product— *(Amended 8 of 2011 s. 11)*

(i) in which he has an interest;

(ii) in which a corporation, in the shares of which he has an interest, has an interest; or

(iii) which—

(A) in the case of securities, is of or issued by the same issuer, and of the same class, as those in which he has an interest; *(Amended 8 of 2011 s. 11)*

(B) in the case of a futures contract, is interests, rights or property based upon securities of or issued by the same issuer, and of the same class, as those in which he has an interest; or

(C) in the case of a structured product, is interests, rights or property based on a structured product of or issued by the same issuer, and of the same class, as that in which he has an interest; or *(Added 8 of 2011 s. 11)*

(b) a person—

(i) by whom he is or was employed;

(ii) of whom he is or was a client;

(iii) who is or was his associate; or

(iv) whom he knows is or was a client of a person with whom he is or was employed or who is or was his associate.

(4) A person who, without reasonable excuse, contravenes subsection (1) or (3) commits an offence and is liable—

(a) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

380. Immunity

(1) A person shall not incur any civil liability, whether arising in contract, tort, defamation, equity or otherwise, in respect of any act done or any omission made by reason only of—

(a) his performance or purported performance in good faith of any function (including that under each of the paragraphs of section 5(1)) under any of the relevant provisions; or

(b) his furtherance or purported furtherance in good faith of any regulatory objective, or performance or purported performance in good faith of any function, pursuant to or consequent upon any written direction given by the Chief Executive under section 11.

(2) Nothing in subsection (1) applies to a person appointed as an auditor under section 153.

(3) A person who complies with a requirement made under any provision of this Ordinance shall not incur any civil liability,

whether arising in contract, tort, defamation, equity or otherwise, to any person by reason only of that compliance.

(4) Subject to subsection (5), nothing in this Ordinance affects any claims, rights or entitlements which would, apart from this Ordinance, arise on the ground of legal professional privilege.

(5) Nothing in subsection (4) affects any requirement under this Ordinance to disclose the name and address of a client of a legal practitioner (whether or not the legal practitioner is qualified in Hong Kong to practise as counsel or to act as a solicitor).

381. Immunity in respect of communication with Commission by auditors of listed corporations, etc.

(1) Without prejudice to section 380, a person who is or was an auditor of a corporation which is listed, or of any associated corporation of the corporation, shall not incur any civil liability, whether arising in contract, tort, defamation, equity or otherwise, by reason only of his communicating in good faith to the Commission any information or opinion on a matter of which he becomes or became aware in his capacity as such auditor, being a matter which in his opinion suggests—

(a) that at any time since the formation of the corporation the business of the corporation has been conducted—

(i) with intent to defraud its creditors, or the creditors of any other person;

(ii) for any fraudulent or unlawful purpose; or

(iii) in a manner oppressive to its members or any part of its members;

(b) that the corporation was formed for any fraudulent or unlawful purpose;

(c) that persons concerned in the process by which the corporation became listed (including that for making the securities of the corporation available to the public in the course of such process) have engaged, in relation to such process, in defalcation, fraud, misfeasance or other misconduct;

(d) that at any time since the formation of the corporation persons involved in the management of the affairs of the corporation have engaged, in relation to such management, in defalcation, fraud, misfeasance or other misconduct towards it or its members or any part of its members; or

(e) that at any time since the formation of the corporation members of the corporation or any part of its members have not been given all the information with respect to its affairs that they might reasonably expect.

(2) In addition to applying to a person who is or was an auditor of a corporation which is listed, or of any associated corporation of the corporation, subsection (1) also applies to—

(a) a person who is or was an auditor of a corporation which was formerly listed, or of any associated corporation of that corporation, in which case a reference to matter in that subsection shall be construed on the basis that—

(i) it includes any matter occurring at any time whether before or after the corporation first referred to in this paragraph ceased to remain listed;

(ii) the circumstances required to be suggested by the matter under paragraph (a), (b), (c), (d) or (e) of that subsection relate, instead of to the corporation

referred to in such paragraph, to the corporation first referred to in this paragraph; and

(iii) the circumstances required to be suggested by the matter under paragraph (a), (d) or (e) of that subsection occurred at any time since the formation of the corporation but before the corporation ceased to remain listed; and

(b) a person who is or was an auditor of a corporation which was formerly an associated corporation of a corporation which is listed, in which case a reference to matter in that subsection shall be construed on the basis that—

(i) it includes any matter occurring at any time whether before or after the corporation first referred to in this paragraph ceased to remain an associated corporation of the corporation which is listed; and

(ii) the circumstances required to be suggested by the matter under paragraph (a), (b), (c), (d) or (e) of that subsection relate, instead of to the corporation referred to in such paragraph, to the corporation of which the corporation first referred to in this paragraph was formerly an associated corporation.

(3) The application of subsection (1) to any person (whether with or without reference to subsection (2)) is not affected by the fact that the person has, before communicating in the manner described in subsection (1) any information or opinion to which subsection (1) applies (whether with or without reference to subsection (2)), previously communicated such information or opinion to any other person.

(4) Without prejudice to subsection (1), where a person communicates in the manner described in that subsection

any information or opinion to which that subsection applies (whether with or without reference to subsection (2)), he shall at the same time communicate the information or opinion to—

(a) where the corporation of which he is or was an auditor is or was an insurer authorized under the Insurance Ordinance (Cap. 41), the Insurance Authority; or *(Amended 12 of 2015 s. 143)*

(b) where the corporation of which he is or was an auditor is or was an authorized financial institution, the Monetary Authority.

(5) In this section—

associated corporation (相聯法團), in relation to a corporation, means—

(a) a subsidiary of that corporation;

(b) a corporation in which that corporation has an interest (whether held by that corporation directly or indirectly through any other corporation or corporations), which is properly accounted for by that corporation in its accounts using the method generally known as equity accounting; or

(c) a corporation a substantial shareholder of which is also a substantial shareholder of that corporation;

auditor (核數師), in relation to a corporation, means—

(a) a person appointed to be an auditor of the corporation for the purposes of any Ordinance, or otherwise for the purposes of auditing the accounts of the corporation (whether or not the person is prohibited under section 20AAZZR of the Accounting and Financial Reporting Council Ordinance (Cap. 588) from holding

the appointment or is otherwise qualified for the appointment); or *(Amended L.N. 66 of 2022)*

(b) a person appointed to be an auditor of the corporation for the purposes of any enactment of a place outside Hong Kong which imposes on such person responsibilities comparable to those imposed on an auditor by the Companies Ordinance (Cap. 622). *(Amended 28 of 2012 ss. 912 & 920)*

Division 1A—Secrecy, etc. Relating to Monetary Authority's Functions under Specified Provisions

(Division 1A added 6 of 2014 s. 40)

381A. Preservation of secrecy

(1) This section applies to—

(a) the Monetary Authority and a person who was the Monetary Authority; and

(b) a person who is or was—

(i) a consultant, agent or adviser of the Monetary Authority;

(ii) a person appointed under section 5A(3) of the Exchange Fund Ordinance (Cap. 66);

(iii) a person appointed by the Monetary Authority under a specified provision; or

(iv) a person assisting the Monetary Authority in the performance of a function under a specified provision or in carrying into effect a specified provision.

(2) Except in the performance of a function under a specified provision, or for the purpose of carrying into effect or doing

anything required or authorized under a specified provision, a person to whom this section applies—

(a) must preserve and aid in preserving secrecy with regard to any matter that comes to the person's knowledge—

(i) because of the person's appointment under a specified provision;

(ii) in the performance of a function under a specified provision or in carrying into effect a specified provision; or

(iii) in the course of assisting another person in the performance of a function under a specified provision or in carrying into effect a specified provision;

(b) must not communicate any matter referred to in paragraph (a) to another person; and

(c) must not suffer or permit another person to have access to any record or document that is in the person's possession because of—

(i) the person's appointment under a specified provision;

(ii) the performance of a function under a specified provision or the carrying into effect of a specified provision; or

(iii) the assistance to the other person in the performance of a function under a specified provision or in carrying into effect a specified provision.

(3) Subsection (2) does not apply to disclosure of information that has already been made available to the public.

(4) Subsection (2) does not apply to disclosure of information—

(a) with a view to the institution of, or otherwise for the purposes of, any criminal proceedings in Hong Kong;

(b) with a view to the commencement of, or otherwise for the purposes of, an investigation carried out in Hong Kong under a specified provision or otherwise;

(c) for the purpose of seeking advice from, or giving advice by, counsel or a solicitor or other professional adviser acting or proposing to act in a professional capacity in connection with a matter arising under a specified provision;

(d) in connection with any judicial or other proceedings to which the person is a party;

(e) in accordance with an order of a court, or in accordance with a law or a requirement made under a law;

(f) to a person appointed under section 5A(3) of the Exchange Fund Ordinance (Cap. 66), if the disclosure will enable or assist the person to assist the Monetary Authority in performing a function referred to in that section; or

(g) to the Hong Kong Deposit Protection Board established by section 3 of the Deposit Protection Scheme Ordinance (Cap. 581) for the purpose of enabling or assisting the Board to perform its functions under that Ordinance.

(5) A person who contravenes subsection (2) commits an offence and is liable—

(a) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(6) In this section—

information (資料) means a matter referred to in subsection (2)(a) or a record or document referred to in subsection (2)(c).

381B. Disclosure by Monetary Authority

(1) Despite section 381A(2), the Monetary Authority may disclose information—

(a) in the performance of a function under, or for the purpose of carrying into effect or doing anything required or authorized under, any Ordinance (other than this Ordinance);

(b) to a person who is a liquidator appointed under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32);

(c) to the Securities and Futures Appeals Tribunal;

(d) to the Market Misconduct Tribunal;

(e) to the Banking Review Tribunal established under section 101A of the Banking Ordinance (Cap. 155);

(ea) to the Resolution Compensation Tribunal; *(Added 23 of 2016 s. 220)*

(eb) to the Resolvability Review Tribunal; *(Added 23 of 2016 s. 220)*

(ec) for the purpose of enabling or assisting a resolution authority to perform its functions under the Financial Institutions (Resolution) Ordinance (Cap. 628), to the resolution authority; *(Added 23 of 2016 s. 220. Amended E.R. 2 of 2017)*

(f) to the Anti-Money Laundering and Counter-Terrorist Financing Review Tribunal established under section 55 of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615); or *(Amended 4 of 2018 s. 46)*

(g) for the purpose of enabling or assisting the Monetary Authority to perform the Monetary Authority's functions under a specified provision, to an auditor or a former auditor of—

(i) an authorized financial institution or a former authorized financial institution; or

(ii) an approved money broker or a former approved money broker.

(2) Despite section 381A(2), the Monetary Authority may disclose information obtained by an MA investigator under section 184B to—

(a) the Financial Secretary; or

(b) the Secretary for Justice.

(3) Despite section 381A(2), but subject to section 381E(1), the Monetary Authority may disclose to the Commission—

(a) information relating to a person other than an authorized financial institution or an approved money broker; and

(b) information relating to an authorized financial institution or an approved money broker if the Monetary Authority is of the opinion that—

(i) it is desirable or expedient that the information should be disclosed to the Commission in the interests of the investing public or in the public interest; or

(ii) the disclosure will enable or assist the Commission to perform its functions and it is not contrary to the interests of the investing public or to the public interest.

(3A) Despite section 381A(2), the Monetary Authority may disclose information to an authority in a place outside Hong Kong if—

(a) that authority performs functions in that place broadly comparable to those of a resolution authority in Hong Kong; and

(b) in the opinion of the Monetary Authority—

(i) that authority is subject to adequate secrecy provisions in that place; and

(ii) the information is necessary to enable or assist that authority to perform functions in that place broadly comparable to those of a resolution authority in Hong Kong. *(Added 23 of 2016 s. 220)*

(4) Despite section 381A(2), the Monetary Authority may disclose information in the form of a summary compiled from any information in the Monetary Authority's possession, including information provided by a person under a specified provision, if the summary is so compiled as to prevent particulars relating to the business or identity of any person from being ascertained from it.

(5) Despite section 381A(2), the Monetary Authority may disclose information with the consent of the person from whom the information was obtained or received, and if the information relates to a different person, with the consent also of that person.

(6) The Monetary Authority may, in disclosing information under this section, impose any condition that the Monetary Authority considers appropriate.

(7) In this section—

information (資料) means a matter referred to in section 381A(2)(a) or a record or document referred to in section 381A(2)(c).

381C. Disclosure if Monetary Authority considers condition satisfied

(1) Despite section 381A(2), if in the opinion of the Monetary

Authority, the condition in subsection (3) is satisfied, the Monetary Authority may disclose information—

(a) to the Chief Executive;

(b) to the Financial Secretary;

(c) to the Secretary for Justice;

(d) to the Commissioner of Police;

(e) to the Commissioner of the Independent Commission Against Corruption;

(f) to the Insurance Authority;

(g) to the Registrar of Companies;

(h) to the Official Receiver;

(i) to the Mandatory Provident Fund Schemes Authority;

(j) to the Privacy Commissioner for Personal Data;

(k) to the Ombudsman;

(l) to a public officer authorized under subsection (8);

(m) to the Accounting and Financial Reporting Council continued under section 6 of the Accounting and Financial Reporting Council Ordinance (Cap. 588); *(Amended L.N. 66 of 2022)*

(n) to an inspector appointed by the Financial Secretary to investigate the affairs of a corporation;

(o) to a recognized exchange company;

(p) to a recognized clearing house;

(q) to a recognized exchange controller;

(r) to a recognized investor compensation company;

(s) to a person authorized under section 95(2) to provide authorized automated trading services; or

(t) with a view to the institution of, or otherwise for the purposes of, any disciplinary proceedings relating to the performance of professional duties by an auditor or a former auditor of an authorized financial institution or a former authorized financial institution.

(2) Despite section 381A(2), if in the opinion of the Monetary Authority, the condition in subsection (3) is satisfied, the Monetary Authority may also disclose information to—

(a) an authority or regulatory organization outside Hong Kong which, in the opinion of the Monetary Authority, satisfies the requirements referred to in subsection (4); or

(b) a companies inspector outside Hong Kong who, in the opinion of the Monetary Authority, satisfies the requirements referred to in subsection (5).

(3) The condition referred to in subsections (1) and (2) is that—

(a) it is desirable or expedient that the information should be disclosed in the interests of the investing public or in the public interest; or

(b) the disclosure of the information will enable or assist the recipient of the information to perform the recipient's functions and it is not contrary to the interests of the investing public or to the public interest.

(4) The requirements referred to in subsection (2)(a) are that the authority or regulatory organization outside Hong Kong—

(a) performs functions similar to the functions of the Monetary Authority or regulates, supervises or investigates banking, insurance or other financial services; and

(b) is subject to adequate secrecy provisions.

(5) The requirements referred to in subsection (2)(b) are that the companies inspector outside Hong Kong—

(a) performs functions similar to the functions of the Registrar of Companies or regulates, supervises or investigates the affairs of corporations; and

(b) is subject to adequate secrecy provisions.

(6) If the Monetary Authority is satisfied of the matters referred to in subsection (4)(a) and (b) or (5)(a) and (b), the Monetary Authority must, as soon as reasonably practicable after being so satisfied, publish in the Gazette, the name of the authority, regulatory organization or companies inspector.

(7) The Monetary Authority may, in disclosing information under this section, impose any condition that the Monetary Authority considers appropriate.

(8) The Financial Secretary may authorize a public officer as a person to whom information may be disclosed under subsection (1)(l).

(9) A matter published under subsection (6) is not subsidiary legislation.

(10) In this section—

companies inspector (公司審查員), in relation to a place outside Hong Kong, has the meaning given by section 378(15);

information (資料) has the meaning given by section 381B(7).

381D. Restrictions on disclosure by persons to whom information is disclosed

(1) If information is disclosed pursuant to section 381A(2) or in any of the circumstances described in section 381A(4), 381B(1) or (2) or 381C(1), unless subsection (2) applies—

(a) the person to whom the information is disclosed; and

(b) any other person obtaining or receiving the information from the person to whom the information is disclosed, either directly or indirectly,

must not disclose the information or any part of it to any other person.

(2) Information disclosed as described in subsection (1) may be disclosed to any other person if—

(a) the Monetary Authority consents to the disclosure;

(b) the information has already been made available to the public;

(c) the disclosure is of a part that has already been made available to the public;

(d) the disclosure is for the purpose of seeking advice from, or giving advice by, counsel or a solicitor or other professional adviser acting or proposing to act in a professional capacity in connection with a matter arising under a specified provision;

(e) the disclosure is in connection with any judicial or other proceedings to which the person or other person referred to in subsection (1)(a) or (b) is a party; or

(f) the disclosure is in accordance with an order of a court, or in accordance with a law or a requirement made under a law.

(3) The Monetary Authority may, in giving any consent under subsection (2)(a), impose any condition that the Monetary Authority considers appropriate.

(4) A person referred to in subsection (1)(a) to whom information is disclosed commits an offence if the person—

(a) discloses information in contravention of that subsection; and

(b) at the time of the disclosure knew or ought reasonably to have known that the information was previously disclosed to the person pursuant to section 381A(2) or in any of the circumstances described in section 381A(4), 381B(1) or (2) or 381C(1),

unless the person proves that the person had reasonable grounds to believe that subsection (2) applied to the disclosure by the person.

(5) A person referred to in subsection (1)(b) who obtains or receives information commits an offence if the person—

(a) discloses information in contravention of that subsection; and

(b) at the time of the disclosure knew or ought reasonably to have known that the information was previously disclosed to the person referred to in subsection (1)(a) under section 381A(2) or in any of the circumstances described in section 381A(4), 381B(1) or (2) or 381C(1),

unless the person proves that the person had reasonable grounds to believe that subsection (2) applied to the disclosure by the person.

(6) A person who commits an offence under subsection (4) or (5) is liable—

(a) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(7) To avoid doubt—

(a) this section does not apply to information disclosed to the Commission under this Division; and

(b) section 378 applies to information disclosed to the Commission under this Division.

(8) In this section—

information (資料) has the meaning given by section 381B(7).

381E. Certain information to be given to Commission

(1) Despite section 381A(2), if requested by the Commission, the Monetary Authority must give to the Commission any information received or obtained by the Monetary Authority that relates to—

(a) an OTC derivative transaction that is reported (whether directly or indirectly) under section 101B(1) by a prescribed person that is not an authorized financial institution or an approved money broker;

(b) an OTC derivative transaction that—

(i) is reported (whether directly or indirectly) under section 101B(1) or (3) by an authorized financial institution or an approved money broker; and

(ii) is a transaction to which a prescribed person other than an authorized financial institution or an approved money broker is a counterparty; or

(c) an OTC derivative transaction that is reported (whether directly or indirectly) under section 101B(1) or (3) by an authorized financial institution or an approved money broker and is a transaction—

(i) in an OTC derivative product of which the underlying subject matter includes securities, futures contracts, indices of securities or futures contracts or any combination of those; or

(ii) in an OTC derivative product that falls within subsection (1)(a)(iii) of section 1A of Part 1 of Schedule 1 and the underlying subject matter is a credit event.

(2) In this section—

credit event (信用事件), in relation to a transaction in an OTC derivative product that—

(a) falls within subsection (1)(a)(iii) of section 1A of Part 1 of Schedule 1; and

(b) transfers credit risk in relation to a reference obligation from one party to the other party,

means an event, which, if it occurs, obliges one party to make payment to the other party;

credit risk (信用風險) means the risk of loss from default by a party in a contract of indebtedness;

reference obligation (參照義務), in relation to an OTC derivative transaction, means the obligation specified in the transaction of an entity specified in the transaction, pursuant to which the basis for the settlement of the transaction is determined.

381F. Disclosure of information to overseas persons with similar functions

(1) Despite section 381A(2), the Monetary Authority may disclose information received or obtained by the Monetary Authority because of the reporting obligation to a person in a place outside Hong Kong (***overseas person***) who, in the opinion of the Monetary Authority, satisfies the requirements specified in subsection (2).

(2) The requirements are that the overseas person—

(a) performs a function similar to that of the Monetary Authority in collecting and maintaining records for the purposes of the reporting obligation;

(b) is subject to adequate regulation and supervision (including adequate requirements to preserve secrecy)

under the law of the place in which the overseas person operates; and

(c) operates in accordance with international standards that are acceptable to the Monetary Authority.

(3) When disclosing any information to an overseas person, the Monetary Authority may consent to the information being disclosed by the overseas person to any other person subject to conditions imposed by the Monetary Authority.

(4) If the Monetary Authority is satisfied of the matters referred to in subsection (2) regarding an overseas person, the Monetary Authority must, as soon as reasonably practicable, publish in the Gazette the name of the overseas person.

(5) A matter published under subsection (4) is not subsidiary legislation.

Division 2—General provisions regarding proceedings and offences

382. Obstruction

(1) A person who, without reasonable excuse, obstructs any specified person in the performance of a function under or in carrying into effect any provision of this Ordinance commits an offence and is liable—

(a) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(2) In this section, ***specified person*** (指明人士) means—

(a) the Commission;

(b) any member, employee, or consultant, agent or adviser, of the Commission; or

(c) any person appointed to investigate any matter under section 182(1).

383. False or misleading representations in applications to Commission

(1) A person commits an offence if—

(a) he, in support of any application made to the Commission under or pursuant to any provision of this Ordinance, whether for himself or for another person, makes a representation, whether in writing, orally or otherwise, that is false or misleading in a material particular; and

(b) he knows that, or is reckless as to whether, the representation is false or misleading in a material particular.

(2) A person who commits an offence under subsection (1) is liable—

(a) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(3) In this section, ***representation*** (陳述) means a representation or statement—

(a) of a matter of fact, either present or past;

(b) about a future event; or

(c) about an existing intention, opinion, belief, knowledge or other state of mind.

384. Provision of false or misleading information

(1) Subject to subsection (2), a person commits an offence if—

(a) he, in purported compliance with a requirement to provide information imposed by or under any of the relevant provisions, provides to a specified recipient any information which is false or misleading in a material particular; and

(b) he knows that, or is reckless as to whether, the information is false or misleading in a material particular.

(2) Subsection (1) does not apply to the provision of information which is false or misleading in a material particular if the provision of such information in purported compliance with a requirement imposed by or under any of the relevant provisions would, apart from subsection (1), also constitute an offence under any of the relevant provisions.

(3) Subject to subsection (4), a person commits an offence if—

(a) he, otherwise than in purported compliance with a requirement to provide information imposed by or under any of the relevant provisions but in connection with the performance by a specified recipient of a function under any of the relevant provisions, provides to the specified recipient any record or document which is false or misleading in a material particular; and

(b) he—

(i) knows that, or is reckless as to whether, the record or document is false or misleading in a material particular; and

(ii) has, in relation to the provision of the record or document, received prior written warning from the specified recipient to the effect that the provision of any record or document which is false or misleading in a material particular in the

circumstances of the case would constitute an offence under this subsection.

(4) Subject to subsection (5), no person shall be convicted of an offence under subsection (3) unless the prosecution proves that—

(a) the specified recipient to which the record or document in question has been provided has reasonably relied on the record or document; or

(b) the person intended that the specified recipient would rely on the record or document.

(5) Nothing in subsection (4)(a) requires it to be proved that the specified recipient who has reasonably relied on any record or document—

(a) was misled;

(b) suffered any detriment; or

(c) incurred any loss,

as a result of such reliance.

(6) A person who commits an offence under subsection (1) is liable—

(a) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 1 year.

(7) A person who commits an offence under subsection (3) is liable—

(a) on conviction on indictment to a fine of $500,000 and to imprisonment for 6 months; or

(b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.

(8) In this section, ***specified recipient*** (指明收受者) means—

(a) the Commission;

(b) a recognized exchange company;

(c) a recognized clearing house; or

(d) a recognized exchange controller.

385. Power of Commission to intervene in proceedings

(1) Where—

(a) there are any judicial or other proceedings (other than criminal proceedings) which concern a matter provided for in any of the relevant provisions, or in which the Commission has an interest by virtue of its functions under any of the relevant provisions; and

(b) the Commission is satisfied that it is in the public interest for the Commission to intervene and be heard in the proceedings,

the Commission, after consultation with the Financial Secretary, may, by an application made in accordance with subsection (2) to the court hearing or otherwise having competent authority to hear the proceedings, apply to intervene and be heard in the proceedings.

(2) An application made for the purposes of subsection (1) shall be—

(a) made in writing; and

(b) supported by an affidavit showing that the conditions set out in subsection (1)(a) and (b) are satisfied.

(3) A copy of the application made for the purposes of subsection (1) shall be served on each of the parties to the proceedings to which the application relates as soon as reasonably practicable after the application is made.

(4) Subject to subsection (5), the court to which an application is made for the purposes of subsection (1) may by order—

(a) allow the application, subject to such terms as it considers just; or

(b) refuse the application.

(5) The court to which an application is made for the purposes of subsection (1) shall not make an order pursuant to subsection (4)(a) or (b) without first giving the Commission, and each of the parties to the proceedings to which the application relates, a reasonable opportunity of being heard.

(6) Where an application made for the purposes of subsection (1) is allowed under subsection (4)(a), the Commission, subject to the terms referred to in subsection (4)(a)—

(a) may intervene and be heard in the proceedings to which the application relates; and

(b) shall be regarded for all purposes as a party to the proceedings and shall have the rights, duties and liabilities of such a party.

(7) Nothing in this section prejudices Order 15, rule 6 of the Rules of the High Court (Cap. 4 sub. leg. A).

(8) In this section, ***court*** (法院) includes a magistrate and a tribunal, other than the Market Misconduct Tribunal and the Securities and Futures Appeals Tribunal.

(Amended E.R. 2 of 2012)

385A. Power of Monetary Authority to intervene in proceedings

(1) The Monetary Authority may, after consultation with the Financial Secretary, make an application to intervene in and be heard in any judicial or other proceedings, other than criminal proceedings, if—

(a) the proceedings concern a matter provided for in a specified provision or the Monetary Authority has an interest in the proceedings because of the Monetary Authority's functions under a specified provision; and

(b) the Monetary Authority is satisfied that it is in the public interest for the Monetary Authority to intervene in and be heard in the proceedings.

(2) The following applies in respect of an application made for the purposes of subsection (1)—

(a) the application must be made to the court hearing the proceedings or which otherwise has jurisdiction to hear the proceedings;

(b) the application must—

(i) be made in writing; and

(ii) be supported by an affidavit showing that the conditions set out in subsection (1)(a) and (b) are satisfied; and

(c) a copy of the application must be served on each party to the proceedings as soon as reasonably practicable after the application is made.

(3) The court to which the application is made—

(a) may by order—

(i) allow the application subject to any terms that it considers just; or

(ii) refuse the application; and

(b) may not make an order under paragraph (a) without first giving the Monetary Authority, and each party to the proceedings, a reasonable opportunity of being heard.

(4) If the application is allowed, the Monetary Authority, subject to the terms referred to in subsection (3)(a)(i)—

(a) may intervene in and be heard in the proceedings;

(b) is to be regarded for all purposes as a party to the proceedings; and

(c) has all the rights, duties and liabilities of a party to the proceedings.

(5) This section does not affect Order 15, rule 6 of the Rules of the High Court (Cap. 4 sub. leg. A).

(6) In this section—

court (法院) includes a magistrate and a tribunal other than the Market Misconduct Tribunal and the Securities and Futures Appeals Tribunal.

(Added 6 of 2014 s. 41)

386. Proceedings not to be stayed

(1) The existence of any judicial or other proceedings, or circumstances that disclose the commission of an offence, shall not by itself constitute justification for any other proceedings or action under this Ordinance being stayed or deferred.

(2) For the avoidance of doubt, nothing in subsection (1)—

(a) affects any other law requiring or providing for a stay of any proceedings or action under this Ordinance;

(b) prevents a court of competent jurisdiction from ordering that any proceedings or action under this Ordinance shall be stayed or deferred.

387. Standard of proof

Where it is necessary for the Commission to establish or to be satisfied, for the purposes of any of the relevant provisions (other than provisions relating to criminal proceedings or to an offence), that—

(a) a person has contravened—

(i) any provision of any Ordinance;

(ii) any notice or requirement given or made under or pursuant to any provision of any Ordinance;

(iii) any of the terms and conditions of any licence or registration under this Ordinance; or

(iv) any other condition imposed under or pursuant to any provision of this Ordinance;

(b) a person has been responsible for an unlawful act or omission;

(c) a person has assisted, counselled, procured or induced any other person to do anything which results in the occurrence of any of the matters referred to in paragraph (a) or (b);

(d) a person has been concerned in, or a party to, anything which results in the occurrence of any of the matters referred to in paragraph (a) or (b);

(e) a person has attempted, or conspired with any other person, to commit anything which results in the occurrence of any of the matters referred to in paragraph (a) or (b); or

(f) any of the matters referred to in paragraphs (a) to (e) might occur,

it is sufficient for the Commission to establish, or to be satisfied as to, the matter referred to in paragraph (a), (b), (c), (d), (e) or (f) (as the case may be) on the standard of proof applicable to civil proceedings in a court of law.

387A. Civil proceedings by Commission

The Commission may begin or carry on any civil proceedings by a solicitor or otherwise.

(Added 9 of 2012 s. 45)

388. Prosecution of certain offences by Commission

(1) An offence under any of the relevant provisions, and an offence of conspiracy to commit such an offence, may be prosecuted by the Commission in its own name but, where under this subsection the Commission prosecutes an offence, the offence shall be tried before a magistrate as an offence which is triable summarily.

(2) For, and only for, the purpose of the prosecution of an offence referred to in subsection (1), an employee of the Commission who apart from this subsection is not qualified to practise as a barrister or to act as a solicitor under the Legal Practitioners Ordinance (Cap. 159) may appear and plead before a magistrate any case of which he has charge and shall, in relation to the prosecution, have all the other rights of a person qualified to practise as a barrister or to act as a solicitor under that Ordinance.

(3) Nothing in this section derogates from the powers of the Secretary for Justice in respect of the prosecution of criminal offences.

(4) This section does not apply to an offence referred to in section 388A(1) or conspiracy to commit such an offence. *(Added 6 of 2014 s. 42)*

388A. Prosecution of offences by Monetary Authority

(1) This section applies to an offence committed—

(a) under section 184D;

(b) under section 191(6) in relation to the execution of a warrant issued on information on oath laid by an MA investigator; or

(c) under section 381D.

(2) The Monetary Authority may prosecute an offence to which this section applies or an offence of conspiracy to commit such an offence, in the name of the Monetary Authority.

(3) Any offence prosecuted under subsection (2) must be tried before a magistrate as an offence that is triable summarily.

(4) For prosecuting an offence referred to in subsection (1) or (2) only, a person appointed under section 5A(3) of the Exchange Fund Ordinance (Cap. 66), even if he or she is not qualified to practise as a barrister or to act as a solicitor under the Legal Practitioners Ordinance (Cap. 159)—

(a) may appear and plead before a magistrate in any case of which that person has charge; and

(b) has, in relation to the prosecution, all the other rights of a person qualified to practise as a barrister or to act as a solicitor under that Ordinance.

(5) This section does not derogate from the powers of the Secretary for Justice in respect of the prosecution of criminal offences.

(Added 6 of 2014 s. 43)

389. Limitation on commencement of proceedings

(1) Notwithstanding section 26 of the Magistrates Ordinance (Cap. 227), any information or complaint relating to an offence under this Ordinance, other than an indictable offence, may be tried if it is laid or made (as the case may be) at any time within 3 years after the commission of the offence.

(2) Nothing in section 388(1) or 388A(3) affects or limits the meaning of indictable offence referred to in subsection (1). *(Amended 6 of 2014 s. 44)*

390. Liability of officers of corporations for offences by corporations, and of partners for offences by other partners

(1) Where the commission of an offence under this Ordinance by a corporation is proved to have been aided, abetted, counselled, procured or induced by, or committed with the consent or connivance of, or attributable to any recklessness on the part of, any officer of the corporation, or any person who was purporting to act in any such capacity, that person, as well as the corporation, is guilty of the offence and is liable to be proceeded against and punished accordingly.

(2) Where the commission of an offence under this Ordinance by a partner in a partnership is proved to have been aided, abetted, counselled, procured or induced by, or committed with the consent or connivance of, or attributable to any recklessness on the part of, any other partner of the partnership, that other partner, as well as the first-mentioned partner, is guilty of the offence and is liable to be proceeded against and punished accordingly.

391. Civil liability for false or misleading public communications concerning securities and futures contracts

(1) Subject to subsections (3) to (7), where—

(a) a person is responsible for a relevant communication being made or issued to the public, or to a group of persons comprising members of the public (including the shareholders of a listed corporation or the holders of listed securities);

(b) the relevant communication concerns securities or futures contracts, or may affect the price of securities or the price for dealings in futures contracts;

(c) the relevant communication is false or misleading in a material particular; and

(d) the person knows that, or is reckless or negligent as to whether, the relevant communication is false or misleading in a material particular,

that person shall, whether or not he also incurs any other liability, be liable to pay compensation by way of damages to any other person for any pecuniary loss sustained by the other person as a result of his acting, or refraining from acting in a manner in which he would otherwise have acted, in reliance on the relevant communication.

(2) For the purposes of subsection (1), a person responsible for a relevant communication being made or issued includes—

(a) any person making or issuing it; and

(b) any person who in a material manner participated in, or approved, the making or issuing of it.

(3) No person shall be liable to pay compensation under subsection (1) to any other person in respect of a relevant communication unless it is fair, just and reasonable in the circumstances of the case that he should be so liable.

(4) No person shall be liable to pay compensation under subsection (1) to any other person by reason only of the issue or reproduction of a relevant communication if—

(a) the issue or reproduction of the relevant communication took place in the ordinary course of a business (whether or not carried on by him), the principal purpose of which was issuing or reproducing materials provided by others;

(b) the contents of the relevant communication were not, wholly or partly, devised—

(i) where the business was carried on by him, by himself or any officer, employee or agent of his; or

(ii) where the business was not carried on by him, by himself;

(c) for the purposes of the issue or reproduction—

(i) where the business was carried on by him, he or any officer, employee or agent of his; or

(ii) where the business was not carried on by him, he,

did not select, add to, modify or otherwise exercise control over the contents of the relevant communication; and

(d) at the time of the issue or reproduction, he did not know that the relevant communication was false or misleading in a material particular.

(5) No person shall be liable to pay compensation under subsection (1) to any other person by reason only of the re-transmission of a relevant communication if—

(a) the re-transmission of the relevant communication took place in the ordinary course of a business (whether or not carried on by him), the normal conduct of which involved the re-transmission of information to other persons within an information system or from one information system to another information system (wherever situated), whether directly or by facilitating the establishment of links between such other persons and third parties;

(b) the contents of the relevant communication were not, wholly or partly, devised—

(i) where the business was carried on by him, by himself or any officer, employee or agent of his; or

(ii) where the business was not carried on by him, by himself;

(c) for the purposes of the re-transmission—

(i) where the business was carried on by him, he or any officer, employee or agent of his; or

(ii) where the business was not carried on by him, he,

did not select, add to, modify or otherwise exercise control over the contents of the relevant communication;

(d) the re-transmission of the relevant communication was accompanied by a message to the effect, or was effected following acknowledgment by the persons to whom it was re-transmitted of their understanding, that—

(i) where the business was carried on by him, he or any officer, employee or agent of his; or

(ii) where the business was not carried on by him, the person who carried on the business or any officer, employee or agent of that person,

did not devise the contents of the relevant communication, and neither took responsibility for it nor endorsed its accuracy; and

(e) at the time of the re-transmission—

(i) he did not know that the relevant communication was false or misleading in a material particular; or

(ii) he knew that the relevant communication was false or misleading in a material particular, but—

(A) where the business was carried on by him, in the circumstances of the case he could not reasonably be expected to prevent the re-transmission; or

(B) where the business was not carried on by him, in the circumstances of the case he has taken all reasonable steps to bring the fact that the relevant communication was so false or misleading to the attention of a person

in a position to take steps to cause the re-transmission to be prevented (even if the re-transmission in fact took place).

(6) No person shall be liable to pay compensation under subsection (1) to any other person by reason only of the live broadcast of a relevant communication if—

(a) the broadcast of the relevant communication took place in the ordinary course of the business of a broadcaster (whether or not he was such broadcaster);

(b) the contents of the relevant communication were not, wholly or partly, devised—

(i) where he was the broadcaster, by himself or any officer, employee or agent of his; or

(ii) where he was not the broadcaster, by himself;

(c) for the purposes of the broadcast—

(i) where he was the broadcaster, he or any officer, employee or agent of his; or

(ii) where he was not the broadcaster, he,

did not select, add to, modify or otherwise exercise control over the contents of the relevant communication;

(d) in relation to the broadcast—

(i) where he was the broadcaster, he; or

(ii) where he was not the broadcaster, he believed and had reasonable grounds to believe that the broadcaster,

acted in accordance with the terms and conditions of the licence (if any) by which he or the broadcaster (as the case may be) became entitled to broadcast as a broadcaster and with any code of practice or guidelines (however described) issued under or pursuant to the

Telecommunications Ordinance (Cap. 106) or the Broadcasting Ordinance (Cap. 562) and applicable to him or the broadcaster (as the case may be) as a broadcaster; and

(e) at the time of the broadcast—

(i) he did not know that the relevant communication was false or misleading in a material particular; or

(ii) he knew that the relevant communication was false or misleading in a material particular, but—

(A) where he was the broadcaster, in the circumstances of the case he could not reasonably be expected to prevent the broadcast; or

(B) where he was not the broadcaster, in the circumstances of the case he has taken all reasonable steps to bring the fact that the relevant communication was so false or misleading to the attention of a person in a position to take steps to cause the broadcast to be prevented (even if the broadcast in fact took place).

(7) Where an action is brought against a person under subsection (1) by reference to subsection (2)(b) in respect of a relevant communication, it is a defence for the person to prove—

(a) that he only participated in, or approved, the making or issuing of a part of the relevant communication and that the part was not false or misleading in a material particular; or

(b) where the action is brought on the basis that he participated in the making or issuing of the relevant communication, that at the time when it was made or

issued, he opposed the making or issuing of it because it was false or misleading in a material particular.

(8) For the avoidance of doubt, where a court has jurisdiction to determine an action brought under subsection (1), it may, where it is, apart from this section, within its jurisdiction to entertain an application for an injunction, grant an injunction in addition to, or in substitution for, damages, on such terms and conditions as it considers appropriate.

(9) This section does not confer a right of action in any case to which section 40 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) (whether with or without reference to section 342E of that Ordinance) or section 108 applies. *(Amended 28 of 2012 ss. 912 & 920)*

(10) Nothing in this section affects, limits or diminishes any rights conferred on a person, or any liabilities a person may incur, under the common law or any other enactment.

(11) In this section—

issue (發出), in relation to any material (including any relevant communication), includes publishing, circulating, distributing or otherwise disseminating the material or the contents thereof, whether—

(a) by any visit in person;

(b) in a newspaper, magazine, journal or other publication;

(c) by the display of posters or notices;

(d) by means of circulars, brochures, pamphlets or handbills;

(e) by an exhibition of photographs or cinematograph films;

(f) by way of sound or television broadcasting;

(g) by any information system or other electronic device; or

(h) by any other means, whether mechanically, electronically, magnetically, optically, manually or

by any other medium, or by way of production or transmission of light, image or sound or any other medium,

and also includes causing or authorizing the material to be issued;

relevant communication (有關通訊) means any communication, including any announcement, disclosure and statement, and any combination thereof.

Division 3—Power to make rules, and codes or guidelines, etc.

392. Financial Secretary to prescribe interests, etc. as securities, etc.

(1) For the purposes of this Ordinance, the Financial Secretary may, by notice published in the Gazette, prescribe, either generally or in a particular case, that—

(a) any interests, rights or property, whether in the form of an instrument or otherwise, or any class or description of any such interests, rights or property, are to be regarded as—

(i) currency-linked instruments;

(ii) currency and interest rate-linked instruments;

(iii) futures contracts;

(iv) interest rate-linked instruments;

(v) securities;

(vi) structured products; or

(vii) OTC derivative products; or *(Added 6 of 2014 s. 45)*

(b) any interests, rights or property, whether in the form of an instrument or otherwise, or any class or description

of any such interests, rights or property, are not to be regarded as—

(i) currency-linked instruments;

(ii) currency and interest rate-linked instruments;

(iii) futures contracts;

(iv) interest rate-linked instruments;

(v) securities;

(vi) structured products; or

(vii) OTC derivative products. *(Added 6 of 2014 s. 45)*

(2) Without limiting subsection (1), a notice under that subsection may prescribe the circumstances under which or the purposes for which any interests, rights or property, or any class or description of any interests, rights or property, referred to in the notice are to be regarded, or not to be regarded, as—

(a) currency-linked instruments;

(b) currency and interest rate-linked instruments;

(c) futures contracts;

(d) interest rate-linked instruments;

(e) securities;

(f) structured products; or

(g) OTC derivative products. *(Added 6 of 2014 s. 45)*

(Replaced 8 of 2011 s. 12. Amended 6 of 2014 s. 45)

392A. Financial Secretary to prescribe markets, instruments etc.

The Financial Secretary may, by notice published in the Gazette, prescribe—

(a) any stock market, futures market, or clearing house for the purpose of section 1B(2)(c) of Part 1 of Schedule 1; or

(b) any type of instrument for the purpose of section 1B(2)(f)(i) of Part 1 of Schedule 1.

(Added 6 of 2014 s. 46)

393. Financial Secretary to prescribe arrangements as collective investment schemes

(1) For the purposes of this Ordinance, the Financial Secretary may by notice published in the Gazette prescribe, either generally or in a particular case, that—

(a) any arrangements, or any class or description of arrangements, is to be regarded as collective investment schemes, where the arrangements—

(i) are made available in the course of business and have the purpose or effect, or pretended purpose or effect, of enabling the participating persons—

(A) to acquire any right, interest, title or benefit in any property for valuable consideration;

(B) to defer taking possession of the property; and

(C) to transfer or retransfer any right, interest, title or benefit in the property to a person who is a party to, or is referred to in, the arrangements; or

(ii) have the purpose or effect, or pretended purpose or effect, of enabling the participating persons, whether by acquiring any right, interest, title or benefit in any property or any part of the property or otherwise, to participate in or receive—

(A) profits, income or other returns represented to arise or to be likely to arise from the acquisition, holding, management or disposal of the property or any part of the property, or sums represented to be paid or to be likely to be paid out of any such profits, income or other returns; or

(B) a payment or other returns arising from the acquisition, holding or disposal of, the exercise of any right in, the redemption of, or the expiry of, any right, interest, title or benefit in the property or any part of the property;

(b) any arrangements, or any class or description of arrangements, is not to be regarded as collective investment schemes.

(2) Without limiting the generality of subsection (1), a notice under that subsection may prescribe the circumstances under which or the purposes for which any arrangements, or any class or description of arrangements, referred to in the notice is to be regarded, or not to be regarded, as collective investment schemes.

394. Orders by Chief Executive in Council for levies

(1) A levy (if any) at the rate specified by the Chief Executive in Council by order published in the Gazette shall be payable to the Commission by the person or persons so specified by the Chief Executive in Council for—

(a) every sale and purchase of any securities which is recorded on a recognized stock market or notified to a recognized exchange company under its rules;

(b) every sale and purchase of any futures contract traded on a recognized futures market; and

(c) every sale and purchase of any securities or futures contracts traded by means of authorized automated trading services.

(2) For the purposes of subsection (1), the Chief Executive in Council may—

(a) specify the rate or amount of the levy payable under that subsection for any sale and purchase—

(i) as a percentage of the consideration for the sale and purchase;

(ii) as a fixed amount;

(iii) as a nil rate, nil percentage or nil amount; or

(iv) as to be calculated in any other manner specified in the order;

(b) specify different rates for different classes of securities or futures contracts.

(3) Each recognized exchange company, and each person authorized to provide authorized automated trading services, shall collect, account for, and pay to the Commission, the levy (if any) payable under subsection (1).

(4) The Commission may recover the amount of any levy payable under this section as a civil debt due to it.

(5) The Chief Executive in Council may make rules for—

(a) the payment of levies under this section;

(b) the imposition of charges or penalties for late payment of such levies;

(c) the keeping, examination and audit of the accounts of recognized exchange companies, and of persons authorized to provide authorized automated trading

services, relating to the collection and payment to the Commission of such levies.

(6) Nothing in subsection (1) requires the Chief Executive in Council to specify a rate or amount of levy in any particular sale and purchase to which that subsection applies or in any particular class of sales and purchases to which that subsection applies.

395. Rules by Chief Executive in Council for payment of fees

(1) The Chief Executive in Council may, after consultation with the Commission, make rules to—

(a) require and provide for the payment to the Commission of, and prescribe, fees—

(i) for an application to the Commission under or pursuant to any of the relevant provisions;

(ii) for anything done by the Commission or a committee established under section 8 in the performance of a function relating to takeovers and mergers or to share buy-backs; *(Amended 28 of 2012 ss. 912 & 920)*

(iii) for anything done by the Commission or a committee established under section 8 or the Monetary Authority in the performance of a function under any of the relevant provisions (other than the function referred to in subparagraph (ii));

(iv) for any other matter with regard to which provision is made by or under any of the relevant provisions;

(b) provide for the payment to the Commission of, and prescribe, fees (however described) which this Ordinance provides are, or may be, prescribed, specified or provided for by rules made under this section.

(2) Without prejudice to subsection (3), fees prescribed by rules made under this section may be fixed at levels sufficient to recover expenditure incurred, or likely to be incurred, by the Commission or a committee established under section 8 or the Monetary Authority in providing the services or performing the functions to which the fees relate, but in fixing the level of the fees appropriations under section 14 shall not be taken into account.

(3) Fees prescribed by rules made under this section shall not be limited by reference to the amount of the administrative or other costs incurred, or likely to be incurred, by the Commission or a committee established under section 8 or the Monetary Authority in providing the services or performing the functions to which the fees relate.

(4) Rules made under this section may provide—

(a) that the amount of any fee shall be fixed by reference to a scale set out in the rules;

(b) for the payment of different fees by or in relation to persons or cases of different classes or descriptions;

(c) that the payment of any fee shall be waived, either generally or in a particular case, whether or not it is otherwise specified as being payable under any provision of this Ordinance;

(d) for the payment of fees annually or at other intervals.

(5) The Commission may pay to the Monetary Authority such of the fees paid to it in accordance with the rules made under this section that in the opinion of the Commission represent the expenditure or costs incurred, or likely to be incurred, by the Monetary Authority in providing the services or performing the functions to which the fees relate.

(6) The Commission may recover the amount of any fees payable under the rules made under this section as a civil debt due to it.

(7) This section is in addition to and not in derogation of sections 29 and 29A of the Interpretation and General Clauses Ordinance (Cap. 1).

396. Reduction of levy

(1) If during a financial year of the Commission—

(a) the reserves of the Commission, after deducting depreciation and all provisions, are more than twice its estimated operating expenses for the financial year; and

(b) the Commission has no outstanding borrowings,

the Commission shall consult the Financial Secretary with a view to recommending to the Chief Executive in Council that the rate or amount of a levy be reduced under section 394.

(2) The Commission may, after consultation with the Financial Secretary under subsection (1), recommend to the Chief Executive in Council that the rate or amount of a levy be reduced under section 394.

397. Rules by Commission

(1) The Commission may make rules to—

(a) provide for applications for licence and registration, the issue of printed licences and certificates of registration, and incidental matters; *(Amended 19 of 2015 s. 11)*

(b) require the display of printed licences and certificates of registration in the specified manner and circumstances and at specified places, and require that printed licences and certificates of registration are in specified circumstances, other than those specified in any

provision of this Ordinance, to be returned to the Commission for any specified purpose; *(Amended 19 of 2015 s. 11)*

(c) require intermediaries to carry on business in relation to a specified class of persons, and in the specified manner and circumstances;

(d) prescribe the qualifications, experience and training required of any persons employed or engaged by intermediaries, and provide for the obligations imposed on the persons and the intermediaries in relation to such requirements, the examinations that applicants for licence or registration are required to take, and the circumstances in which they may be exempted from such requirements;

(e) provide for the correction of errors in the register maintained by the Commission under section 136;

(f) provide for the admissibility in evidence in judicial or other proceedings of specified records, and extracts from specified records, kept by the Commission;

(g) require documents and information required to be lodged, filed, submitted or retained for the purposes of any provision of this Ordinance to be so lodged, filed, submitted or retained in the specified manner, whether by electronic or other means;

(h) require documents and information lodged, filed, submitted or retained for the purposes of any provision of this Ordinance in any specified manner to be completed, signed, executed and authenticated in the specified form and manner;

(i) specify whether, when and the circumstances in which records compiled in any specified form or manner, or documents or information completed, signed, executed

or authenticated in any specified form or manner, are acceptable or required for the purposes of any provision of this Ordinance;

(j) require the payment of remuneration to any auditor appointed, and the costs of an audit carried out, under any provision of this Ordinance, and provide for matters relating to such remuneration and costs;

(k) require a person of a specified description, when selling securities at or through a recognized stock market where his right to vest the securities in the purchaser (or, where he is acting as agent, his principal's right to do so) is derived from an arrangement of a specified kind, to notify the exchange participant through whom the sale is being effected of the fact that the right to vest the securities in the purchaser is derived from such an arrangement, and require the person who, having sold such securities pursuant to such an arrangement, purchases securities at or through a recognized stock market in satisfaction, in whole or in part, of his obligations under the arrangement to notify the exchange participant through whom the purchase or purchases is or are being effected of that fact;

(l) require a lender under a securities borrowing and lending agreement to—

(i) keep specified records or documents in the specified form and manner; and

(ii) give copies of such records or documents to the Commission at its request in the specified form and manner and within the specified time;

(m) require intermediaries to make returns at specified times (whether at regular intervals or otherwise) to the Commission, and provide for the particulars, or the

nature of particulars, to be contained therein, the person by whom, and the manner and circumstances in which they are to be made, and other matters related to such returns;

(n) require a form or return required to be submitted under any provision of this Ordinance to be received by the Commission by or within the specified time;

(o) prescribe, specify or provide for any matter which this Ordinance provides is, or may be, prescribed, specified or provided for by rules made under this section;

(p) provide for any other matters for the better carrying out of the objects and purposes of this Ordinance.

(2) In addition to the power to make rules under subsection (1), the Commission may, after consultation with the Financial Secretary, make such other rules as are necessary for the furtherance of any of its regulatory objectives and the performance of any of its functions.

(3) Notwithstanding anything in this section—

(a) the power of the Commission to make rules under this section in respect of any persons as intermediaries shall, where the intermediaries are registered institutions, be regarded as the power to make rules in respect of the intermediaries only in relation to the businesses which constitute any regulated activities for which they are registered;

(b) the power of the Commission to make rules under this section in respect of any persons as associated entities shall, where the associated entities are authorized financial institutions, be regarded as the power to make rules in respect of the associated entities only in relation to their businesses of receiving or holding client assets of intermediaries of which they are associated entities.

(4) For the avoidance of doubt, the powers of the Commission to make rules under this section are in addition to and not in derogation of any other power of the Commission to make rules under any provision of this or any other Ordinance.

398. General provisions for rules by Commission

(1) Notwithstanding any other provisions of this Ordinance but subject to subsection (3), where the Commission proposes to make rules under any provision of this Ordinance, it shall publish a draft of the proposed rules, in such manner as it considers appropriate, for the purpose of inviting representations on the proposed rules by the public.

(2) Where the Commission makes any rules under any provision of this Ordinance after a draft is published under subsection (1) in relation to the rules, it shall—

(a) publish, in such manner as it considers appropriate, an account setting out in general terms—

(i) the representations made on the draft; and

(ii) the response of the Commission to the representations; and

(b) where the rules are made with modifications which in the opinion of the Commission result in the rules being significantly different from the draft, publish, in such manner as it considers appropriate, details of the difference.

(3) Subsections (1) and (2) do not apply if the Commission considers, in the circumstances of the case, that—

(a) it is inappropriate or unnecessary that such subsections should apply; or

(b) any delay involved in complying with such subsections would not be—

(i) in the interest of the investing public; or

(ii) in the public interest.

(4) Notwithstanding any other provisions of this Ordinance, the Commission shall consult the Monetary Authority regarding rules it proposes to make under any provision of this Ordinance, other than a provision that requires the consent of the Monetary Authority, in so far as such rules apply to authorized financial institutions by reason of their being registered institutions, or associated entities of intermediaries. *(Amended 6 of 2014 s. 47)*

(5) For the avoidance of doubt, nothing in subsections (1) to (4) affects any other requirements which, apart from such subsections, apply to the making of any rules under any provision of this Ordinance.

(6) Where rules are made by the Commission under any provision of this Ordinance and it has not been provided in this Ordinance that the rules may provide that a contravention of any specified provision of the rules constitutes an offence, the Chief Executive in Council may make regulations to provide that a person who contravenes any specified provision of the rules that applies to him commits an offence and is liable to a specified penalty not exceeding—

(a) on conviction on indictment a fine of $500,000 and a term of imprisonment of 2 years;

(b) on summary conviction a fine at level 6 and a term of imprisonment of 6 months.

(7) Except as otherwise provided in this Ordinance, rules made by the Commission under any provision of this Ordinance may provide that, subject to the terms and conditions specified in the rules, the provisions of this Ordinance specified in the rules—

(a) shall not have effect, or shall only have effect to a specified extent, in relation to any specified person or to members of a specified class of persons—

(i) who is or are or may be required to be licensed by reason only of his or their doing anything that is incidental to another business;

(ii) who does not or do not, on behalf of any other person, deal in securities or futures contracts or trade in interests in collective investment schemes or leveraged foreign exchange contracts; or

(iii) who is or are or may be required to be licensed by reason only of his or their entering into a specified class of transactions;

(b) shall not have effect in relation to any specified transaction or class of transactions entered into by any specified person or class of persons;

(c) shall, where they require any application, statement, notice or other document (however described) to be lodged or filed with or submitted to the Commission, be regarded as having been complied with if the application, statement, notice or other document (as the case may be) is lodged or filed with or submitted to any other specified person.

(8) Except as otherwise provided in this Ordinance, rules made by the Commission under any provision of this Ordinance—

(a) may be of general or special application and may be made so as to apply only in specified circumstances;

(b) may make different provisions for different circumstances and provide for different cases or classes of cases;

(c) may authorize any matter or thing to be determined, applied or regulated by any specified person;

(d) may provide for the exercise of discretion in specified cases;

(e) may, for the better and more effectual carrying into effect of any provision of this Ordinance or the rules, include any savings, transitional, incidental, supplemental, evidential and consequential provisions (whether involving the provisions of any principal legislation or the provisions of any subsidiary legislation).

399. Codes or guidelines by Commission

(1) The Commission may publish, in the Gazette and in any other manner it considers appropriate, such codes and guidelines as it considers appropriate for providing guidance—

(a) for the furtherance of any of its regulatory objectives;

(b) in relation to any matter relating to any of the functions of the Commission under any of the relevant provisions;

(c) in relation to the operation of any provision of this Ordinance.

(2) Without limiting the generality of subsection (1), the Commission may publish under that subsection—

(a) a code to provide for matters concerning takeovers and mergers and matters incidental thereto;

(b) a code to provide for matters concerning share buy-backs and matters incidental thereto. *(Amended 28 of 2012 ss. 912 & 920)*

(3) Notwithstanding anything in this section—

(a) the power of the Commission to publish codes or guidelines under this section in respect of any persons as intermediaries shall, where the intermediaries

are registered institutions, be regarded as the power to publish codes or guidelines in respect of the intermediaries only in relation to the businesses which constitute any regulated activities for which they are registered;

(b) the power of the Commission to publish codes or guidelines under this section in respect of any persons as associated entities shall, where the associated entities are authorized financial institutions, be regarded as the power to publish codes or guidelines in respect of the associated entities only in relation to their businesses of receiving or holding client assets of intermediaries of which they are associated entities.

(4) For the avoidance of doubt, the power of the Commission to publish codes or guidelines under this section is in addition to and not in derogation of any other power of the Commission to publish codes or guidelines under any provision of this or any other Ordinance.

(5) The Commission may from time to time amend the whole or any part of any code or guideline published under this section or any other provision of this Ordinance in a manner consistent with the power to publish the code or guideline under this section or that other provision, and— *(Amended 6 of 2014 s. 48)*

(a) the other provisions of this section or the provision concerned apply, with necessary modifications, to such amendments to the code or guideline as they apply to the code or guideline; and *(Amended 6 of 2014 s. 48)*

(b) any reference in this or any other Ordinance to the code or guideline (however expressed) shall, unless the context otherwise requires, be construed as a reference to the code or guideline as so amended.

(6) A failure on the part of any person to comply with the provisions set out in any code or guideline published under this section or any other provision of this Ordinance that apply to him shall not by itself render him liable to any judicial or other proceedings, but in any proceedings under this Ordinance before any court the code or guideline shall be admissible in evidence, and if any provision set out in the code or guideline appears to the court to be relevant to any question arising in the proceedings it shall be taken into account in determining that question. *(Amended 6 of 2014 s. 48)*

(7) Any code or guideline published under this section or any other provision of this Ordinance— *(Amended 6 of 2014 s. 48)*

(a) may be of general or special application and may be made so as to apply only in specified circumstances;

(b) may make different provisions for different circumstances and provide for different cases or classes of cases.

(8) Any code or guideline published under this section is not subsidiary legislation.

(9) Notwithstanding any other provisions of this Ordinance, the Commission shall consult the Monetary Authority regarding codes or guidelines it proposes to publish under this section or any other provision of this Ordinance, or amendments it proposes to make to codes or guidelines published under this section or any other provision of this Ordinance, in so far as such codes or guidelines or such amendments (as the case may be) apply to authorized financial institutions by reason of their being registered institutions, or associated entities of intermediaries.

(Amended E.R. 2 of 2012)

Division 4—Miscellaneous

400. Service of notices, etc.

(1) Subject to sections 111, 141 and 374 and any rules made under section 233 or 269, any written notice or direction or other document (however described) to be, or required to be, issued or served (however described) to or on any person, other than the Commission, for the purposes of this Ordinance shall for all purposes be regarded as duly issued or served if— *(Amended 28 of 2012 ss. 912 & 920)*

(a) in the case of an individual, it is—

(i) delivered to him by hand;

(ii) left at, or sent by post to, his last known business or residential address;

(iii) sent by facsimile transmission to his last known facsimile number; or

(iv) sent by electronic mail transmission to his last known electronic mail address;

(b) in the case of a company, it is—

(i) delivered to any officer of the company by hand;

(ii) left at, or sent by post to, the company's registered office in Hong Kong; *(Amended 28 of 2012 ss. 912 & 920)*

(iii) sent by facsimile transmission to its last known facsimile number; or

(iv) sent by electronic mail transmission to its last known electronic mail address;

(ba) in the case of an open-ended fund company, it is—

(i) delivered to any officer of the company by hand;

(ii) left at, or sent by post to, the company's registered office in Hong Kong;

(iii) sent by facsimile transmission to its last known facsimile number; or

(iv) sent by electronic mail transmission to its last known electronic mail address; *(Added 16 of 2016 s. 18)*

(c) in the case of a registered non-Hong Kong company as defined by section 2(1) of the Companies Ordinance (Cap. 622), it is— *(Amended 30 of 2004 s. 3; 28 of 2012 ss. 912 & 920)*

(i) delivered by hand to, or sent by post to, the authorized representative at the representative's address as shown in the Companies Register; *(Amended 28 of 2012 ss. 912 & 920)*

(ii) sent by facsimile transmission to the last known facsimile number of the person; or

(iii) sent by electronic mail transmission to the last known electronic mail address of the person;

(d) in the case of a partnership, it is—

(i) delivered to any partner of the partnership by hand;

(ii) left at, or sent by post to, the last known principal place of business of the partnership;

(iii) sent by facsimile transmission to the last known facsimile number of the partnership; or

(iv) sent by electronic mail transmission to the last known electronic mail address of the partnership; or

(e) in the case of a body corporate (other than a company, an open-ended fund company, a registered non-Hong

Kong company as defined by section 2(1) of the Companies Ordinance (Cap. 622) or the Commission) or an unincorporated body (other than a partnership), or a tribunal, it is— *(Amended 30 of 2004 s. 3; 28 of 2012 ss. 912 & 920; 16 of 2016 s. 18)*

(i) delivered to any officer of the body or the tribunal (as the case may be) by hand;

(ii) left at, or sent by post to, the last known principal place of business of the body or the tribunal (as the case may be);

(iii) in the case of the body, sent by facsimile transmission to the last known facsimile number of the body; or

(iv) in the case of the body, sent by electronic mail transmission to the last known electronic mail address of the body.

(2) In this section—

authorized representative (獲授權代表) means an authorized representative as defined by section 774(1) of the Companies Ordinance (Cap. 622);

Companies Register (公司登記冊) has the meaning given by section 2(1) of the Companies Ordinance (Cap. 622). *(Added 28 of 2012 ss. 912 & 920)*

401. Evidence regarding Commission's records or documents

A record or document purporting to be a record or document, or a copy of a record or document, signed, executed or issued by or on behalf of the Commission and purporting to be signed or initialled by any member of the Commission or any person performing any function under any of the relevant provisions shall in any proceedings be admissible as evidence of the facts stated in it,

without proof of the signature or initials of the person purporting to sign or initial the record or document.

402. General requirements for documents lodged with Commission

(1) Except as otherwise provided in sections 324 and 347, the Commission may, by notice published in the Gazette, specify any form in respect of any application, statement, notice, return or other document (however described) required to be lodged, filed or submitted with or to the Commission for the purposes of any provision of this Ordinance, either generally or in any particular case, and, without limiting the generality of the foregoing, may in the form—

(a) include directions and instructions relating to the compilation of the application, statement, notice, return or other document (as the case may be);

(b) include directions and instructions relating to the inclusion of statutory declarations made in respect of the particulars in it; and

(c) specify documents by which it is to be accompanied.

(2) For the purposes of subsection (1), the Commission may specify any form by referring in a notice published in the Gazette to the form as separately published by such electronic means as the Commission considers appropriate, instead of setting out the form in a notice published in the Gazette, whereupon the Commission shall for all purposes be regarded as having duly specified the form under subsection (1).

(3) For the purposes of subsection (1), the Commission may specify that different forms are to be used in different circumstances.

(4) Subject to subsections (5) and (6), where—

(a) there is any requirement for any application, statement, notice, return or other document (however described) to

be lodged, filed or submitted with or to the Commission for the purposes of any provision of this Ordinance; and

(b) the Commission has specified any form in respect of it under subsection (1),

the requirement shall not be regarded as having been complied with unless it—

(i) is in the form specified;

(ii) is compiled in accordance with such directions and instructions as are included in the form;

(iii) contains statutory declarations in accordance with such directions and instructions as are included in the form; and

(iv) is accompanied by such documents as are specified in the form.

(5) An application, statement, notice, return or other document shall not by reason of any deviation from a form specified in respect of it under subsection (1) cease to be regarded as being in that form, if the deviation does not affect the substance of the form.

(6) Where the Commission is satisfied that a person has substantial practical difficulties in complying with any of the requirements referred to in subsection (4)(i), (ii), (iii) or (iv), it may in its discretion dispense with the requirements in the case of the person to such extent as it considers necessary.

(7) A notice published pursuant to subsection (1) is not subsidiary legislation.

403. General provisions for approvals by Commission

Where under any provision of this Ordinance, an act cannot be done, or an omission cannot be made, except with the approval, whether in writing or otherwise, of the Commission—

(a) without prejudice to any express provisions in this Ordinance relating to imposition of conditions, the approval may be given subject to such conditions (if any) as the Commission may specify in giving the approval (including conditions which provide that failure to comply with the conditions causes the approval to lapse); and

(b) for the purposes of any pecuniary, custodial or other sanction which may be imposed under any provision of this Ordinance in relation to any such act done or omission made without such approval, the approval shall have no effect to the extent that the act is done or the omission is made (as the case may be) otherwise than in accordance with any such conditions.

404. Exclusions of provisions of Gambling Ordinance

(1) Subject to subsection (2), the Gambling Ordinance (Cap. 148) shall not apply to any transaction or activity which is regulated by or under, or which is carried out in compliance with, this Ordinance.

(2) The Commission may make rules to prescribe any class of transactions or activities (being transactions or activities to which the Gambling Ordinance (Cap. 148) would apart from this section apply), whether by reference to the nature of the transactions or activities or all or any of the parties to or persons involved in the transactions or activities or otherwise, as a class of transactions or activities to which that Ordinance shall apply, whereupon that Ordinance shall have application accordingly.

405. Inland Revenue Ordinance not affected

Nothing in this Ordinance affects section 4 of the Inland Revenue Ordinance (Cap. 112).

Part XVII

Repeals and Related Provisions

(Format changes—E.R. 2 of 2012)

406. Repeals

#(1) Each of the following shall be repealed from a day appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette— *(Amended L.N. 106 of 2002)*

(a) the Securities and Futures Commission Ordinance (Cap. 24);

(b) the Commodities Trading Ordinance (Cap. 250);

(c) the Securities Ordinance (Cap. 333);

(d) the Protection of Investors Ordinance (Cap. 335);

(e) the Stock Exchanges Unification Ordinance (Cap. 361);

(f) the Securities (Insider Dealing) Ordinance (Cap. 395);

(g) the Securities (Disclosure of Interests) Ordinance (Cap. 396);

(h) the Securities and Futures (Clearing Houses) Ordinance (Cap. 420);

(i) the Leveraged Foreign Exchange Trading Ordinance (Cap. 451);

(j) the Exchanges and Clearing Houses (Merger) Ordinance (Cap. 555).

(2) Any repeal under this section is subject to—

(a) the other provisions of this Part; and

(b) Schedule 10.

(3) Without limiting the generality to section 12 of Part 1 of Schedule 1, a reference to any Ordinance in this section includes any subsidiary legislation made under such Ordinance.

Editorial Note:

1 April 2003 was the day appointed under this subsection — see L.N. 13 of 2003.

407. Savings, transitional, consequential and related provisions, etc.

(1) Part 1 of Schedule 10 provides for the savings, transitional and supplemental arrangements that apply on, or relate to, the commencement of this Ordinance or any part thereof.

(2) Part 2 of Schedule 10 provides for the consequential and supplemental amendments that apply on, or relate to, the commencement of this Ordinance or any part thereof, and the enactments specified in column 2 of that Part are amended in the manner set out in column 3 of that Part.

(3) Part 3 of Schedule 10 provides for the savings and transitional arrangements that apply on, or relate to, the commencement# of the Securities and Futures and Companies Legislation (Structured Products Amendment) Ordinance 2011 (8 of 2011). *(Added 8 of 2011 s. 13)*

(4) Part 4 of Schedule 10 provides for the savings and transitional arrangements that apply on, or relate to, the commencement of the Securities and Futures (Amendment) Ordinance 2012 (9 of 2012) or any part of that Ordinance. *(Added 9 of 2012 s. 46)*

(5) Part 5 of Schedule 10 provides for the savings and transitional arrangements that apply on, or relate to, the commencement@ of section 78 of Schedule 11 to the Companies Ordinance (Cap. 622). *(Added 28 of 2012 ss. 912 & 920)*

(5A) Part 6 of Schedule 10 provides for the savings and transitional arrangements that apply on, or relate to, the commencement of Part 4 of the Securities and Futures (Amendment) Ordinance 2014 (6 of 2014) or any provision in Part 4 of that Ordinance. *(Added 17 of 2021 s. 86)*

Editorial Note:

Commencement date: 13 May 2011.

@ Commencement date : 3 March 2014.

408. Provisions of Part XVII, etc. not to derogate from section 23 of Interpretation and General Clauses Ordinance

Except as otherwise provided in this Part or Schedule 10, the provisions of this Part and of Schedule 10 are in addition to and not in derogation of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1).

409. Amendment of Schedule 10

The Chief Executive in Council may, by order published in the Gazette, amend Schedule 10.

(Amended L.N. 29 of 2004)

Schedule 1

[ss. 2, 19, 66, 101A, 102, 164, 171, 174, 175, 202, 381E, 392A & 406 & Schs. 9 & 10]
(Amended 8 of 2011 s. 14; 6 of 2014 s. 52)

Interpretation and General Provisions

(Format changes—E.R. 2 of 2012)

Part 1

Interpretation

1. Interpretation of this Ordinance

In this Ordinance, unless otherwise defined or excluded or the context otherwise requires—

accredited (隸屬) means accredited to a licensed corporation with the Commission's approval under section 122 of this Ordinance;

Advisory Committee (諮詢委員會) means the Advisory Committee referred to in section 7 of this Ordinance;

affiliated operational entity (相聯營運實體) has the meaning given by section 2(1) of the Financial Institutions (Resolution) Ordinance (Cap. 628); *(Added 23 of 2016 s. 221. Amended E.R. 2 of 2017)*

approved money broker (核准貨幣經紀) has the meaning given by section 2(1) of the Banking Ordinance (Cap. 155); *(Added 6 of 2014 s. 52)*

associate (有聯繫者), in relation to a person, means—

(a) the spouse, or any minor child (natural or adopted) or minor step-child, of the person;

(b) any corporation of which the person is a director;

(c) any employee or partner of the person;

(d) the trustee of a trust of which the person, his spouse, minor child (natural or adopted) or minor step-child, is a beneficiary or a discretionary object;

(e) another person in accordance with whose directions or instructions the person is accustomed or obliged to act;

(f) another person accustomed or obliged to act in accordance with the directions or instructions of the person;

(g) a corporation in accordance with the directions or instructions of which, or the directions or instructions of the directors of which, the person is accustomed or obliged to act;

(h) a corporation which is, or the directors of which are, accustomed or obliged to act in accordance with the directions or instructions of the person;

(i) a corporation at general meetings of which the person, either alone or together with another, is directly or indirectly entitled to exercise or control the exercise of 33% or more of the voting power;

(j) a corporation of which the person controls the composition of the board of directors;

(k) where the person is a corporation—

(i) each of its directors and its related corporations and each director or employee of any of its related corporations; and

(ii) a pension fund, provident fund or employee share scheme of the corporation or of a related corporation of the corporation;

(l) without limiting the circumstances in which paragraphs (a) to (k) apply, in circumstances concerning the securities of or other interest in a corporation, or rights arising out of the holding of such securities or such interest, any other person with whom the person has an agreement or arrangement—

(i) with respect to the acquisition, holding or disposal of such securities or such interest; or

(ii) under which they undertake to act together in exercising their voting power at general meetings of the corporation;

associated entity (有聯繫實體), in relation to an intermediary, means a company, or a registered non-Hong Kong company as defined by section 2(1) of the Companies Ordinance (Cap. 622), which— *(Amended 30 of 2004 s. 3; 28 of 2012 ss. 912 & 920)*

(a) is in a controlling entity relationship with the intermediary; and

(b) receives or holds in Hong Kong client assets of the intermediary;

auditor (核數師) means a certified public accountant (practising) as defined by section 2(1) of the Accounting and Financial Reporting Council Ordinance (Cap. 588), or such other person as is prescribed by rules made under section 397 of this Ordinance for the purposes of this definition; *(Amended 23 of 2004 s. 56; L.N. 66 of 2022)*

authorized automated trading services (認可自動化交易服務) means automated trading services which a person is authorized to provide under section 95(2) of this Ordinance;

authorized financial institution (認可財務機構) means an authorized institution as defined in section 2(1) of the Banking Ordinance (Cap. 155);

automated trading services (自動化交易服務) has the meaning assigned to it by Part 2 of Schedule 5 to this Ordinance;

bank (銀行) means any institution carrying on business similar to—

(a) the banking business within the meaning of the Banking Ordinance (Cap. 155) as carried on by an authorized financial institution; or

(b) the business of taking deposits within the meaning of that Ordinance as carried on by an authorized financial institution,

whether it is an authorized financial institution or not, and ***banker*** (銀行) shall be construed accordingly;

bank incorporated outside Hong Kong (在香港以外地方成立為法團的銀行) means a bank incorporated outside Hong Kong that is not an authorized financial institution;

banker's books (銀行簿冊) includes—

(a) books of a banker;

(b) cheques, orders for the payment of money, bills of exchange and promissory notes in the possession of a banker;

(c) securities in the possession of a banker, whether as a pledge or otherwise; and

(d) any material in which information is recorded (however compiled or stored, and whether recorded in a legible form or recorded otherwise than in a legible form but is capable of being reproduced in a legible form) and which is used in the ordinary course of business of a bank;

books (簿冊) includes—

(a) accounts and any accounting information; and

(b) in the case of a banker, any banker's books,

however compiled or stored, and whether recorded in a legible form or recorded otherwise than in a legible form but is capable of being reproduced in a legible form;

broadcast (廣播), in relation to any material (however described), includes having the information contained in the material broadcast;

broadcaster (廣播業者) means a person who lawfully—

(a) establishes and maintains a broadcasting service within the meaning of Part 3A of the Telecommunications Ordinance (Cap. 106); or

(b) provides a broadcasting service as defined in section 2(1) of the Broadcasting Ordinance (Cap. 562);

business day (營業日) means a day other than—

(a) a public holiday; *(Amended 9 of 2012 s. 53)*

(ab) a Saturday; and *(Added 9 of 2012 s. 53)*

(b) a gale warning day or a black rainstorm warning day as defined in section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1);

certificate of deposit (存款證) means a document relating to money, in any currency, which has been deposited with the issuer or some other person, being a document which recognizes an obligation to pay a stated amount to bearer or to order, with or without interest, and being a document by the delivery of which, with or without endorsement, the right to receive that stated amount, with or without interest, is transferable (and, in the case of any such document which is a prescribed instrument by virtue of paragraph (a) of the

definition of ***prescribed instrument*** in section 137B(1) of the Banking Ordinance (Cap. 155), such document includes any right or interest referred to in paragraph (b) of that definition in respect of such document);

certified public accountant (會計師) means a certified public accountant as defined in section 2 of the Professional Accountants Ordinance (Cap. 50); *(Replaced 23 of 2004 s. 56)*

charge (押記) includes any form of security, including a mortgage;

clearing house (結算所) means a person—

(a) whose activities or objects include the provision of services for the clearing and settlement of transactions in securities effected on a recognized stock market or subject to the rules of a recognized exchange company;

(b) whose activities or objects include the provision of services for—

(i) the clearing and settlement of transactions in futures contracts; or

(ii) the day-to-day adjustment of the financial position of futures contracts,

effected on a recognized futures market or subject to the rules of a recognized exchange company; or

(c) who guarantees the settlement of any such transactions as are referred to in paragraph (a) or (b),

but does not include a corporation operated by or on behalf of the Government;

clearing obligation (結算責任) has the meaning given by section 101A of this Ordinance; *(Added 6 of 2014 s. 52)*

clearing participant (結算所參與者) means a person—

(a) who, in accordance with the rules of a recognized clearing house, may participate in one or more of the services provided by the clearing house in its capacity as a clearing house; and

(b) whose name is entered in a list, roll or register kept by that recognized clearing house as a person who may participate in one or more of the services provided by that clearing house;

client (客戶), in relation to an intermediary, means a person for whom the intermediary provides a service the provision of which constitutes a regulated activity, and—

(a) includes another intermediary that—

(i) deposits securities;

(ii) deposits money; or

(iii) deposits any property as collateral,

with the first-mentioned intermediary;

(b) in connection with a leveraged foreign exchange contract, does not include a recognized counterparty;

client assets (客戶資產) means—

(a) client securities and collateral; and

(b) client money;

client collateral (客戶抵押品) means—

(a) securities collateral; and

(b) other collateral;

client money (客戶款項)—

(a) in relation to a licensed corporation, means any money—

(i) received or held by or on behalf of the licensed corporation; or

(ii) received or held by or on behalf of any corporation which is in a controlling entity relationship with the licensed corporation,

which is so received or held on behalf of a client of the licensed corporation or in which a client of the licensed corporation has a legal or equitable interest, and includes any accretions thereto whether as capital or income; or

(b) in relation to a registered institution, means any money—

(i) received or held by or on behalf of the registered institution, in the course of the conduct of any regulated activity for which the registered institution is registered; or

(ii) received or held by or on behalf of any corporation which is in a controlling entity relationship with the registered institution, in relation to such conduct of the regulated activity,

which is so received or held on behalf of a client of the registered institution or in which a client of the registered institution has a legal or equitable interest, and includes any accretions thereto whether as capital or income;

client securities (客戶證券)—

(a) in relation to a licensed corporation, means any securities (other than securities collateral)—

(i) received or held by or on behalf of the licensed corporation; or

(ii) received or held by or on behalf of any corporation which is in a controlling entity relationship with the licensed corporation,

which are so received or held on behalf of a client of the licensed corporation or in which a client of the licensed corporation has a legal or equitable interest; or

(b) in relation to a registered institution, means any securities (other than securities collateral)—

(i) received or held by or on behalf of the registered institution, in the course of the conduct of any regulated activity for which the registered institution is registered; or

(ii) received or held by or on behalf of any corporation which is in a controlling entity relationship with the registered institution, in relation to such conduct of the regulated activity,

which are so received or held on behalf of a client of the registered institution or in which a client of the registered institution has a legal or equitable interest;

client securities and collateral (客戶證券及抵押品) means—

(a) client securities; and

(b) client collateral;

collective investment scheme (集體投資計劃) means—

(a) arrangements in respect of any property—

(i) under which the participating persons do not have day-to-day control over the management of the property, whether or not they have the right to be consulted or to give directions in respect of such management;

(ii) under which—

(A) the property is managed as a whole by or on behalf of the person operating the arrangements;

(B) the contributions of the participating persons and the profits or income from which payments are made to them are pooled; or

(C) the property is managed as a whole by or on behalf of the person operating the arrangements, and the contributions of the participating persons and the profits or income from which payments are made to them are pooled; and

(iii) the purpose or effect, or pretended purpose or effect, of which is to enable the participating persons, whether by acquiring any right, interest, title or benefit in the property or any part of the property or otherwise, to participate in or receive—

(A) profits, income or other returns represented to arise or to be likely to arise from the acquisition, holding, management or disposal of the property or any part of the property, or sums represented to be paid or to be likely to be paid out of any such profits, income or other returns; or

(B) a payment or other returns arising from the acquisition, holding or disposal of, the exercise of any right in, the redemption of, or the expiry of, any right, interest, title or benefit in the property or any part of the property; or

(b) arrangements which are arrangements, or are of a class or description of arrangements, prescribed by notice under section 393 of this Ordinance as being regarded as collective investment schemes in accordance with the terms of the notice,

but does not include—

(i) arrangements operated by a person otherwise than by way of business;

(ii) arrangements under which each of the participating persons is a corporation in the same group of companies as the person operating the arrangements;

(iii) arrangements under which each of the participating persons is a bona fide employee or former employee of a corporation in the same group of companies as the person operating the arrangements, or a spouse, widow, widower, minor child (natural or adopted) or minor step-child of such employee or former employee;

(iv) franchise arrangements under which the franchisor or franchisee earns profits or income by exploiting a right conferred by the arrangements to use a trade name or design or other intellectual property or the goodwill attached to it;

(v) arrangements under which money is taken by a solicitor from his client, or as a stakeholder, acting in his professional capacity in the ordinary course of his practice;

(vi) arrangements made for the purposes of any fund or scheme maintained by the Commission, or by a recognized exchange company, recognized clearing house, recognized exchange controller or recognized investor compensation company, under any provision of this Ordinance for the purpose of providing compensation in the event of default by an exchange participant or a clearing participant;

(vii) arrangements made by any credit union in accordance with the objects thereof;

(viii) arrangements made for the purposes of any chit-fund permitted to operate under the Chit-Fund Businesses (Prohibition) Ordinance (Cap. 262);

(ix) arrangements made for the purposes of the Exchange Fund established by the Exchange Fund Ordinance (Cap. 66);

(x) arrangements which are arrangements, or are of a class or description of arrangements, prescribed by notice under section 393 of this Ordinance as not being regarded as collective investment schemes in accordance with the terms of the notice;

Commission (證監會) means the Securities and Futures Commission referred to in section 3(1) of this Ordinance;

Commissioner of the Independent Commission Against Corruption (廉政專員) means the person who holds the office of the Commissioner of the Independent Commission Against Corruption pursuant to section 5 of the Independent Commission Against Corruption Ordinance (Cap. 204); *(Amended 14 of 2003 s. 24)*

company (公司) means a company as defined in section 2(1) of the Companies Ordinance (Cap. 622); *(Amended 28 of 2012 ss. 912 & 920)*

compensation fund (賠償基金) means the Investor Compensation Fund established under section 236 of this Ordinance;

conduct (行為) includes any act or omission, and any series of acts or omissions;

constitution (章程), in relation to a corporation, including a recognized exchange company, recognized clearing house, recognized exchange controller or recognized investor compensation company, means—

(a) where the corporation is a company, the articles of association of the corporation; or *(Amended 28 of 2012 ss. 912 & 920)*

(b) in any other case, any other instrument providing for the constitution of the corporation;

controlling entity (控權實體), in relation to a corporation, means a person who, either alone or with any of his associates—

(a) is entitled to exercise or control the exercise of not less than—

(i) subject to subparagraph (ii), 20%; or

(ii) where any other percentage is prescribed by rules made under section 397 of this Ordinance for the purposes of this definition, such other percentage,

of the voting power at general meetings of the corporation;

(b) has the right to nominate any of the directors of the corporation; or

(c) has an interest in shares carrying the right to—

(i) veto any resolution; or

(ii) amend, modify, limit or add conditions to any resolution,

at general meetings of the corporation;

controlling entity relationship (控權實體關係), in relation to a corporation, means its relationship with an intermediary by virtue of—

(a) the intermediary being a controlling entity of the corporation;

(b) the corporation being a controlling entity of the intermediary; or

(c) another person, who is a controlling entity of the corporation, being also a controlling entity of the intermediary;

corporation (法團) means a company or other body corporate incorporated either in Hong Kong or elsewhere, but does not include a company or other body corporate which is prescribed by rules made under section 397 of this Ordinance for the purposes of this definition as being exempted from the provisions of this Ordinance, or to the extent that it is prescribed by rules so made as being exempted from any provision of this Ordinance;

court (法庭、法院) includes a magistrate and a tribunal;

credit union (儲蓄互助社) means a credit union registered under the Credit Unions Ordinance (Cap. 119);

currency and interest rate-linked instrument (貨幣及利率掛鈎票據) means—

(a) an instrument that is a structured product only because some or all of the return or amount due (or both the return and the amount due) or the method of settlement is determined by reference to a combination of—

(i) changes in the value or level (or a range within the value or level) of any one or more currency exchange rates or currency exchange rate indices or the occurrence or non-occurrence of any specified event or events relating to any one or more currency exchange rates or currency exchange rate indices; and

(ii) changes in the value or level (or a range within the value or level) of any one or more interest rates or interest rate indices or the occurrence or non-occurrence of any specified event or events relating

to any one or more interest rates or interest rate indices; or

(b) any interests, rights or property prescribed, or of a class or description prescribed, by notice under section 392 of this Ordinance as being regarded as currency and interest rate-linked instruments in accordance with the notice,

but does not include any interests, rights or property prescribed, or of a class or description prescribed, by notice under section 392 of this Ordinance as not being regarded as currency and interest rate-linked instruments in accordance with the notice; *(Added 8 of 2011 s. 14)*

currency-linked instrument (貨幣掛鈎票據) means—

(a) an instrument that is a structured product only because some or all of the return or amount due (or both the return and the amount due) or the method of settlement is determined by reference to one or more of—

(i) changes in the value or level (or a range within the value or level) of any one or more currency exchange rates or currency exchange rate indices; or

(ii) the occurrence or non-occurrence of any specified event or events relating to any one or more currency exchange rates or currency exchange rate indices; or

(b) any interests, rights or property prescribed, or of a class or description prescribed, by notice under section 392 of this Ordinance as being regarded as currency-linked instruments in accordance with the notice,

but does not include any interests, rights or property prescribed, or of a class or description prescribed, by notice under section 392 of this Ordinance as not being regarded as

currency-linked instruments in accordance with the notice; *(Added 8 of 2011 s. 14)*

data material (數據材料) means a document or other material used with or produced by any information system;

dealing (交易)—

(a) in relation to securities, means, whether as principal or agent, making or offering to make an agreement with another person, or inducing or attempting to induce another person, to enter into or to offer to enter into an agreement—

(i) for or with a view to acquiring, disposing of, subscribing for or underwriting securities; or

(ii) the purpose or pretended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities; or

(b) in relation to futures contracts, means, whether as principal or agent—

(i) making or offering to make an agreement with another person to enter into, or to acquire or dispose of, a futures contract;

(ii) inducing or attempting to induce another person to enter into, or to offer to enter into, a futures contract; or

(iii) inducing or attempting to induce another person to acquire or dispose of a futures contract;

debenture (債權證) includes debenture stocks, bonds, and other debt securities of a corporation, whether constituting a charge on the assets of the corporation or not; *(Amended 8 of 2011 s. 14)*

defalcation (虧空) means misapplication, including misappropriation, of any property;

director (董事) includes a shadow director and any person occupying the position of director by whatever name called;

disclosure proceedings (關於披露的研訊程序) has the meaning given by section 307I(1) of this Ordinance; *(Added 9 of 2012 s. 11)*

document (文件) includes any register and books, any tape recording and any form of input or output into or from an information system, and any other document or similar material (whether produced mechanically, electronically, magnetically, optically, manually or by any other means);

exchange participant (交易所參與者) means a person—

(a) who, in accordance with the rules of a recognized exchange company, may trade through that exchange company or on a recognized stock market or a recognized futures market operated by that exchange company; and

(b) whose name is entered in a list, roll or register kept by that recognized exchange company as a person who may trade through that exchange company or on a recognized stock market or a recognized futures market operated by that exchange company;

executive director (執行董事), in relation to the Commission, means the chief executive officer of the Commission or any other person who is appointed as an executive director of the Commission under section 1 of Part 1 of Schedule 2 to this Ordinance (whether or not acting in any other capacity under that Part); *(Amended 15 of 2006 s. 5)*

executive officer (主管人員)—

(a) in relation to a licensed corporation, means a responsible officer of the licensed corporation;

(b) in relation to a registered institution, means a person who is an executive officer of the registered institution under the Banking Ordinance (Cap. 155); or

(c) in relation to an associated entity of an intermediary, means any director of the associated entity who is responsible for directly supervising the receiving or holding by the associated entity of client assets of the intermediary;

fee (費用) includes a charge;

financial accommodation (財務通融) means a loan or other arrangement under which a person is or is to be provided with credit, whether directly or through a third party, and in particular includes an overdraft, a discounted negotiable instrument, a guarantee, a forbearance from enforcing any debt that in substance is a loan, and also includes an agreement to secure the payment or repayment of any such accommodation;

financial product (金融產品) means—

(a) any securities;

(b) any futures contract;

(c) any collective investment scheme;

(d) any leveraged foreign exchange contract;

(e) any structured product; *(Added 8 of 2011 s. 14)*

financial resources rules (財政資源規則) means rules made under section 145 of this Ordinance;

financial year (財政年度)—

(a) in relation to the Commission, means the financial year referred to in section 13(1) of this Ordinance; or

(b) in relation to an intermediary, or an associated entity of an intermediary, means—

(i) the financial year in respect of which notification is given to the Commission under section 155(1) of this Ordinance or, where an approval is granted under section 155(3)(a) of this Ordinance, the financial year in respect of which the approval is granted;

(ii) the financial year in respect of which notification is given to the Monetary Authority under section 59B(1) of the Banking Ordinance (Cap. 155) or, where an approval is granted under section 59B(3)(a) of that Ordinance, the financial year in respect of which the approval is granted; or

(iii) in any other case, a period of 12 consecutive months ending on 31 March in a calendar year;

function (職能) includes power and duty;

futures contract (期貨合約) means—

(a) a contract or an option on a contract made under the rules or conventions of a futures market;

(b) interests, rights or property which is interests, rights or property, or is of a class or description of interests, rights or property, prescribed by notice under section 392 of this Ordinance as being regarded as futures contracts in accordance with the terms of the notice,

but does not include interests, rights or property which is interests, rights or property, or is of a class or description of interests, rights or property, prescribed by notice under section 392 of this Ordinance as not being regarded as futures contracts in accordance with the terms of the notice;

Futures Exchange Company (期交所) means the company incorporated, and registered by the name Hong Kong Futures Exchange Limited, under the relevant Ordinance; *(Amended 28 of 2012 ss. 912 & 920)*

futures market (期貨市場) means a place at which facilities are provided for persons to negotiate or conclude sales and purchases of, or for bringing together on a regular basis sellers and purchasers of—

(a) contracts the effect of which is—

(i) that one party agrees to deliver to the other party at an agreed future time an agreed property, or an agreed quantity of a property, at an agreed price; or

(ii) that the parties will make an adjustment between them at an agreed future time according to whether at that time an agreed property is worth more or less or an index or other factor stands at a higher or lower level than a value or level agreed at the time of making of the contract; or

(b) options on contracts of the kind described in paragraph (a),

where—

(i) the contracts or options of the kind described in paragraph (a) or (b) are novated or guaranteed by a central counterparty under the rules or conventions of the market on which they are traded; or

(ii) the contractual obligations under the contracts or options of the kind described in paragraph (a) or (b) are normally discharged before the contractual expiry date under the rules or conventions of the market on which they are traded,

but does not include the office of a recognized clearing house;

group of companies (公司集團) means any 2 or more corporations one of which is the holding company of the other or others (as the case may be);

hold (持有), in relation to any property, includes—

(a) possession of the property;

(b) being registered or otherwise recorded, as having title to or being entitled to receive the property, in any register or other record (however compiled or stored) which is established or created for the purpose of identifying persons having title to or being entitled to receive any property; and

(c) in the case of a person carrying on business, the person being in a position to transfer the property to himself or otherwise receive the benefit of the property—

(i) where another person has a legal or equitable interest in the property;

(ii) where there is a connection between the property and the business which is carried on by the person; and

(iii) regardless of whether it would be lawful or unlawful for the person to transfer the property to himself or otherwise receive the benefit of the property,

but does not include, in the case of a cheque or other order made payable to any person, the possession of the cheque or other order during the course of dispatching or delivering it to that person or any other person on behalf of that person;

holding company (控權公司) means, in relation to a corporation, any other corporation of which it is a subsidiary; *(Replaced 28 of 2012 ss. 912 & 920)*

incorporated (成立、成立為法團) includes formed or established, by whatever means;

information (資訊、資料、消息) includes data, text, images, sound codes, computer programmes, software and databases, and any combination thereof;

information system (資訊系統) means an information system as defined in section 2(1) of the Electronic Transactions Ordinance (Cap. 553);

Insurance Authority (保監局) means the Insurance Authority established under section 4AAA of the Insurance Ordinance (Cap. 41); *(Replaced 12 of 2015 s. 144)*

insurer (保險人) means an insurer as defined in section 2(1) of the Insurance Ordinance (Cap. 41); *(Amended 12 of 2015 s. 144)*

interest rate-linked instrument (利率掛鈎票據) means—

(a) an instrument that is a structured product only because some or all of the return or amount due (or both the return and the amount due) or the method of settlement is determined by reference to one or more of—

(i) changes in the value or level (or a range within the value or level) of any one or more interest rates or interest rate indices; or

(ii) the occurrence or non-occurrence of any specified event or events relating to any one or more interest rates or interest rate indices; or

(b) any interests, rights or property prescribed, or of a class or description prescribed, by notice under section 392 of this Ordinance as being regarded as interest rate-linked instruments in accordance with the notice,

but does not include any interests, rights or property prescribed, or of a class or description prescribed, by notice under section 392 of this Ordinance as not being regarded as interest rate-linked instruments in accordance with the notice; *(Added 8 of 2011 s. 14)*

intermediary (中介人) means a licensed corporation or a registered institution;

judicial or other proceedings (司法或其他法律程序) means any legal proceedings, whether in the nature of judicial proceedings or otherwise;

legal officer (律政人員) means a legal officer as defined in section 2 of the Legal Officers Ordinance (Cap. 87);

leveraged foreign exchange contract (槓桿式外匯交易合約) has the meaning assigned to it by Part 2 of Schedule 5 to this Ordinance;

leveraged foreign exchange trading (槓桿式外匯交易) has the meaning assigned to it by Part 2 of Schedule 5 to this Ordinance;

licence (牌、牌照) means a licence granted under section 116, 117, 120 or 121 of this Ordinance, and ***licensed*** (獲發牌、持牌) shall be construed accordingly;

licensed corporation (持牌法團) means a corporation which is granted a licence under section 116 or 117 of this Ordinance;

licensed person (持牌人) means a licensed corporation or a licensed representative;

licensed representative (持牌代表) means an individual who is granted a licence under section 120 or 121 of this Ordinance;

liquidator (清盤人) includes a provisional liquidator;

listed (上市) means listed on a recognized stock market, and for the purposes of this definition—

(a) a corporation shall be regarded as listed if any of its securities are listed;

(b) securities shall be regarded as listed when a recognized exchange company has, on the application of the corporation which issued them, or on the application

of a holder of them, agreed to allow, subject to the requirements of this Ordinance, dealings in those securities to take place on a recognized stock market, and shall continue to be so regarded during a period of suspension of dealings in those securities on the recognized stock market;

listing (上市), in relation to securities, means the process by which the securities are listed;

live broadcast (直播), in relation to any material (however described), means having the material broadcast without its being recorded in advance;

MA investigator (金管局調查員) has the meaning given by section 178 of this Ordinance; *(Added 6 of 2014 s. 52)*

Mandatory Provident Fund Schemes Authority (積金局) means the Mandatory Provident Fund Schemes Authority established under section 6 of the Mandatory Provident Fund Schemes Ordinance (Cap. 485);

market contract (市場合約) means—

(a) a contract that is subject to the rules of a recognized clearing house and entered into by the clearing house with a clearing participant, whether or not pursuant to a novation, for the purpose of the clearing and settlement of a transaction in securities or futures contracts that is—

(i) effected on a recognized stock market or a recognized futures market; or

(ii) subject to the rules of a recognized exchange company;

(b) a contract that is subject to the rules of a recognized clearing house and entered into by the clearing house with a clearing participant, whether or not pursuant to a

novation, for the purpose of the clearing and settlement of an OTC derivative transaction; or

#(c) a contract that is—

(i) subject to the rules of a designated CCP (as defined by section 101A of this Ordinance) that is a provider of authorized automated trading services and specified by the Commission by notice published in the Gazette under section 1C; and

(ii) entered into by the designated CCP with any one of its members, whether or not pursuant to a novation, for the purpose of the clearing and settlement of an OTC derivative transaction; *(Replaced 6 of 2014 s. 52)*

market misconduct (市場失當行為) has the meaning assigned to it by section 245(1) of this Ordinance;

Market Misconduct Tribunal (市場失當行為審裁處) means the Market Misconduct Tribunal established by section 251 of this Ordinance;

member (成員), in relation to the Commission, means— *(Amended 15 of 2006 s. 5)*

(a) the chairman of the Commission; or

(b) the chief executive officer or any other executive director or non-executive director of the Commission (whether or not acting in any other capacity under Part 1 of Schedule 2 to this Ordinance); *(Amended 15 of 2006 s. 5)*

minor (未成年), in relation to a person, means not having attained the age of 18 years;

misfeasance (不當行為) means the performance of an otherwise lawful act in a wrongful manner;

Monetary Authority (金融管理專員) means the Monetary Authority appointed under section 5A of the Exchange Fund Ordinance (Cap. 66);

money laundering activities (洗錢活動) means activities intended to have the effect of making any property—

(a) which is the proceeds obtained from the commission of an offence under the laws of Hong Kong, or of any conduct which if occurred in Hong Kong would constitute an offence under the laws of Hong Kong; or

(b) which in whole or in part, directly or indirectly, represents such proceeds,

not to appear to be or so represent such proceeds;

multilateral agency (多邊機構) means a body specified in Part 4;

non-executive director (非執行董事), in relation to the Commission, means a person who is appointed as a non-executive director of the Commission under section 1 of Part 1 of Schedule 2 to this Ordinance (whether or not acting in any other capacity under that Part); *(Amended 15 of 2006 s. 5)*

non-Hong Kong company (非香港公司) has the meaning given by section 2(1) of the Companies Ordinance (Cap. 622); *(Added 30 of 2004 s. 3. Amended 28 of 2012 ss. 912 & 920)*

number (數目), in relation to shares which in the context can be construed to include stock, includes amount;

OFC rules (《開放式基金型公司規則》) has the meaning given by section 112A of this Ordinance; *(Added 16 of 2016 s. 19)*

officer (高級人員)—

(a) in relation to a corporation, means a director, manager or secretary of, or any other person involved in the management of, the corporation; or

(b) in relation to an unincorporated body, means any member of the governing body of the unincorporated body;

Official Receiver (破產管理署署長) means the Official Receiver appointed under section 75 of the Bankruptcy Ordinance (Cap. 6);

Ombudsman (申訴專員) means The Ombudsman referred to in section 3(1) of The Ombudsman Ordinance (Cap. 397);

open-ended fund company (開放式基金型公司) has the meaning given by section 112A of this Ordinance; *(Added 16 of 2016 s. 19)*

OTC derivative product (場外衍生工具產品) has the meaning given by section 1B; *(Added 6 of 2014 s. 52)*

OTC derivative transaction (場外衍生工具交易) means a transaction in an OTC derivative product; *(Added 6 of 2014 s. 52)*

other collateral (其他抵押品)—

(a) in relation to a licensed corporation, means any property (other than securities or money)—

(i) deposited with, or otherwise provided by or on behalf of a client of the licensed corporation to, the licensed corporation; or

(ii) deposited with, or otherwise provided by or on behalf of a client of the licensed corporation to, any other intermediary or person,

which is so deposited or provided—

(A) as security for the provision by the licensed corporation of financial accommodation; or

(B) to facilitate the provision by the licensed corporation of financial accommodation under

an arrangement that confers on the licensed corporation a collateral interest in the property; or

(b) in relation to a registered institution, means any property (other than securities or money)—

(i) deposited with, or otherwise provided by or on behalf of a client of the registered institution to, the registered institution, in the course of the conduct of any regulated activity for which the registered institution is registered; or

(ii) deposited with, or otherwise provided by or on behalf of a client of the registered institution to, any other intermediary or person, in relation to such conduct of the regulated activity,

which is so deposited or provided—

(A) as security for the provision by the registered institution of financial accommodation; or

(B) to facilitate the provision by the registered institution of financial accommodation under an arrangement that confers on the registered institution a collateral interest in the property;

performance (執行), in relation to a function, includes discharge and exercise;

possession (管有), in relation to any matter, includes custody, control and power of or over the matter;

prescribed person (訂明人士) has the meaning given by section 101A of this Ordinance; *(Added 6 of 2014 s. 52)*

printed licence (印刷本牌照) means a certificate printed on paper or in any other physical form certifying the grant of a licence (whether issued before, on or after the commencement date§ of Part 2 of the Securities and Futures (Amendment) Ordinance 2015 (19 of 2015)); *(Added 19 of 2015 s. 12)*

Privacy Commissioner for Personal Data (私隱專員) means the Privacy Commissioner for Personal Data established under section 5(1) of the Personal Data (Privacy) Ordinance (Cap. 486);

professional investor (專業投資者) means—

(a) any recognized exchange company, recognized clearing house, recognized exchange controller or recognized investor compensation company, or any person authorized to provide automated trading services under section 95(2) of this Ordinance;

(b) any intermediary, or any other person carrying on the business of the provision of investment services and regulated under the law of any place outside Hong Kong;

(c) any authorized financial institution, or any bank which is not an authorized financial institution but is regulated under the law of any place outside Hong Kong;

(d) any insurer authorized under the Insurance Ordinance (Cap. 41), or any other person carrying on insurance business and regulated under the law of any place outside Hong Kong; *(Amended 12 of 2015 s. 144)*

(e) any scheme which—

(i) is a collective investment scheme authorized under section 104 of this Ordinance; or

(ii) is similarly constituted under the law of any place outside Hong Kong and, if it is regulated under the law of such place, is permitted to be operated under the law of such place,

or any person by whom any such scheme is operated;

(f) any registered scheme as defined in section 2(1) of the Mandatory Provident Fund Schemes Ordinance

(Cap. 485), or its constituent fund as defined in section 2 of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A), or any person who, in relation to any such registered scheme, is an approved trustee or service provider as defined in section 2(1) of that Ordinance or who is an investment manager of any such registered scheme or constituent fund;

(g) any scheme which—

(i) is a registered scheme as defined in section 2(1) of the Occupational Retirement Schemes Ordinance (Cap. 426); or

(ii) is an offshore scheme as defined in section 2(1) of that Ordinance and, if it is regulated under the law of the place in which it is domiciled, is permitted to be operated under the law of such place,

or any person who, in relation to any such scheme, is an administrator as defined in section 2(1) of that Ordinance;

(h) any government (other than a municipal government authority), any institution which performs the functions of a central bank, or any multilateral agency;

(i) except for the purposes of Schedule 5 to this Ordinance, any corporation which is—

(i) a wholly owned subsidiary of—

(A) an intermediary, or any other person carrying on the business of the provision of investment services and regulated under the law of any place outside Hong Kong; or

(B) an authorized financial institution, or any bank which is not an authorized financial

institution but is regulated under the law of any place outside Hong Kong;

(ii) a holding company which holds all the issued share capital of—

(A) an intermediary, or any other person carrying on the business of the provision of investment services and regulated under the law of any place outside Hong Kong; or

(B) an authorized financial institution, or any bank which is not an authorized financial institution but is regulated under the law of any place outside Hong Kong; or

(iii) any other wholly owned subsidiary of a holding company referred to in subparagraph (ii); or

(j) any person of a class which is prescribed by rules made under section 397 of this Ordinance for the purposes of this paragraph as within the meaning of this definition for the purposes of the provisions of this Ordinance, or to the extent that it is prescribed by rules so made as within the meaning of this definition for the purposes of any provision of this Ordinance;

property (財產) includes—

(a) money, goods, choses in action and land, whether in Hong Kong or elsewhere; and

(b) obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, arising out of or incident to property as defined in paragraph (a);

prospectus (招股章程) means prospectus as defined in section 2(1) of the Companies (Winding Up and Miscellaneous

Provisions) Ordinance (Cap. 32); *(Replaced 30 of 2004 s. 3. Amended 28 of 2012 ss. 912 & 920)*

public (公眾、大眾) means the public of Hong Kong, and includes any class of that public;

purchase (買、購買), in relation to securities, includes subscribing for or acquiring the securities, in whatever form the consideration may be;

qualifying credit rating (合資格信貸評級) means—

(a) a credit rating specified in Part 5; or

(b) any credit rating which, in the opinion of the Commission, is equivalent to a credit rating specified in Part 5;

recognized clearing house (認可結算所) means a company recognized as a clearing house under section 37(1) of this Ordinance;

recognized counterparty (認可對手方) means—

(a) an authorized financial institution;

(b) in relation to a particular transaction conducted by a corporation licensed for Type 3 regulated activity, another corporation which is also so licensed; or

(c) an institution prescribed by rules made under section 397 of this Ordinance for the purposes of this definition as a recognized counterparty;

recognized exchange company (認可交易所) means a company recognized as an exchange company under section 19(2) of this Ordinance;

recognized exchange controller (認可控制人) means a company recognized as an exchange controller under section 59(2) of this Ordinance;

recognized futures market (認可期貨市場) means a futures market operated by a recognized exchange company;

recognized investor compensation company (認可投資者賠償公司) means a company recognized as an investor compensation company under section 79(1) of this Ordinance;

recognized stock market (認可證券市場) means a stock market operated by a recognized exchange company;

record (紀錄) means any record of information (however compiled or stored) and includes—

(a) any books, deeds, contract or agreement, voucher, receipt or data material, or information which is recorded otherwise than in a legible form but is capable of being reproduced in a legible form; and

(b) any document, disc, tape, sound track or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of other equipment) of being reproduced, and any film (including a microfilm), tape or other device in which visual images are embodied so as to be capable (with or without the aid of other equipment) of being reproduced;

record keeping obligation (備存紀錄責任) has the meaning given by section 101A of this Ordinance; *(Added 6 of 2014 s. 52)*

registered (註冊) means registered under section 119 of this Ordinance, and ***registration*** (註冊) shall be construed accordingly;

registered institution (註冊機構) means an authorized financial institution which is registered under section 119 of this Ordinance;

Registrar of Companies (公司註冊處處長) means the Registrar of Companies appointed under section 21(1) of the Companies Ordinance (Cap. 622); *(Amended 28 of 2012 ss. 912 & 920)*

regulated activity (受規管活動) means any of the regulated activities specified in Part 1 of Schedule 5 to this Ordinance, and a reference to a type of regulated activity by number shall be construed as a reference to the type of regulated activity of that number as specified in that Part;

regulated investment agreement (受規管投資協議) means an agreement the purpose or effect, or pretended purpose or effect, of which is to provide, whether conditionally or unconditionally, to any party to the agreement a profit, income or other returns calculated by reference to changes in the value of any property, but does not include an interest in a collective investment scheme;

relevant Ordinance (《有關條例》) means the Companies Ordinance (Cap. 32) as in force from time to time before the commencement date[##] of section 2 of Schedule 9 to the Companies Ordinance (Cap. 622); *(Added 28 of 2012 ss. 912 & 920)*

relevant provisions (有關條文) means the provisions of—

(a) this Ordinance;

(b) Parts II and XII of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), so far as those Parts relate, directly or indirectly, to the performance of functions relating to prospectuses, whether or not such functions have been made the subject of a transfer order under section 25 or 68 of this Ordinance; *(Amended 28 of 2012 ss. 912 & 920)*

(ba) Part 5 of the Companies Ordinance (Cap. 622), so far as that Part relates, directly or indirectly, to the performance of functions relating to—

(i) the buy-back by a corporation of its own shares; or

(ii) a corporation giving financial assistance for the acquisition of its own shares,

whether or not such functions have been made the subject of a transfer order under section 25 or 68 of this Ordinance; *(Added 28 of 2012 ss. 912 & 920)*

(c) Parts II and XII of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), for the purposes only of section 213 of this Ordinance, and so far as those Parts relate, directly or indirectly, to an advertisement mentioned in section 38B(1) of that Ordinance; *(Added 30 of 2004 s. 3. Amended 28 of 2012 ss. 912 & 920)*

(d) Part 2 (except section 6) of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615); *(Added 15 of 2011 s. 91. Amended 4 of 2018 s. 47)*

relevant share capital (有關股本) means the issued share capital of a corporation which is of a class carrying rights to vote in all circumstances at general meetings of the corporation;

remuneration (報酬) includes money, any consideration, financial accommodation or benefit, whether paid, provided or supplied directly or indirectly;

repealed Commodities Trading Ordinance (已廢除的《商品交易條例》) means the Commodities Trading Ordinance (Cap. 250) repealed under section 406 of this Ordinance;

repealed Exchanges and Clearing Houses (Merger) Ordinance (已廢除的《交易所及結算所(合併)條例》) means the Exchanges and Clearing Houses (Merger) Ordinance (Cap. 555) repealed under section 406 of this Ordinance;

repealed Leveraged Foreign Exchange Trading Ordinance (已廢除的《槓桿式外匯買賣條例》) means the Leveraged Foreign Exchange Trading Ordinance (Cap. 451) repealed under section 406 of this Ordinance;

repealed Protection of Investors Ordinance (已廢除的《保障投資者條例》) means the Protection of Investors Ordinance (Cap. 335) repealed under section 406 of this Ordinance;

repealed Securities and Futures (Clearing Houses) Ordinance (已廢除的《證券及期貨(結算所)條例》) means the Securities and Futures (Clearing Houses) Ordinance (Cap. 420) repealed under section 406 of this Ordinance;

repealed Securities and Futures Commission Ordinance (已廢除的《證券及期貨事務監察委員會條例》) means the Securities and Futures Commission Ordinance (Cap. 24) repealed under section 406 of this Ordinance;

repealed Securities (Disclosure of Interests) Ordinance (已廢除的《證券(披露權益)條例》) means the Securities (Disclosure of Interests) Ordinance (Cap. 396) repealed under section 406 of this Ordinance;

repealed Securities (Insider Dealing) Ordinance (已廢除的《證券(內幕交易)條例》) means the Securities (Insider Dealing) Ordinance (Cap. 395) repealed under section 406 of this Ordinance;

repealed Securities Ordinance (已廢除的《證券條例》) means the Securities Ordinance (Cap. 333) repealed under section 406 of this Ordinance;

repealed Stock Exchanges Unification Ordinance (已廢除的《證券交易所合併條例》) means the Stock Exchanges Unification Ordinance (Cap. 361) repealed under section 406 of this Ordinance;

reporting obligation (匯報責任) has the meaning given by section 101A of this Ordinance; *(Added 6 of 2014 s. 52)*

resolution authority (處置機制當局) has the meaning given by section 2(1) of the Financial Institutions (Resolution) Ordinance (Cap. 628); *(Added 23 of 2016 s. 221. Amended E.R. 2 of 2017)*

Resolution Compensation Tribunal (處置補償審裁處) means—

(a) the Tribunal established by section 127(1) of the Financial Institutions (Resolution) Ordinance (Cap. 628); or *(Amended E.R. 2 of 2017)*

(b) an additional tribunal established under section 128(1) of that Ordinance; *(Added 23 of 2016 s. 221)*

Resolvability Review Tribunal (處置可行性覆檢審裁處) means—

(a) the Tribunal established by section 110(1) of the Financial Institutions (Resolution) Ordinance (Cap. 628); or *(Amended E.R. 2 of 2017)*

(b) an additional tribunal established under section 111(1) of that Ordinance; *(Added 23 of 2016 s. 221)*

responsible officer (負責人員) means an individual who is approved by the Commission under section 126(1) of this Ordinance as a responsible officer of a licensed corporation;

Risk Management Committee (風險管理委員會), in relation to a recognized exchange controller, means the committee of that name established under section 65(1) of this Ordinance by the controller;

rules (規章)—

(a) in relation to a recognized exchange company, means the rules, regulations and directions, by whatever name they may be called and wherever contained, governing—

(i) its exchange participants;

(ii) the persons who may participate in any of the services it provides;

(iii) the setting and levying of fees;

(iv) the listing of securities;

(v) the trading of securities or futures contracts;

(vi) the provision of other services; or

(vii) generally, its management, operations or procedures,

and includes, in respect of sections 24 and 92 of this Ordinance, its constitution;

(b) in relation to a recognized clearing house, means the rules, regulations and directions, by whatever name they may be called and wherever contained, governing—

(i) its clearing participants;

(ii) the persons who may participate in any of the services it provides;

(iii) the setting and levying of fees;

(iv) the provision of clearing and settlement services, and the suspension or withdrawal of such services;

(v) the provision of other services; or

(vi) generally, its management, operations or procedures,

and includes, in respect of sections 41 and 92 of this Ordinance, its constitution;

(c) in relation to a recognized exchange controller, means—

(i) its constitution; or

(ii) the rules, regulations and directions, by whatever name they may be called and wherever contained, governing the conduct or procedures of—

(A) the recognized exchange controller;

(B) the Risk Management Committee; or

(C) any person or body of persons declared in a notice under section 66(2) of this Ordinance to be a person or body of persons (as the case

may be) to which this sub-subparagraph shall apply; or

(d) in relation to a recognized investor compensation company, means—

(i) its constitution; or

(ii) the rules, regulations and directions, by whatever name they may be called and wherever contained, governing its management, operations or procedures, or its provision of services;

scheme property (計劃財產) has the meaning given by section 112A of this Ordinance; *(Added 16 of 2016 s. 19)*

securities (證券) means—

(a) shares, stocks, debentures, loan stocks, funds, bonds or notes of, or issued by, a body, whether incorporated or unincorporated, or a government or municipal government authority;

(b) rights, options or interests (whether described as units or otherwise) in, or in respect of, such shares, stocks, debentures, loan stocks, funds, bonds or notes;

(c) certificates of interest or participation in, temporary or interim certificates for, receipts for, or warrants to subscribe for or purchase, such shares, stocks, debentures, loan stocks, funds, bonds or notes;

(d) interests in any collective investment scheme;

(e) interests, rights or property, whether in the form of an instrument or otherwise, commonly known as securities;

(f) interests, rights or property which is interests, rights or property, or is of a class or description of interests, rights or property, prescribed by notice under section 392 of this Ordinance as being regarded as securities in

accordance with the terms of the notice; *(Amended 8 of 2011 s. 14)*

(g) a structured product that does not come within any of paragraphs (a) to (f) but in respect of which the issue of any advertisement, invitation or document that is or contains an invitation to the public to do any act referred to in section 103(1)(a) of this Ordinance is authorized, or required to be authorized, under section 105(1) of this Ordinance, *(Added 8 of 2011 s. 14)*

but does not include—

(i) shares or debentures of a company that is a private company within the meaning of section 11 of the Companies Ordinance (Cap. 622); *(Amended 28 of 2012 ss. 912 & 920)*

(ii) any interest in any collective investment scheme that is—

(A) a registered scheme as defined in section 2(1) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485), or its constituent fund as defined in section 2 of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A);

(B) an occupational retirement scheme as defined in section 2(1) of the Occupational Retirement Schemes Ordinance (Cap. 426); or

(C) a contract of insurance in relation to any class of insurance business specified in Schedule 1 to the Insurance Ordinance (Cap. 41); *(Amended 12 of 2015 s. 144)*

(iii) any interest arising under a general partnership agreement or proposed general partnership agreement unless the agreement or proposed agreement relates

to an undertaking, scheme, enterprise or investment contract promoted by or on behalf of a person whose ordinary business is or includes the promotion of similar undertakings, schemes, enterprises or investment contracts (whether or not that person is, or is to become, a party to the agreement or proposed agreement);

(iv) any negotiable receipt or other negotiable certificate or document evidencing the deposit of a sum of money, or any rights or interest arising under the receipt, certificate or document;

(v) any bill of exchange within the meaning of section 3 of the Bills of Exchange Ordinance (Cap. 19) and any promissory note within the meaning of section 89 of that Ordinance;

(vi) any debenture that specifically provides that it is not negotiable or transferable (excluding a debenture that is a structured product in respect of which the issue of any advertisement, invitation or document that is or contains an invitation to the public to do any act referred to in section 103(1)(a) of this Ordinance is authorized, or required to be authorized, under section 105(1) of this Ordinance); *(Amended 8 of 2011 s. 14)*

(vii) interests, rights or property which is interests, rights or property, or is of a class or description of interests, rights or property, prescribed by notice under section 392 of this Ordinance as not being regarded as securities in accordance with the terms of the notice;

Securities and Futures Appeals Tribunal (上訴審裁處) means the Securities and Futures Appeals Tribunal established by section 216 of this Ordinance;

securities and futures industry (證券期貨業) means the securities and futures market and participants (other than investors)

therein (including recognized exchange companies, recognized clearing houses, recognized exchange controllers, recognized investor compensation companies and persons carrying on any regulated activity), and any activities related to financial products that are carried on in such securities and futures market or by such participants;

securities and futures market (證券期貨市場) means any market, exchange, place or service which facilitates the bringing together on a regular basis persons who are parties to transactions related to financial products;

securities borrowing and lending agreement (證券借貸協議) means an agreement whereby a person borrows or lends securities pursuant to an arrangement where the borrower undertakes to return securities of the same description, or pay the equivalent value of the securities, to the lender, and includes a stock borrowing within the meaning of section 19(16) of the Stamp Duty Ordinance (Cap. 117);

securities collateral (證券抵押品)—

(a) in relation to a licensed corporation, means any securities—

(i) deposited with, or otherwise provided by or on behalf of a client of the licensed corporation to, the licensed corporation; or

(ii) deposited with, or otherwise provided by or on behalf of a client of the licensed corporation to, any other intermediary or person,

which are so deposited or provided—

(A) as security for the provision by the licensed corporation of financial accommodation; or

(B) to facilitate the provision by the licensed corporation of financial accommodation under

an arrangement that confers on the licensed corporation a collateral interest in the securities; or

(b) in relation to a registered institution, means any securities—

(i) deposited with, or otherwise provided by or on behalf of a client of the registered institution to, the registered institution, in the course of the conduct of any regulated activity for which the registered institution is registered; or

(ii) deposited with, or otherwise provided by or on behalf of a client of the registered institution to, any other intermediary or person, in relation to such conduct of the regulated activity,

which are so deposited or provided—

(A) as security for the provision by the registered institution of financial accommodation; or

(B) to facilitate the provision by the registered institution of financial accommodation under an arrangement that confers on the registered institution a collateral interest in the securities;

securities margin financing (證券保證金融資) has the meaning assigned to it by Part 2 of Schedule 5 to this Ordinance;

served (送達) includes given;

shadow director (幕後董事) means a person in accordance with whose directions or instructions the directors of a corporation are accustomed or obliged to act, but a person shall not be regarded as a shadow director by reason only of the fact that the directors act on advice given by him in a professional capacity;

share (股份) means any share in the share capital of a corporation, and, except where a distinction between stock and shares is express or implied, includes stock;

short selling order (賣空指示)—

(a) subject to paragraph (b), means an order to sell securities in respect of which the seller, or the person for whose benefit or on whose behalf the order is made, has a presently exercisable and unconditional right to vest the securities in the purchaser of them by virtue of having—

(i) under a securities borrowing and lending agreement—

(A) borrowed the securities; or

(B) obtained a confirmation from the counterparty to the agreement that the counterparty has the securities available to lend to him;

(ii) a title to other securities which are convertible into or exchangeable for the securities to which the order relates;

(iii) an option to acquire the securities to which the order relates;

(iv) rights or warrants to subscribe for and to receive the securities to which the order relates; or

(v) entered into with any other person an agreement or arrangement of a description prescribed by rules made under section 397 of this Ordinance for the purposes of this subparagraph;

(b) in relation to paragraph (a)(ii), (iii), (iv) or (v), does not include an order where the seller, or the person for whose benefit or on whose behalf the order is made, has, at the time of placing the order, issued unconditional

instructions to obtain the securities to which the order relates;

specified debt securities (指明債務證券) means debenture stocks, loan stocks, debentures, bonds, notes, indexed bonds, convertible debt securities, bonds with warrants, non-interest bearing debt securities and other securities or instruments acknowledging, evidencing or creating indebtedness—

(a) which are issued or guaranteed by the Government;

(b) which are issued by an issuer that has a qualifying credit rating for any of its debt instruments; or

(c) which are issued by any other issuer as may be approved by the Commission in writing in a particular case;

specified futures exchange (指明期貨交易所) means a futures exchange specified in Part 2;

specified provision (指明條文) means each of the following—

(a) Part IIIA of this Ordinance and subsidiary legislation made under it;

(b) Division 3A of Part VIII of this Ordinance;

(c) sections 185, 187, 190 and 191 of this Ordinance to the extent to which they relate to an investigation of any matter under section 184A of this Ordinance;

(d) sections 186A, 385A and 388A of this Ordinance;

(e) Divisions 4 and 5 of Part IX of this Ordinance;

(f) Division 1A of Part XVI of this Ordinance; *(Added 6 of 2014 s. 52)*

specified stock exchange (指明證券交易所) means a stock exchange specified in Part 3;

stabilization option (穩定措施) has the meaning given by section 2(1) of the Financial Institutions (Resolution) Ordinance

(Cap. 628); *(Added 23 of 2016 s. 221. Amended E.R. 2 of 2017)*

Stock Exchange Company (聯交所) means the company incorporated, and registered by the name The Stock Exchange of Hong Kong Limited, under the relevant Ordinance; *(Amended 28 of 2012 ss. 912 & 920)*

stock market (證券市場) means a place where persons regularly meet together to negotiate sales and purchases of securities (including prices), or a place at which facilities are provided for bringing together sellers and purchasers of securities; but does not include the office of—

(a) an exchange participant of a recognized exchange company which may operate a stock market; or

(b) a recognized clearing house;

structured product (結構性產品) has the meaning given by section 1A of this Part; *(Added 8 of 2011 s. 14)*

take-over offer (收購要約), in relation to a corporation, means an offer made to all the holders (or all the holders other than the person making the offer and his nominees) of the shares in the corporation to acquire the shares or a specified proportion of them, or to all the holders (or all the holders other than the person making the offer and his nominees) of a particular class of the shares to acquire the shares of the class or a specified proportion of them;

title (稱銜) includes name or description;

trading right (交易權), in relation to a recognized exchange company, means a right to be eligible to trade through that exchange company or on a recognized stock market or a recognized futures market operated by that exchange company and entered as such a right in a list, roll or register kept by that exchange company.

within scope financial institution (受涵蓋金融機構) has the meaning given by section 2(1) of the Financial Institutions (Resolution) Ordinance (Cap. 628). *(Added 23 of 2016 s. 221. Amended E.R. 2 of 2017)*

(Amended 23 of 2004 s. 56; 30 of 2004 s. 3; 28 of 2012 ss. 912 & 920)

Editorial Note:

Not yet commenced.

§ Commencement date: 13 November 2015.

Commencement date : 3 March 2014.

1A. Meaning of *structured product*

(1) In this Ordinance, subject to subsection (2), ***structured product*** (結構性產品) means—

(a) an instrument under which some or all of the return or amount due (or both the return and the amount due) or the method of settlement is determined by reference to one or more of—

(i) changes in the price, value or level (or a range within the price, value or level) of any type or combination of types of securities, commodity, index, property, interest rate, currency exchange rate or futures contract;

(ii) changes in the price, value or level (or a range within the price, value or level) of any basket of more than one type, or any combination of types, of securities, commodity, index, property, interest rate, currency exchange rate or futures contract; or

(iii) the occurrence or non-occurrence of any specified event or events (excluding an event or events

relating only to the issuer or guarantor of the instrument or to both the issuer and the guarantor);

(b) a regulated investment agreement; or

(c) any interests, rights or property prescribed, or of a class or description prescribed, by notice under section 392 of this Ordinance as being regarded as structured products in accordance with the notice.

(2) A ***structured product*** does not include—

(a) a debenture issued for capital fund raising purposes that is convertible into or exchangeable for shares (whether issued or unissued) of the issuer of the debenture or of a related corporation of the issuer;

(b) a subscription warrant issued for capital fund raising purposes that entitles the holder to subscribe for shares (whether issued or unissued) of the issuer of the warrant or of a related corporation of the issuer;

(c) a collective investment scheme;

(d) a depositary receipt;

(e) a debenture that would come within subsection (1)(a) only because it has a variable interest rate that is reset periodically to equate to a money market or interbank reference interest rate that is widely quoted (whether or not subject to a predetermined maximum or minimum rate) plus or minus a specified rate (if any);

(f) a product under which some or all of the return or amount due (or both the return and the amount due) or the method of settlement is determined by reference to securities of a corporation, or of a related corporation of the corporation, and that is issued by the corporation only to a person who is—

(i) a bona fide employee or former employee of the corporation or of a related corporation of the corporation; or

(ii) a spouse, widow, widower, minor child (natural or adopted) or minor step-child of a person referred to in subparagraph (i);

(g) a product that may be possessed, promoted, offered, sold, printed or published only—

(i) under a licence, permission or other authorization under the Betting Duty Ordinance (Cap. 108) or the Gambling Ordinance (Cap. 148); or

(ii) under the Government Lotteries Ordinance (Cap. 334);

(h) an instrument issued in relation to—

(i) a contest authorized by section 37 of the Broadcasting Ordinance (Cap. 562); or

(ii) a contest included in a service licensed under Part 3A of the Telecommunications Ordinance (Cap. 106);

(i) a contract of insurance in relation to any class of insurance business specified in Schedule 1 to the Insurance Ordinance (Cap. 41); or *(Amended 12 of 2015 s. 144)*

(j) any interests, rights or property prescribed, or of a class or description prescribed, by notice under section 392 of this Ordinance as not being regarded as structured products in accordance with the notice.

(Added 8 of 2011 s. 14)

1B. Meaning of *OTC derivative product*

(1) In this Ordinance, subject to subsections (2) and (3)—

OTC derivative product (場外衍生工具產品) means a structured product.

(2) An ***OTC derivative product*** does not include—

(a) securities that are traded on a recognized stock market;

(b) a futures contract that is traded on a recognized futures market;

(c) a securities or futures contract that is—

(i) traded on a stock market or futures market prescribed under section 392A of this Ordinance; and

(ii) cleared through a clearing house prescribed under that section;

(d) a structured product that is offered to the public, the issue of any advertisement, invitation or document relating to which is authorized under section 105(1) of this Ordinance;

(e) a structured product in the form of debt security the payment under which is derived from cash flows generated by an underlying pool of assets;

(f) an instrument that—

(i) is in the form of shares, stocks, debentures, loan stocks, funds, bonds, notes, deposits or certificates of deposits or in the form of any other type of instrument prescribed under section 392A of this Ordinance; and

(ii) has an embedded feature that makes it a structured product;

(g) a spot contract;

(h) a structured product that is offered—

(i) within an offer period that is not more than 2 weeks; and

(ii) to multiple persons on identical terms, other than the consideration to be paid for the product; or

(i) a structured product, or a structured product of a class or description, prescribed under section 392(1)(b)(vii) of this Ordinance as a product that is not to be regarded as an OTC derivative product in accordance with the notice.

(3) An OTC derivative product also includes a product prescribed by notice under section 392(1)(a)(vii) of this Ordinance as a product that is to be regarded as an OTC derivative product in accordance with the notice.

(4) In this section—

spot contract (現貨合約) means a contract for the sale of any type or combination of types of securities, commodity, index, property, interest rate or currency exchange rate under the terms of which the settlement of the contract is scheduled to be made within the longest of the following periods—

(a) if the contract is—

(i) entered into in Hong Kong, 2 business days after the date of entering into the contract; or

(ii) settled outside Hong Kong, 2 days on which each settlement facility necessary to settle the transaction is open for business, after the date of entering into the contract;

(b) the period generally accepted in the market for that type or combination of types of securities, commodity, index, property, interest rate or currency exchange rate as the standard delivery period.

(Added 6 of 2014 s. 52)

2. References to subsidiary

(1) For the purposes of this Ordinance, a corporation shall be regarded as a subsidiary of another corporation if—

(a) the other corporation—

(i) controls the composition of its board of directors;

(ii) controls more than half of its voting power at general meetings; or

(iii) holds more than half of its issued share capital (which issued share capital, for the purposes of this subparagraph, excludes any part thereof which carries no right to participate beyond a specified amount on a distribution of either profits or capital); or

(b) it is a subsidiary of a corporation which is the other corporation's subsidiary.

(2) For the purposes of subsection (1), in determining whether a corporation is a subsidiary of another corporation—

(a) any shares held or power exercisable by the other corporation in a fiduciary capacity shall be regarded as not held or exercisable by it;

(b) subject to paragraphs (c) and (d), any shares held or power exercisable—

(i) by a nominee for the other corporation (except where the other corporation is concerned only in a fiduciary capacity); or

(ii) by, or by a nominee for, a subsidiary of the other corporation, not being a subsidiary which is concerned only in a fiduciary capacity,

shall be regarded as held or exercisable by the other corporation;

(c) any shares held or power exercisable by a person under a debenture of the corporation or under a trust deed for securing the issue of the debenture shall be disregarded; and

(d) any shares held or power exercisable by, or by a nominee for, the other corporation or its subsidiary, not being held or exercisable as mentioned in paragraph (c), shall be regarded as not held or exercisable by the other corporation if the ordinary business of the other corporation or its subsidiary (as the case may be) includes the lending of money and the shares are held or power is exercisable by way of security only for a transaction entered into in the ordinary course of that business.

3. References to related corporation

For the purposes of this Ordinance—

(a) 2 or more corporations shall be regarded as related corporations of each other if one of them is—

(i) the holding company of the other;

(ii) a subsidiary of the other; or

(iii) a subsidiary of the holding company of the other;

(b) when an individual—

(i) controls the composition of the board of directors of one or more corporations;

(ii) controls more than half of the voting power at general meetings of one or more corporations; or

(iii) holds more than half of the issued share capital (which issued share capital, for the purposes of

this subparagraph, excludes any part thereof which carries no right to participate beyond a specified amount on a distribution of either profits or capital) of one or more corporations,

each of the corporations referred to in subparagraph (i), (ii) or (iii), and each of their subsidiaries, shall be regarded as related corporations of each other.

4. References to controlling the composition of a corporation's board of directors

(1) For the purposes of this Ordinance, the composition of a corporation's board of directors shall be regarded as controlled by another corporation if the other corporation, by the exercise of some power exercisable by it, can, without the consent or concurrence of any other person, appoint or remove all or a majority of the directors of the corporation.

(2) For the purposes of subsection (1), a corporation shall be regarded as being able to appoint or remove a director of another corporation if—

(a) the appointment or removal cannot occur without the corporation exercising a power; or

(b) the appointment of a person as a director of the other corporation follows necessarily from his being a director or other officer of the corporation.

(3) For the purposes of this Ordinance, the composition of a corporation's board of directors shall be regarded as controlled by an individual if the individual, by the exercise of some power exercisable by him, can, without the consent or concurrence of any other person, appoint or remove all or a majority of the directors of the corporation.

(4) For the purposes of subsection (3), an individual shall be regarded as being able to appoint or remove a director of a corporation if—

(a) the appointment or removal cannot occur without the individual exercising a power; or

(b) the appointment of a person as a director of the corporation follows necessarily from his being a director or other officer of another corporation and his appointment as a director or other officer of the other corporation cannot occur without the individual exercising a power.

5. References to wholly owned subsidiary

For the purposes of this Ordinance, a body corporate shall be regarded as the wholly owned subsidiary of another body corporate if it has no members except that other, that other's nominee, that other's wholly owned subsidiary (as construed in accordance with this section), such wholly owned subsidiary's nominee, or any combination thereof.

6. References to substantial shareholder

(1) For the purposes of this Ordinance, a person shall, in relation to a corporation, be regarded as a substantial shareholder of the corporation if he, either alone or with any of his associates—

(a) has an interest in shares in the corporation—

(i) the aggregate number of which shares is equal to more than 10% of the total number of issued shares of the corporation; or *(Amended 28 of 2012 ss. 912 & 920)*

(ii) which entitles the person, either alone or with any of his associates and either directly or indirectly, to

exercise or control the exercise of more than 10% of the voting power at general meetings of the corporation; or

(b) holds shares in any other corporation which entitles him, either alone or with any of his associates and either directly or indirectly, to exercise or control the exercise of 35% or more of the voting power at general meetings of the other corporation, or of a further corporation, which is itself entitled, either alone or with any of its associates and either directly or indirectly, to exercise or control the exercise of more than 10% of the voting power at general meetings of the corporation.

(2) For the purposes of subsection (1), a person shall be regarded as being entitled to exercise or control the exercise of 35% or more of the voting power at general meetings of a corporation indirectly if he, either alone or with any of his associates, has an interest in shares in a further corporation which entitles him, either alone or with any of his associates, to exercise or control the exercise of 35% or more of the voting power at general meetings of the further corporation which is itself entitled, either alone or with any of its associates, to exercise or control the exercise of 35% or more of the voting power at general meetings of the first-mentioned corporation.

7. References to securities of a corporation

In this Ordinance, a reference to securities (however described) as those of a corporation shall, unless the context otherwise requires, be construed as a reference to securities (having the applicable meaning, whether under section 1 or otherwise) which are—

(a) issued, made available or granted by the corporation;

(b) proposed to be issued, made available or granted by the corporation; or

(c) proposed to be issued, made available or granted by the corporation when it is incorporated.

8. References to interest of investing public

In this Ordinance, a reference to the interest of the investing public does not include any interest the taking into consideration of which is or is likely to be contrary to the public interest.

9. References to conditions

In this Ordinance, unless the context otherwise requires, a reference to any condition imposed under or pursuant to any provision of this Ordinance shall, in any case where the condition has been amended (however described) under or pursuant to any provision of this Ordinance, be construed as a reference to the condition as so amended.

10. References relating to regulated activity

In this Ordinance—

(a) unless otherwise defined or excluded or the context otherwise requires, a person shall be regarded as carrying on a regulated activity if—

(i) he carries on a business in a regulated activity; or

(ii) he performs for or on behalf of or by arrangement with a person carrying on a business in a regulated activity, any regulated function (as defined in section 113(1) of this Ordinance) in relation to the regulated activity;

(b) a person shall be regarded as carrying on a regulated activity for an intermediary if he performs for or on behalf of or by arrangement with the intermediary any regulated function (as defined in section 113(1) of this Ordinance) in relation to the regulated activity;

(c) (i) a corporation licensed under section 116 or 117 of this Ordinance to carry on a regulated activity shall be regarded as being licensed for that regulated activity;

(ii) an individual licensed under section 120 or 121 of this Ordinance to carry on a regulated activity for a licensed corporation shall be regarded as being licensed for that regulated activity.

11. References to contravention, etc.

In this Ordinance, unless the context otherwise requires—

(a) a reference to contravention shall—

(i) be construed as including a reference to failure to comply; and

(ii) in relation to any provision of any Ordinance, be construed as including a reference to the commission of an offence under the provision;

(b) a reference to failure to comply shall—

(i) be construed as including a reference to contravention; and

(ii) in relation to any provision of any Ordinance, be construed as including a reference to the commission of an offence under the provision.

12. References to Ordinance

For the avoidance of doubt, in this Ordinance, a reference to this or any other Ordinance, whether generally or specifically and whether by reference to the short title of the Ordinance or otherwise, shall, unless the context otherwise requires, be construed as including any subsidiary legislation made under this or that other Ordinance (as the case may be).

13. Notes in Ordinance

A note located in the text of this Ordinance is provided for information only and has no legislative effect.

(Added 9 of 2012 s. 11)

14. Commencement of subsidiary legislation

Without limiting section 28(5) of the Interpretation and General Clauses Ordinance (Cap. 1), if any subsidiary legislation made under this Ordinance is to come into operation on a day to be notified in the Gazette—

(a) the notice may fix different days for a provision of the subsidiary legislation to come into operation for different purposes; and

(b) different notices may fix different days for the provision to come into operation for different purposes.

(Added 5 of 2015 s. 17)

Part 2

Specified Futures Exchanges

1. ASX Limited

2. Australian Securities Exchange Limited

3. BM&FBOVESPA S.A. – Bolsa de Valores, Mercadorias e Futuros

4. Board of Trade of the City of Chicago, Inc.

5. Chicago Board Options Exchange, Incorporated

6. Chicago Mercantile Exchange Inc.

7. China Financial Futures Exchange

8. Commodity Exchange, Inc.

9. Dalian Commodity Exchange

10. Eurex Frankfurt AG

11. Eurex Zürich AG

12. Euronext Amsterdam N.V.

13. Euronext Paris S.A.

14. Hong Kong Futures Exchange Limited

15. ICE Futures Canada, Inc.

16. ICE Futures U.S., Inc.

17. Korea Exchange, Inc.

18. LIFFE Administration and Management

19. Montréal Exchange Inc.

20. Multi Commodity Exchange of India Limited

21. National Commodity & Derivatives Exchange Limited

22. NASDAQ OMX PHLX LLC

23. NASDAQ OMX Stockholm AB

24. New York Mercantile Exchange, Inc.

25. New Zealand Futures and Options Exchange Limited

26. NYSE Arca, Inc.

27. Osaka Securities Exchange Co., Ltd.

28. Shanghai Futures Exchange

29. Singapore Exchange Derivatives Trading Limited

30. The London Metal Exchange Limited

31. Tokyo Financial Exchange Inc.

32. Tokyo Grain Exchange Inc.

33. Tokyo Stock Exchange, Inc.

34. Zhengzhou Commodity Exchange

(Part 2 Replaced L.N. 94 of 2012)

Part 3

Specified Stock Exchanges

1. ASX Limited

2. BSE Limited

3. Borsa Italiana S.p.A.

4. Bursa Malaysia Securities Berhad

5. Deutsche Börse AG

6. Euronext Amsterdam N.V.

7. Euronext Brussels S.A./N.V.

8. Euronext Paris S.A.

9. Korea Exchange, Inc.

10. London Stock Exchange plc

11. Montréal Exchange Inc.

12. Nagoya Stock Exchange, Inc.

13. NASDAQ OMX Copenhagen A/S

14. NASDAQ OMX Helsinki Ltd

15. NASDAQ OMX Stockholm AB

16. National Stock Exchange of India Limited

17. New York Stock Exchange LLC

18. NYSE Amex LLC

19. NZX Limited

20. Osaka Securities Exchange Co., Ltd.

21. Oslo Børs ASA

22. Singapore Exchange Securities Trading Limited

23. SIX Swiss Exchange AG

24. Sociedad Rectora de la Bolsa de Valores de Madrid, S.A. (Sociedad Unipersonal)

25. Société de la Bourse de Luxembourg S.A.

26. The NASDAQ Stock Market LLC

27. The Philippine Stock Exchange, Inc.

28. The Stock Exchange of Hong Kong Limited

29. The Stock Exchange of Thailand

30. Tokyo Stock Exchange, Inc.

31. TSX Inc.

32. Wiener Börse AG

(Part 3 Replaced L.N. 94 of 2012)

Part 4

Multilateral Agencies

1. The African Development Bank

2. The Asian Development Bank

3. The European Bank for Reconstruction and Development

4. The European Investment Bank

5. The Inter-American Development Bank

6. The International Bank for Reconstruction and Development (commonly known as the World Bank)

7. The International Finance Corporation (an affiliate of the World Bank)

8. The Asian Infrastructure Investment Bank *(Added L.N. 59 of 2016)*

Part 5

Qualifying Credit Rating

1. A Moody's Investors Service rating of—

(a) A3 or above for long term debt; or

(b) Prime-3 or above for short term debt.

2. A Standard & Poor's Corporation rating of—

(a) A or above for long term debt; or

(b) A-3 or above for short term debt.

(Amended E.R. 2 of 2012)

Schedule 2

[ss. 3, 7 & 10 & Schs. 1 & 10]

Securities and Futures Commission

(Format changes—E.R. 2 of 2012)

Part 1

Constitution and Proceedings of Commission, etc.

Chairman, chief executive officer and other members of Commission

(Amended 15 of 2006 s. 6)

1. The Commission shall consist of a chairman, a chief executive officer and such number of other executive directors and non-executive directors as is determined by the Chief Executive, all of whom shall be appointed by the Chief Executive as follows— *(Amended 15 of 2006 s. 6)*

   (a) the number of members of the Commission shall not be less than 8; and

   (b) the number of non-executive directors of the Commission shall exceed the number of executive directors of the Commission. *(Replaced 15 of 2006 s. 6)*

2. *(Repealed 15 of 2006 s. 6)*

3. When the membership of the Commission ceases to comply with the requirements of section 1, the Chief Executive shall as soon as reasonably practicable thereafter make the necessary appointment to ensure that the requirements are complied with.

Deputy chairman and vacancies in office of chairman or deputy chairman

4. The Chief Executive may appoint an executive director or non-executive director of the Commission to be the deputy chairman of the Commission. *(Amended 15 of 2006 s. 6)*

5. If the office of chairman of the Commission is vacant or the chairman of the Commission is unable to act as chairman due to illness, absence from Hong Kong or any other cause, the deputy chairman appointed under section 4 shall act as chairman in his place.

6. Notwithstanding that a deputy chairman has been appointed under section 4, the chairman of the Commission may, where there is no designation under section 7, designate an executive director or non-executive director of the Commission to act as chairman of the Commission for any period during which both he and the deputy chairman are unable to act as chairman due to illness, absence from Hong Kong or any other cause, and may at any time revoke any such designation. *(Amended 15 of 2006 s. 6)*

7. If—

(a) no deputy chairman has been appointed under section 4 or the office of deputy chairman of the Commission is vacant; or

(b) the deputy chairman appointed under section 4 is unable to act as chairman due to illness, absence from Hong Kong or any other cause, and there is no designation under section 6,

the Financial Secretary may designate an executive director or non-executive director of the Commission to act as chairman of the Commission for any period during which the chairman of the Commission is unable to act as chairman due to illness, absence from Hong Kong or any other cause. *(Amended 15 of 2006 s. 6)*

8. A designation under section 7 ceases to have effect when—

(a) it is revoked by the Financial Secretary;

(b) where the designation is under section 7(a), an appointment is made under section 4; or

(c) where the designation is under section 7(b), the deputy chairman appointed under section 4 is able to act as chairman,

whichever is the earlier.

9. A deputy chairman of the Commission who acts as chairman of the Commission under section 5, or an executive director or non-executive director of the Commission who acts as chairman of the Commission in accordance with a designation under section 6 or 7, shall be deemed for all purposes to be the chairman of the Commission. *(Replaced 15 of 2006 s. 6)*

9A. Notwithstanding section 9—

(a) an executive director of the Commission shall not cease to be regarded as such only because of his acting as chairman of the Commission; and

(b) a non-executive director of the Commission shall not cease to be regarded as such only because of his acting as chairman of the Commission. *(Added 15 of 2006 s. 6)*

Vacancy in office of chief executive officer

(Added 15 of 2006 s. 6)

9B. The Chief Executive may designate an executive director of the Commission to act as chief executive officer of the Commission for any period during which the chief executive officer of the Commission is unable to act as chief executive officer due to illness, absence from Hong Kong or any other cause, and may at any time revoke any such designation. *(Added 15 of 2006 s. 6)*

9C. An executive director of the Commission who acts as chief executive officer of the Commission shall be deemed for all purposes to be the chief executive officer of the Commission. *(Added 15 of 2006 s. 6)*

Functions and office of members, etc.

(Amended 15 of 2006 s. 6)

9D. Subject to the other provisions of this Ordinance, the chairman, deputy chairman and chief executive officer of the Commission shall have such functions as are assigned to them by the Commission. *(Added 15 of 2006 s. 6)*

10. The terms and conditions of the office of a member of the Commission (whether as the chairman, deputy chairman, chief executive officer or otherwise) shall be determined by the Chief Executive. *(Amended 15 of 2006 s. 6)*

11. A member of the Commission (whether as the chairman, deputy chairman, chief executive officer or otherwise) may at any time resign his office by notice in writing to the Chief Executive. *(Amended 15 of 2006 s. 6)*

12. A member of the Commission (whether as the chairman, deputy chairman, chief executive officer or otherwise) shall be paid by the Commission such remuneration, allowances or expenses as the Chief Executive may determine. *(Amended 15 of 2006 s. 6)*

13. The Chief Executive may by notice in writing remove from office any member of the Commission (whether as the chairman, deputy chairman, chief executive officer or otherwise) whose removal appears to him to be desirable for the effective performance by the Commission of its functions. *(Amended 15 of 2006 s. 6)*

Meetings

14. Meetings of the Commission shall be held as often as may be necessary for the performance of its functions, and may be convened by the chairman, deputy chairman, chief executive officer, or any 2 other members, of the Commission. *(Amended 15 of 2006 s. 6)*

15. At a meeting of the Commission—

(a) if the chairman of the Commission is present, he shall be the chairman of the meeting;

(b) if the chairman of the Commission is not present but the deputy chairman of the Commission is present, the deputy chairman shall be the chairman of the meeting; or

(c) if neither the chairman nor the deputy chairman of the Commission is present, the members of the Commission present shall choose one of their number to be the chairman of the meeting.

16. The quorum for a meeting of the Commission is not less than one third of the executive directors of the Commission and not less than one third of the non-executive directors of the Commission.

16A. For the purpose of forming a quorum under section 16—

(a) subject to paragraph (b), the chairman of the Commission shall be counted as a non-executive director of the Commission; and

(b) notwithstanding sections 9 and 9A—

(i) an executive director of the Commission who acts as chairman of the Commission shall only be counted as an executive director of the Commission; and

(ii) a non-executive director of the Commission who acts as chairman of the Commission shall only be counted as a non-executive director of the Commission. *(Added 15 of 2006 s. 6)*

17. A member of the Commission shall be regarded as being present at a meeting of the Commission if he participates in the meeting by telephone, video conferencing or other electronic means, provided he is able to hear the other members present at the meeting and they are able to hear him.

18. Each member of the Commission present at a meeting of the Commission has one vote.

19. Every question for decision at a meeting of the Commission shall be determined by a majority of votes of its members present and, in the event that voting is equally divided, the chairman of the meeting shall, subject to section 20, have a casting vote.

20. The chairman of a meeting of the Commission shall not exercise a casting vote in respect of any question for decision at the meeting until after he has consulted the Financial Secretary on the question.

Written resolution

21. Where a resolution—

(a) is in writing; and

(b) is signed by such number of members of the Commission as—

(i) would include all of the members of the Commission who are, at any time when the resolution is made available for signature, present in Hong Kong and capable of signing the resolution; and

(ii) is also not less than one third of the executive directors of the Commission and not less than one third of the non-executive directors of the Commission,

the resolution shall be as valid and effectual as if it had been passed at a meeting of the Commission convened and conducted in accordance with this Ordinance.

22. For the purposes of section 21, a resolution to which that section applies may be—

(a) in the form of one document; or

(b) in the form of more than one document, each in the like form and signed by one or more members of the Commission.

23. Where a resolution is in the form of more than one document as described in section 22(b), the requirement under section 21(b) shall be regarded as having been satisfied if the documents together bear the signatures of such number of members of the Commission as is specified in section 21(b)(i) and (ii).

24. For the purposes of sections 21 to 23—

(a) a document shall be regarded as having been signed by a member of the Commission if a telex, cable, facsimile or electronic transmission of a document bears the signature of the member; and

(b) a resolution to which section 21 applies shall be regarded as made on the date on which the resolution is signed by the last person signing as a member of the Commission for the purposes of that section.

Seal, and regulation of administration, etc.

25. The Commission shall have a seal, the affixing of which shall be authenticated by the signature of the chairman or the deputy chairman of the Commission, or by the signature of such other member of the Commission as is authorized by it to act in that behalf.

26. The Commission shall organize and regulate its administration, procedure and business in such manner as it considers will, subject to the requirements of this Ordinance, best ensure the performance of its functions.

Advisory Committee

27. The Advisory Committee shall consist of—

(a) the chairman of the Commission;

(aa) the chief executive officer of the Commission; *(Added 15 of 2006 s. 6)*

(b) not more than 2 other executive directors of the Commission who shall be appointed by the Commission;

(c) not less than 8 (but not more than 12) other members who shall be appointed by the Chief Executive after consultation with the Commission.

28. A meeting of the Advisory Committee may be convened by—

(a) the chairman of the Commission; *(Amended 15 of 2006 s. 6)*

(aa) the chief executive officer of the Commission; or *(Added 15 of 2006 s. 6)*

(b) any 3 other members of the Advisory Committee.

29. At a meeting of the Advisory Committee—

(a) if the chairman of the Commission is present, he shall be the chairman of the meeting; or

(b) if the chairman of the Commission is not present, the members of the Advisory Committee present shall choose one of their number to be the chairman of the meeting.

30. Where a member of the Advisory Committee appointed under section 27(b) ceases to be an executive director of the Commission, he ceases to be a member of the Advisory Committee.

31. A member of the Advisory Committee appointed under section 27(b) or (c) may at any time resign his office by notice in writing to—

(a) where he has been appointed under section 27(b), the Commission; or

(b) where he has been appointed under section 27(c), the Chief Executive.

32. The Chief Executive may by notice in writing remove from office any member of the Advisory Committee appointed under section 27(c).

Part 2

Non-Delegable Functions of Commission

1. Any function of the Commission to make subsidiary legislation

under or pursuant to any Ordinance.

2. The following functions of the Commission—

(1) to borrow money, under section 5(4)(d) of this Ordinance;

(1A) to establish a wholly owned subsidiary, under section 5(4)(da) of this Ordinance; *(Added 9 of 2012 s. 33)*

(2) *(Repealed 19 of 2015 s. 28)*

(3) to establish any committee, under section 8(1) of this Ordinance;

(4) to refer any matter to a committee, under section 8(2) of this Ordinance;

(5) to appoint a person to be a member or chairman of a committee, under section 8(3) of this Ordinance;

(6) to withdraw a reference from a committee, or to revoke an appointment of a member or chairman of a committee, under section 8(5) of this Ordinance;

(7) to submit to the Chief Executive estimates, under section 13(2) of this Ordinance;

(8) to prepare any financial statements, under section 15(2) of this Ordinance;

(9) to prepare any report, under section 15(3) of this Ordinance;

(10) to appoint auditors, under section 16(1) of this Ordinance;

(11) *(Repealed 9 of 2012 s. 47)*

(12) to recognize a company as an exchange company under, or to impose conditions pursuant to, section 19(2) of this Ordinance;

(13) to amend or revoke conditions, or impose new conditions, under section 19(3) of this Ordinance;

(14) to give a company a reasonable opportunity of being heard, under section 19(7) of this Ordinance;

(15) to request a recognized exchange company to make or amend rules, under section 23(3) of this Ordinance;

(16) to refuse to give approval to any rules or amendment of any rules, or any part thereof, under section 24(3) of this Ordinance;

(17) to advise the Financial Secretary to extend time, pursuant to section 24(6) of this Ordinance;

(18) to declare any class of rules to be a class of rules which are not required to be approved, under section 24(7) of this Ordinance;

(19) to request the Chief Executive in Council to transfer any function of the Commission, under section 25(1) of this Ordinance;

(20) to request the Chief Executive in Council to order that the Commission resume any function, pursuant to section 25(7) of this Ordinance;

(21) to approve the appointment of a person as chief executive, pursuant to section 26 of this Ordinance;

(22) to withdraw recognition of a recognized exchange company, under section 28(1)(a) of this Ordinance;

(23) to direct a recognized exchange company to cease to provide or operate facilities or to cease to provide services, under section 28(1)(b) of this Ordinance;

(24) to direct a recognized exchange company to cease to provide or operate facilities or to cease to provide services, under section 29(1) of this Ordinance;

(25) to extend a direction, under section 29(3) of this Ordinance;

(26) to recognize a company as a clearing house under, or to impose conditions pursuant to, section 37(1) of this Ordinance;

(27) to amend or revoke conditions, or impose new conditions, under section 37(2) of this Ordinance;

(28) to give a company a reasonable opportunity of being heard, under section 37(5) of this Ordinance;

(29) to request a recognized clearing house to make or amend rules, under section 40(4) of this Ordinance;

(30) to refuse to give approval to any rules or amendment of any rules, or any part thereof, under section 41(3) of this Ordinance;

(31) to advise the Financial Secretary to extend time, pursuant to section 41(6) of this Ordinance;

(32) to declare any class of rules to be a class of rules which are not required to be approved, under section 41(7) of this Ordinance;

(33) to withdraw recognition of a recognized clearing house, under section 43(1)(a) of this Ordinance;

(34) to direct a recognized clearing house to cease to provide or operate facilities, under section 43(1)(b) of this Ordinance;

(35) to recognize a company as an exchange controller under, or to impose conditions pursuant to, section 59(2) of this Ordinance;

(36) to amend or revoke conditions, or impose new conditions, under section 59(3) of this Ordinance;

(37) to direct a person to take specified steps, under section 59(9)(c) of this Ordinance;

(38) to give a company a reasonable opportunity of being heard, under section 59(18) of this Ordinance;

(39) to approve the increase or decrease of any interest a recognized exchange controller has in a recognized exchange company or recognized clearing house, pursuant to section 60(a) of this Ordinance;

(40) to approve a person for becoming a minority controller of a recognized exchange controller, recognized exchange company or recognized clearing house, pursuant to section 61(1) of this Ordinance;

(41) to refuse to give approval to any rules or amendment of any rules, or any part thereof, under section 67(3) of this Ordinance;

(42) to advise the Financial Secretary to extend time, pursuant to section 67(6) of this Ordinance;

(43) to declare any class of rules to be a class of rules which are not required to be approved, under section 67(7) of this Ordinance;

(44) to request the Chief Executive in Council to transfer any function of the Commission, under section 68(1) of this Ordinance;

(45) to request the Chief Executive in Council to order that the Commission resume any function, pursuant to section 68(7) of this Ordinance;

(46) to approve the appointment of a person as chief executive or chief operating officer, pursuant to section 70(1) of this Ordinance;

(47) to remove a person from the office of a chief executive or chief operating officer, under section 70(2) of this Ordinance;

(48) to withdraw recognition of a recognized exchange controller, under section 72(1)(i) of this Ordinance;

(49) to direct a company to take specified steps, under section 72(1)(ii) of this Ordinance;

(50) to give a recognized exchange controller a reasonable opportunity of being heard, pursuant to section 72(2) of this Ordinance;

(51) to make statement in writing, pursuant to section 74(1) of this Ordinance;

(52) to direct a recognized exchange controller or a relevant corporation to take specified steps, under section 75(1) of this Ordinance;

(53) to approve a fee, pursuant to section 76(1) of this Ordinance;

(54) to recognize a company as an investor compensation company under, or to impose conditions pursuant to, section 79(1) of this Ordinance;

(55) to amend or revoke conditions, or impose new conditions, under section 79(2) of this Ordinance;

(56) to give a company a reasonable opportunity of being heard, under section 79(5) of this Ordinance;

(57) to request the Chief Executive in Council to transfer any function of the Commission, under section 80(1) of this Ordinance;

(58) to request the Chief Executive in Council to order that the Commission resume any function, pursuant to section 80(7) of this Ordinance;

(59) to refuse to give approval to any rules or amendment of any rules, or any part thereof, under section 83(3) of this Ordinance;

(60) to advise the Financial Secretary to extend time, pursuant to section 83(6) of this Ordinance;

(61) to declare any class of rules to be a class of rules which are not required to be approved, under section 83(7) of this Ordinance;

(62) to withdraw recognition of a recognized investor compensation company, under section 85(1) of this Ordinance;

(63) to approve the conduct of activities or businesses, pursuant to section 90(1) of this Ordinance;

(64) to serve a notice, under section 92(1) of this Ordinance;

(65) to extend the period during which a restriction notice is to remain in force, under section 92(7) of this Ordinance;

(66) to apply to the Court of First Instance, pursuant to section 92(9) of this Ordinance;

(67) to make a suspension order, under section 93(1) of this Ordinance;

(68) to extend the period during which a suspension order is to remain in force, under section 93(9) of this Ordinance;

(69) to appoint any person, other than an employee of the Commission, to investigate any of the matters referred to in section 182(1)(a) to (g) of this Ordinance, under section 182(1) of this Ordinance;

(70) to cause a report to be published, under section 183(6) of this Ordinance;

(71) to impose a prohibition or requirement, under section 204, 205 or 206 of this Ordinance;

(72) to withdraw, substitute or vary a prohibition or requirement, under section 208(1) of this Ordinance;

(73) to present a petition, under section 212 of this Ordinance;

(74) to apply to the Court of First Instance, pursuant to section 213(1) or (3A) of this Ordinance; *(Amended 16 of 2016 s. 20)*

(75) to apply to the Court of First Instance, under section 214(1) of this Ordinance;

(75A) to apply to the Court of First Instance, under section 214A(1) of this Ordinance; *(Added 16 of 2016 s. 20)*

(76) to specify the time at which a specified decision is to take effect, under section 232(3) of this Ordinance;

(77) to establish a compensation fund, under section 236 of this Ordinance;

(78) to borrow, or to charge any investments by way of security, under section 237(2)(a) of this Ordinance;

(79) to appoint an auditor, under section 240(5) of this Ordinance;

(80) *(Repealed 9 of 2012 s. 47)*

(81) to institute proceedings in the Market Misconduct Tribunal under section 252(1) of this Ordinance *(Replaced 9 of 2012 s. 27)*

(81A) to institute disclosure proceedings under section 307I(1) of this Ordinance; *(Added 9 of 2012 s. 12)*

(82) to publish guidelines, under section 309(1) of this Ordinance;

(83) to make an application, pursuant to section 385(1) of this Ordinance;

(84) to consult the Financial Secretary, under section 396(1) of this Ordinance;

(85) to make recommendation to the Chief Executive in Council, under section 396(2) of this Ordinance;

(86) to appoint members of the Advisory Committee, under section 27(b) of Part 1;

(87) to direct any specified securities to be subject to restrictions, under section 1(2) of Part 6 of Schedule 3 to this Ordinance;

(88) to apply to the Court of First Instance, pursuant to section 1(6)(a) of Part 6 of Schedule 3 to this Ordinance;

(89) to apply to the Court of First Instance, pursuant to section 1(7) of Part 6 of Schedule 3 to this Ordinance; (Amended 23 of 2016 s. 222)

(90) to recommend the designation of a recognized exchange company as a within scope financial institution under section 6(1)(b) of the Financial Institutions (Resolution) Ordinance (Cap. 628); *(Added 23 of 2016 s. 222. Amended E.R. 2 of 2017)*

(91) to make an application under section 145(1) of the Financial Institutions (Resolution) Ordinance (Cap. 628); *(Added 23 of 2016 s. 222. Amended E.R. 2 of 2017)*

(92) to issue a code of practice under section 196 of the Financial Institutions (Resolution) Ordinance (Cap. 628). *(Added 23 of 2016 s. 222. Amended E.R. 2 of 2017)*

Part 3

Functions of Commission Delegable for Resolution

(Part 3 added 23 of 2016 s. 222)

A function mentioned in section 2(12), (13), (14), (21), (22), (23), (24), (25), (26), (27), (28), (33), (34), (35), (36), (37), (38), (39), (40), (46), (47), (48), (49) or (50) of Part 2.

Schedule 3

[ss. 18, 40, 58, 59, 61, 62, 72 & 78 & Sch. 2]

Exchange Companies, Clearing Houses and Exchange Controllers

(Format changes—E.R. 1 of 2013)

Part 1

Definitions

1. In this Schedule, unless the context otherwise requires, ***associated person*** (相聯者), ***controller*** (控制人), ***default rules*** (違責處理規則), ***indirect controller*** (間接控制人), ***market charge*** (市場押記), ***market collateral*** (市場抵押品) and ***shareholder controller*** (股東控制人) have the meanings respectively assigned to them in section 18 of this Ordinance.

Part 2

Specification of Persons Who are Associated Persons

Part 3

Specification of Persons Who are not Associated Persons

1. A person (***first person***) is not an associated person of another person (***second person***) for the purposes of all the provisions of

Division 4 of Part III of this Ordinance in so far as—

(a) the first person or the second person is a recognized clearing house (or its nominee) acting in its capacity as such;

(b) the first person is the chairman of a general meeting of a corporation entitled to exercise voting rights in the corporation due to his appointment as a proxy by the second person where the appointment—

(i) is for that meeting only; and

(ii) does not involve any valuable consideration; or

(c) the first person and the second person are persons who have appointed the chairman of a general meeting of a corporation as a proxy to exercise voting rights in the corporation where each appointment—

(i) is for that meeting only; and

(ii) does not involve any valuable consideration.

2. A person is not an associated person of another person for the purposes of section 61 of this Ordinance by reason only of each person having appointed the same person as a proxy to exercise voting rights in a corporation at a general meeting of the corporation where each appointment—

(a) is for that meeting only; and

(b) does not involve any valuable consideration.

Part 4

Specification of Persons Who are not Indirect Controllers

1. A person is not an indirect controller for all the provisions of Division 4 of Part III of this Ordinance in so far as the person is a person in accordance with whose directions or instructions the directors of a corporation or of another corporation of which it is a subsidiary are accustomed or obliged to act by reason only that they act on advice given by the person in the person's professional capacity.

Part 5

Requirements for Default Rules of Recognized Clearing Houses

1. The rules of a recognized clearing house which provide for the taking of proceedings or other action if a clearing participant appears to be unable, or likely to become unable, to meet his obligations in respect of all unsettled or open market contracts to which he is a party, shall—

(a) enable the settlement, or closing-out by offset, of all of the contracts;

(b) for the purpose of paragraph (a), provide for there to be payable by or to the clearing participant a sum of money in relation to each contract if this is required after taking into account all the rights and liabilities of the clearing participant under or in respect of the contract concerned;

(c) enable all sums of money payable by or to the clearing participant as determined in accordance with paragraph (b) to be aggregated or set-off so as to produce a net sum (if any) payable by or to the clearing participant;

(d) if any net sum referred to in paragraph (c) is payable by the clearing participant, provide for that net sum to be set-off against all property of the clearing participant

which is either subject to a market charge or which has been provided as market collateral (or set-off against the proceeds of the realization of such property) so as to produce a further net sum (if any) payable by or to the clearing participant;

(e) if any net sum referred to in paragraph (c) is payable to the clearing participant, provide that all property of the clearing participant which is either subject to a market charge or which has been provided as market collateral shall cease to be subject to the market charge (but without prejudice to any other form of charge to which it may be subject) or to be market collateral (but without prejudice to its provision as any other form of collateral) (as the case may be); and

(f) provide for the certification by the clearing house of any net sum referred to in paragraph (c) payable to the clearing participant, or of any further net sum referred to in paragraph (d) payable by or to the clearing participant (as the case may be) or, if there is no such sum, the certification by the clearing house of that fact.

2. If—

(a) the RCH rules envisage that a clearing participant may record market contracts in separate capacities, as referred to in section 3; and

(b) the recognized clearing house operates in such a manner that paragraphs (a), (b), (c), (d), (e) and (f) of section 1 may be complied with separately in respect of each of the capacities,

paragraphs (a), (b), (c), (d), (e) and (f) of section 1 must be complied with separately in respect of each capacity.

(Added 6 of 2014 s. 61)

3. For the purposes of section 2—

(a) a clearing participant will be regarded as recording market contracts in a separate capacity in respect of its house accounts and each of its client accounts if—

(i) for house accounts—transactions that are required or permitted by the RCH rules to be recorded in any of the clearing participant's house accounts with the recognized clearing house have been so recorded; and

(ii) for each client account—transactions that are required or permitted by the RCH rules to be recorded in any of the clearing participant's client accounts with the clearing house have been so recorded;

(b) any net sum payable to the clearing participant in respect of transactions recorded in a client account, as calculated under section 1(c), must not be set-off against any net sum payable by the clearing participant in respect of transactions recorded in any house account, as calculated under that section, regardless of any provision to the contrary in the RCH rules;

(c) any net sum payable to the clearing participant in respect of transactions recorded in house accounts, as calculated under section 1(c), may be set-off against any net sum payable by the clearing participant in respect of transactions recorded in any client account, as calculated

under that section, if the RCH rules so provide or permit;

(d) any net sum payable to the clearing participant in respect of transactions recorded in a client account, as calculated under section 1(c), may not be set-off against any net sum payable by the clearing participant in respect of transactions recorded in any other client account, as calculated under that section, if the RCH rules so provide.

(Added 6 of 2014 s. 61)

4. To avoid doubt—

(a) a transfer of a defaulting participant's positions under an unsettled market contract and collateral in a client account to one or more other clearing participants of the recognized clearing house in accordance with the RCH rules constitutes settlement of that contract for the purposes of section 1(a); and

(b) without limiting section 1(b), the reference in that section to the rights and liabilities of the clearing participant under or in respect of the contract concerned includes the rights and liabilities that arise as a result of action taken under the RCH rules authorizing or permitting the transfer of the clearing participant's positions under the contract and collateral in a client account to one or more other clearing participants of the recognized clearing house.

(Added 6 of 2014 s. 61)

5. Sections 1, 2, 3 and 4 apply despite section 55 of this Ordinance.

(Added 6 of 2014 s. 61)

6. In this Part, a reference to a set-off or offset includes a netting arrangement.

(Added 6 of 2014 s. 61)

7. For the purposes of this Part, a sum of money payable by, or payable to, a person includes a value to be taken into account under a netting arrangement to which the person is a party.

(Added 6 of 2014 s. 61)

8. In this Part—

client account (客户帳户), in relation to a clearing participant, means an account held with a recognized clearing house in the name of the clearing participant, other than a house account in which positions or collateral are recorded;

house account (結算所帳户), in relation to a clearing participant, means an account—

(a) which is held with a recognized clearing house in the name of the clearing participant; and

(b) in which the following are recorded—

(i) the clearing participant's own positions or collateral;

(ii) the positions or collateral of other persons that are regarded by the RCH rules to be the clearing participant's own positions or collateral;

netting (淨額計算) means the determination of a net balance by taking account of the values (whether positive or negative) attributed to an accelerated or terminated payment, or to a delivery obligation or entitlement;

RCH rules (《認可結算所規章》), in relation to a recognized clearing house, means the rules of the clearing house referred to in section 1.

(Added 6 of 2014 s. 61)

Part 6

Provisions Applicable Where there is Failure to Comply with Notice under Section 59(9)(c), 61(9)(b) or 72(1) of this Ordinance

1. Restrictions on and sale of securities

(1) The powers conferred by this section shall be exercisable where a person has failed to comply with a notice under section 59(9)(c), 61(9)(b) or 72(1) of this Ordinance.

(2) The Commission may, by notice in writing served on the person concerned, direct that any specified securities to which this section applies shall, until further notice, be subject to one or more of the following restrictions—

(a) any transfer of those securities or, in the case of unissued securities, any transfer of the right to be issued with them, and any issue of such securities, shall be void;

(b) no voting rights shall be exercisable in respect of the securities;

(c) no further securities shall be issued in right of them or pursuant to any offer made to their holder;

(d) except in a liquidation, no payment shall be made of any sums due from the corporation concerned on the securities, whether in respect of capital or otherwise;

(e) that the holder of the securities shall cause them to be transferred to a nominee of the Commission specified in the notice and within the period specified in the notice.

(3) Where securities are subject to the restrictions under subsection (2)(a), any agreement to transfer them or, in the case of unissued securities, the right to be issued with them, shall be void.

(4) Where securities are subject to the restrictions under subsection (2)(c) or (d), any agreement to transfer any right to be issued with other securities in right of those securities, or to receive any payment on them (otherwise than in a liquidation), shall be void.

(5) Where securities are subject to any restrictions under subsection (2), any person affected by any of those restrictions may request the Commission to make an application referred to in subsection (6)(a) in respect of those securities and, where such a request is made, the Commission shall, not later than 30 days after that request has been made—

(a) comply with that request; or

(b) serve a notice in writing on that person stating that it does not propose to comply with that request.

(6) The Court of First Instance may—

(a) on the application of the Commission, order the sale of any specified securities to which this section applies and,

if they are for the time being subject to any restrictions under subsection (2), that they shall cease to be subject to those restrictions;

(b) on the application of a person who has made a request under subsection (5) where he has been served with a notice under paragraph (b) of that subsection in respect of that request, order the sale of any specified securities to which that request relates and that they shall cease to be subject to any restrictions under subsection (2).

(7) Where an order has been made under subsection (6), the Court of First Instance may, on the application of the Commission, make such further order relating to the sale or transfer of the securities as it considers appropriate.

(8) Where securities are sold pursuant to an order under this section, the proceeds of the sale, less the costs of the sale, shall, unless otherwise specified by the Court of First Instance, be paid into court for the benefit of the persons beneficially interested in them, and any such person may apply to the Court of First Instance for an order that the whole or part of the proceeds be paid to him.

(9) This section shall apply—

(a) to all the securities of the corporation concerned by virtue of which the person concerned is a shareholder controller, or minority controller within the meaning of section 61 of this Ordinance, of the corporation which are held by him or any associated person of his and were not so held immediately before he became such a controller; and

(b) where the person concerned became a shareholder controller, or minority controller within the meaning of section 61 of this Ordinance, of the corporation concerned by virtue of the acquisition by him or

any associated person of his of securities of another corporation, to all the securities of that corporation which are held by him or any associated person of his and were not so held immediately before he became such a controller.

(10) A copy of a notice served under subsection (2) on the person concerned shall be served on the corporation to whose securities it relates and, if it relates to securities held by any associated person of that person, on that associated person.

(11) The Chief Justice may make rules regulating the practice and procedure in connection with applications (including any class of applications) made under subsection (6).

(12) It is hereby declared that the operation of subsection (2)(b) or (e) shall not by itself cause any person to contravene section 59(1) or 61(1) of this Ordinance.

2. Punishment for attempted evasion of restrictions

(1) Any person who—

(a) exercises or purports to exercise any right to dispose of any securities, or of any right to be issued with any such securities, knowing that to do so contravenes any restrictions under section 1(2) to which the securities are subject;

(b) votes in respect of any such securities as a holder or as a proxy knowing that to do so contravenes any such restrictions;

(c) appoints a proxy in respect of any such securities knowing that to vote in respect of any such securities would contravene any such restrictions;

(d) being the holder of any such securities, fails to notify of their being subject to those restrictions any person whom he does not know to be aware of that fact but

does know to be entitled (apart from the restrictions) to vote in respect of those securities whether as a holder or as a proxy;

(e) being the holder of any such securities, or being entitled to any right to be issued with other securities in right of them, or to receive any payment on them (otherwise than in a liquidation), enters into any agreement which is void under section 1(3) or (4); or

(f) without reasonable excuse, fails to comply with a restriction under section 1(2)(e) to which any such securities are subject,

commits an offence and is liable—

(i) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(ii) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(2) Where securities of a corporation are issued in contravention of restrictions under section 1(2) or payments are made by a corporation in contravention of such restrictions, every director and every manager of the corporation who knowingly and wilfully permits such an issue of securities or the making of such a payment (as the case may be) commits an offence and is liable—

(a) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

3. Prohibition on certain person acting as indirect controllers

(1) In this section, ***prohibited person*** (受禁制人士), in relation to a corporation, means any person who has failed to

comply with a notice under section 59(9)(c) or 72(1) of this Ordinance in relation to the corporation in so far as the notice relates to a controller who is an indirect controller.

(2) Where a person is or may become a prohibited person in respect of a corporation, the Commission shall serve on the corporation a copy of the notice concerned under section 59(9)(c) or 72(1) of this Ordinance.

(3) No person who is a prohibited person in respect of a corporation shall act or continue to act (as the case may be) as an indirect controller of the corporation and, accordingly, as such a controller shall not give or shall cease to give (as the case may be) any directions or instructions to the directors of the corporation or of another corporation of which it is a subsidiary.

(4) Where any director of a corporation or of another corporation of which it is a subsidiary is given (whether directly or indirectly) any directions or instructions—

(a) by a person whom the director knows, or ought reasonably to know, is a prohibited person in respect of the first-mentioned corporation; and

(b) which are, or might reasonably be construed as being, prohibited from being so given by virtue of subsection (3),

the director shall forthwith notify the Commission of those directions or instructions and the circumstances in which they were so given.

(5) Any prohibited person who contravenes subsection (3) commits an offence and is liable—

(a) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of $10,000 for every day during which the offence continues; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months and, in the case of a continuing offence, to a further fine of $10,000 for every day during which the offence continues.

(6) Any director who, without reasonable excuse, contravenes subsection (4) commits an offence and is liable—

(a) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of $10,000 for every day during which the offence continues; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months and, in the case of a continuing offence, to a further fine of $10,000 for every day during which the offence continues.

(7) In this section, a reference to a continuing offence means an offence consisting of a person's continued default, refusal or other contravention of subsection (3) or (4), and notwithstanding that any period (however expressed) specified in that subsection for complying with it has expired.

Part 7

Specification of Persons Who are not Minority Controllers

1. A person is not a minority controller for the purposes of Division 4 of Part III of this Ordinance in so far as the person is—

(a) a recognized clearing house (or its nominee) acting in its capacity as such; or

(b) the chairman of a general meeting of a corporation entitled to exercise voting rights in the corporation due to his appointment as a proxy where the appointment—

(i) is for that meeting only; and

(ii) does not involve any valuable consideration.

2. A person is not a minority controller for all the provisions of Division 4 of Part III of this Ordinance by reason only of being entitled to exercise voting rights in a corporation due to his appointment as a proxy where the appointment—

(a) is for only one general meeting of the corporation; and

(b) does not involve any valuable consideration.

Part 8

Exemption from Section 59(1) of this Ordinance

1. A person is exempt from section 59(1) of this Ordinance in so far as the person is—

(a) a recognized clearing house (or its nominee) acting in its capacity as such; or

(b) the controller of a corporation by reason only of being the chairman of a general meeting of the corporation entitled to exercise voting rights in the corporation due to his appointment as a proxy where the appointment—

(i) is for that meeting only; and

(ii) does not involve any valuable consideration.

Schedule 4

[ss. 102, 103, 110 & 112]

Offers of Investments

(Format changes—E.R. 1 of 2013)

Part 1

Sum Specified for Purposes of Section 103(3)(f)(i) and (g) of this Ordinance

$1 million or its equivalent in any foreign currency.

Part 2

Instruments Specified for Purposes of Section 103(3)(g) of this Ordinance

1. A bill of exchange within the meaning of section 3 of the Bills of Exchange Ordinance (Cap. 19).

2. A promissory note within the meaning of section 89 of the Bills of Exchange Ordinance (Cap. 19).

3. Any other instrument which evidences an obligation to pay a stated amount to bearer or to order, on or before a fixed time, with or without interest, being an instrument by the delivery of which, with or without endorsement, the right to receive that stated amount, with or without interest, is transferable (and, in the case of any such instrument which is a prescribed instrument by virtue of

paragraph (a) of the definition of ***prescribed instrument*** in section 137B(1) of the Banking Ordinance (Cap. 155), such instrument includes any right or interest referred to in paragraph (b) of that definition in respect of such instrument).

Part 3

Exempted Bodies

1. The Government.

2. Hong Kong Housing Authority.

3. Airport Authority.

4. Kowloon-Canton Railway Corporation.

5. Urban Renewal Authority.

6. Hong Kong Export Credit Insurance Corporation.

7. Hong Kong Science and Technology Parks Corporation.

8. Hong Kong Productivity Council.

9. Hong Kong Tourism Board.

10. Hong Kong Trade Development Council.

11. Any other corporation which has any of its shares listed and any wholly owned subsidiary of such a corporation, whether incorporated in Hong Kong or elsewhere.

Part 4

Sum Specified for Purposes of Definition of *Relevant Condition* in Section 103(12) of this Ordinance

$100 million or its equivalent in any foreign currency.

Schedule 5

[ss. 114, 118, 139 & 142 & Sch. 1]

Regulated Activities

(Format changes—E.R. 1 of 2013)

Part 1

The following are regulated activities—

Type 1 :	dealing in securities;
Type 2 :	dealing in futures contracts;
Type 3 :	leveraged foreign exchange trading;
Type 4 :	advising on securities;
Type 5 :	advising on futures contracts;
Type 6 :	advising on corporate finance;
Type 7 :	providing automated trading services;
Type 8 :	securities margin financing;
Type 9 :	asset management; *(Amended L.N. 28 of 2011)*
Type 10 :	providing credit rating services; *(Added L.N. 28 of 2011. Amended 6 of 2014 s. 53)*
#Type 11 :	dealing in OTC derivative products or advising on OTC derivative products; *(Added 6 of 2014 s. 53)*
@Type 12 :	providing client clearing services for OTC derivative transactions. *(Added 6 of 2014 s. 53)*

Editorial Note:

Not yet in operation.

@ The new Type 12, Part 1, Schedule 5 added by the Securities and Futures (Amendment) Ordinance 2014 (6 of 2014) came into operation on 1 September 2016, in so far as it relates to paragraph (c) of the new definition of ***excluded***

services in Part 2 of Schedule 5. Please see paragraph (g) of the Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2016 (L.N. 27 of 2016).

Part 2

In this Schedule—

advising on corporate finance (就機構融資提供意見) means giving advice—

(a) concerning compliance with or in respect of rules made under section 23 or 36 of this Ordinance governing the listing of securities and the code published under section 399(2)(a) or (b) of this Ordinance;

(b) concerning—

(i) any offer to dispose of securities to the public;

(ii) any offer to acquire securities from the public; or

(iii) acceptance of any offer referred to in subparagraph (i) or (ii), but only in so far as the advice is given generally to holders of securities or a class of securities; or

(c) to a listed corporation or public company or a subsidiary of the corporation or company, or to its officers or shareholders, concerning corporate restructuring in respect of securities (including the issue, cancellation or variation of any rights attaching to any securities),

but does not include such advice given by—

(i) a corporation solely to any of its wholly owned subsidiaries, its holding company which holds all its issued shares, or other wholly owned subsidiaries of that holding company;

(ii) a person who is licensed for Type 1 regulated activity who gives such advice wholly incidental to the carrying on of that regulated activity;

(iii) an authorized financial institution which is registered for Type 1 regulated activity which gives such advice wholly incidental to the carrying on of that regulated activity;

(iv) an individual—

(A) whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged in respect of Type 1 regulated activity by an authorized financial institution registered for that regulated activity; and

(B) who gives such advice wholly incidental to the carrying on of that regulated activity;

(v) a solicitor who gives such advice wholly incidental to his practice as such in a Hong Kong firm or foreign firm within the meaning of the Legal Practitioners Ordinance (Cap. 159);

(vi) counsel who gives such advice wholly incidental to his practice as such;

(vii) a certified public accountant who gives such advice wholly incidental to his practice as such in a practice unit as defined by section 2(1) of the Accounting and Financial Reporting Council Ordinance (Cap. 588); *(Amended 23 of 2004 s. 56; L.N. 66 of 2022)*

(viii) a trust company registered under Part 8 of the Trustee Ordinance (Cap. 29) which gives such advice wholly incidental to the discharge of its duty as such; or

(ix) a person through—

(A) a newspaper, magazine, book or other publication which is made generally available to the public; or

(B) television broadcast or radio broadcast for reception by the public, whether on subscription or otherwise;

advising on futures contracts (就期貨合約提供意見) means—

(a) giving advice on—

(i) whether;

(ii) which;

(iii) the time at which; or

(iv) the terms or conditions on which,

futures contracts should be entered into; or

(b) issuing analyses or reports, for the purposes of facilitating the recipients of the analyses or reports to make decisions on—

(i) whether;

(ii) which;

(iii) the time at which; or

(iv) the terms or conditions on which,

futures contracts are to be entered into,

otherwise than by—

(i) a corporation which gives such advice or issues such analyses or reports solely to any of its wholly owned subsidiaries, its holding company which holds all its issued shares, or other wholly owned subsidiaries of that holding company;

(ii) a person who is licensed for Type 2 regulated activity who gives such advice or issues such analyses or reports wholly incidental to the carrying on of that regulated activity;

(iii) an authorized financial institution which is registered for Type 2 regulated activity which gives such advice or issues such analyses or reports wholly incidental to the carrying on of that regulated activity;

(iv) an individual—

(A) whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged in respect of Type 2 regulated activity by an authorized financial institution registered for that regulated activity; and

(B) who gives such advice or issues such analyses or reports wholly incidental to the carrying on of that regulated activity;

(iva) a person—

(A) who is licensed or registered for Type 9 regulated activity;

(B) who provides a service of managing a portfolio of futures contracts under a collective investment scheme for another person that the person is permitted to provide under that licence or registration; and *(Amended 6 of 2014 s. 53)*

(C) who gives such advice or issues such analyses or reports solely for the purposes of providing the service described in subparagraph (B); *(Added L.N. 197 of 2005)*

(v) a solicitor who gives such advice, or issues such analyses or reports as part of an advice given, wholly incidental to his practice as a solicitor in a Hong Kong firm or foreign firm within the meaning of the Legal Practitioners Ordinance (Cap. 159);

(vi) counsel who gives such advice, or issues such analyses or reports as part of an advice given, wholly incidental to his practice as counsel;

(vii) a certified public accountant who gives such advice, or issues such analyses or reports as part of an advice given, wholly incidental to his practice as a certified public accountant in a practice unit as defined by section 2(1) of the Accounting and Financial Reporting Council Ordinance (Cap. 588); *(Amended 23 of 2004 s. 56; L.N. 66 of 2022)*

(viii) a trust company registered under Part 8 of the Trustee Ordinance (Cap. 29) which gives such advice or issues such analyses or reports wholly incidental to the discharge of its duty as such; or

(ix) a person who gives such advice or issues such analyses or reports through—

(A) a newspaper, magazine, book or other publication which is made generally available to the public; or

(B) television broadcast or radio broadcast for reception by the public, whether on subscription or otherwise;

advising on securities (就證券提供意見) means—

(a) giving advice on—

(i) whether;

(ii) which;

(iii) the time at which; or

(iv) the terms or conditions on which,

securities should be acquired or disposed of; or

(b) issuing analyses or reports, for the purposes of facilitating the recipients of the analyses or reports to make decisions on—

(i) whether;

(ii) which;

(iii) the time at which; or

(iv) the terms or conditions on which,

securities are to be acquired or disposed of,

otherwise than by—

(i) a corporation which gives such advice or issues such analyses or reports solely to any of its wholly owned subsidiaries, its holding company which holds all its issued shares, or other wholly owned subsidiaries of that holding company;

(ii) a person who is licensed for Type 1 regulated activity who gives such advice or issues such analyses or reports wholly incidental to the carrying on of that regulated activity;

(iii) an authorized financial institution which is registered for Type 1 regulated activity which gives such advice or issues such analyses or reports wholly incidental to the carrying on of that regulated activity;

(iv) an individual—

(A) whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged in respect of Type 1 regulated activity by an authorized financial institution registered for that regulated activity; and

(B) who gives such advice or issues such analyses or reports wholly incidental to the carrying on of that regulated activity;

(iva) a person—

(A) who is licensed or registered for Type 9 regulated activity;

(B) who provides a service of managing a portfolio of securities under a collective investment scheme for another person that the person is permitted to provide under that licence or registration; and *(Amended 6 of 2014 s. 53)*

(C) who gives such advice or issues such analyses or reports solely for the purposes of providing the service described in subparagraph (B); *(Added L.N. 197 of 2005)*

(v) a solicitor who gives such advice, or issues such analyses or reports as part of an advice given, wholly incidental to his practice as a solicitor in a Hong Kong firm or foreign firm within the meaning of the Legal Practitioners Ordinance (Cap. 159);

(vi) counsel who gives such advice, or issues such analyses or reports as part of an advice given, wholly incidental to his practice as counsel;

(vii) a certified public accountant who gives such advice, or issues such analyses or reports as part of an advice given, wholly incidental to his practice as a certified public accountant in a practice unit as defined by section 2(1) of the Accounting and Financial Reporting Council Ordinance (Cap. 588); *(Amended 23 of 2004 s. 56; L.N. 66 of 2022)*

(viii) a trust company registered under Part 8 of the Trustee Ordinance (Cap. 29) which gives such advice or issues such analyses or reports wholly incidental to the discharge of its duty as such; or

(ix) a person who gives such advice or issues such analyses or reports through—

(A) a newspaper, magazine, book or other publication which is made generally available to the public; or

(B) television broadcast or radio broadcast for reception by the public, whether on subscription or otherwise,

but does not include the giving of such advice or issuing of such analyses or reports that falls within the meaning of ***advising on corporate finance*** or ***providing credit rating services***; *(Amended L.N. 28 of 2011; 6 of 2014 s. 53)*

asset management (資產管理) means—

(a) real estate investment scheme management; or

(b) securities or futures contracts management; *(Added L.N. 197 of 2005)*

automated trading services (自動化交易服務) means services provided by means of electronic facilities, not being facilities provided by a recognized exchange company or a recognized clearing house, whereby—

(a) offers to sell or purchase securities or futures contracts are regularly made or accepted in a way that forms or results in a binding transaction in accordance with established methods, including any method commonly used by a stock market or futures market;

[+](ab) offers to enter into OTC derivative transactions are regularly made or accepted in a way that forms or results in a binding transaction in accordance with established methods; *(Added 6 of 2014 s. 53)*

(b) persons are regularly introduced, or identified to other persons in order that they may negotiate or conclude, or with the reasonable expectation that they will negotiate or conclude sales or purchases of securities or futures contracts in a way that forms or results in a binding transaction in accordance with established methods, including any method commonly used by a stock market or futures market; *(Amended 6 of 2014 s. 53)*

[@](ba) persons are regularly introduced, or identified to other persons—

(i) in order that they may negotiate or conclude OTC derivative transactions in a way that forms or results in a binding transaction in accordance with established methods; or

(ii) with the reasonable expectation that they will negotiate or conclude OTC derivative transactions in such a way; *(Added 6 of 2014 s. 53)*

(c) transactions—

(i) referred to in paragraph (a);

(ii) resulting from the activities referred to in paragraph (b); or

(iii) effected on, or subject to the rules of, a stock market or futures market,

may be novated, cleared, settled or guaranteed; or

##(d) transactions—

(i) referred to in paragraph (ab); or

(ii) resulting from the activities referred to in paragraph (ba),

may be novated, cleared, settled or guaranteed, *(Added 6 of 2014 s. 53)*

but does not include such services provided by a corporation operated by or on behalf of the Government or any excluded services; *(Amended 6 of 2014 s. 53)*

credit ratings (信貸評級) means opinions, expressed using a defined ranking system, primarily regarding the creditworthiness of—

(a) a person other than an individual;

(b) debt securities;

(c) preferred securities; or

(d) an agreement to provide credit; *(Added L.N. 28 of 2011)*

dealing in futures contracts (期貨合約交易), in relation to a person, means—

(a) making or offering to make an agreement with another person to enter into, or to acquire or dispose of, a futures contract;

(b) inducing or attempting to induce another person to enter into, or to offer to enter into, a futures contract; or

(c) inducing or attempting to induce another person to acquire or dispose of a futures contract,

by the person, except where the person—

(i) is carrying out his functions as a recognized clearing house;

(ii) performs the act referred to in paragraph (a), (b) or (c) through another person (***the futures dealer***)—

(A) who is licensed or registered for Type 2 regulated activity; or

(B) whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged in respect of Type 2 regulated activity by an authorized financial institution registered for that regulated activity,

but the person shall be regarded as dealing in futures contracts if, in return for a commission, rebate or other remuneration, the person—

(I) receives from a third person an offer or invitation to enter into a futures contract, and communicates it, either in his name or in the name of the third person, to the futures dealer;

(II) effects an introduction between the futures dealer or his representative and a third person, so that the third person may enter into, or offer or invite to enter into, a futures contract with the futures dealer;

(III) effects an acquisition or disposal of a futures contract for a third person through the futures dealer;

(IV) makes an offer for the futures dealer to a third person to acquire or dispose of a futures contract; or

(V) accepts for the futures dealer an offer by a third person to acquire or dispose of a futures contract;

(iii) performs the act referred to in paragraph (a), (b) or (c) only on a market referred to in section 3(a), (b) or (c) of the Commodity Exchanges (Prohibition) Ordinance (Cap. 82);

(iv) is a member of a commodity exchange referred to in section 3(d) of the Commodity Exchanges (Prohibition) Ordinance (Cap. 82) who only performs the act referred to in paragraph (a), (b) or (c) on such an exchange;

(v) enters into a market contract;

(vi) is licensed or registered for Type 9 regulated activity and performs the act referred to in paragraph (a), (b) or (c) solely for the purposes of carrying on that regulated activity; or

(vii) as principal performs the act referred to in paragraph (a), (b) or (c) in relation to a futures contract traded otherwise than on a recognized futures market by way of dealing with a person who is a professional investor (whether acting as principal or agent);

dealing in securities (證券交易), in relation to a person, means making or offering to make an agreement with another person, or inducing or attempting to induce another person to enter into or to offer to enter into an agreement—

(a) for or with a view to acquiring, disposing of, subscribing for or underwriting securities; or

(b) the purpose or pretended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities,

by the person, except where the person—

(i) is a recognized exchange company operating a stock market;

(ii) is a recognized clearing house;

(iii) is a corporation providing automated trading services under authorization granted under section 95(2) of this Ordinance;

(iv) performs the act through another person (***the securities dealer***)—

(A) who is licensed or registered for Type 1 regulated activity; or

(B) whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged in respect of Type 1 regulated activity by an authorized financial institution registered for that regulated activity,

but the person shall be regarded as dealing in securities if, in return for a commission, rebate or other remuneration, the person—

(I) receives from a third person an offer or invitation to enter into an agreement referred to in paragraph (a) or (b), and communicates it, either in his name or in the name of the third person, to the securities dealer;

(II) effects an introduction between the securities dealer or his representative and a third person, so that the third person may enter into, or offer or invite to enter into, an agreement referred to in paragraph (a) or (b) with the securities dealer;

(III) effects an agreement referred to in paragraph (a) or (b) on behalf of a third person through the securities dealer;

(IV) makes an offer to the securities dealer on behalf of a third person to acquire or dispose of securities; or

(V) accepts for the securities dealer an offer by a third person to enter into an agreement referred to in paragraph (a) or (b);

(v) as principal—

(A) performs the act by way of dealing with a person who is a professional investor (whether acting as principal or agent); or

(B) acquires, disposes of, subscribes for or underwrites securities;

(vi) enters into a market contract;

(vii) issues a prospectus which complies with, or is exempt from compliance with, Part II of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) or, in the case of a corporation incorporated outside Hong Kong, Part XII of that Ordinance; *(Amended 28 of 2012 ss. 912 & 920)*

(viii) issues a document relating to the securities of a corporation incorporated in Hong Kong which is not a company, being a document which—

(A) would, if the corporation were a company, be a prospectus to which section 38 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) applies, or would apply if not excluded by section 38(5)(b) or 38A of that

Ordinance; and *(Amended 28 of 2012 ss. 912 & 920)*

(B) contains all the matters which, under Part XII of that Ordinance, would be required to contain if the corporation were a corporation incorporated outside Hong Kong and the document were a prospectus issued by the corporation;

(ix) issues a form of application for the shares or debentures of a corporation, together with—

(A) a prospectus which complies with, or is exempt from compliance with, Part II of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) or, in the case of a corporation incorporated outside Hong Kong, Part XII of that Ordinance; or *(Amended 28 of 2012 ss. 912 & 920)*

(B) in the case of a corporation incorporated in Hong Kong which is not a company, a document which contains the matters specified in paragraph (viii)(B);

(x) issues a prospectus the registration of which has been authorized by the Commission under section 342C of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) in relation to a collective investment scheme that is a corporation— *(Amended 28 of 2012 ss. 912 & 920)*

(A) which is or holds itself out as being engaged primarily in the business of investing, reinvesting or trading in any property (including securities and futures contracts); and

(B) the shares in which are exclusively, or primarily, redeemable shares,

or issues together with the prospectus a form of application for the shares in the corporation;

(xi) issues any advertisement, invitation or document the issue of which has been authorized by the Commission under section 105 of this Ordinance;

(xia) being an open-ended fund company, issues any advertisement, invitation or document in respect of the shares in the company; *(Added 16 of 2016 s. 21)*

(xii) is a trust company registered under Part 8 of the Trustee Ordinance (Cap. 29) acting as an agent for a collective investment scheme which, by performing the act, is carrying out its functions of distributing application forms, redemption notices, conversion notices and contract notes, receiving money and issuing receipts on behalf of its principal;

(xiii) is licensed or registered for Type 4 or Type 6 regulated activity and, solely for the purposes of carrying on that regulated activity, he issues a document under section 175(1)(a)(i) or (ii) of this Ordinance, the content of which complies with the requirements of section 175(1)(b) and (c) of this Ordinance; *(Amended L.N. 197 of 2005)*

(xiv) is licensed or registered for Type 9 regulated activity and performs the act solely for the purposes of carrying on that regulated activity; or *(Amended L.N. 197 of 2005)*

(xv) in any case where each of the parties to the transaction or proposed transaction under which securities are or will be acquired, disposed of, subscribed for or underwritten as described in paragraph (a) is an authorized financial institution, is an approved money broker and performs the act for each of the parties to the transaction or proposed transaction; *(Added L.N. 197 of 2005. Amended 6 of 2014 s. 53)*

debt securities (債務證券) means debenture stocks, loan stocks, debentures, bonds, notes, indexed bonds, convertible debt securities, bonds with warrants, non-interest bearing debt securities, and other securities or instruments acknowledging, evidencing or creating indebtedness; *(Added L.N. 28 of 2011)*

excluded services (豁除服務) means—

#(a) services for trading in OTC derivative products that do not fall within paragraph (a), (b) or (c) of the definition of ***automated trading services*** and which are provided—

(i) by an authorized financial institution or an approved money broker;

(ii) by means of electronic facilities; and

(iii) wholly incidentally in carrying out an act that would constitute dealing in OTC derivative products but for the exclusion under section 2(f) of Part 2A;

#(b) services for clearing OTC derivative products that—

(i) also constitute Type 12 regulated activity; and

(ii) are provided by a person licensed for that regulated activity; and

(c) services for clearing OTC derivative products that—

(i) would constitute Type 12 regulated activity but for the exclusion under section 4(b) of Part 2A; and

(ii) are provided by an authorized financial institution or an approved money broker; *(Added 6 of 2014 s. 53)*

foreign exchange trading (外匯交易) means entering into or offering to enter into, or inducing or attempting to induce a person to enter into or to offer to enter into, a contract or arrangement whereby any person undertakes to—

(a) exchange currency with another person;

(b) deliver an amount of foreign currency to another person; or

(c) credit the account of another person with an amount of foreign currency,

but does not include any act performed for or in connection with any contract or arrangement or a proposed contract or arrangement as described in paragraphs (i) to (xv) of the definition of ***leveraged foreign exchange trading***;

leveraged foreign exchange contract (槓桿式外匯交易合約) means a contract or arrangement the effect of which is that one party agrees or undertakes to—

(a) make an adjustment between himself and the other party or another person according to whether a currency is worth more or less (as the case may be) in relation to another currency;

(b) pay an amount of money or to deliver a quantity of any commodity determined or to be determined by reference to the change in value of a currency in relation to another currency to the other party or another person; or

(c) deliver to the other party or another person at an agreed future time an agreed amount of currency at an agreed consideration;

leveraged foreign exchange trading (槓桿式外匯交易) means—

(a) the act of entering into or offering to enter into, or inducing or attempting to induce a person to enter into or to offer to enter into, a leveraged foreign exchange contract;

(b) the act of providing any financial accommodation to facilitate foreign exchange trading or to facilitate an act referred to in paragraph (a); or

(c) the act of entering into or offering to enter into, or inducing or attempting to induce a person to enter into, an arrangement with another person, on a discretionary basis or otherwise, to enter into a contract to facilitate an act referred to in paragraph (a) or (b),

but does not include any act performed for or in connection with any contract or arrangement or a proposed contract or arrangement—

(i) wholly referable to the provision of property, other than currency, or services or employment at fair or market value;

(ia) by a person for the purpose of performing the person's functions as a recognized clearing house; *(Added 6 of 2014 s. 53)*

(ii) where the contract or arrangement is entered into by a corporation—

(A) the principal business of which does not include dealing in currency in any form;

(B) for the purpose of hedging its exposure to currency exchange risks in connection with its business; and

(C) with another corporation;

(iii) that is an exchange transaction within the meaning of the Money Changers Ordinance (Cap. 34);

(iv) arranged by an approved money broker and every party to which is— *(Amended 6 of 2014 s. 53; 14 of 2020 s. 122)*

(A) a corporation;

(B) a limited partnership registered under the Limited Partnerships Ordinance (Cap. 37); or

(C) a limited partnership fund registered under the Limited Partnership Fund Ordinance (Cap. 637); *(Added 14 of 2020 s. 122. Amended E.R. 5 of 2020)*

(v) that is a transaction executed solely for the purpose of its insurance business by an insurer authorized under section 8 of the Insurance Ordinance (Cap. 41) (***Cap. 41***) to carry on insurance business, or deemed to be so authorized under section 61(1) or (2) of Cap. 41 as in force immediately before the commencement date of section 10 of the Insurance Companies (Amendment) Ordinance 2015 (12 of 2015) having continuing effect by the operation of section 2(7) of Schedule 11 to Cap. 41; *(Amended 12 of 2015 s. 145)*

(vi) that is a contract executed on a specified futures exchange by or through a person who is licensed or registered for Type 2 regulated activity or is wholly incidental to one or more than one such contract or a series of such contracts;

(vii) arranged by—

(A) a body which, in the opinion of the Monetary Authority, is—

(I) a central bank; or

(II) an institution which performs the functions of a central bank; or

(B) an organization which, with the approval of the Monetary Authority, is acting on behalf of a body referred to in subparagraph (A);

(viii) that is a transaction executed on a specified stock exchange by or through a person who is licensed or registered for Type 1 regulated activity or is wholly incidental to one or more than one such transaction or a series of such transactions;

(ix) that is a transaction executed by or through a person who is licensed or registered for Type 7 regulated activity or is wholly incidental to one or more than one such transaction or a series of such transactions;

(x) that is a transaction in an interest or interests in a collective investment scheme authorized by the Commission under section 104 of this Ordinance;

(xi) that is wholly incidental to one or more than one transaction in specified debt securities or a series of such transactions;

#(xia) that is an OTC derivative dealing act carried out by a person who is licensed for Type 12 regulated activity and is carried out wholly incidentally to the carrying on of that regulated activity; *(Added 6 of 2014 s. 53)*

(xib) that is an act that constitutes entering into a market contract; *(Added 6 of 2014 s. 53)*

(xii) by an authorized financial institution;

(xiii) by any person belonging to a class of persons, or carrying on a type of business, as prescribed by rules made under section 397 of this Ordinance for the purposes of this paragraph;

(xiv) by a person through a trader, but the person shall be regarded as carrying on leveraged foreign exchange trading if, in return for a commission, rebate or other remuneration, the person—

(A) receives from another person an offer or invitation to—

(I) enter into a leveraged foreign exchange contract; or

(II) use any financial accommodation to facilitate foreign exchange trading or facilitate entering into a leveraged foreign exchange contract,

and communicates it, either in his name or in the name of the other person, to the trader;

(B) effects an introduction between the trader or its representative and another person, so that the other person may—

(I) enter into a leveraged foreign exchange contract with the trader; or

(II) use any financial accommodation provided by the trader to facilitate foreign exchange trading or facilitate entering into a leveraged foreign exchange contract; or

(C) effects the entering into a leveraged foreign exchange contract by another person through the trader,

where in this paragraph, ***trader*** (交易商) means a corporation licensed for Type 3 regulated activity or an authorized financial institution; or

(xv) by—

(A) a collective investment scheme; or

(B) a person in the course of business for the purpose of operating a collective investment scheme,

authorized by the Commission under section 104 of this Ordinance;

preferred securities (優先證券) means preference shares, preferred shares or preferred stock; *(Added L.N. 28 of 2011)*

§***providing client clearing services for OTC derivative transactions*** (為場外衍生工具交易提供客户結算服務), in relation to a person and subject to Part 2A, means providing services to another person for the clearing and settlement of OTC derivative transactions through a central counterparty (whether located in Hong Kong or elsewhere)— *(Added 6 of 2014 s. 53. Amended 17 of 2021 s. 75)*

(a) as a member of the central counterparty; or

(b) as a client of a member of the central counterparty (***direct client***), a client of a direct client (***indirect client***), a client of an indirect client, or a client, whether direct or indirect, of any of those persons; *(Amended 17 of 2021 s. 75)*

providing credit rating services (提供信貸評級服務) means—

(a) preparing credit ratings—

(i) for dissemination to the public, whether in Hong Kong or elsewhere; or

(ii) with a reasonable expectation that they will be so disseminated; or

(b) preparing credit ratings—

(i) for distribution by subscription, whether in Hong Kong or elsewhere; or

(ii) with a reasonable expectation that they will be so distributed,

but does not include—

(c) preparing, pursuant to a request made by a person, a credit rating which is exclusively prepared for, and provided to, the person and that is neither intended for dissemination to the public or distribution by subscription, whether in Hong Kong or elsewhere, nor reasonably expected to be so disseminated or distributed; or

(d) gathering, collating, disseminating or distributing information concerning the indebtedness or credit history of any person;

(Added L.N. 28 of 2011)

real estate investment scheme management (房地產投資計劃管理), in relation to a person, means providing a service of operating a collective investment scheme for another person by the person, where—

(a) the property that is being managed under the scheme consists primarily of immovable property; and

(b) the scheme is authorized under section 104 of this Ordinance;

(Added L.N. 197 of 2005)

securities margin financing (證券保證金融資) means providing a financial accommodation in order to facilitate—

(a) the acquisition of securities listed on any stock market, whether a recognized stock market or any other stock market outside Hong Kong; and

(b) (where applicable) the continued holding of those securities,

whether or not those or other securities are pledged as security for the accommodation, but does not include the provision of financial accommodation—

(i) that forms part of an arrangement to underwrite or sub-underwrite securities;

(ii) to facilitate an acquisition of securities in accordance with the term of a prospectus, regardless of whether the offer of securities is made in Hong Kong or elsewhere;

(iii) by a person who is licensed or registered for Type 1 regulated activity in order to facilitate acquisitions or holdings of securities by the person for his client;

(iv) by a collective investment scheme that is a corporation—

(A) which is or holds itself out as being engaged primarily in the business of investing, reinvesting or trading in any property (including securities and futures contracts); and

(B) the shares in which are exclusively, or primarily, redeemable shares,

in order to finance investment in any interest in the collective investment scheme of which it is the issuer;

(v) by an authorized financial institution for the purpose of facilitating acquisitions or holdings of securities by the institution's clients;

(vi) by an individual to a company in which he holds 10% or more of its issued shares to facilitate acquisitions or holdings of securities; or *(Amended 28 of 2012 ss. 912 & 920)*

(vii) by an intermediary by way of effecting an introduction between a person and a related corporation of the intermediary in order that the corporation may provide the person with financial accommodation; *(Amended L.N. 197 of 2005)*

securities or futures contracts management (證券或期貨合約管理), in relation to a person, means providing a service of managing a portfolio of securities or futures contracts for another person by the person, otherwise than by— *(Amended L.N. 197 of 2005)*

(a) a corporation which provides such service solely to any of its wholly owned subsidiaries, its holding company which holds all its issued shares, or other wholly owned subsidiaries of that holding company;

(b) a person who is licensed for Type 1 or Type 2 regulated activity who provides such service wholly incidental to the carrying on of that regulated activity;

(c) an authorized financial institution which is registered for Type 1 or Type 2 regulated activity which provides such service wholly incidental to the carrying on of that regulated activity;

(d) an individual—

(i) whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged in respect of Type 1 or Type 2 (as the case may be) regulated activity by an authorized financial institution registered for that regulated activity; and

(ii) who provides such service wholly incidental to the carrying on of that regulated activity;

(e) a solicitor who provides such service wholly incidental to his practice as such in a Hong Kong firm or foreign firm within the meaning of the Legal Practitioners Ordinance (Cap. 159);

(f) counsel who provides such service wholly incidental to his practice as such;

(g) a certified public accountant who provides such service wholly incidental to his practice as such in a practice unit as defined by section 2(1) of the Accounting and Financial Reporting Council Ordinance (Cap. 588); or *(Amended 23 of 2004 s. 56; L.N. 66 of 2022)*

(h) a trust company registered under Part 8 of the Trustee Ordinance (Cap. 29) which provides such service wholly incidental to the discharge of its duty as such. *(Amended L.N. 197 of 2005)*

(Amended E.R. 2 of 2014)

Editorial Note:

+ The new paragraph (ab) in the definition of ***automated trading services***, Part 2, Schedule 5 added by the Securities and Futures (Amendment) Ordinance 2014 (6 of 2014) came into operation on 1 September 2016, in so far as it relates to the new paragraph (d) of the definition of ***automated trading services***. Please see paragraph (h) of the Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2016 (L.N. 27 of 2016).

@ The new paragraph (ba) in the definition of ***automated trading services***, Part 2, Schedule 5 added by the Securities and Futures (Amendment) Ordinance 2014 (6 of 2014) came into operation on 1 September 2016, in so far as it relates to the new paragraph (d) of the definition of ***automated trading services***. Please see paragraph (j) of the Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2016 (L.N. 27 of 2016).

The new paragraph (d) in the definition of ***automated trading services***, Part 2, Schedule 5 added by the Securities and Futures (Amendment) Ordinance 2014 (6 of 2014) came into operation on 1 September 2016, except in so far as it relates to Type 7 regulated activity under the Securities and Futures Ordinance (Cap. 571). Please see paragraph (l) of the Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2016 (L.N. 27 of 2016).

Not yet in operation.

§ The new definition of ***providing client clearing services for OTC derivative transactions***, Part 2, Schedule 5 added by the Securities and Futures (Amendment) Ordinance 2014 (6 of 2014) came into operation on 1 September 2016, in so far as it relates to paragraph (c) of the new definition of ***excluded services***. Please see paragraph (n)(ii) of the Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2016 (L.N. 27 of 2016). See also section 78(3) of the Securities and Futures and Companies Legislation (Amendment) Ordinance 2021 (17 of 2021).

Part 2A

#1. In Part 2, ***advising on OTC derivative products*** does not include the following—

(a) an act that falls within—

(i) Type 4 regulated activity, carried out by a person licensed to carry on that regulated activity; or

(ii) Type 5 regulated activity, carried out by a person licensed to carry on that regulated activity;

(b) an act that is excluded from the definition of ***advising on futures contracts*** in Part 2 under paragraph (ii) of that definition;

(c) an act that is excluded from the definition of ***advising on securities*** in Part 2 under paragraph (ii) of that definition;

(d) an OTC derivative advising act carried out in the ordinary course of business by—

(i) an authorized financial institution; or

(ii) an approved money broker;

(e) an OTC derivative advising act carried out by a person licensed for Type 9 regulated activity who—

(i) provides a service of OTC derivative products management that the person is permitted to provide under that licence; and

(ii) carries out the act solely for the purpose of providing that service;

(f) an OTC derivative advising act carried out by a person who—

(i) falls within a class prescribed by rules made under section 397 of this Ordinance for the purposes of this paragraph; or

(ii) carries on a type or description of business so prescribed;

(g) an OTC derivative advising act carried out by a corporation, if the giving of the advice or issuing of the analyses or reports constituting the act is solely to—

(i) any of its wholly owned subsidiaries; or

(ii) a holding company that holds all its issued shares or to other wholly owned subsidiaries of that holding company;

(h) an OTC derivative advising act carried out by—

(i) a solicitor, if carrying out that act is wholly incidental to his or her practice as a solicitor in a Hong Kong firm or foreign firm (both as

defined by section 2(1) of the Legal Practitioners Ordinance (Cap. 159));

(ii) counsel, if carrying out that act is wholly incidental to his or her practice as counsel;

(iii) a certified public accountant, if carrying out that act is wholly incidental to his or her practice as a certified public accountant in a practice unit (as defined by section 2(1) of the Professional Accountants Ordinance (Cap. 50)); or

(iv) a trust company registered under Part VIII of the Trustee Ordinance (Cap. 29), if carrying out that act is wholly incidental to the discharge of its duties as such a trust company;

(i) an OTC derivative advising act carried out by a person through—

(i) a newspaper, magazine, book or other publication that is made generally available to the public; or

(ii) a television broadcast or radio broadcast for reception by the public, whether on subscription or otherwise.

#2. In Part 2, ***dealing in OTC derivative products*** does not include the following—

(a) an act that falls within—

(i) Type 1 regulated activity, carried out by a person licensed to carry on that regulated activity;

(ii) Type 2 regulated activity, carried out by a person licensed to carry on that regulated activity; or

(iii) Type 3 regulated activity, carried out by a person licensed to carry on that regulated activity;

(b) an act that is excluded from the definition of ***dealing in securities*** in Part 2 under paragraph (iv) or (xiii) of that definition;

(c) an act that is excluded from the definition of ***dealing in futures contracts*** in Part 2 under paragraph (ii) of that definition;

(d) an act that is excluded from the definition of ***leveraged foreign exchange trading*** in Part 2 under paragraph (i), (iii), (vii) or (xiv) of that definition;

(e) an act carried out by a person for the purpose of performing the person's functions as—

(i) a recognized clearing house;

(ii) a recognized exchange company; or

(iii) a provider of automated trading services authorized under section 95(2) of this Ordinance;

(f) an act carried out in the ordinary course of business by—

(i) an authorized financial institution; or

(ii) an approved money broker;

(g) an act referred to in paragraph (a) of the definition of ***dealing in OTC derivative products*** in Part 2 that is carried out by a person as a price taker;

(h) an OTC derivative dealing act carried out by a person licensed for Type 9 regulated activity who—

(i) provides a service of managing a portfolio of OTC derivative products for another person that the person is permitted to provide under that licence; and

(ii) carries out the act solely for the purpose of providing that service;

(i) an OTC derivative dealing act—

(i) carried out by a person who is licensed for Type 12 regulated activity; and

(ii) is carried out wholly incidentally to the carrying on of that regulated activity;

(j) an act that constitutes entering into a market contract;

(k) an act carried out by a person who—

(i) falls within a class prescribed by rules made under section 397 of this Ordinance for the purposes of this paragraph; or

(ii) carries on a type or description of business so prescribed;

(l) an OTC derivative dealing act carried out only on a market referred to in section 3(a), (b) or (c) of the Commodity Exchanges (Prohibition) Ordinance (Cap. 82);

(m) an OTC derivative dealing act carried out by a person who—

(i) is a member of a commodity exchange referred to in section 3(d) of the Commodity Exchanges (Prohibition) Ordinance (Cap. 82); and

(ii) carries out the act only on an exchange referred to in subparagraph (i);

(n) an OTC derivative dealing act that is carried out by a person (***first person***) through another person (***OTC derivative products dealer***) who is—

(i) licensed for Type 11 regulated activity;

(ii) an authorized financial institution;

(iii) an approved money broker;

(iv) an officer or employee of an authorized financial institution, acting in the person's capacity as such; or

(v) an officer or employee of an approved money broker, acting in the person's capacity as such,

except that the first person is to be regarded as dealing in OTC derivative products if that person, in return for a commission, rebate or other remuneration carries out an act set out in section 3.

#3. The acts referred to in section 2(n) are that the first person (within the meaning of that section)—

(a) receives from a third person an offer or invitation to enter into an OTC derivative transaction, and communicates it, either in the first person's name or in the name of the third person to the OTC derivative products dealer (within the meaning of section 2(n));

(b) effects an introduction between the OTC derivative products dealer or that dealer's representative and a third person, so that the third person may enter into, or offer or invite to enter into, an OTC derivative transaction with the OTC derivative products dealer;

(c) effects the entering into an OTC derivative transaction by a third person through the OTC derivative products dealer;

(d) makes an offer for the OTC derivative products dealer to a third person to enter into an OTC derivative transaction; or

(e) accepts for the OTC derivative products dealer an offer by a third person to enter into an OTC derivative transaction.

4. In Part 2, ***providing client clearing services for OTC derivative transactions*** does not include the following—

#(a) an act carried out by a central counterparty, whether located in Hong Kong or elsewhere, for the purpose of performing the person's functions as a central counterparty;

@(b) an act carried out by an authorized financial institution or an approved money broker in the ordinary course of business;

#(c) an act of an acceptable participant of a central counterparty located in Hong Kong; or

#(d) an act of an agent, who does not handle client money or client assets, of such an acceptable participant.

#5. In section 4—

acceptable participant (可接受參與者) means a person—

(a) who does not have a place of business in Hong Kong;

(b) who is, or has applied to become, a member of a central counterparty located in Hong Kong;

(c) who does not market its services to persons in Hong Kong other than through an authorized financial institution or a licensed corporation; and

(d) the provision by whom of clearing and settlement services (other than acts referred to in section 4) in respect of OTC derivative transactions or other similar transactions on behalf of another person and through a central counterparty (either directly as a member of the central counterparty or indirectly through another person that is such a member) is governed by legal or regulatory requirements of a comparable overseas jurisdiction;

comparable overseas jurisdiction (相若的海外司法管轄區) means a jurisdiction—

(a) which the Commission is satisfied has legal or regulatory requirements comparable to those of Hong Kong for regulating the provision of clearing and settlement services (other than acts referred to in section 4) in respect of OTC derivative transactions or other similar transactions on behalf of another person and through a central counterparty (either directly as a member of the central counterparty or indirectly through another person that is such a member); and

(b) with the regulators of which the Commission has adequate cooperative arrangements or agreements.

(Part 2A added 6 of 2014 s. 53)

Editorial Note:

Not yet in operation.

@ The new section 4(b), Schedule 5, Part 2A added by the Securities and Futures (Amendment) Ordinance 2014 (6 of 2014) came into operation on 1 September 2016, in so far as it relates to the new definition of ***providing client clearing services for OTC derivative transactions*** in Part 2 of Schedule 5. Please see paragraph (o) of the Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2016 (L.N. 27 of 2016).

Part 3

The following are the specified activities referred to in section 114(5) of this Ordinance—

(a) the acquisition of securities listed on a stock market which is or forms part of a stock borrowing or stock return as defined in section 19(16) of the Stamp Duty Ordinance (Cap. 117), or any transaction in securities similar to such a borrowing or return; or

(b) the provision of financial accommodation—

(i) to a corporation licensed for Type 1 or Type 8 regulated activity or an authorized financial institution to facilitate acquisitions or holdings of securities;

(ii) by a company to its directors or employees to facilitate acquisitions or holdings of its own securities; or

(iii) by a member of a group of companies to another member of the group to facilitate acquisitions or holdings of securities by that other member.

Schedule 6

[ss. 113, 139 & 143]

Specified Titles

(Format changes—E.R. 1 of 2013)

Item	Provision	Specified titles
1.	Section 139(1) of this Ordinance	"bond broker", "bond dealer", "securities dealer", "stock dealer", "stockbroker", "股票經紀", "債券交易商", "債券經紀", "證券交易商" and "證券經紀"
2.	Section 139(2) of this Ordinance	"futures broker", "futures dealer", "期貨交易商" and "期貨經紀"
3.	Section 139(3) of this Ordinance	"leveraged foreign exchange trader" and "槓桿式外匯交易商"
4.	Section 139(4) of this Ordinance	"securities adviser", "securities consultant", "stock adviser", "股票顧問" and "證券顧問"
5.	Section 139(5) of this Ordinance	"futures adviser", "futures consultant" and "期貨顧問"
6.	Section 139(6) of this Ordinance	"corporate finance adviser", "corporate finance consultant" and "機構融資顧問"
7.	Section 139(7) of this Ordinance	"automated trading service provider" and "自動化交易服務提供者"

Item	Provision	Specified titles
8.	Section 139(8) of this Ordinance	"margin lender", "securities margin financier" and "證券保證金融資人"

Schedule 7

[ss. 175 & 177]

Offers by Intermediaries or Representatives for Type 1, Type 4 or Type 6 Regulated Activity under Section 175 of this Ordinance

(Format changes—E.R. 1 of 2013)

Part 1

Requirements to be Satisfied in Relation to Offers to Acquire Securities

1. If the securities proposed to be acquired are currently listed or quoted on any stock market, whether a recognized stock market or any other stock market outside Hong Kong, the offer shall—

(a) state that fact and specify the stock markets on which the securities are currently listed or quoted;

(b) specify the closing price in respect of the securities on each stock market on the latest practicable date immediately preceding the date of the offer;

(c) specify the closing price in respect of the securities on the last trading day of each of the 6 months immediately preceding the date of the offer;

(d) specify the highest and the lowest closing prices in respect of the securities during the period of 6 months immediately preceding the date of the offer; and

(e) where the offer has been the subject of a public announcement, whether in a newspaper or any other

form of information medium or otherwise, specify the closing price in respect of the securities on the last trading day immediately preceding the public announcement.

2. If the securities proposed to be acquired are not listed or quoted on any stock market, whether a recognized stock market or any other stock market outside Hong Kong, the offer shall contain—

(a) all information that the offeror may have as to the number and nominal value (if any) of those securities that have been sold in Hong Kong during the period of 6 months immediately preceding the date of the offer and the prices yielded by those sales; and *(Amended 28 of 2012 ss. 912 & 920)*

(b) particulars of any restriction in the constitution, by whatever name called, of the body in question on the right to transfer the securities, that has the effect of requiring the offerees, before transferring the securities, to offer those securities for purchase to any member of the body or to any other person and, where there is any such restriction, the arrangements (if any) being made to enable the securities to be transferred in pursuance of the offer.

3. If any requirement set out in sections 1 and 2 cannot be satisfied because any of the information and particulars required are not available, or because any of the matters covered by the requirement are not applicable to the body in question, the offer shall instead state that fact and the reasons therefor; and if the body in

question is a corporation incorporated in Hong Kong but any of the information and particulars required under section 2 are not available in the returns of the corporation filed with the Registrar of Companies, the offer shall also state that fact.

4. The offer shall contain in a prominent position—

(a) in the case of the English text, the following notice printed in type of a size not smaller than the type known as 8 point Times—

"IMPORTANT

If you are in doubt as to any aspect of this offer, you should consult a licensed securities dealer, bank manager, solicitor, certified public accountant or other professional adviser." ; and

(b) in the case of the Chinese text, the following notice printed in type the face of which is not less than 2.5 mm in depth—

"重要提示

如你對此要約的任何方面有疑問，應諮詢持牌證券交易商、銀行經理、律師、會計師或其他專業顧問。".

(Amended 23 of 2004 s. 56)

5. (1) In this Part, ***body*** (團體) has the meaning assigned to it by section 175(9) of this Ordinance.

(2) Section 175(8) of this Ordinance applies to a reference to securities of a body (however described) in this Part as it applies to such a reference in section 175 of this Ordinance.

Part 2

Requirements to be Satisfied in Relation to Offers to Dispose of Securities

1. If the securities offered are currently listed or quoted on any stock market, whether a recognized stock market or any other stock market outside Hong Kong, or, where the securities are not so listed or quoted, will be uniform in all respects with securities of the body in question that are so listed or quoted, the offer shall—

(a) state that fact and specify the stock markets on which the securities or the securities with which they will be uniform (as the case may be) are currently listed or quoted;

(b) specify the closing price in respect of the securities or the securities with which they will be uniform (as the case may be) on each stock market on the latest practicable date immediately preceding the date of the offer;

(c) specify the closing price in respect of the securities or the securities with which they will be uniform (as the case may be) on the last trading day of each of the 6 months immediately preceding the date of the offer;

(d) specify the highest and the lowest closing prices in respect of the securities or the securities with which they will be uniform (as the case may be) during the period of 6 months immediately preceding the date of the offer; and

(e) where the offer has been the subject of a public announcement, whether in a newspaper or any other form of information medium or otherwise, specify the closing price in respect of the securities or the securities with which they will be uniform (as the case may be) on the last trading day immediately preceding the public announcement.

2. If the securities offered are not listed or quoted on any stock market, whether a recognized stock market or any other stock market outside Hong Kong, and will not be uniform in all respects with securities of the body in question that are so listed or quoted, the offer shall—

(a) contain particulars of any restriction in the constitution, by whatever name called, of the body on the right to transfer the securities, that has the effect of requiring the holder of the securities, before transferring them, to offer them for purchase to any member of the body or to any other person; and

(b) (i) where the securities are of, or issued by, a corporation, contain the particulars specified in section 3 or be accompanied by a statement in writing containing those particulars, unless the offer is accompanied by a document which conforms with Part II or XII of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) in relation to the corporation; *(Amended 28 of 2012 ss. 912 & 920)*

(ii) where the securities are of, or issued by, a multilateral agency, contain the particulars specified

in section 4 or be accompanied by a statement in writing containing those particulars; or

(iii) where the securities are of, or issued by, a government or municipal government authority, contain the particulars specified in section 5 or be accompanied by a statement in writing containing those particulars.

3. The particulars referred to in section 2(b)(i), in relation to the corporation referred to in that section, are as follows—

(a) (i) the year in which, and the country or territory in which, the corporation has been incorporated;

(ii) the address of its registered or principal office in Hong Kong; and

(iii) where the corporation has been incorporated outside Hong Kong, the address of its registered or principal office in the country or territory in which it is incorporated or is resident;

(b) (i) the authorized capital (if any), or the maximum number of shares issuable under the constitution, of the corporation;

(ii) the amount of share capital that has been issued and is outstanding at the date specified as being the close of the 5 financial years of the corporation immediately preceding the date of the offer;

(iii) the classes of shares into which the share capital is divided;

(iv) the rights, in respect of capital, dividends and voting, of holders of each of such classes of shares; and

(v) the number and total nominal value (if any) respectively of shares of the corporation issued as fully or partly paid up for cash or as fully or partly paid up for a consideration other than cash, or both; *(Amended 28 of 2012 ss. 912 & 920)*

(c) (i) the number and total nominal value (if any) of shares issued since the close of the last financial year of the corporation; *(Amended 28 of 2012 ss. 912 & 920)*

(ii) the classes of shares into which the shares issued since the close of the last financial year of the corporation are divided;

(iii) the rights, in respect of capital, dividends and voting, of holders of each of such classes of shares;

(iv) the number and total nominal value (if any) respectively of shares issued since the close of the last financial year of the corporation as fully or partly paid up for cash or as fully or partly paid up for a consideration other than cash, or both; *(Amended 28 of 2012 ss. 912 & 920)*

(v) the number of redeemable preference shares redeemed since the close of the last financial year of the corporation and the amounts repaid in respect of the shares so redeemed; and

(vi) particulars of any reduction of capital lawfully authorized in respect of the corporation since the close of the last financial year of the corporation;

(d) particulars of any reorganization of the capital of the corporation during each of its 2 financial years immediately preceding the date of the offer;

(e) (i) the amount of the net profit or loss of the corporation (before taking into account any form of tax calculated by reference to the amount of profits of the corporation);

(ii) the rate per cent and the amount of each payment of dividends made by the corporation in respect of each class of shares during each of its 5 financial years immediately preceding the date of the offer; and

(iii) where no dividend has been paid in respect of shares of any particular class during any of those years, a statement to that effect;

(f) the total amount of any debentures issued by the corporation and outstanding not more than 28 days before the date of the offer, and the total amount of mortgage debts, loans or charges due from the corporation not more than 28 days before that date, together with the rate of interest payable in respect of them;

(g) the names and addresses of the directors of the corporation;

(h) the number, description, and nominal value (if any) of the securities of the corporation held by or on behalf of each of its directors or, if a director does not hold any such securities and no such securities are held on his behalf, a statement to that effect; and *(Amended 28 of 2012 ss. 912 & 920)*

(i) whether or not the securities offered are or, in the case of securities to be issued, will be fully paid up, and, if

not, to what extent they are or will be paid up, and, if the corporation has fixed a date and amount for payment of outstanding calls, the date and amount of each such call.

4. The particulars referred to in section 2(b)(ii), in relation to the multilateral agency referred to in that section, are as follows—

(a) the details of the organization and administration of the multilateral agency;

(b) the description of the activities of the multilateral agency; and

(c) the particulars of the financial situation of the multilateral agency, including—

(i) the income and expenditure for the past 2 years immediately preceding the date of the offer and the budgetary forecasts for the current year; and

(ii) the public debt for the past 2 years immediately preceding the date of the offer.

5. The particulars referred to in section 2(b)(iii), in relation to the government or municipal government authority referred to in that section, are as follows—

(a) the details of the organization and administration of the government or municipal government authority;

(b) in the case of a government, the particulars of the economic situation of the place of which it is the government, including—

(i) general information on the government;

(ii) the gross national product by economic sector for the past 2 years immediately preceding the date of the offer;

(iii) the production trends in the various economic sectors with a breakdown of the principal production branches for the past 2 years immediately preceding the date of the offer;

(iv) the price, wage and employment trends over the past 2 years immediately preceding the date of the offer;

(v) the export and import trends by economic sector and country over the past 2 years immediately preceding the date of the offer;

(vi) the balance of payments in respect of economic and financial transactions with other places for the past 2 years immediately preceding the date of the offer; and

(vii) the gold and currency reserves;

(c) in the case of a municipal government authority, the particulars of the economic situation of the place of which it is the municipal government authority, including—

(i) general information on the municipal government authority;

(ii) the principal sources of revenue; and

(iii) the production trends in the various economic sectors with a breakdown of the principal production branches for the past 2 years immediately preceding the date of the offer; and

(d) the particulars of the financial situation of the government or municipal government authority, including—

(i) the income and expenditure for the past 2 years immediately preceding the date of the offer and the budgetary forecasts for the current year; and

(ii) the public debt for the past 2 years immediately preceding the date of the offer.

6. If the securities offered are yet to be issued by a body, the offer shall, in addition to any other requirements applicable to them in this Part—

(a) state—

(i) whether or not the issue requires the authority of a resolution of the body;

(ii) the first dividend in which the securities will participate; and

(iii) whether or not there has been, to the knowledge of the offeror, any material change in the financial position of the body since the date of the balance sheet and profit and loss account of the body for its financial year immediately preceding the date of the offer and, if so, the particulars of the change;

(b) be accompanied by copies of the balance sheet and profit and loss account of the body made up to (and including) the end of the last financial year of the body immediately preceding the date of the offer;

(c) be accompanied by copies of the constitution, by whatever name called, of the body unless the offer specifies—

(i) a place in Hong Kong at which such copies may be inspected by offerees; and

(ii) the times at which they may be inspected;

(d) in the case of securities which will be uniform in all respects with previously issued securities of the body that are not currently listed or quoted on any stock market, whether a recognized stock market or any other stock market outside Hong Kong, contain all information that the offeror may have as to the number and nominal value (if any) of those securities that have been sold during the period of 6 months immediately preceding the date of the offer and the prices yielded by those sales; and *(Amended 28 of 2012 ss. 912 & 920)*

(e) in the case of securities which will not be uniform in all respects with previously issued securities of the body, state—

(i) the respects in which the securities will differ from the previously issued securities;

(ii) whether or not any voting rights will attach to the securities and, if so, the limitations on those rights; and

(iii) whether or not application for permission to have the securities listed or quoted has been or will be made to any stock market, whether a recognized stock market or any other stock market outside Hong Kong, and, if such an application has been made, the name of the stock market to which the application has been made.

7. If any requirement set out in sections 1 to 6 cannot be satisfied because any of the information, particulars and documents required are not available, or because any of the matters covered by the requirement are not applicable to the body in question, the offer shall instead state that fact and the reasons therefor; and if the body in question is a corporation incorporated in Hong Kong but any of the information, particulars and documents required under sections 2 to 6 are not available in the returns of the corporation filed with the Registrar of Companies, the offer shall also state that fact.

8. The offer shall contain in a prominent position—

(a) in the case of the English text, the following notice printed in type of a size not smaller than the type known as 8 point Times—

"IMPORTANT

If you are in doubt as to any aspect of this offer, you should consult a licensed securities dealer, bank manager, solicitor, certified public accountant or other professional adviser." ; and

(b) in the case of the Chinese text, the following notice printed in type the face of which is not less than 2.5 mm in depth—

"重要提示

如你對此要約的任何方面有疑問，應諮詢持牌證券交易商、銀行經理、律師、會計師或其他專業顧問。".

(Amended 23 of 2004 s. 56)

9. (1) In this Part, ***body*** (團體) has the meaning assigned to it by section 175(9) of this Ordinance.

(2) Section 175(8) of this Ordinance applies to a reference to securities of a body (however described) in this Part as it applies to such a reference in section 175 of this Ordinance.

Schedule 8

[ss. 215, 216, 217, 218, 219, 222, 232, 233 & 234 & Sch. 10]

Securities and Futures Appeals Tribunal

(Format changes—E.R. 1 of 2013)

Part 1

Appointment of Members and Proceedings of Tribunal, etc.

1. In this Schedule, unless the context otherwise requires—

appeal panel (上訴委員會) means the panel of persons appointed under section 2;

application for review (覆核申請) has the meaning assigned to it by section 215 of this Ordinance;

chairman (主席) means the chairman of the Tribunal;

judge (法官) has the meaning assigned to it by section 215 of this Ordinance;

member (成員) means a member of the Tribunal;

ordinary member (普通成員) means a member other than the chairman;

panel member (上訴委員) means a member of the appeal panel;

parties (各方) has the meaning assigned to it by section 215 of this Ordinance;

relevant authority (有關當局) has the meaning assigned to it by section 215 of this Ordinance;

review (覆核) has the meaning assigned to it by section 215 of this Ordinance;

Secretary (局長) means the Secretary for Financial Services and the Treasury; *(Amended L.N. 106 of 2002)*

specified decision (指明決定) has the meaning assigned to it by section 215 of this Ordinance;

Tribunal (審裁處) has the meaning assigned to it by section 215 of this Ordinance.

Appointment of appeal panel

2. The Chief Executive shall appoint persons to a panel comprising such number of members, who are not public officers, as he considers appropriate.

3. Subject to sections 4 and 5, a panel member shall be appointed for such period as the Chief Executive considers appropriate, and may, subject to the other provisions of this Ordinance, from time to time be reappointed.

4. A panel member may at any time resign his office by notice in writing to the Chief Executive.

5. The Chief Executive may by notice in writing remove a panel

member from office on the grounds of incapacity, bankruptcy, neglect of duty, conflict of interest or misconduct.

6. For the avoidance of doubt, section 216(5) of this Ordinance does not require the appointment of persons to more than one panel under section 2.

Appointment of chairman

7. The chairman shall be appointed by the Chief Executive on the recommendation of the Chief Justice.

8. Subject to sections 9 to 11, the chairman shall be appointed for a term of 3 years or appointed to act in relation to any specified review, and may, subject to the other provisions of this Ordinance, from time to time be reappointed.

9. The chairman may at any time resign his office by notice in writing to the Chief Executive.

10. The Chief Executive, after consultation with the Chief Justice, may by notice in writing remove the chairman from office on the grounds of incapacity, bankruptcy, neglect of duty, conflict of interest or misconduct.

11. If a review has been commenced by the Tribunal but not completed before the expiry of the chairman's term of office, the Chief Executive may authorize the chairman to continue to act as the chairman for the purpose of completing the review.

Appointment of ordinary members

12. For the purpose of determining a review, the Secretary on the recommendation of the chairman shall appoint 2 panel members as ordinary members in relation to the review.

13. Subject to sections 14 and 15, an ordinary member shall be appointed to act in relation to any specified review, and may, subject to the other provisions of this Ordinance, from time to time be reappointed.

14. An ordinary member may at any time resign his office by notice in writing to the Secretary.

15. Where an ordinary member ceases to be a panel member, he ceases to be such ordinary member.

Sittings

16. The chairman shall convene such sittings of the Tribunal as are necessary to determine a review.

17. Before convening a sitting under section 16 in respect of a review, the Tribunal may give directions to the parties to the review concerning procedural matters to be complied with by the parties and the time within which the parties are required to comply with such matters.

18. Subject to section 19, at any sitting of the Tribunal—

(a) the chairman and 2 ordinary members shall be present;

(b) the chairman shall preside; and

(c) every question before the Tribunal shall be determined by the opinion of the majority of the members except a question of law which shall be determined by the chairman alone.

19. At any sitting of the Tribunal held in respect of any matter which is determined by the chairman alone as the sole member of the Tribunal under section 31 or 32, the chairman only shall be present, and every question before the Tribunal shall be determined by him.

20. Every sitting of the Tribunal shall be held in public unless the Tribunal, on its own motion or on the application of any of the parties to the review, determines that in the interests of justice a

sitting or any part thereof shall not be held in public in which case it may hold the sitting or the part thereof (as the case may be) in private.

21. Where an application is made pursuant to section 20 for a determination that a sitting or any part thereof shall not be held in public, any hearing of the application shall be held in private.

22. The parties to a review shall, at any sitting of the Tribunal relating to the review, be entitled to be heard—

(a) in person or, in the case of the relevant authority or a corporation, through an officer or employee of the relevant authority or the corporation (as the case may be); and

(b) through counsel or a solicitor or, with the leave of the Tribunal, through any other person.

23. The chairman shall prepare or cause to be prepared a record of the proceedings at any sitting of the Tribunal, which shall contain such particulars relating to the proceedings as he considers appropriate.

24. The order of proceedings at any sitting of the Tribunal shall be determined by the Tribunal in the manner most appropriate to the circumstances of the case.

Preliminary conferences and consent orders

25. At any time after an application for review has been made, the chairman may—

(a) on his own motion or on the application of any of the parties to the review;

(b) if he considers it appropriate to do so, after consideration of any material that has been submitted to the Tribunal in relation to the application for review by the parties to the review; and

(c) if the parties agree or, in the case of an application made by any party pursuant to paragraph (a), the other party agrees,

direct that a conference, to be attended by the parties or their representatives and presided over by the chairman shall be held for the purposes of—

(i) enabling the parties to prepare for the conduct of the review;

(ii) assisting the Tribunal to determine issues for the purposes of the review; and

(iii) generally securing the just, expeditious and economical conduct of the review.

26. At a conference held in accordance with a direction of the chairman under section 25, the chairman may—

(a) give any direction he considers necessary or desirable for securing the just, expeditious and economical conduct of the review; and

(b) endeavour to secure that the parties to the review make all agreements as they ought reasonably to have made in relation to the review.

27. After a conference has been held in accordance with a direction of the chairman under section 25, the chairman shall report to the Tribunal on such matters relating to the conference as he considers appropriate.

28. At any time after an application for review has been made, the Tribunal or the chairman may make any order which it or he is entitled to make under any provision of this Ordinance, whether or not the requirements otherwise applicable to the making of the order have been complied with, if—

(a) the parties to the review request, and agree to, the making of the order under this section by the Tribunal or the chairman (as the case may be); and

(b) the parties consent to all of the terms of the order.

29. Notwithstanding Part XI of this Ordinance or any other provisions of this Schedule, where under section 28 the Tribunal or the chairman makes any order, the order shall, for all purposes, be regarded as an order made by the Tribunal or the chairman (as the case may be) under the provision in question in compliance with the requirements otherwise applicable to the making of the order.

30. In sections 28 and 29, ***order*** (命令) includes any finding, determination and any other decision.

Chairman as sole member of Tribunal

31. Where, at any time after an application for review has been made but before any sitting of the Tribunal is held to determine the review, the parties to the review have, by notice in writing given to the Tribunal, informed the Tribunal that they have agreed that the review may be determined by the chairman alone as the sole member of the Tribunal, the chairman may determine the review as the sole member of the Tribunal.

32. Where—

(a) an application is made to the Tribunal pursuant to section 217(4) of this Ordinance for the grant of an extension of the time within which an application for review shall be made; or

(b) an application is made to the Tribunal under section 227(2) of this Ordinance for a stay of execution of a specified decision,

the chairman may determine the application as the sole member of the Tribunal.

33. Where section 31 or 32 applies, the Tribunal constituted by the chairman as the sole member of the Tribunal shall, for all purposes, be regarded as the Tribunal constituted also by 2 ordinary members.

34. After the chairman has made any determination under section 31, or made any determination in respect of an application described in section 32(b), the chairman shall report to the Tribunal the making of the determination and the reasons therefor and such other matters relating to the determination as he considers appropriate.

35. Where—

(a) there is an application described in section 32(b); and

(b) the chairman is precluded by illness, absence from Hong Kong or any other cause from performing his functions, or considers it improper or undesirable that he should perform his functions in relation to the application,

a judge within the meaning of paragraph (a) of the definition of ***judge*** in section 215 of this Ordinance shall, upon appointment by the Chief Justice for the purpose, determine the application as if he were the chairman duly appointed under this Ordinance, and the provisions of this Ordinance shall apply to him accordingly.

Miscellaneous

36. Except as otherwise provided in this Ordinance, the Tribunal and its members, and any party, witness, counsel, solicitor, or any other person involved, in a review, shall have the same privileges and immunities in respect of the review as they would have if the review were civil proceedings before the Court of First Instance.

Part 2

Specified Decisions

Division 1—Specified Decisions Made by Commission

Item	Provision	Description of decision
1.	Section 93(12) of this Ordinance	Requirement to pay costs or expenses.
2.	Section 95(2) of this Ordinance	Refusal to grant an authorization, or imposition of any condition.
3.	Section 97(1) of this Ordinance	Amendment or revocation of any condition, or imposition of any new condition.
4.	Section 98(1) of this Ordinance	Withdrawal of an authorization.
4A.	Section 101H(1)(a) or (b) of this Ordinance	Refusal to grant an exemption, or imposition of any condition. *(Added 6 of 2014 s. 54)*
4B.	Section 101H(2)(a) or (b) of this Ordinance	Suspension or withdrawal of an exemption, or amendment of any condition. *(Added 6 of 2014 s. 54)*
4C.	Section 101J(1)(b) of this Ordinance	Refusal to designate a person as a central counterparty. *(Added 6 of 2014 s. 54)*
4D.	Section 101J(5)(a) of this Ordinance	Imposition of any condition. *(Added 6 of 2014 s. 54)*

Item	Provision	Description of decision
4E.	Section 101J(5)(b) or (c) of this Ordinance	Amendment or revocation of any condition, or imposition of any additional condition. *(Added 6 of 2014 s. 54)*
4F.	Section 101J(5)(d) of this Ordinance	Revocation of a designation. *(Added 6 of 2014 s. 54)*
5.	Section 104(1) of this Ordinance	Refusal to authorize a collective investment scheme, or imposition of any condition.
6.	Section 104(3) of this Ordinance	Refusal to approve an individual nominated in respect of a collective investment scheme.
7.	Section 104(3) of this Ordinance	Withdrawal of approval of an individual nominated in respect of a collective investment scheme.
8.	Section 104(4) of this Ordinance	Amendment or revocation of any condition, or imposition of any new condition.
8A.	Section 104A(1) of this Ordinance	Refusal to authorize a structured product, or imposition of any conditions. *(Added 8 of 2011 s. 15)*
8B.	Section 104A(3) of this Ordinance	Refusal to approve an individual nominated in respect of a structured product. *(Added 8 of 2011 s. 15)*
8C.	Section 104A(4)(a) of this Ordinance	Amendment or revocation of any condition, or imposition of any new condition. *(Added 8 of 2011 s. 15)*

Item	Provision	Description of decision
8D.	Section 104A(4)(b) of this Ordinance	Withdrawal of approval of an individual nominated in respect of a structured product. *(Added 8 of 2011 s. 15)*
9.	Section 105(1) of this Ordinance	Refusal to authorize the issue of any advertisement, invitation or document, or imposition of any condition.
10.	Section 105(3) of this Ordinance	Refusal to approve an individual nominated in respect of the issue of any advertisement, invitation or document.
11.	Section 105(3) of this Ordinance	Withdrawal of approval of an individual nominated in respect of the issue of any advertisement, invitation or document.
12.	Section 105(4) of this Ordinance	Amendment or revocation of any condition, or imposition of any new condition.
13.	Section 106(1) of this Ordinance	Withdrawal of an authorization.
14.	Section 106(3) of this Ordinance	Refusal to withdraw an authorization.
15.	Section 106(4) of this Ordinance	Imposition of any condition.
15A.	Section 112D(1) of this Ordinance	Refusal to register a proposed company. *(Added 16 of 2016 s. 22)*
15B.	Section 112D(6) of this Ordinance	Imposition of any condition. *(Added 16 of 2016 s. 22)*

Item	Provision	Description of decision
15C.	Section 112F of this Ordinance	Amendment or revocation of any condition, or imposition of any new condition. *(Added 16 of 2016 s. 22)*
15D.	Section 112ZF(1) of this Ordinance	Direction to a person. *(Added 16 of 2016 s. 22)*
15E.	Section 112ZF(3) of this Ordinance	Amendment of any direction. *(Added 16 of 2016 s. 22)*
15F.	Section 112ZH(2) of this Ordinance	Refusal to cancel registration. *(Added 16 of 2016 s. 22)*
15G.	Section 112ZH(3) of this Ordinance	Imposition of any condition. *(Added 16 of 2016 s. 22)*
15H.	Section 112ZH(4) of this Ordinance	Amendment or revocation of any condition, or imposition of any new condition. *(Added 16 of 2016 s. 22)*
15I.	Section 112ZI(1) of this Ordinance	Cancellation of registration. *(Added 16 of 2016 s. 22)*
15J.	Section 112ZI(2) of this Ordinance	Imposition of any condition. *(Added 16 of 2016 s. 22)*
15K.	Section 112ZI(3) of this Ordinance	Amendment or revocation of any condition, or imposition of any new condition. *(Added 16 of 2016 s. 22)*
15L.	Section 112ZJ(3) of this Ordinance	Imposition of any condition. *(Added 16 of 2016 s. 22)*
15M.	Section 112ZJ(6) of this Ordinance	Amendment or revocation of any condition, or imposition of any new condition. *(Added 16 of 2016 s. 22)*
15MA.	Section 112ZJB(1) of this Ordinance	Refusal to register a non-Hong Kong fund corporation. *(Added 33 of 2021 s. 11)*

Item	Provision	Description of decision
15MB.	Section 112ZJB(5) of this Ordinance	Imposition of any condition. *(Added 33 of 2021 s. 11)*
15N.	Section 112ZO(6) of this Ordinance	Imposition of any condition. *(Added 16 of 2016 s. 22)*
15O.	Section 112ZO(7) of this Ordinance	Amendment or revocation of a modification or waiver. *(Added 16 of 2016 s. 22)*
15P.	Section 112ZO(8) of this Ordinance	Amendment or revocation of any condition, or imposition of any new condition. *(Added 16 of 2016 s. 22)*
16.	Section 116(1) of this Ordinance	Refusal to grant a licence.
17.	Section 116(6) of this Ordinance	Imposition, amendment or revocation of any condition, or imposition of any new condition.
18.	Section 117(1) of this Ordinance	Refusal to grant a licence for a period not exceeding 3 months.
19.	Section 117(3) of this Ordinance	Imposition, amendment or revocation of any condition, or imposition of any new condition.
20.	Section 119(1) of this Ordinance	Refusal to grant registration.
21.	Section 119(5) of this Ordinance	Imposition, amendment or revocation of any condition, or imposition of any new condition.
22.	Section 120(1) of this Ordinance	Refusal to grant a licence.
23.	Section 120(5) of this Ordinance	Imposition of any condition.

Item	Provision	Description of decision
24.	Section 120(7) of this Ordinance	Amendment or revocation of any condition, or imposition of any new condition.
25.	Section 121(1) of this Ordinance	Refusal to grant a licence for a period not exceeding 3 months.
26.	Section 121(3) of this Ordinance	Imposition of any condition.
27.	Section 121(5) of this Ordinance	Amendment or revocation of any condition, or imposition of any new condition.
28.	Section 122(1) of this Ordinance	Refusal to approve an accreditation.
29.	Section 122(2) of this Ordinance	Refusal to approve a transfer of an accreditation.
30.	Section 124(1) of this Ordinance	Refusal to issue a duplicate printed licence or certificate of registration. *(Amended 19 of 2015 s. 13)*
31.	Section 126(1) of this Ordinance	Refusal to approve a person as a responsible officer.
32.	Section 126(3) of this Ordinance	Imposition, amendment or revocation of any condition, or imposition of any new condition.
33.	Section 127(1) of this Ordinance	Refusal to vary any regulated activity.
34.	Section 130(1) of this Ordinance	Refusal to approve premises.
35.	Section 132(1) of this Ordinance	Refusal to approve a person to become or continue to be a substantial shareholder.

Item	Provision	Description of decision
36.	Section 132(3) of this Ordinance	Imposition, amendment or revocation of any condition, or imposition of any new condition.
37.	Section 133(1) of this Ordinance	Direction to a licensed corporation.
38.	Section 133(2) of this Ordinance	Direction to a person.
39.	Section 134(1)(a), (b), (c), (d), (e), (f), (g), (h), (i) or (j) of this Ordinance	Refusal to grant a modification or waiver.
40.	Section 134(4) of this Ordinance	Amendment of a modification or waiver, imposition, amendment or revocation of any condition, or imposition of any new condition.
40A.	Section 145A(1) of this Ordinance	Variation of any financial resources rule. *(Added 6 of 2014 s. 54)*
41.	Section 146(2) or (5)(b) of this Ordinance	Imposition of any condition.
42.	Section 146(5)(a) of this Ordinance	Suspension of a licence.
43.	Section 146(6) or (7) of this Ordinance	Amendment of any condition.
44.	Section 147(3)(a) of this Ordinance	Suspension of a licence.
45.	Section 147(3)(b) of this Ordinance	Imposition of any condition.
46.	Section 147(4) or (5) of this Ordinance	Amendment of any condition.

Item	Provision	Description of decision
47.	Section 159(1) of this Ordinance	Appointment of an auditor.
48.	Section 159(4) of this Ordinance	Direction to pay any of the costs and expenses of any examination and audit.
49.	Section 160(1) of this Ordinance	Appointment of an auditor.
50.	Section 160(8) of this Ordinance	Direction to pay any of the costs and expenses of any examination and audit.
51.	Section 194(1)(i), (ii), (iii) or (iv) of this Ordinance	Exercise of power to revoke or suspend a licence or the approval of a person as a responsible officer, to publicly or privately reprimand a person, or to impose a prohibition on a person.
52.	Section 194(2) of this Ordinance	Order to pay a pecuniary penalty.
53.	Section 195(1)(a), (b) or (c) of this Ordinance	Revocation or suspension of a licence.
54.	Section 195(2) of this Ordinance	Revocation of a licence.
55.	Section 195(7) of this Ordinance	Revocation or suspension of the approval of a person as a responsible officer.
56.	Section 196(1)(i), (ii) or (iii) of this Ordinance	Exercise of power to revoke or suspend any registration, to publicly or privately reprimand a person, or to impose a prohibition on a person.

Item	Provision	Description of decision
57.	Section 196(2) of this Ordinance	Order to pay a pecuniary penalty.
58.	Section 197(1)(a) or (b) of this Ordinance	Revocation or suspension of any registration.
59.	Section 197(2) of this Ordinance	Revocation of any registration.
60.	Section 202(1) of this Ordinance	Requirement to transfer records.
61.	Section 203(1F) of this Ordinance	Imposition of any condition. *(Amended 19 of 2015 s. 26)*
62.	Section 204(1)(a) or (b) of this Ordinance	Prohibition or requirement imposed on a licensed corporation concerning transactions, etc.
63.	Section 205(1)(a) or (b) of this Ordinance	Prohibition or requirement imposed on a licensed corporation concerning relevant property.
64.	Section 206(1) of this Ordinance	Requirement imposed on a licensed corporation to maintain property.
65.	Section 208(1)(b) of this Ordinance	Substitution or variation of a prohibition or requirement under section 204, 205 or 206 of this Ordinance.
66.	Section 208(1) of this Ordinance	Refusal to withdraw, substitute or vary a prohibition or requirement under section 204, 205 or 206 of this Ordinance.
67.	Section 309(2) of this Ordinance	Refusal to grant an exemption, or imposition of any condition.

Item	Provision	Description of decision
68.	Section 309(3) of this Ordinance	Refusal to grant an exemption, or imposition of any condition.
69.	Section 309(4)(a) or (b) of this Ordinance	Suspension or withdrawal of an exemption, or amendment of any condition.
70.	Section 403 of this Ordinance	Imposition of any condition.
71.	Section 38A(1) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32)	Refusal to issue a certificate of exemption, or imposition of any condition. *(Amended 28 of 2012 ss. 912 & 920)*
72.	Section 342A(1) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32)	Refusal to issue a certificate of exemption, or imposition of any condition. *(Amended 28 of 2012 ss. 912 & 920)*
73.	Section 6(2) of the Securities and Futures (Stock Market Listing) Rules (Cap. 571 sub. leg. V)	Objection to a listing of securities. *(Added L.N. 231 of 2002)*
74.	Section 6(3)(b) of the Securities and Futures (Stock Market Listing) Rules (Cap. 571 sub. leg. V)	Imposition of any condition. *(Added L.N. 231 of 2002)*

Item	Provision	Description of decision
75.	Section 8(3) of the Securities and Futures (Disclosure of Interests-Securities Borrowing and Lending) Rules (Cap. 571 sub. leg. X)	Refusal to approve a corporation as an approved lending agent. *(Added L.N. 231 of 2002)*
76.	Section 8(4) of the Securities and Futures (Disclosure of Interests-Securities Borrowing and Lending) Rules (Cap. 571 sub. leg. X)	Imposition of any condition. *(Added L.N. 231 of 2002)*
77.	Section 8(6) of the Securities and Futures (Disclosure of Interests-Securities Borrowing and Lending) Rules (Cap. 571 sub. leg. X)	Withdrawal of an approval. *(Added L.N. 231 of 2002)*
78.	Section 4(4)(c) of the Securities and Futures (Contracts Limits and Reportable Positions) Rules (Cap. 571 sub. leg. Y)	Refusal to give notice. *(Added L.N. 231 of 2002)*

Division 2—Specified Decisions Made by Monetary Authority

Item	Provision	Description of decision
1.	Section 58A(1)(c) or (d) of the Banking Ordinance (Cap. 155)	Removal or suspension of relevant particulars of a relevant individual from the register.
2.	Section 71C(1) of the Banking Ordinance (Cap. 155)	Refusal to give consent.
3.	Section 71C(2)(b) of the Banking Ordinance (Cap. 155)	Attachment of any condition.
4.	Section 71C(4)(c) or (d) of the Banking Ordinance (Cap. 155)	Withdrawal or suspension of consent.
5.	Section 71C(9) of the Banking Ordinance (Cap. 155)	Attachment or amendment of any condition.
6.	Section 71E(3) of the Banking Ordinance (Cap. 155)	Attachment or amendment of any condition.
7.	Section 203A(1)(a), (b) or (c) of this Ordinance	Exercise of power to publicly or privately reprimand a person, to impose a prohibition on a person, or to order to pay a pecuniary penalty. *(Added 6 of 2014 s. 54)*

Division 3—Specified Decisions Made by Commission or Recognized Investor Compensation Company

Item	Provision	Description of decision
1.	Section 4(4) of the Securities and Futures (Investor Compensation-Claims) Rules (Cap. 571 sub. leg. T)	Refusal to determine that a claim which is not lodged within the time limit provided in section 4(3) of the Securities and Futures (Investor Compensation-Claims) Rules (Cap. 571 sub. leg. T) is not barred. *(Added L.N. 231 of 2002)*
2.	Section 7(1)(a), (b) or (c) of the Securities and Futures (Investor Compensation-Claims) Rules (Cap. 571 sub. leg. T)	Determination as to whether there has been a default, as to the date of default, or as to whether a claimant is entitled to compensation. *(Added L.N. 231 of 2002)*
3.	Section 7(2) of the Securities and Futures (Investor Compensation-Claims) Rules (Cap. 571 sub. leg. T)	Determination of a provisional amount of compensation. *(Added L.N. 231 of 2002)*
4.	Section 9(3) of the Securities and Futures (Investor Compensation-Claims) Rules (Cap. 571 sub. leg. T)	Aggregation of separate claims or parts of those claims. *(Added L.N. 231 of 2002)*

Part 3

Division 1—Specified Decisions Referred to in Section 217(3)(b) of this Ordinance

Item	Description of specified decision	Provisions
1.	A specified decision set out in item 41 or 43 of Division 1 of Part 2.	Section 146(10) of this Ordinance.
2.	A specified decision set out in item 45 or 46 of Division 1 of Part 2.	Section 147(8) of this Ordinance.

Division 2—Specified Decisions Referred to in Section 218(4)(a) of this Ordinance

Item	Description of specified decision	Provisions
1.	A specified decision set out in item 56 or 57 of Division 1 of Part 2.	Sections 58A(1) and 71C(4) of the Banking Ordinance (Cap. 155).

Division 3—Specified Decisions Referred to in Section 218(4)(b) of this Ordinance

Item	Description of specified decision	Provision
1.	A specified decision set out in item 1 or 4 of Division 2 of Part 2.	Section 196(1) and (2) of this Ordinance.

Division 4—Specified Decisions Referred to in Section 232(1) of this Ordinance

Item	Description of specified decision	Provision
1.	A specified decision set out in item 41 or 43 of Division 1 of Part 2.	Section 146(10) of this Ordinance.
2.	A specified decision set out in item 45 or 46 of Division 1 of Part 2.	Section 147(8) of this Ordinance.

Division 5—Specified Decisions Referred to in Section 232(2) of this Ordinance

Item	Description of specified decision	Provision
1.	A specified decision set out in item 3 of Division 1 of Part 2.	Section 97(2) of this Ordinance.
2.	A specified decision set out in item 4 of Division 1 of Part 2.	Section 98(6) of this Ordinance.
2A.	A specified decision set out in item 4E of Division 1 of Part 2.	Section 101J(7) of this Ordinance. *(Added 6 of 2014 s. 54)*
2B.	A specified decision set out in item 4F of Division 1 of Part 2.	Section 101J(8) of this Ordinance. *(Added 6 of 2014 s. 54)*
2C.	A specified decision set out in item 15D of Division 1 of Part 2.	Section 112ZF(4) of this Ordinance. *(Replaced 21 of 2020 s. 124)*

Item	Description of specified decision	Provision
2D.	A specified decision set out in item 15E of Division 1 of Part 2.	Section 112ZF(4) of this Ordinance. *(Replaced 21 of 2020 s. 124)*
2E	A specified decision set out in item 15L of Division 1 of Part 2.	Section 112ZJ(5) of this Ordinance. *(Added 21 of 2020 s. 124)*
2F.	A specified decision set out in item 15M of Division 1 of Part 2.	Section 112ZJ(7) of this Ordinance. *(Added 21 of 2020 s. 124)*
3.	A specified decision set out in item 17 of Division 1 of Part 2.	Section 116(7) of this Ordinance.
4.	A specified decision set out in item 19 of Division 1 of Part 2.	Section 117(4) of this Ordinance.
5.	A specified decision set out in item 21 of Division 1 of Part 2.	Section 119(6) of this Ordinance.
6.	A specified decision set out in item 24 of Division 1 of Part 2.	Section 120(8) of this Ordinance.
7.	A specified decision set out in item 27 of Division 1 of Part 2.	Section 121(6) of this Ordinance.
8.	A specified decision set out in item 36 of Division 1 of Part 2.	Section 132(4) of this Ordinance.
8A.	A specified decision set out in item 40A of Division 1 of Part 2.	Section 145A(8) of this Ordinance. *(Added 6 of 2014 s. 54)*
9.	A specified decision set out in item 42 of Division 1 of Part 2.	Section 146(9) of this Ordinance.
10.	A specified decision set out in item 41 or 43 of Division 1 of Part 2.	Section 146(10) of this Ordinance.

Item	Description of specified decision	Provision
11.	A specified decision set out in item 44 of Division 1 of Part 2.	Section 147(7) of this Ordinance.
12.	A specified decision set out in item 45 or 46 of Division 1 of Part 2.	Section 147(8) of this Ordinance.
13.	A specified decision set out in item 61 of Division 1 of Part 2.	Section 203(3) of this Ordinance.
14.	A specified decision set out in item 62, 63, 64 or 65 of Division 1 of Part 2.	Section 209(1) of this Ordinance.
15.	A specified decision set out in item 6 of Division 2 of Part 2.	Section 71E(4) of the Banking Ordinance (Cap. 155).
16.	A specified decision set out in item 73 of Division 1 of Part 2.	Section 6(5) of the Securities and Futures (Stock Market Listing) Rules (Cap. 571 sub. leg. V). *(Added L.N. 231 of 2002)*
17.	A specified decision set out in item 74 of Division 1 of Part 2.	Section 6(5) of the Securities and Futures (Stock Market Listing) Rules (Cap. 571 sub. leg. V). *(Added L.N. 231 of 2002)*

(Amended 21 of 2020 s. 124)

Schedule 9

[ss. 251, 252, 253, 256, 269, 307H, 307I, 307M & 307X]
(Amended 9 of 2012 s. 13)

Market Misconduct Tribunal

(Format changes—E.R. 2 of 2012)

1. In this Schedule, unless the context otherwise requires—

chairman (主席) means the chairman of the Tribunal;

identified person (被識辨的人) means—

(a) for proceedings instituted under section 252 of this Ordinance, a person whose identity is specified under section 13(b) in the statement for the proceedings as described in section 13;

(b) for disclosure proceedings, a person whose identity is specified under section 14A(b) in the statement for the proceedings as described in section 14A; *(Added 9 of 2012 s. 13)*

judge (法官) has the meaning assigned to it by section 245(1) of this Ordinance;

member (成員) means a member of the Tribunal;

ordinary member (普通成員) means a member other than the chairman;

party (一方), in relation to proceedings, means—

(a) the Commission; or

(b) any identified person for the proceedings; *(Replaced 9 of 2012 s. 13)*

(Added 9 of 2012 s. 28)

Presenting Officer (提控官) has the meaning assigned to it by section 245(1) of this Ordinance;

proceedings (研訊程序) means proceedings instituted under section 252 of this Ordinance or disclosure proceedings; *(Amended 9 of 2012 s. 13)*

Tribunal (審裁處) has the meaning assigned to it by section 245(1) of this Ordinance.

Appointment of Members

2. The chairman shall be appointed by the Chief Executive on the recommendation of the Chief Justice.

3. Subject to sections 6, 7 and 9, the chairman shall be appointed for a term of 3 years or appointed to act in relation to any specified proceedings, and may, subject to the other provisions of this Ordinance, from time to time be reappointed.

4. The ordinary members shall be appointed by the Chief Executive.

5. Subject to sections 6 and 8, an ordinary member shall be appointed to act in relation to any specified proceedings, and may, subject to the other provisions of this Ordinance, from time to time be reappointed.

6. A member may at any time resign his office by notice in writing to the Chief Executive.

7. The Chief Executive, after consultation with the Chief Justice, may by notice in writing remove the chairman from office on the grounds of incapacity, bankruptcy, neglect of duty, conflict of interest or misconduct.

8. The Chief Executive may by notice in writing remove an ordinary member from office on the grounds of incapacity, bankruptcy, neglect of duty, conflict of interest or misconduct.

9. If any proceedings have been commenced by the Tribunal but not completed before the expiry of the chairman's term of office, the Chief Executive may authorize the chairman to continue to act as the chairman for the purpose of completing the proceedings.

Appointment of Persons to Replace Ordinary Members

10. Subject to section 11, the Chief Executive may appoint a person, who is not a public officer, to replace an ordinary member if the ordinary member has died, or has resigned from office under section 6 or has been removed from office under section 8, and the person may, subject to the other provisions of this Ordinance, from time to time be reappointed.

11. The Chief Executive shall not appoint a person to replace an ordinary member of the Tribunal under section 10 unless the chairman of the Tribunal—

(a) has recommended that a person should be so appointed having regard to the interests of justice; and

(b) has given a reasonable opportunity of being heard to—

(i) any identified person for the proceedings; and *(Replaced 9 of 2012 s. 13)*

(ii) the Presenting Officer appointed for the proceedings.

12. A person appointed to replace an ordinary member under section 10 shall be deemed for all purposes to be the ordinary member.

Statements for Institution of Proceedings

13. The statement required to be contained in a notice given by the Commission under section 252(2) of this Ordinance shall specify— *(Amended 9 of 2012 s. 28)*

(a) the provision or provisions of Part XIII of this Ordinance by reference to which any person appears to have perpetrated any conduct which constitutes market misconduct; and

(b) the identity of the person, and such brief particulars as are sufficient to disclose reasonable information concerning the nature and essential elements of the market misconduct.

14. Where it appears to the Commission that a person may have perpetrated any conduct which constitutes market misconduct by reference to more than one provision of Part XIII of this Ordinance, the statement described in section 13 may specify separately or in the alternative the market misconduct by reference to those provisions.

(Amended 9 of 2012 s. 28)

14A. The statement required to be contained in a notice given by the Commission under section 307I(2) of this Ordinance must specify—

(a) the provision or provisions of Part XIVA of this Ordinance by reference to which a person appears to be in breach of a disclosure requirement; and

(b) the identity of the person, and brief particulars that are sufficient to disclose reasonable information concerning the nature and essential elements of the breach.

(Added 9 of 2012 s. 13)

15. At any time during the conduct of proceedings instituted under section 252 of this Ordinance, the Tribunal may order the Presenting Officer to amend the statement for the proceedings as described in section 13 in any manner the Tribunal considers appropriate, except that—

(a) there must be no amendment to the identity of the identified person for the proceedings; and

(b) after the amendment the financial product which is the subject of any market misconduct specified in the statement must remain the same as the financial product

which is the subject of the market misconduct originally specified in the statement.

(Replaced 9 of 2012 s. 13)

15A. At any time during the conduct of disclosure proceedings, the Tribunal may order the Presenting Officer to amend the statement for the proceedings as described in section 14A in any manner the Tribunal considers appropriate, except that there must be no amendment to the identity of the identified person for the proceedings.

(Added 9 of 2012 s. 13)

16. To avoid doubt—

(a) the Tribunal has jurisdiction exercisable by reference to a statement as amended under section 15 in the same manner as it has jurisdiction exercisable by reference to a statement described in section 13; and

(b) the Tribunal has jurisdiction exercisable by reference to a statement as amended under section 15A in the same manner as it has jurisdiction exercisable by reference to a statement described in section 14A.

(Replaced 9 of 2012 s. 13)

17. Despite anything in Part XIII or XIVA of this Ordinance—

(a) unless the identity of a person is specified under section 13(b) in a statement as described in section 13 for

any proceedings instituted under section 252 of this Ordinance—

(i) the person must not be identified in those proceedings under section 252(3)(b) of this Ordinance as having engaged in market misconduct; and

(ii) an order must not be made in those proceedings under section 257 or 258 of this Ordinance in respect of the person; and

(b) unless the identity of a person is specified under section 14A(b) in a statement as described in section 14A for any disclosure proceedings—

(i) the person must not be identified in those proceedings under section 307J(1)(b) of this Ordinance as being in breach of a disclosure requirement; and

(ii) an order must not be made in those proceedings under section 307N of this Ordinance in respect of the person.

(Replaced 9 of 2012 s. 13)

18. Any identified person for proceedings is to be provided with a copy of the statement identifying them as described in section 13 or 14A (as the case may be) and, if the statement has been amended under section 15 or 15A, of the statement as so amended, in the manner directed by the Tribunal.

(Replaced 9 of 2012 s. 13)

19. After the conduct of any proceedings instituted under section 252 of this Ordinance, where it appears to the Tribunal that market misconduct has or may have taken place by reference to the conduct of any person, it may, where it considers appropriate, include in the report prepared by it in respect of the proceedings under section 262(1) of this Ordinance a recommendation to the Commission to institute proceedings under section 252 of this Ordinance concerning the matter.

(Amended 9 of 2012 s. 28)

19A. After the conduct of any disclosure proceedings, where it appears to the Tribunal that a breach of a disclosure requirement has or may have taken place by reference to the conduct of any person, it may, where it considers appropriate, include in the report prepared by it in respect of the proceedings under section 307Q(1) of this Ordinance, a recommendation to the Commission to institute disclosure proceedings concerning the matter.

(Added 9 of 2012 s. 13)

20. In section 15, ***financial product*** (金融產品) means—

(a) where the market misconduct in question is an insider dealing, listed securities or derivatives of listed securities as defined in section 245(2) of this Ordinance; or

(b) where the market misconduct in question is any other market misconduct, securities or futures contracts as defined in Schedule 1 to this Ordinance.

Presenting Officer

21. Without prejudice to a Presenting Officer's powers and functions under Part XIII of this Ordinance, in any proceedings instituted under section 252 of this Ordinance, the Presenting Officer— *(Amended 9 of 2012 s. 13)*

(a) represents the Commission; and

(b) must present to the Tribunal any evidence available to the Commission, including any evidence that the Tribunal requests the Presenting Officer to present, and make any submissions, that will enable the Tribunal to reach an informed decision as to whether market misconduct has taken place and, if so, the nature of the market misconduct. *(Replaced 9 of 2012 s. 28)*

21A. Without prejudice to a Presenting Officer's powers and functions under Part XIII or XIVA of this Ordinance, in any disclosure proceedings, the Presenting Officer—

(a) represents the Commission; and

(b) must present to the Tribunal any evidence available to the Commission, including any evidence that the Tribunal requests the Presenting Officer to present, and make any submissions, that will enable the Tribunal to reach an informed decision as to whether a breach of a disclosure requirement has taken place and, if so, the nature of the breach.

(Added 9 of 2012 s. 13)

22. The Commission may at any time replace a Presenting Officer or any person appointed to assist a Presenting Officer.

(Amended 9 of 2012 s. 28)

Sittings

23. The chairman shall convene such sittings of the Tribunal as are necessary to hear and determine any question or issue arising out of or in connection with the proceedings.

24. Subject to section 25, at any sitting of the Tribunal—

(a) the chairman and 2 ordinary members shall be present;

(b) the chairman shall preside; and

(c) every question before the Tribunal shall be determined by the opinion of the majority of the members except a question of law which shall be determined by the chairman alone.

25. At any sitting of the Tribunal held in respect of any matter which is determined by the chairman alone as the sole member of the Tribunal under section 36, the chairman only shall be present, and every question before the Tribunal shall be determined by him.

26. Every sitting of the Tribunal shall be held in public unless the Tribunal—

(a) on its own motion; or

(b) on the application of—

(i) any identified person for the proceedings; or *(Replaced 9 of 2012 s. 13)*

(ii) the Presenting Officer appointed for the proceedings,

determines that in the interests of justice a sitting or any part thereof shall not be held in public in which case it may hold the sitting or the part thereof (as the case may be) in private.

27. Where an application is made pursuant to section 26 for a determination that a sitting or any part thereof shall not be held in public, any hearing of the application shall be held in private.

28. At any sitting of the Tribunal relating to any proceedings, an identified person for the proceedings is entitled to be heard— *(Amended 9 of 2012 s. 13)*

(a) in person or, in the case of a corporation, through an officer or employee of the corporation; and

(b) through counsel or a solicitor or, with the leave of the Tribunal, through any other person.

29. The chairman shall prepare or cause to be prepared a record of the proceedings at any sitting of the Tribunal, which shall contain such particulars relating to the proceedings as he considers appropriate.

Preliminary Conferences and Consent Orders

30. At any time after any proceedings have been instituted, the chairman may— *(Amended 9 of 2012 s. 13)*

(a) on his own motion or on the application of—

(i) any identified person for the proceedings; or *(Replaced 9 of 2012 s. 13)*

(ii) the Presenting Officer appointed for the proceedings;

(b) if he considers it appropriate to do so, after consideration of any material that has been submitted to the Tribunal in relation to the proceedings by any person who is entitled to make an application pursuant to paragraph (a)(i) or (ii); and

(c) if all persons who are entitled to make, but have not made, an application pursuant to paragraph (a)(i) or (ii) agree,

direct that a conference, to be attended by the parties to the proceedings or their representatives and presided over by the chairman, shall be held for the purposes of—

(i) enabling the parties to prepare for the conduct of the proceedings;

(ii) assisting the Tribunal to determine issues for the purposes of the proceedings; and

(iii) generally securing the just, expeditious and economical conduct of the proceedings.

31. At a conference held in accordance with a direction of the chairman under section 30, the chairman may—

(a) give any direction he considers necessary or desirable for securing the just, expeditious and economical conduct of the proceedings; and

(b) endeavour to secure that the parties to the proceedings make all agreements as they ought reasonably to have made in relation to the proceedings.

32. After a conference has been held in accordance with a direction of the chairman under section 30, the chairman shall report to the Tribunal on such matters relating to the conference as he considers appropriate.

32A. At any time after proceedings have been instituted but before any sitting of the Tribunal is held to hear and determine any question or issue arising out of or in connection with the proceedings (other than a conference held in accordance with a direction of the chairman under section 30), the Commission may withdraw or discontinue the proceedings, or any part of them, by serving written notice of withdrawal or discontinuance on— *(Amended 9 of 2012 s. 13)*

(a) the party in respect of whom the proceedings or part are being withdrawn or discontinued; and

(b) the Tribunal.

(Added 9 of 2012 s. 28)

33. At any time after any proceedings have been instituted, the

Tribunal or the chairman may make any order which it or he is entitled to make under any provision of this Ordinance, whether or not the requirements otherwise applicable to the making of the order have been complied with, if— *(Amended 9 of 2012 s. 13)*

(a) the parties to the proceedings request, and agree to, the making of the order under this section by the Tribunal or the chairman (as the case may be); and

(b) the parties consent to all of the terms of the order.

34. Notwithstanding Part XIII or XIVA of this Ordinance or any other provisions of this Schedule, where under section 33 the Tribunal or the chairman makes any order, the order shall, for all purposes, be regarded as an order made by the Tribunal or the chairman (as the case may be) under the provision in question in compliance with the requirements otherwise applicable to the making of the order.

(Amended 9 of 2012 s. 13)

35. In sections 33 and 34, ***order*** (命令) includes any finding, determination and any other decision.

Chairman as Sole Member of Tribunal

36. Where, at any time after any proceedings have been instituted but before any sitting of the Tribunal is held to hear and determine any question or issue arising out of or in connection with the proceedings, the parties to the proceedings have, by notice in writing given to the Tribunal, informed the Tribunal that they have agreed that any such question or issue may be determined by the chairman alone as the sole member of the Tribunal, the chairman

may determine the question or issue as the sole member of the Tribunal.

(Amended 9 of 2012 s. 13)

37. Where section 36 applies, the Tribunal constituted by the chairman as the sole member of the Tribunal shall, for all purposes, be regarded as the Tribunal constituted also by 2 ordinary members.

38. After the chairman has made any determination under section 36, the chairman shall report to the Tribunal the making of the determination and the reasons therefor and such other matters relating to the determination as he considers appropriate.

Miscellaneous

39. Except as otherwise provided in this Ordinance, the Tribunal and its members, any Presenting Officer, and any party, witness, counsel, solicitor, or any other person involved, in any proceedings, shall have the same privileges and immunities in respect of the proceedings as they would have if the proceedings were civil proceedings before the Court of First Instance.

40. The Tribunal may, at any time—

(a) consolidate proceedings; or

(b) order that proceedings be heard together.

(Added 9 of 2012 s. 13)

Schedule 10

[ss. 237, 240, 242, 406, 407, 408 & 409]

Savings, Transitional, Consequential and Related Provisions, etc.

(Format changes—E.R. 2 of 2012)

Part 1

Savings, Transitional and Supplemental Arrangements

Interpretation of Part 1

1. In this Part, a heading to any provision of this Part shall not have legislative effect and shall not in any way vary, limit or extend the interpretation of any provision of this Part.

Part II of this Ordinance (Securities and Futures Commission)

2. Without prejudice to section 3 of this Ordinance—

(a) anything done under or by virtue of the repealed Securities and Futures Commission Ordinance before the commencement of Part II of this Ordinance by or in relation to the Commission and having effect immediately before such commencement shall, in so far as it could upon such commencement have been done under or by virtue of any provision in that Part, upon such commencement continue to have effect and be deemed to have been done under or by virtue of that provision;

(b) anything which immediately before the commencement of Part II of this Ordinance is in the process of being done under or by virtue of the repealed Securities and Futures Commission Ordinance by or in relation to the Commission may, in so far as it could upon such commencement have been done under or by virtue of any provision in that Part, be continued upon such commencement under or by virtue of that provision;

(c) any person holding office as the chairman or deputy chairman, or as an executive director or non-executive director, of the Commission immediately before the commencement of Part II of this Ordinance shall upon such commencement continue to hold the corresponding office under that Part and Schedule 2 to this Ordinance and be deemed to have been appointed, on the same terms and conditions as were applicable had this Ordinance not been enacted, to the corresponding office under that Part and Schedule 2 to this Ordinance;

(d) the Advisory Committee constituted under section 10 of the repealed Securities and Futures Commission Ordinance immediately before the commencement of Part II of this Ordinance shall upon such commencement continue in existence and be deemed to have been constituted under section 7 of and Schedule 2 to this Ordinance;

(e) any committee which has been established under section 6 of the repealed Securities and Futures Commission Ordinance and which is in existence immediately before the commencement of Part II of this Ordinance shall upon such commencement continue in existence and be deemed to have been established under section 8 of this Ordinance;

(f) any person holding office as a member of the Advisory Committee referred to in paragraph (d), or as a member of a committee referred to in paragraph (e), immediately before the commencement of Part II of this Ordinance shall upon such commencement continue to hold the corresponding office under that Part and Schedule 2 to this Ordinance and be deemed to have been appointed, on the same terms and conditions as were applicable had this Ordinance not been enacted, to the corresponding office under that Part and Schedule 2 to this Ordinance;

(g) any person employed or engaged in any office, other than that referred to in paragraph (c) or (f), by the Commission under or pursuant to any provision of the repealed Securities and Futures Commission Ordinance immediately before the commencement of Part II of this Ordinance shall upon such commencement continue to be employed or engaged in the same office under or pursuant to that Part and be deemed to have been employed or engaged in the same office, on the same terms and conditions as were applicable had this Ordinance not been enacted, under or pursuant to that Part.

Part III of this Ordinance (Exchanges, Clearing Houses and Investor Compensation Companies)

3. In sections 6 and 9—

HKFECC (期貨結算公司) means the company incorporated, and registered by the name HKFE Clearing Corporation Limited, under the relevant Ordinance; *(Amended 28 of 2012 ss. 912 & 920)*

HKSCC (香港結算公司) means the company incorporated, and registered by the name Hong Kong Securities Clearing

Company Limited, under the relevant Ordinance; *(Amended 28 of 2012 ss. 912 & 920)*

SEOCH (期權結算公司) means the company incorporated, and registered by the name The SEHK Options Clearing House Limited, under the relevant Ordinance. *(Amended 28 of 2012 ss. 912 & 920)*

4. In sections 10 and 13—

HKEC (交易結算公司) means the company incorporated, and registered by the name Hong Kong Exchanges and Clearing Limited, under the relevant Ordinance. *(Amended 28 of 2012 ss. 912 & 920)*

5. On the commencement of Division 2 of Part III of this Ordinance—

(a) the Stock Exchange Company and the Futures Exchange Company shall each be deemed to have been recognized as an exchange company under section 19(2) of this Ordinance;

(b) the rules of—

(i) the Stock Exchange Company made under section 34 (except subsection (1)(b)) of the repealed Stock Exchanges Unification Ordinance and approved under section 35 of that Ordinance; and

(ii) the Futures Exchange Company approved under section 14 of the repealed Commodities Trading Ordinance,

which are in effect immediately before such commencement shall upon such commencement continue to have effect and be deemed to have been made under section 23 of this Ordinance and approved under section 24(3) of this Ordinance;

(c) the respective constitutions of the Stock Exchange Company and the Futures Exchange Company which are in effect immediately before such commencement shall upon such commencement continue to have effect and be deemed to have been approved under section 24(3) of this Ordinance; and

(d) any appointment of a person as chief executive of the Stock Exchange Company or the Futures Exchange Company which is in effect immediately before such commencement shall upon such commencement continue to have effect and be deemed to have been approved under section 26 of this Ordinance.

6. On the commencement of Division 3 of Part III of this Ordinance, the HKSCC, HKFECC and SEOCH shall each be deemed to have been recognized as a clearing house under section 37(1) of this Ordinance.

7. Anything done under or by virtue of the repealed Securities and Futures (Clearing Houses) Ordinance before the commencement of Division 3 of Part III of this Ordinance and having effect immediately before such commencement shall, in so far as it could upon such commencement have been done under or by virtue of any provision in that Division, upon such commencement continue

to have effect and be deemed to have been done under or by virtue of that provision.

8. Anything which immediately before the commencement of Division 3 of Part III of this Ordinance is in the process of being done under or by virtue of the repealed Securities and Futures (Clearing Houses) Ordinance may, in so far as it could upon such commencement have been done under or by virtue of any provision in that Division, be continued upon such commencement under or by virtue of that provision.

9. Without limiting the generality of section 7—

(a) a notice which is published under section 4(4) of the repealed Securities and Futures (Clearing Houses) Ordinance and which is in effect immediately before the commencement of Division 3 of Part III of this Ordinance shall upon such commencement continue to have effect and be deemed to have been published under section 41(7) of this Ordinance; and

(b) the rules of the HKSCC, HKFECC and SEOCH which—

(i) have been approved under section 4(7) of the repealed Securities and Futures (Clearing Houses) Ordinance; or

(ii) have been submitted or cause to be submitted under section 4(5) of that Ordinance,

and which are in effect immediately before the commencement of Division 3 of Part III of this

Ordinance shall upon such commencement continue to have effect and be deemed to have been—

(A) in the case of subparagraph (i), approved under section 41(3) of this Ordinance; or

(B) in the case of subparagraph (ii), submitted or caused to be submitted under section 41(2)(b) of this Ordinance.

10. On the commencement of Division 4 of Part III of this Ordinance, the HKEC shall be deemed to have been recognized as an exchange controller under section 59(2) of this Ordinance.

11. Anything done under or by virtue of the repealed Exchanges and Clearing Houses (Merger) Ordinance before the commencement of Division 4 of Part III of this Ordinance and having effect immediately before such commencement shall, in so far as it could upon such commencement have been done under or by virtue of any provision in that Division, upon such commencement continue to have effect and be deemed to have been done under or by virtue of that provision.

12. Anything which immediately before the commencement of Division 4 of Part III of this Ordinance is in the process of being done under or by virtue of the repealed Exchanges and Clearing Houses (Merger) Ordinance may, in so far as it could upon such commencement have been done under or by virtue of any provision

in that Division, be continued upon such commencement under or by virtue of that provision.

13. Without limiting the generality of section 11—

(a) a notice which is published under section 10(6) of the repealed Exchanges and Clearing Houses (Merger) Ordinance and which is in effect immediately before the commencement of Division 4 of Part III of this Ordinance shall upon such commencement continue to have effect and be deemed to have been published under section 67(7) of this Ordinance;

(b) the rules of the HKEC which have been approved under section 10(3) of the repealed Exchanges and Clearing Houses (Merger) Ordinance and which are in effect immediately before the commencement of Division 4 of Part III of this Ordinance shall upon such commencement continue to have effect and be deemed to have been approved under section 67(3) of this Ordinance;

(c) any approval which is given under section 6(2) of the repealed Exchanges and Clearing Houses (Merger) Ordinance and which is in effect immediately before the commencement of Division 4 of Part III of this Ordinance shall upon such commencement continue to have effect and be deemed to have been given under section 61(1) of this Ordinance;

(d) any approval in writing of the Chief Executive for a person to hold the office of the chairman of a recognized exchange controller which is in effect immediately before the commencement of Division 4 of Part III of this Ordinance shall upon such commencement continue

to have effect and be deemed to have been given under section 69 of this Ordinance;

(e) any appointment of a person as chief executive or chief operating officer of a recognized exchange controller which is in effect immediately before the commencement of Division 4 of Part III of this Ordinance shall upon such commencement continue to have effect and be deemed to have been approved under section 70 of this Ordinance; and

(f) the Risk Management Committee established under section 9 of the repealed Exchanges and Clearing Houses (Merger) Ordinance shall upon the commencement of Division 4 of Part III of this Ordinance continue in existence and be deemed to have been established under section 65 of this Ordinance.

14. Anything done under or by virtue of—

(a) section 50 of the repealed Securities and Futures Commission Ordinance before the commencement of section 92 of this Ordinance; or

(b) section 51 of the repealed Securities and Futures Commission Ordinance before the commencement of section 93 of this Ordinance,

and having effect immediately before such commencement shall, in so far as it could upon such commencement have been done under or by virtue of section 92 or 93 of this Ordinance, upon such commencement continue to have effect and be deemed to have been done under or by virtue of that section 92 or 93 (as the case may be).

15. Anything which immediately before the commencement of—

(a) section 92 of this Ordinance is in the process of being done under or by virtue of section 50 of the repealed Securities and Futures Commission Ordinance; or

(b) section 93 of this Ordinance is in the process of being done under or by virtue of section 51 of the repealed Securities and Futures Commission Ordinance,

may, in so far as it could upon such commencement have been done under or by virtue of section 92 or 93 of this Ordinance, be continued upon such commencement under or by virtue of that section 92 or 93 (as the case may be).

Part IV of this Ordinance (Offers of investments)

16. Subject to sections 18 and 19—

(a) any corporation or arrangement that is immediately before the commencement of Part IV of this Ordinance authorized under section 15 of the repealed Securities Ordinance as a mutual fund corporation or a unit trust; or

(b) any matter in respect of which the issue of an advertisement, invitation or document is immediately before the commencement of Part IV of this Ordinance authorized pursuant to section 4(2)(g) of the repealed Protection of Investors Ordinance,

shall, where its name appears in a list published by the Commission for the purposes of this section on the date of commencement of Part IV of this Ordinance, upon such commencement be deemed to have been authorized under section 104 of this Ordinance as a

collective investment scheme, subject to the same conditions as were applicable had this Ordinance not been enacted.

17. Subject to sections 18 and 19, the issue of an advertisement, invitation or document that is immediately before the commencement of Part IV of this Ordinance authorized pursuant to section 4(2)(g) of the repealed Protection of Investors Ordinance shall upon such commencement be deemed to have been authorized under section 105 of this Ordinance, subject to the same conditions as were applicable had this Ordinance not been enacted.

18. Where no individual has been nominated pursuant to section 104(3) or 105(3) of this Ordinance before the expiration of 6 months from the commencement of Part IV of this Ordinance, any authorization otherwise having effect by virtue of section 16 or 17 shall thereupon cease to have effect.

19. Where an individual has been nominated pursuant to section 104(3) or 105(3) of this Ordinance before the expiration of 6 months from the commencement of Part IV of this Ordinance, any authorization otherwise having effect by virtue of section 16 or 17 shall continue to have effect until the Commission decides otherwise.

20. Where an application for—

(a) authorization of any corporation or arrangement under section 15 of the repealed Securities Ordinance as a mutual fund corporation or a unit trust; or

(b) authorization of the issue of an advertisement, invitation or document pursuant to section 4(2)(g) of the repealed Protection of Investors Ordinance,

has been made before the commencement of Part IV of this Ordinance but has not been finally determined by the Commission before such commencement, the application shall upon such commencement be deemed to be—

(i) in the case of paragraph (a), an application for authorization of a collective investment scheme under section 104 of this Ordinance; or

(ii) in the case of paragraph (b), an application for authorization of a collective investment scheme under section 104 of this Ordinance, or an application for authorization of the issue of an advertisement, invitation or document under section 105 of this Ordinance, as the Commission considers appropriate.

21. A list published pursuant to section 16 is not subsidiary legislation.

Part V of this Ordinance (Licensing and registration)

Corporations other than exempt dealers and exempt investment advisers

22. Subject to section 55, a corporation which immediately before the commencement of Part V of this Ordinance is—

(a) registered under the repealed Securities Ordinance as a dealer shall, upon such commencement, be deemed to have been licensed under section 116(1) of this Ordinance for Type 1, Type 4, Type 6 and (subject to the condition specified in section 51) Type 9 regulated activities;

(b) registered under the repealed Securities Ordinance as an investment adviser shall, upon such commencement, be deemed to have been licensed under section 116(1) of this Ordinance for Type 4, Type 6 and (subject to the condition specified in section 51) Type 9 regulated activities;

(c) registered under the repealed Securities Ordinance as a securities margin financier shall, upon such commencement, be deemed to have been licensed under section 116(1) of this Ordinance for Type 8 regulated activity;

(d) registered under the repealed Commodities Trading Ordinance as a dealer shall, upon such commencement, be deemed to have been licensed under section 116(1) of this Ordinance for Type 2, Type 5 and (subject to the condition specified in section 52) Type 9 regulated activities;

(e) registered under the repealed Commodities Trading Ordinance as a commodity trading adviser shall, upon such commencement, be deemed to have been licensed under section 116(1) of this Ordinance for Type 5 and (subject to the condition specified in section 52) Type 9 regulated activities;

(f) licensed under the repealed Leveraged Foreign Exchange Trading Ordinance as a leveraged foreign exchange trader shall, upon such commencement, be

deemed to have been licensed under section 116(1) of this Ordinance for Type 3 regulated activity,

and to have complied with the requirement of section 125(1)(a) and (b) of this Ordinance, and, subject to section 53, shall be so deemed for a period of 2 years from such commencement.

23. Subject to section 55, where a corporation is deemed under section 22 to have been licensed, any director of that corporation who is an individual and immediately before the commencement of Part V of this Ordinance is—

(a) registered under the repealed Securities Ordinance as a dealer of that corporation shall, upon such commencement, be deemed to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 1, Type 4, Type 6 and (subject to the condition specified in section 51) Type 9 regulated activities and accredited to that corporation;

(b) registered under the repealed Securities Ordinance as an investment adviser of that corporation shall, upon such commencement, be deemed to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 4, Type 6 and (subject to the condition specified in section 51) Type 9 regulated activities and accredited to that corporation;

(c) registered under the repealed Securities Ordinance as a securities margin financier's representative of that corporation shall, upon such commencement, be deemed to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 8 regulated activity and accredited to that corporation;

(d) registered under the repealed Commodities Trading Ordinance as a dealer of that corporation shall, upon such commencement, be deemed to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 2, Type 5 and (subject to the condition specified in section 52) Type 9 regulated activities and accredited to that corporation;

(e) registered under the repealed Commodities Trading Ordinance as a commodity trading adviser of that corporation shall, upon such commencement, be deemed to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 5 and (subject to the condition specified in section 52) Type 9 regulated activities and accredited to that corporation;

(f) licensed under the repealed Leveraged Foreign Exchange Trading Ordinance as a representative of that corporation shall, upon such commencement, be deemed to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 3 regulated activity and accredited to that corporation,

and approved under section 126(1) of this Ordinance as a responsible officer of that corporation, and, subject to section 53, shall be so deemed for a period of 2 years from such commencement.

24. Subject to section 55, where a corporation is deemed under section 22 to have been licensed, any individual not being a director of that corporation who immediately before the commencement of Part V of this Ordinance is—

(a) registered under the repealed Securities Ordinance as a dealer's representative of that corporation shall, upon

such commencement, be deemed to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 1, Type 4, Type 6 and (subject to the condition specified in section 51) Type 9 regulated activities and accredited to that corporation;

(b) registered under the repealed Securities Ordinance as an investment representative of that corporation shall, upon such commencement, be deemed to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 4, Type 6 and (subject to the condition specified in section 51) Type 9 regulated activities and accredited to that corporation;

(c) registered under the repealed Securities Ordinance as a securities margin financier's representative of that corporation shall, upon such commencement, be deemed to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 8 regulated activity and accredited to that corporation;

(d) registered under the repealed Commodities Trading Ordinance as a dealer's representative of that corporation shall, upon such commencement, be deemed to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 2, Type 5 and (subject to the condition specified in section 52) Type 9 regulated activities and accredited to that corporation;

(e) registered under the repealed Commodities Trading Ordinance as a commodity trading adviser's representative of that corporation shall, upon such commencement, be deemed to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 5 and (subject to the condition specified in section 52) Type 9 regulated activities and accredited to that corporation;

(f) licensed under the repealed Leveraged Foreign Exchange Trading Ordinance as a representative of that corporation shall, upon such commencement, be deemed to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 3 regulated activity and accredited to that corporation,

and, subject to section 53, shall be so deemed for a period of 2 years from such commencement.

Persons who are exempt dealers or exempt investment advisers

25. Subject to section 55—

(a) an authorized financial institution which immediately before the commencement of Part V of this Ordinance is—

(i) an exempt dealer within the meaning of the repealed Securities Ordinance shall, upon such commencement, be deemed to have been registered under section 119(1) of this Ordinance for Type 1, Type 4, Type 6 and (subject to the condition specified in section 51) Type 9 regulated activities;

(ii) an exempt investment adviser within the meaning of the repealed Securities Ordinance shall, upon such commencement, be deemed to have been registered under section 119(1) of this Ordinance for Type 4, Type 6 and (subject to the condition specified in section 51) Type 9 regulated activities,

and, subject to section 53, shall be so deemed for a period of 2 years from such commencement;

(b) a corporation (other than an authorized financial institution), partnership or individual who immediately

before the commencement of Part V of this Ordinance is—

(i) an exempt dealer within the meaning of the repealed Securities Ordinance shall, upon such commencement, be deemed to be a licensed corporation that has been licensed under section 116(1) of this Ordinance for Type 1, Type 4, Type 6 and (subject to the condition specified in section 51) Type 9 regulated activities;

(ii) an exempt investment adviser within the meaning of the repealed Securities Ordinance shall, upon such commencement, be deemed to be a licensed corporation that has been licensed under section 116(1) of this Ordinance for Type 4, Type 6 and (subject to the condition specified in section 51) Type 9 regulated activities,

and, subject to section 53, shall be so deemed for a period of 2 years from such commencement, and for so long as such corporation, partnership or individual is so deemed, the requirements of sections 125(1)(a) and (b) and 131(1) of this Ordinance shall not apply to it.

26. Where immediately before the commencement of Part V of this Ordinance an individual is engaged—

(a) by an authorized financial institution; or

(b) by a corporation (other than an authorized financial institution), partnership or individual,

to perform any act which, after such commencement, would constitute a regulated function in relation to a regulated activity for which the institution is deemed under section 25(a) to have been

registered or the corporation, partnership or individual is deemed under section 25(b) to have been licensed (as the case may be), the first-mentioned individual shall, upon such commencement, be deemed—

(i) (if paragraph (a) applies to the first-mentioned individual) to be a person whose name has been entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged by the institution in respect of that regulated activity;

(ii) (if paragraph (b) applies to the first-mentioned individual) to have been licensed as a licensed representative under section 120(1) of this Ordinance for that regulated activity (subject to the condition specified in section 51) and accredited to the corporation, partnership or individual (in its capacity as a licensed corporation by virtue of section 25(b)),

and, subject to section 53, shall be so deemed for a period of 2 years from such commencement.

Partnerships

27. Subject to section 55, a partnership which immediately before the commencement of Part V of this Ordinance is registered—

(a) under the repealed Securities Ordinance as a dealer shall, upon such commencement, be deemed to be a licensed corporation that has been licensed under section 116(1) of this Ordinance for Type 1, Type 4, Type 6 and (subject to the condition specified in section 51) Type 9 regulated activities;

(b) under the repealed Securities Ordinance as an investment adviser shall, upon such commencement, be deemed to

be a licensed corporation that has been licensed under section 116(1) of this Ordinance for Type 4, Type 6 and (subject to the condition specified in section 51) Type 9 regulated activities;

(c) under the repealed Commodities Trading Ordinance as a dealer shall, upon such commencement, be deemed to be a licensed corporation that has been licensed under section 116(1) of this Ordinance for Type 2, Type 5 and (subject to the condition specified in section 52) Type 9 regulated activities;

(d) under the repealed Commodities Trading Ordinance as a commodity trading adviser shall, upon such commencement, be deemed to be a licensed corporation that has been licensed under section 116(1) of this Ordinance for Type 5 and (subject to the condition specified in section 52) Type 9 regulated activities,

and to have complied with the requirement of section 125(1)(a) and (b) of this Ordinance, and, subject to section 53, shall be so deemed for a period of 2 years from such commencement.

28. Subject to section 55, where a partnership is deemed under section 27 to be a licensed corporation, any partner of that partnership who immediately before the commencement of Part V of this Ordinance is registered—

(a) under the repealed Securities Ordinance as a dealer of that partnership shall, upon such commencement, be deemed to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 1, Type 4, Type 6 and (subject to the condition specified in section 51) Type 9 regulated activities and accredited to that licensed corporation;

(b) under the repealed Securities Ordinance as an investment adviser of that partnership shall, upon such commencement, be deemed to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 4, Type 6 and (subject to the condition specified in section 51) Type 9 regulated activities and accredited to that licensed corporation;

(c) under the repealed Commodities Trading Ordinance as a dealer of that partnership shall, upon such commencement, be deemed to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 2, Type 5 and (subject to the condition specified in section 52) Type 9 regulated activities and accredited to that licensed corporation;

(d) under the repealed Commodities Trading Ordinance as a commodity trading adviser of that partnership shall, upon such commencement, be deemed to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 5 and (subject to the condition specified in section 52) Type 9 regulated activities and accredited to that licensed corporation,

and approved under section 126(1) of this Ordinance as a responsible officer of that licensed corporation, and, subject to section 53, shall be so deemed for a period of 2 years from such commencement.

29. Subject to section 55, where a partnership is deemed under section 27 to be a licensed corporation, any individual who immediately before the commencement of Part V of this Ordinance is registered—

(a) under the repealed Securities Ordinance as a dealer's representative of that partnership shall, upon such commencement, be deemed to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 1, Type 4, Type 6 and (subject to the condition specified in section 51) Type 9 regulated activities and accredited to that licensed corporation;

(b) under the repealed Securities Ordinance as an investment representative of that partnership shall, upon such commencement, be deemed to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 4, Type 6 and (subject to the condition specified in section 51) Type 9 regulated activities and accredited to that licensed corporation;

(c) under the repealed Commodities Trading Ordinance as a dealer's representative of that partnership shall, upon such commencement, be deemed to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 2, Type 5 and (subject to the condition specified in section 52) Type 9 regulated activities and accredited to that licensed corporation;

(d) under the repealed Commodities Trading Ordinance as a commodity trading adviser's representative of that partnership shall, upon such commencement, be deemed to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 5 and (subject to the condition specified in section 52) Type 9 regulated activities and accredited to that licensed corporation,

and, subject to section 53, shall be so deemed for a period of 2 years from such commencement.

Sole-proprietorships

30. Subject to section 55, an individual who immediately before the commencement of Part V of this Ordinance is registered—

(a) under the repealed Securities Ordinance as a dealer shall, upon such commencement, be deemed—

(i) to be a licensed corporation that has been licensed under section 116(1) of this Ordinance for Type 1, Type 4, Type 6 and (subject to the condition specified in section 51) Type 9 regulated activities;

(ii) to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 1, Type 4, Type 6 and (subject to the condition specified in section 51) Type 9 regulated activities and accredited to that licensed corporation; and

(iii) to have been approved under section 126(1) of this Ordinance as a responsible officer of that licensed corporation;

(b) under the repealed Securities Ordinance as an investment adviser shall, upon such commencement, be deemed—

(i) to be a licensed corporation that has been licensed under section 116(1) of this Ordinance for Type 4, Type 6 and (subject to the condition specified in section 51) Type 9 regulated activities;

(ii) to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 4, Type 6 and (subject to the condition specified in section 51) Type 9 regulated activities and accredited to that licensed corporation; and

(iii) to have been approved under section 126(1) of this Ordinance as a responsible officer of that licensed corporation;

(c) under the repealed Commodities Trading Ordinance as a dealer shall, upon such commencement, be deemed—

(i) to be a licensed corporation that has been licensed under section 116(1) of this Ordinance for Type 2, Type 5 and (subject to the condition specified in section 52) Type 9 regulated activities;

(ii) to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 2, Type 5 and (subject to the condition specified in section 52) Type 9 regulated activities and accredited to that licensed corporation; and

(iii) to have been approved under section 126(1) of this Ordinance as a responsible officer of that licensed corporation;

(d) under the repealed Commodities Trading Ordinance as a commodity trading adviser shall, upon such commencement, be deemed—

(i) to be a licensed corporation that has been licensed under section 116(1) of this Ordinance for Type 5 and (subject to the condition specified in section 52) Type 9 regulated activities;

(ii) to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 5 and (subject to the condition specified in section 52) Type 9 regulated activities and accredited to that licensed corporation; and

(iii) to have been approved under section 126(1) of this Ordinance as a responsible officer of that licensed corporation,

and to have complied with the requirement of section 125(1)(a) and (b) of this Ordinance, and, subject to section 53, shall be so deemed for a period of 2 years from such commencement.

31. Subject to section 55, where an individual is deemed under section 30 to be a licensed corporation, any other individual who immediately before the commencement of Part V of this Ordinance is registered—

(a) under the repealed Securities Ordinance as a dealer's representative of the first-mentioned individual shall, upon such commencement, be deemed to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 1, Type 4, Type 6 and (subject to the condition specified in section 51) Type 9 regulated activities and accredited to that licensed corporation;

(b) under the repealed Securities Ordinance as an investment representative of the first-mentioned individual shall, upon such commencement, be deemed to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 4, Type 6 and (subject to the condition specified in section 51) Type 9 regulated activities and accredited to that licensed corporation;

(c) under the repealed Commodities Trading Ordinance as a dealer's representative of the first-mentioned individual shall, upon such commencement, be deemed to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 2, Type 5 and (subject to the condition specified in section 52) Type 9 regulated activities and accredited to that licensed corporation;

(d) under the repealed Commodities Trading Ordinance as a commodity trading adviser's representative of the first-mentioned individual shall, upon such commencement, be deemed to have been licensed as a licensed

representative under section 120(1) of this Ordinance for Type 5 and (subject to the condition specified in section 52) Type 9 regulated activities and accredited to that licensed corporation,

and, subject to section 53, shall be so deemed for a period of 2 years from such commencement.

Licensed banks

32. Where immediately before the commencement of Part V of this Ordinance, a licensed bank would have fallen within the meaning of the definition of ***investment adviser*** in section 2(1) of the repealed Securities Ordinance but for paragraph (i) of that definition, it shall, upon such commencement, be deemed to have been registered under section 119(1) of this Ordinance for Type 4, Type 6 and (subject to the condition specified in section 51) Type 9 regulated activities, and, subject to section 53, shall be so deemed for a period of 2 years from such commencement.

33. Where immediately before the commencement of Part V of this Ordinance an individual is engaged by a licensed bank to perform any act which, after such commencement, would constitute a regulated function in relation to a regulated activity for which the bank is deemed under section 32 to have been registered, that individual shall, upon such commencement, be deemed to be a person whose name has been entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged by the bank in respect of that regulated activity, and, subject to section 53, shall be so deemed for a period of 2 years from such commencement.

Persons providing automated trading services

34. Where immediately before the commencement of Part V of this Ordinance, a person is carrying on a business in providing automated trading services, and the person is—

(a) a corporation to which section 22(a) or (d) or 25(b)(i) applies;

(b) a partnership to which section 25(b)(i) or 27(a) or (c) applies; or

(c) an individual to whom section 25(b)(i) or 30(a) or (c) applies,

then in relation to the person, any of those sections that applies to the person as such corporation, partnership or individual (as the case may be) shall be read and construed as if Type 7 regulated activity were added as a regulated activity for which the person is deemed to have been licensed (in its capacity as a licensed corporation by virtue of that section), and the provisions of sections 22 to 60 shall be construed accordingly.

35. Where section 34 is applicable to a corporation, partnership or individual (***the first-mentioned individual***), then in relation to—

(a) a director of the corporation to whom section 23(a) or (d) applies;

(b) an individual (not being a director) of the corporation to whom section 24(a) or (d) applies;

(c) a partner of the partnership to whom section 28(a) or (c) applies;

(d) an individual (not being a partner) of the partnership to whom section 29(a) or (c) applies;

(e) the first-mentioned individual, to whom section 30(a)(ii) and (iii) or (c)(ii) and (iii) applies;

(f) an individual to whom section 31(a) or (c) applies in relation to the first-mentioned individual; or

(g) an individual to whom section 26(ii) applies in relation to the corporation, partnership or first-mentioned individual,

any of those sections that applies to such director, partner or individual (including the first-mentioned individual) (as the case may be) shall be read and construed as if Type 7 regulated activity were added as a regulated activity for which such director, partner or individual is deemed to have been licensed (in his capacity as a licensed representative by virtue of that section) or approved (in his capacity as a responsible officer by virtue of that section) and the provisions of sections 22 to 60 shall be construed accordingly.

36. Where immediately before the commencement of Part V of this Ordinance, a person is carrying on a business in providing automated trading services, and the person is an authorized financial institution to which section 25(a)(i) applies, then in relation to the institution, that section shall be read and construed as if Type 7 regulated activity were added as a regulated activity for which the institution is deemed to have been registered and the provisions of sections 22 to 60 shall be construed accordingly.

37. Where immediately before the commencement of Part V of this Ordinance, a person is carrying on a business in providing

automated trading services and none of sections 34, 35 and 36 is applicable in relation to the person, then the person may continue carrying on the business for a period of 6 months from such commencement, and for such continuation of the business, this Ordinance shall not apply to—

(a) the person; and

(b) any individual engaged by the person to perform any act in providing automated trading services in the business,

until the expiration of that period.

Persons dealing in certain interests in collective investment scheme

38. For the purposes of sections 39, 40, 41, 42, 43 and 44, ***excluded interests*** (豁除權益) means interests in a collective investment scheme, where such interest does not fall within the meaning of ***securities*** as defined in section 2(1) of the repealed Securities Ordinance.

39. Where immediately before the commencement of Part V of this Ordinance, a person—

(a) is carrying on a business in dealing in excluded interests; and

(b) is registered under the repealed Commodities Trading Ordinance as a dealer, other than as such dealer in the capacity of—

(i) a director of a corporation; or

(ii) a partner of a partnership,

that is registered as such dealer,

then the person may continue carrying on the business referred to in paragraph (a) for a period of 2 years from such commencement, and solely for the purposes of the continuation of such business, this Ordinance shall not apply to the person until the expiration of that period.

40. Where section 39 is applicable to a person, and immediately before the commencement of Part V of this Ordinance—

(a) (if the person is a corporation) a director of the person is registered as a dealer;

(b) (if the person is a partnership) a partner of the person is registered as a dealer;

(c) an individual is registered as a dealer's representative,

of the person under the repealed Commodities Trading Ordinance, then the director, partner or individual may deal in excluded interests in the business carried on by the person for a period of 2 years from such commencement, and solely for the purposes of dealing in excluded interests in such business, this Ordinance shall not apply to such director, partner or individual until the expiration of that period.

41. Where immediately before the commencement of Part V of this Ordinance, a person is carrying on a business in dealing in excluded interests, and neither section 39 nor 40 is applicable to the person, then the person may continue carrying on the business in dealing in excluded interests for a period of 6 months from such commencement, and solely for the purposes of the continuation of such business, this Ordinance shall not apply to—

(a) the person; and

(b) any individual engaged in the business by the person to deal in excluded interests,

until the expiration of that period.

Persons advising on certain interests in collective investment scheme

42. Where immediately before the commencement of Part V of this Ordinance, a person—

(a) is carrying on a business in advising on excluded interests (as defined in section 38); and

(b) is registered under the repealed Commodities Trading Ordinance as a commodity trading adviser, other than as such adviser in the capacity of—

(i) a director of a corporation; or

(ii) a partner of a partnership,

that is registered as such adviser,

then the person may continue carrying on the business referred to in paragraph (a) for a period of 2 years from such commencement, and solely for the purposes of the continuation of such business, this Ordinance shall not apply to the person until the expiration of that period.

43. Where section 42 is applicable to a person, and immediately before the commencement of Part V of this Ordinance—

(a) (if the person is a corporation) a director of the person is registered as a commodity trading adviser;

(b) (if the person is a partnership) a partner of the person is registered as a commodity trading adviser;

(c) an individual is registered as a commodity trading adviser's representative,

of the person under the repealed Commodities Trading Ordinance, then the director, partner or individual may advise on excluded interests in the business carried on by the person for a period of 2 years from such commencement, and solely for the purposes of advising on excluded interests in such business, this Ordinance shall not apply to such director, partner or individual until the expiration of that period.

44. Where immediately before the commencement of Part V of this Ordinance, a person is carrying on a business in advising on excluded interests, and neither section 42 nor 43 is applicable to the person, then the person may continue carrying on the business in advising on excluded interests for a period of 6 months from such commencement, and solely for the purposes of the continuation of such business, this Ordinance shall not apply to—

(a) the person; and

(b) any individual engaged in the business by the person to advise on excluded interests,

until the expiration of that period.

Persons dealing in futures contracts solely with persons outside Hong Kong

45. For the purposes of sections 47, 48, 49 and 50, ***excluded clients*** (豁除客戶) means persons outside Hong Kong.

46. For the purposes of sections 48, 49 and 50, ***dealing in futures contracts*** (期貨合約交易) has the meaning assigned to it by Part 2 of Schedule 5 to this Ordinance.

47. Where immediately before the commencement of Part V of this Ordinance, a person—

(a) is carrying on a business which does not fall within the meaning of ***trading in commodity futures contracts***, as defined in section 2(1) of the repealed Commodities Trading Ordinance, solely because the person while engaging in such trading only deals with excluded clients; and

(b) (i) is registered under the repealed Securities Ordinance as a dealer, other than as such dealer in the capacity of—

(A) a director of a corporation; or

(B) a partner of a partnership,

that is registered as such dealer; or

(ii) is declared under the repealed Securities Ordinance as an exempt dealer,

then the person may continue carrying on the business referred to in paragraph (a) for a period of 2 years from such commencement, and solely for the purposes of the continuation of such business, this Ordinance shall not apply to the person until the expiration of that period.

48. Where section 47 is applicable to a person who falls within the description of section 47(b)(i), and immediately before the commencement of Part V of this Ordinance—

(a) (if the person is a corporation) a director of the person is registered as a dealer;

(b) (if the person is a partnership) a partner of the person is registered as a dealer;

(c) an individual is registered as a dealer's representative,

of the person under the repealed Securities Ordinance, then the director, partner or individual may deal in futures contracts solely with excluded clients in the business carried on by the person for a period of 2 years from such commencement, and solely for the purposes of dealing in futures contracts solely with excluded clients in such business, this Ordinance shall not apply to the director, partner or individual until the expiration of that period.

49. Where section 47 is applicable to a person who falls within the description of section 47(b)(ii), and immediately before the commencement of Part V of this Ordinance, an individual is engaged by the person to deal solely with excluded clients in the person's business referred to in section 47(a), then the individual may deal in futures contracts solely with excluded clients in such business for a period of 2 years from such commencement, and solely for the purposes of dealing in futures contracts solely with excluded clients in such business, this Ordinance shall not apply to the person until the expiration of that period.

50. Where immediately before the commencement of Part V of this Ordinance, a person—

(a) is carrying on a business which does not fall within the meaning of ***trading in commodity futures contracts***, as defined in section 2(1) of the repealed Commodities Trading Ordinance, solely because the person while engaging in such trading only deals with excluded clients; and

(b) none of sections 47, 48 and 49 is applicable to the person,

then the person may continue carrying on the business referred to in paragraph (a) for a period of 6 months from such commencement, and solely for the purposes of the continuation of such business, this Ordinance shall not apply to—

(i) the person; and

(ii) any individual engaged in the business by the person to deal in futures contracts solely with excluded clients,

until the expiration of that period.

Deemed condition for Type 9 regulated activity

51. Where a person is—

(a) immediately before the commencement of Part V of this Ordinance—

(i) registered under the repealed Securities Ordinance as a dealer, investment adviser, dealer's representative or investment representative;

(ii) declared under the repealed Securities Ordinance as an exempt dealer or an exempt investment adviser; or

(iii) a licensed bank referred to in section 32; and

(b) deemed under section 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 or 32 to have been licensed or registered for Type 9 regulated activity under Part V of this Ordinance,

then without prejudice to section 55, such licence or registration referred to in paragraph (b) shall be subject to a condition that the person shall not provide a service of managing a portfolio of futures contracts for another person.

52. Where a person is—

(a) immediately before the commencement of Part V of this Ordinance registered under the repealed Commodities Trading Ordinance as a dealer, commodity trading adviser, dealer's representative or commodity trading adviser's representative; and

(b) deemed under section 22, 23, 24, 27, 28, 29, 30 or 31 to have been licensed for Type 9 regulated activity under Part V of this Ordinance,

then without prejudice to section 55, such licence referred to in paragraph (b) shall be subject to a condition that the person shall not provide a service of managing a portfolio of securities for another person.

Further provisions on transitional period

53. (1) Where, within 2 years from the commencement of Part V of this Ordinance—

(a) a corporation deemed under section 22 or 25(b) to have been licensed for a regulated activity applies to be licensed for that regulated activity under section 116(1)

of this Ordinance, then without prejudice to subsection (3)(C), it shall be deemed—

(i) to have been so licensed; and

(ii) (in the case of a corporation deemed under section 22 to have been licensed) to have complied with the requirement of section 125(1)(a) and (b) of this Ordinance in relation to that regulated activity,

until the licence applied for is granted or the Commission's refusal to grant the licence takes effect as a specified decision under section 232 of this Ordinance (as the case may be);

(b) a company, or a registered non-Hong Kong company as defined by section 2(1) of the Companies Ordinance (Cap. 622), applies to be licensed under section 116(1) of this Ordinance for a regulated activity and— *(Amended 30 of 2004 s. 3; 28 of 2012 ss. 912 & 920)*

(i) all the partners of a partnership deemed under section 25(b) or 27 to have been licensed for that regulated activity are shareholders of the applicant;

(ii) the collective shareholdings of such partners would have made them a majority shareholder of the applicant if they were one single shareholder of the applicant; and

(iii) the applicant satisfies the Commission that—

(A) it is incorporated for the purposes of taking over the business carried on by that partnership in that regulated activity; and

(B) sufficient arrangements have been or will be made to effect the transfer of such business from that partnership to the applicant,

then without prejudice to subsection (3)(C), that partnership shall be deemed—

(A) to have been so licensed; and

(B) (in the case of a partnership deemed under section 27 to have been licensed) to have complied with the requirement of section 125(1)(a) and (b) of this Ordinance in relation to that regulated activity,

until the licence applied for is granted or the Commission's refusal to grant the licence takes effect as a specified decision under section 232 of this Ordinance (as the case may be);

(c) a company, or a registered non-Hong Kong company as defined by section 2(1) of the Companies Ordinance (Cap. 622), applies to be licensed under section 116(1) of this Ordinance for a regulated activity and— *(Amended 30 of 2004 s. 3; 28 of 2012 ss. 912 & 920)*

(i) an individual deemed under section 25(b) or 30 to have been licensed for that regulated activity is a majority shareholder of the applicant; and

(ii) the applicant satisfies the Commission that—

(A) it is incorporated for the purposes of taking over the business carried on by that individual in that regulated activity; and

(B) sufficient arrangements have been or will be made to effect the transfer of such business from that individual to the applicant,

then without prejudice to subsection (3)(C), that individual shall be deemed—

(A) to have been so licensed;

(B) (in the case of an individual deemed under section 30 to have been licensed) to have complied with the requirement of section 125(1)(a) and (b) of this Ordinance in relation to that regulated activity; and

(C) (in the case of an individual deemed under section 30 to have been licensed) to have been approved under section 126(1) of this Ordinance as a responsible officer in relation to that licensed corporation,

until the licence applied for is granted or the Commission's refusal to grant the licence takes effect as a specified decision under section 232 of this Ordinance (as the case may be);

(d) a director deemed under section 23, or a partner deemed under section 28—

(i) to have been licensed for a regulated activity and accredited to a corporation; and

(ii) to have been approved as a responsible officer of that corporation,

applies to be licensed for the regulated activity under section 120(1) of this Ordinance, he shall, subject to subsection (6), be so deemed until the licence applied for is granted or the Commission's refusal to grant the licence takes effect as a specified decision under section 232 of this Ordinance (as the case may be);

(e) an individual deemed under section 24, 26(ii), 29 or 31 to have been licensed for a regulated activity and accredited to a corporation applies to be licensed for the regulated activity under section 120(1) of this Ordinance, he shall, subject to subsection (6), be so deemed until the licence applied for is granted or the Commission's refusal to grant the licence takes effect as

a specified decision under section 232 of this Ordinance (as the case may be).

(2) Where, within 2 years from the commencement of Part V of this Ordinance, an authorized financial institution deemed under section 25(a) to have been registered, or a licensed bank deemed under section 32 to have been registered, for a regulated activity, applies to be registered for that regulated activity under section 119(1) of this Ordinance, then without prejudice to subsection (3)(C)—

(a) it shall be deemed to have been so registered; and

(b) an individual deemed under section 26(i) or 33 to be a person whose name has been entered in the register referred to in that section as engaged by the institution or licensed bank (as the case may be) in that regulated activity shall, subject to subsection (6), be so deemed,

until the applicant is registered pursuant to the application or the Commission's refusal to register the applicant takes effect as a specified decision under section 232 of this Ordinance (as the case may be).

(3) Where—

(a) an application referred to in subsection (1)(a), (b) or (c) or (2) in relation to a regulated activity is refused; or

(b) such an application is refused and the applicant applies for review of the refusal under section 217 of this Ordinance, and the refusal is confirmed by the Securities and Futures Appeals Tribunal,

then—

(i) in the case of an application referred to in subsection (1)(a) or (2), the applicant;

(ii) in the case of an application referred to in subsection (1)(b), the partnership from which the applicant intends to take over the business in that regulated activity; or

(iii) in the case of an application referred to in subsection (1)(c), the individual from whom the applicant intends to take over the business in that regulated activity,

shall—

(A) cease to carry on that regulated activity within 21 days of the refusal or the confirmation (as the case may be) or within such further period as the Commission notifies the applicant, partnership or individual (as the case may be) in writing;

(B) comply with such reasonable conditions as the Commission may impose for such cessation; and

(C) before such cessation but in any event not later than the 21 days or further period referred to in paragraph (A) and solely for the purpose of winding up its business in that regulated activity, continue to be deemed to have been licensed or registered or to have complied with the requirement of section 125(1)(a) and (b) of this Ordinance or to have been approved as a responsible officer for or in relation to that regulated activity, as may be applicable,

and may be subject to the exercise of the power of the Commission under section 201 of this Ordinance as if the licence or registration referred to in paragraph (C) in respect of the applicant, partnership or individual (as the case may be) had been revoked on the occurrence of the circumstances specified in paragraphs (a) and (b) (whichever is applicable).

(4) Where a person is deemed under section 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 or 32 to have been licensed or registered

for a regulated activity or approved as a responsible officer, the provisions of this Ordinance shall—

(a) apply to or in relation to the person as they apply to or in relation to a person who is licensed or registered for that regulated activity or approved as a responsible officer (as the case may be); and

(b) in case the person is a partnership or an individual (as the case may be) carrying on a business in that regulated activity, so apply with such modifications under section 134 of this Ordinance as may be necessary.

(5) Where an individual's name is deemed—

(a) under section 26(i); or

(b) under section 33,

to have been entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged by the institution concerned or the bank concerned in respect of a regulated activity, the provisions of this Ordinance shall apply to or in relation to the individual as they apply to or in relation to an individual whose name is entered in such register in respect of that regulated activity with such modifications under section 134 of this Ordinance as may be necessary.

(6) If—

(a) a director of a corporation who is deemed under section 23—

(i) to have been licensed as a licensed representative and accredited to that corporation; and

(ii) to have been approved under section 126(1) of this Ordinance as a responsible officer of that corporation,

ceases to be a director of that corporation, he shall upon such cessation cease to be so deemed;

(b) a partner of a partnership who is deemed under section 28—

(i) to have been licensed as a licensed representative and accredited to that partnership (deemed under section 27 to be a licensed corporation); and

(ii) to have been approved under section 126(1) of this Ordinance as a responsible officer of that corporation,

ceases to be a partner of that partnership, he shall upon such cessation cease to be so deemed;

(c) an individual who is deemed under section 24, 26(ii), 29 or 31 to have been licensed as a licensed representative and accredited to a licensed person ceases to act for or on behalf of that licensed person in relation to the regulated activity for which he is so deemed, he shall upon such cessation cease to be so deemed;

(d) an individual who is deemed under section 26(i) or 33 to be a person whose name has been entered in the register referred to in that section ceases to be engaged by the institution concerned or the bank concerned to perform any act which constitutes a regulated function in relation to the relevant regulated activity, he shall upon such cessation cease to be so deemed.

Certain unregistered persons to be permitted to carry on limited business

54. A person who—

(a) immediately before the commencement of Part XA of the repealed Securities Ordinance, carried on a business of securities margin financing; and

(b) continues to collect interest accrued or accruing on sums already advanced under financial accommodation granted before the commencement of that Part,

is deemed not to be carrying on a business in Type 8 regulated activity for the purposes of section 114(1) of this Ordinance, but only if the person does not carry on, or hold itself out as carrying on, any business in securities margin financing other than that as referred to in paragraph (b).

Miscellaneous

55. Where a person is—

(a) immediately before the commencement of Part V of this Ordinance—

(i) registered under the repealed Securities Ordinance as a dealer, investment adviser, securities margin financier, dealer's representative, investment representative or securities margin financier's representative;

(ii) declared under the repealed Securities Ordinance as an exempt dealer or an exempt investment adviser;

(iii) registered under the repealed Commodities Trading Ordinance as a dealer, commodity trading adviser, dealer's representative or commodity trading adviser's representative; or

(iv) licensed under the repealed Leveraged Foreign Exchange Trading Ordinance as a leveraged foreign exchange trader or representative; and

(b) deemed under section 22, 23, 24, 25, 27, 28, 29, 30, 31 or 32 to have been licensed or registered under Part V of this Ordinance,

any condition that has been attached or imposed by the Commission to the registration, exemption or licence referred to in paragraph (a) which is in force immediately before such commencement shall, upon such commencement, be deemed to have been imposed in respect of the licence or registration referred to in paragraph (b).

56. Where—

(a) approval for premises to be used for keeping records or documents has been given by the Commission under the repealed Securities and Futures Commission Ordinance or the repealed Leveraged Foreign Exchange Trading Ordinance; and

(b) the approval subsists immediately before the commencement of Part V of this Ordinance,

the approval shall, upon such commencement, be deemed to have been granted under section 130(1) of this Ordinance.

57. Where—

(a) approval for a subordinated loan has been given by the Commission under the Financial Resources Rules (Cap. 24 sub. leg. J) repealed under section 406 of this Ordinance or the Leveraged Foreign Exchange Trading (Financial Resources) Rules (Cap. 451 sub. leg. G) repealed under section 406 of this Ordinance; and

(b) the approval subsists immediately before the commencement of Part V of this Ordinance,

the approval shall, upon such commencement, be deemed to have been granted under this Ordinance.

58. Where—

(a) approval to be a substantial shareholder has been given by the Commission under the repealed Securities and Futures Commission Ordinance or the repealed Leveraged Foreign Exchange Trading Ordinance; and

(b) the approval subsists immediately before the commencement of Part V of this Ordinance,

the approval shall, upon such commencement, be deemed to have been granted under section 132 of this Ordinance.

59. Where—

(a) an application is made before the commencement of Part V of this Ordinance for approval to be a substantial shareholder under section 26A of the repealed Securities and Futures Commission Ordinance or section 14A of the repealed Leveraged Foreign Exchange Trading Ordinance; and

(b) immediately before such commencement the application has not been granted, refused or withdrawn,

the application shall, upon such commencement, be treated as an application to become a substantial shareholder under section 132 of this Ordinance.

60. (1) Where—

(a) an application is made before the commencement of Part V of this Ordinance for—

(i) registration; or

(ii) a licence,

in any capacity specified in column 2 of the Table; and

(b) immediately before such commencement the application has not been granted, refused or withdrawn,

the application shall, upon such commencement, be treated as an application for a licence as specified opposite thereto in column 3 of the Table, and the Commission shall be entitled to determine the application accordingly.

Table

Item	Application pending at commencement of Part V of this Ordinance	To be treated as application for a licence
1.	For registration as a dealer under the repealed Securities Ordinance, by—	

Item	Application pending at commencement of Part V of this Ordinance	To be treated as application for a licence
	(a) a corporation	(a) Under section 116(1) of this Ordinance for Type 1, Type 4, Type 6, Type 7 and Type 9 regulated activities, or any one or more of them, as may be applicable
	(b) an individual	(b) Under section 120(1) of this Ordinance for Type 1, Type 4, Type 6, Type 7 and Type 9 regulated activities, or any one or more of them, as may be applicable
2.	For registration as an investment adviser under the repealed Securities Ordinance, by—	
	(a) a corporation	(a) Under section 116(1) of this Ordinance for Type 4, Type 6 and Type 9 regulated activities, or any one or more of them, as may be applicable

Item	Application pending at commencement of Part V of this Ordinance	To be treated as application for a licence
	(b) an individual	(b) Under section 120(1) of this Ordinance for Type 4, Type 6 and Type 9 regulated activities, or any one or more of them, as may be applicable
3.	For registration as a dealer's representative under the repealed Securities Ordinance	Under section 120(1) of this Ordinance for Type 1, Type 4, Type 6, Type 7 and Type 9 regulated activities, or any one or more of them, as may be applicable
4.	For registration as an investment representative under the repealed Securities Ordinance	Under section 120(1) of this Ordinance for Type 4, Type 6 and Type 9 regulated activities, or any one or more of them, as may be applicable
5.	For registration as a dealer under the repealed Commodities Trading Ordinance, by—	

Item	Application pending at commencement of Part V of this Ordinance	To be treated as application for a licence
	(a) a corporation	(a) Under section 116(1) of this Ordinance for Type 2, Type 5, Type 7 and Type 9 regulated activities, or any one or more of them, as may be applicable
	(b) an individual	(b) Under section 120(1) of this Ordinance for Type 2, Type 5, Type 7 and Type 9 regulated activities, or any one or more of them, as may be applicable
6.	For registration as a commodity trading adviser under the repealed Commodities Trading Ordinance, by—	
	(a) a corporation	(a) Under section 116(1) of this Ordinance for Type 5 and Type 9 regulated activities, or any one of them, as may be applicable

Item	Application pending at commencement of Part V of this Ordinance	To be treated as application for a licence
	(b) an individual	(b) Under section 120(1) of this Ordinance for Type 5 and Type 9 regulated activities, or any one of them, as may be applicable
7.	For registration as a dealer's representative under the repealed Commodities Trading Ordinance	Under section 120(1) of this Ordinance for Type 2, Type 5, Type 7 and Type 9 regulated activities, or any one or more of them, as may be applicable
8.	For registration as a commodity trading adviser's representative under the repealed Commodities Trading Ordinance	Under section 120(1) of this Ordinance for Type 5 and Type 9 regulated activities, or any one of them, as may be applicable
9.	For a licence as a leveraged foreign exchange trader under the repealed Leveraged Foreign Exchange Trading Ordinance	Under section 116(1) of this Ordinance for Type 3 regulated activity

Item	Application pending at commencement of Part V of this Ordinance	To be treated as application for a licence
10.	For a licence as a representative under the repealed Leveraged Foreign Exchange Trading Ordinance	Under section 120(1) of this Ordinance for Type 3 regulated activity
11.	For registration as a securities margin financier under the repealed Securities Ordinance	Under section 116(1) of this Ordinance for Type 8 regulated activity
12.	For registration as a securities margin financier's representative under the repealed Securities Ordinance	Under section 120(1) of this Ordinance for Type 8 regulated activity

(2) Where—

(a) an application is made before the commencement of Part V of this Ordinance for a declaration as an exempt dealer under the repealed Securities Ordinance; and

(b) immediately before such commencement the application has not been granted, refused or withdrawn,

the application shall, upon such commencement—

(i) where the applicant is an authorized financial institution, be treated as an application under section 119(1) of this Ordinance for registration for Type 1, Type 4, Type 6 and Type 9 regulated activities; or

(ii) where the applicant is not an authorized financial institution, be treated as an application under section

116(1) of this Ordinance for Type 1, Type 4, Type 6 and Type 9 regulated activities.

(3) Where—

(a) an application is made before the commencement of Part V of this Ordinance for a declaration as an exempt investment adviser under the repealed Securities Ordinance; and

(b) immediately before such commencement the application has not been granted, refused or withdrawn,

the application shall, upon such commencement—

(i) where the applicant is an authorized financial institution, be treated as an application under section 119(1) of this Ordinance for registration for Type 4, Type 6 and Type 9 regulated activities; or

(ii) where the applicant is not an authorized financial institution, be treated as an application under section 116(1) of this Ordinance for Type 4, Type 6 and Type 9 regulated activities.

Part VI of this Ordinance (Capital requirements, client assets, records and audit relating to intermediaries)

61. Where—

(a) before the commencement of Part VI of this Ordinance, any power could have been, but was not, exercised under—

(i) section 52 or 53 of the repealed Commodities Trading Ordinance;

(ii) section 90, 91, 121AW or 121AX of the repealed Securities Ordinance; or

(iii) section 33 or 34 of the repealed Leveraged Foreign Exchange Trading Ordinance; or

(b) before such commencement any power has been exercised under any of the provisions referred to in paragraph (a)(i), (ii) and (iii), and the exercise of the power would, but for the enactment of this Ordinance, continue to have force and effect on or after such commencement,

then—

(i) (A) where paragraph (a) applies, the power may be exercised; or

(B) where paragraph (b) applies, the exercise of the power shall continue to have force and effect,

as if this Ordinance had not been enacted; and

(ii) the provisions of the repealed Commodities Trading Ordinance, the repealed Securities Ordinance or the repealed Leveraged Foreign Exchange Trading Ordinance (as the case may be) shall continue to apply to the exercise of the power and to any matters relating thereto (including any further exercise of power) as if this Ordinance had not been enacted.

Part VIII of this Ordinance (Supervision and investigations)

62. Where—

(a) before the commencement of Part VIII of this Ordinance, any power could have been, but was not, exercised under—

(i) section 29A, 30, 31, 33 or 36 of the repealed Securities and Futures Commission Ordinance; or

(ii) section 12, 41, 42, 44 or 47 of the repealed Leveraged Foreign Exchange Trading Ordinance; or

(b) before such commencement any power has been exercised under any of the provisions referred to in paragraph (a)(i) and (ii), and the exercise of the power would, but for the enactment of this Ordinance, continue to have force and effect on or after such commencement,

then—

(i) (A) where paragraph (a) applies, the power may be exercised; or

(B) where paragraph (b) applies, the exercise of the power shall continue to have force and effect,

as if this Ordinance had not been enacted; and

(ii) the provisions of the repealed Securities and Futures Commission Ordinance or the repealed Leveraged Foreign Exchange Trading Ordinance (as the case may be) shall continue to apply to the exercise of the power and to any matters relating thereto (including any further exercise of power) as if this Ordinance had not been enacted.

63. Without prejudice to section 62, section 179 of this Ordinance applies even if—

(a) in the case of subsection (1)(a), (b), (c), (d) or (e) of that section 179, the matter described in such subsection as being suggested by the circumstances referred to in such subsection has occurred, or appears to the Commission as occurring, before the commencement of Part VIII of this Ordinance; or

(b) in the case of subsection (1)(f) of that section 179, the matter in respect of the investigation of which the Commission decides to provide assistance under section 186 of this Ordinance has occurred, or appears to the Commission as occurring, before such commencement.

Part IX of this Ordinance (Discipline, etc.)

64. Where—

(a) before the commencement of Part IX of this Ordinance, any power could have been, but was not, exercised under—

(i) section 35 or 36 of the repealed Commodities Trading Ordinance;

(ii) section 55, 56, 60(5), 61(2), 121R, 121S, 121T, 121U, 121V or 121X of the repealed Securities Ordinance; or

(iii) section 11 or 12 of the repealed Leveraged Foreign Exchange Trading Ordinance; or

(b) before such commencement any power has been exercised under any of the provisions referred to in paragraph (a)(i), (ii) and (iii), and the exercise of the power would, but for the enactment of this Ordinance, continue to have force and effect on or after such commencement,

then—

(i) (A) where paragraph (a) applies, the power may be exercised; or

(B) where paragraph (b) applies, the exercise of the power shall continue to have force and effect,

as if this Ordinance had not been enacted; and

(ii) subject to section 66, the provisions of the repealed Commodities Trading Ordinance, the repealed Securities Ordinance or the repealed Leveraged Foreign Exchange Trading Ordinance (as the case may be) and the repealed Securities and Futures Commission Ordinance (where applicable) shall continue to apply to the exercise of the power and to any appeals and other matters relating thereto (including any further exercise of power) as if this Ordinance had not been enacted.

65. Where—

(a) the exercise of any power under section 64 results in the revocation of any declaration of exemption or the revocation or suspension of any registration or licence of any person, or the suspension of any such registration or licence continues to have force and effect by virtue of that section; and

(b) the person has, by reason of the declaration or registration or licence referred to in paragraph (a), been deemed under any of the provisions of sections 22 to 37 to have been registered or licensed under this Ordinance,

the registration or licence of the person under this Ordinance shall, notwithstanding sections 22 to 37, be regarded as having been revoked or suspended (as the case may be) on the same terms and conditions on which the declaration or registration or licence referred to in paragraph (a) is revoked or suspended, and sections 200(1) to (3), 201(2) and (5), 202 and 203 of this Ordinance shall apply, with necessary modifications, in relation to the revocation or suspension as if it were a revocation or suspension under Part IX of this Ordinance.

66. Where, but for this section, the exercise of any power under section 64 would have been subject to appeal to the Securities and Futures Appeals Panel established by section 18 of the repealed Securities and Futures Commission Ordinance, an application for review to the Securities and Futures Appeals Tribunal, but not such appeal to the Securities and Futures Appeals Panel, may be made in respect of the exercise of the power and disposed of in all respects as if the exercise of the power were a specified decision as defined in section 215 of and section 1 of Schedule 8 to this Ordinance, and the other provisions of this Ordinance shall, with necessary modifications, apply accordingly.

Part X of this Ordinance (Powers of intervention and proceedings)

67. Where—

(a) before the commencement of Part X of this Ordinance, any power could have been, but was not, exercised under—

(i) section 39, 40, 41 or 43 of the repealed Securities and Futures Commission Ordinance; or

(ii) section 50, 51, 52 or 54 of the repealed Leveraged Foreign Exchange Trading Ordinance; or

(b) before such commencement any power has been exercised under any of the provisions referred to in paragraph (a)(i) and (ii), and the exercise of the power would, but for the enactment of this Ordinance, continue to have force and effect on or after such commencement,

then—

(i) (A) where paragraph (a) applies, the power may be exercised; or

(B) where paragraph (b) applies, the exercise of the power shall continue to have force and effect,

as if this Ordinance had not been enacted; and

(ii) subject to section 68, the provisions of the repealed Securities and Futures Commission Ordinance or both the repealed Securities and Futures Commission Ordinance and the repealed Leveraged Foreign Exchange Trading Ordinance (as the case may be) shall continue to apply to the exercise of the power and to any appeals and other matters relating thereto (including any further exercise of power) as if this Ordinance had not been enacted.

68. Where, but for this section, the exercise of any power under section 67 would have been subject to appeal to the Securities and Futures Appeals Panel established by section 18 of the repealed Securities and Futures Commission Ordinance, an application for review to the Securities and Futures Appeals Tribunal, but not such appeal to the Securities and Futures Appeals Panel, may be made in respect of the exercise of the power and disposed of in all respects as if the exercise of the power were a specified decision as defined in section 215 of and section 1 of Schedule 8 to this Ordinance, and the other provisions of this Ordinance shall, with necessary modifications, apply accordingly.

69. Section 214 of this Ordinance applies even if the conduct of business or affairs in question has occurred, or appears to the

Commission as occurring, before the commencement of Part X of this Ordinance.

Part XI of this Ordinance (Securities and Futures Appeals Tribunal)

70. Where a person has made an appeal to the Securities and Futures Appeals Panel before the commencement of Part XI of this Ordinance under—

(a) Part III of the repealed Securities and Futures Commission Ordinance; or

(b) Part IX of the repealed Leveraged Foreign Exchange Trading Ordinance,

and the appeal has not been finally determined before such commencement, the appeal may be continued and disposed of in all respects (and, without limiting the generality of the foregoing, any power to appoint any person as a member (whether as the chairman, deputy chairman or other member) of the Securities and Futures Appeals Panel or as a member of a tribunal appointed under any of the provisions referred to in paragraphs (a) and (b) may be exercised for the purposes of the appeal) as if this Ordinance had not been enacted.

71. Where—

(a) before the commencement of Part XI of this Ordinance an appeal has not been made to the Securities and Futures Appeals Panel under—

(i) Part III of the repealed Securities and Futures Commission Ordinance; or

(ii) Part IX of the repealed Leveraged Foreign Exchange Trading Ordinance; and

(b) the time within which the appeal may be made under such Part is running and has not expired upon such commencement,

the appeal may be made to the Securities and Futures Appeals Panel and disposed of in all respects (and, without limiting the generality of the foregoing, any power to appoint any person as a member (whether as the chairman, deputy chairman or other member) of the Securities and Futures Appeals Panel or as a member of a tribunal appointed under any of the provisions referred to in paragraph (a)(i) and (ii) may be exercised for the purposes of the appeal) as if this Ordinance had not been enacted.

72. Where, by virtue of section 70 or 71, any appeal is or is to be made or continued, and disposed of, under—

(a) Part III of the repealed Securities and Futures Commission Ordinance; or

(b) Part IX of the repealed Leveraged Foreign Exchange Trading Ordinance,

then, without limiting the generality of sections 70 and 71 (including the exercise of the power to appoint any person as a member (whether as the chairman, deputy chairman or other member) of the Securities and Futures Appeals Panel established by section 18 of the repealed Securities and Futures Commission Ordinance or as a member of a tribunal appointed under any of the provisions referred to in paragraphs (a) and (b))—

(i) any person who immediately before the commencement of Part XI of this Ordinance holds any office as a member (whether as the chairman, deputy chairman or other member) of the Securities and Futures Appeals Panel or as a member of the tribunal to determine the

appeal shall, for the purposes of the appeal, continue to hold the same office on the same terms and conditions as if this Ordinance had not been enacted; and

(ii) the Securities and Futures Appeals Panel and the tribunal shall, for the purposes of the appeal, continue in existence as if this Ordinance had not been enacted.

Part XII of this Ordinance (Investor compensation)

73. (1) In sections 74 to 76—

Futures Exchange Compensation Fund (期交所賠償基金) and ***Unified Exchange Compensation Fund*** (聯交所賠償基金) have the meanings respectively assigned to them in section 235 of this Ordinance;

repealed Commodities Trading Rules (已廢除的《商品交易規則》) means the Commodities Trading (Dealers, Commodity Trading Advisers and Representatives) Rules (Cap. 250 sub. leg. A) repealed under section 406 of this Ordinance;

repealed Contract Levy Rules (已廢除的《合約徵費規則》) means the Commodities Trading (Contract Levy) Rules (Cap. 250 sub. leg. C) repealed under section 406 of this Ordinance;

repealed Securities Rules (已廢除的《證券規則》) means the Securities (Miscellaneous) Rules (Cap. 333 sub. leg. A) repealed under section 406 of this Ordinance.

(2) For the avoidance of doubt, it is hereby declared that nothing in sections 74 to 76 shall be construed as enabling a claim to be made which is barred under any enactment or rule of law.

Unified Exchange Compensation Fund

74. (1) Despite the repeals effected by section 406 of this Ordinance,

Part X of the repealed Securities Ordinance shall, subject to this section, continue to apply to and in relation to—

(a) any claim for compensation from the Unified Exchange Compensation Fund made under that Part before the appointed day; or

(b) any default occurring before the appointed day,

as if that section had not been enacted, subject to the following modifications—

(i) section 112 of that Part X shall cease to apply as from the appointed day;

(ii) for any reference to the Unified Exchange, there shall be substituted a reference to a recognized stock market within the meaning of this Ordinance;

(iii) for any reference to the Exchange Company, there shall be substituted a reference to the Stock Exchange Company within the meaning of this Ordinance;

(iv) the expression ***dealing in securities*** shall be construed in accordance with Part 2 of Schedule 5 to this Ordinance; and

(v) the expressions ***exchange participant***, ***listed***, ***securities*** and ***trading right*** shall respectively be construed in accordance with this Ordinance.

(2) The Commission may after the appointed day pay into the compensation fund such sum of money from the Unified Exchange Compensation Fund as it considers appropriate, having regard to—

(a) the amounts which the Commission considers to be necessary to meet any claims or likely claims against the Unified Exchange Compensation Fund; and

(b) the amounts deposited in cash under section 104 of the repealed Securities Ordinance, which have not previously been reimbursed under this section.

(3) Where the Commission considers that the amount at credit in the Unified Exchange Compensation Fund exceeds the total amount which the Commission considers to be necessary to meet any claims or likely claims against the Unified Exchange Compensation Fund, the Commission may after the appointed day apply the excess to reimburse the Stock Exchange Company or, if the Stock Exchange Company is in liquidation, the liquidator of the Stock Exchange Company, for the amounts deposited in cash under section 104 of the repealed Securities Ordinance.

(4) As soon as reasonably practicable after the appointed day, the Stock Exchange Company shall publish in one or more English language newspapers and one or more Chinese language newspapers, published daily and circulating generally in Hong Kong, a notice specifying a date, not being earlier than 3 months after the publication of the notice, on or before which a claim for compensation from the Unified Exchange Compensation Fund may be made by any person.

(5) Where, in respect of a default occurring prior to the appointed day, a person wishes to start a claim for compensation from the Unified Exchange Compensation Fund, he shall lodge his claim in writing with the Stock Exchange Company—

(a) if a notice under subsection (4) has been published, on or before the date specified in the notice; or

(b) if no such notice has been published, within 6 months after he became aware of the default giving rise to the claim.

(6) A claim made under subsection (5) shall be regarded as a claim made under section 109 of the repealed Securities

Ordinance and other provisions of Part X of that Ordinance shall apply accordingly.

(7) A claim that is not made within the time limited by subsection (5) shall, unless the Stock Exchange Company otherwise determines, be barred.

(8) After—

(a) all claims made or continued under this section have been disposed of; and

(b) all outstanding liabilities against the Unified Exchange Compensation Fund have been satisfied,

the Commission shall apply any balance remaining in the Fund in accordance with subsection (9).

(9) Any balance mentioned in subsection (8) shall—

(a) be used to reimburse the Stock Exchange Company or, if the Stock Exchange Company is in liquidation, the liquidator of the Stock Exchange Company, for the amounts deposited in cash under section 104 of the repealed Securities Ordinance, which have not previously been reimbursed under this section; and

(b) if there is any remaining balance, be paid into the compensation fund.

(10) Upon any reimbursement referred to in subsection (3) or (9)(a), the amount of the reimbursement shall form part of the assets of the Stock Exchange Company and, if it is in liquidation, shall be available to the liquidator for distribution in accordance with the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32). *(Amended 28 of 2012 ss. 912 & 920)*

(11) Where a claim for compensation from the Unified Exchange Compensation Fund is allowed (whether in full or in part) but the amount allowed cannot be paid to the claimant because

the Commission is unable to locate the claimant, then the Commission shall hold for the claimant the amount allowed for 3 years beginning with the date on which the claim is allowed, after which time the Commission shall apply the amount in accordance with subsection (9).

(12) Except as provided in this section, no claim for compensation from the Unified Exchange Compensation Fund may be made after the appointed day.

#(13) The Secretary for Financial Services and the Treasury may by notice published in the Gazette appoint a date as the appointed day for the purposes of this section. *(Amended L.N. 106 of 2002)*

(14) In this section—

appointed day (指定日期) means the date appointed under subsection (13);

default (違責) means an act referred to in section 109(1) of the repealed Securities Ordinance.

Futures Exchange Compensation Fund

75. (1) Despite the repeals effected by section 406 of this Ordinance, Part VIII of the repealed Commodities Trading Ordinance and the repealed Contract Levy Rules shall, subject to this section, continue to apply to and in relation to—

(a) any claim for compensation from the Futures Exchange Compensation Fund made under that Part before the appointed day; or

(b) any default occurring before the appointed day,

as if that section had not been enacted, subject to the following modifications—

(i) section 89 of that Part VIII shall cease to apply as from the appointed day;

(ii) for any reference to the Commodity Exchange, there shall be substituted a reference to a recognized futures market within the meaning of this Ordinance;

(iii) for any reference to the Exchange Company, there shall be substituted a reference to the Futures Exchange Company within the meaning of this Ordinance; and

(iv) the expressions ***exchange participant***, ***futures contracts*** and ***trading right*** shall respectively be construed in accordance with this Ordinance.

(2) The Commission may after the appointed day pay into the compensation fund such sum of money from the Futures Exchange Compensation Fund as it considers appropriate, having regard to—

(a) the amounts which the Commission considers to be necessary to meet any claims or likely claims against the Futures Exchange Compensation Fund; and

(b) the amounts deposited in cash under section 82 of the repealed Commodities Trading Ordinance, which have not previously been reimbursed under this section.

(3) Where the Commission considers that the amount at credit in the Futures Exchange Compensation Fund exceeds the total amount which the Commission considers to be necessary to meet any claims or likely claims against the Futures Exchange Compensation Fund, the Commission may after the appointed day apply the excess to reimburse the Futures Exchange Company or, if the Futures Exchange Company is in liquidation, the liquidator of the Futures Exchange Company, for the amounts deposited in cash under section 82 of the repealed Commodities Trading Ordinance.

(4) As soon as reasonably practicable after the appointed day, the Futures Exchange Company shall publish in one or more English language newspapers and one or more Chinese language newspapers, published daily and circulating generally in Hong Kong, a notice specifying a date, not being earlier than 3 months after the publication of the notice, on or before which a claim for compensation from the Futures Exchange Compensation Fund may be made by any person.

(5) Where, in respect of a default occurring prior to the appointed day, a person wishes to start a claim for compensation from the Futures Exchange Compensation Fund, he shall lodge his claim in writing with the Futures Exchange Company—

(a) if a notice under subsection (4) has been published, on or before the date specified in the notice; or

(b) if no such notice has been published, within 6 months after he became aware of the default giving rise to the claim.

(6) A claim made under subsection (5) shall be regarded as a claim made under section 87 of the repealed Commodities Trading Ordinance and other provisions of Part VIII of that Ordinance shall apply accordingly.

(7) A claim that is not made within the time limited by subsection (5) shall, unless the Futures Exchange Company otherwise determines, be barred.

(8) After—

(a) all claims made or continued under this section have been disposed of; and

(b) all outstanding liabilities against the Futures Exchange Compensation Fund have been satisfied,

the Commission shall apply any balance remaining in the Fund in accordance with subsection (9).

(9) Any balance mentioned in subsection (8) shall—

(a) be used to reimburse the Futures Exchange Company or, if the Futures Exchange Company is in liquidation, the liquidator of the Futures Exchange Company, for the amounts deposited in cash under section 82 of the repealed Commodities Trading Ordinance, which have not previously been reimbursed under this section; and

(b) if there is any remaining balance, be paid into the compensation fund.

(10) Upon any reimbursement referred to in subsection (3) or (9)(a), the amount of the reimbursement shall form part of the assets of the Futures Exchange Company and, if it is in liquidation, shall be available to the liquidator for distribution in accordance with the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32). *(Amended 28 of 2012 ss. 912 & 920)*

(11) Where a claim for compensation from the Futures Exchange Compensation Fund is allowed (whether in full or in part) but the amount allowed cannot be paid to the claimant because the Commission is unable to locate the claimant, then the Commission shall hold for the claimant the amount allowed for 3 years beginning with the date on which the claim is allowed, after which time the Commission shall apply the amount in accordance with subsection (9).

(12) Except as provided in this section, no claim for compensation from the Futures Exchange Compensation Fund may be made after the appointed day.

@(13) The Secretary for Financial Services and the Treasury may by notice published in the Gazette appoint a date as the appointed day for the purposes of this section. *(Amended L.N. 106 of 2002)*

(14) In this section—

appointed day (指定日期) means the date appointed under subsection (13);

default (違責) means a default referred to in section 87(1) of the repealed Commodities Trading Ordinance.

Dealers Deposit Scheme

76. (1) Despite the repeals effected by section 406 of this Ordinance—

(a) sections 52 (except subsections (1), (1A) and (6)) and 52A of the repealed Securities Ordinance;

(b) rules 2, 4, 5, 6 (other than rule 6(4)), 6B, 6C, 6D, 6E, 6F and 6G (other than rule 6G(4)) of the repealed Securities Rules;

(c) section 33 of the repealed Commodities Trading Ordinance; and

(d) Part III (other than rule 15(5)) of the repealed Commodities Trading Rules,

shall, subject to this section, continue to apply for the purposes of this section as if that section 406 had not been enacted.

(2) Where, prior to the appointed day—

(a) there arises any of the circumstances described in section 52(2) or (11) of the repealed Securities Ordinance, section 33(1) or (11) of the repealed Commodities Trading Ordinance or rule 6D(1), 6E or 6G(1) of the repealed Securities Rules; and

(b) no transfer, payment, forfeiture or application for release of the deposit or security (as the case may be) paid, deposited or lodged by the dealer or the registered

financier concerned has been made under any of those sections or rules,

then a transfer, payment, forfeiture or application for release and any subsequent application of the deposit or security may be made under the applicable provisions specified in subsection (1).

(3) A claim for compensation made before the appointed day in respect of a default occurring prior to that day that has not been disposed of may be continued and disposed of under subsection (1).

(4) As soon as reasonably practicable after the appointed day, the Commission shall publish in one or more English language newspapers and one or more Chinese language newspapers, published daily and circulating generally in Hong Kong, a notice specifying a date, not being earlier than 3 months after the publication of the notice, on or before which a claim for compensation against the deposit forfeited under section 52(2)(c) of the repealed Securities Ordinance or section 33(1)(c) of the repealed Commodities Trading Ordinance or the security lodged under section 121K(1) of the repealed Securities Ordinance may be made.

(5) Where, in respect of a default occurring prior to the appointed day, a person wishes to start a claim for compensation against any deposit or security referred to in subsection (4), he shall lodge his claim in writing with the Commission—

(a) if a notice under subsection (4) has been published, on or before the date specified in the notice; or

(b) if no such notice has been published, within 6 months after he became aware of the default giving rise to the claim.

(6) A claim made under subsection (5) shall be regarded as a claim made under rule 6(5) or 6G(5) of the repealed

Securities Rules or rule 15(6) of the repealed Commodities Trading Rules (as the case may be), and other provisions of the Rules shall apply accordingly.

(7) A claim that is not made within the time limited by subsection (5) shall, unless the Commission otherwise determines, be barred.

(8) Where a claim made or continued under this section is not allowed or the amount or amounts determined to be payable as compensation do not exceed the amount of the deposit or the security, the Commission shall repay the deposit or the security to which the claim relates or the remaining balance of the deposit or the security (as the case may be) to the dealer or the registered financier concerned.

(9) Where—

(a) a deposit made under section 52 of the repealed Securities Ordinance or section 31 of the repealed Commodities Trading Ordinance or a security lodged under section 121K(1) of the repealed Securities Ordinance has not been or is not required to be disposed of under the Ordinance; and

(b) the deposit or the security is not required to be disposed of under this section,

the Commission shall repay the deposit or the security to the dealer or the registered financier concerned.

(10) Where a claim made or continued under this section is allowed (whether in full or in part) but the amount allowed cannot be paid to the claimant because the Commission is unable to locate the claimant, then the Commission shall hold for the claimant the amount allowed for 3 years beginning with the date on which the claim is allowed, after which time the Commission shall repay the amount to the dealer or the registered financier concerned.

(11) Where—

(a) a deposit or a security or its remaining balance is required to be repaid to a dealer or a registered financier under subsection (8) or (9) or any amount is required to be repaid to a dealer or a registered financier under subsection (10); but

(b) the Commission is unable to locate the dealer or the registered financier for the purpose of repayment during the period of 3 years beginning with— *(Amended 9 of 2012 s. 48)*

(i) in the case of subsection (8), the date of the determination of the claim;

(ii) in the case of subsection (9), the appointed day; or

(iii) in the case of subsection (10), the end of the 3-year period referred to in that subsection,

the Commission shall pay the deposit or the security or the remaining balance or the amount (as the case may be) to the compensation fund.

(12) Except as provided in this section, no claim for compensation may be made against any deposit forfeited under section 52(2)(c) of the repealed Securities Ordinance or section 33(1)(c) of the repealed Commodities Trading Ordinance or against any security lodged under section 121K(1) of the repealed Securities Ordinance after the appointed day.

*(13) The Secretary for Financial Services and the Treasury may by notice published in the Gazette appoint a date as the appointed day for the purposes of this section. *(Amended L.N. 106 of 2002)*

(14) In this section—

appointed day (指定日期) means the date appointed under subsection (13);

default (違責) means a default referred to in rule 6(2) or 6G(2) of the repealed Securities Rules or rule 15(2) of the repealed Commodities Trading Rules.

(Amended 9 of 2012 s. 48)

Part XIII of this Ordinance (Market Misconduct Tribunal)

77. Where—

(a) the repealed Securities (Insider Dealing) Ordinance would but for the enactment of this Ordinance have effect with respect to an insider dealing within the meaning of the repealed Securities (Insider Dealing) Ordinance; and

(b) the insider dealing has taken place before the commencement of Part XIII of this Ordinance,

and the Financial Secretary has before the commencement of Part XIII of this Ordinance instituted an inquiry with reference to the insider dealing under section 16(2) of the repealed Securities (Insider Dealing) Ordinance, then the repealed Securities (Insider Dealing) Ordinance shall continue to have application in connection with the insider dealing and with any inquiry, appeal, and other matters relating thereto (including, without limiting the generality of the foregoing, the exercise of any power to appoint any person as a member (whether as the chairman or other member) or as a temporary member of the Insider Dealing Tribunal referred to in section 15 of that Ordinance for the purposes of any inquiry relating thereto) as if this Ordinance had not been enacted.

78. Where—

(a) the repealed Securities (Insider Dealing) Ordinance would but for the enactment of this Ordinance have effect with respect to an insider dealing within the meaning of the repealed Securities (Insider Dealing) Ordinance; and

(b) the insider dealing has in whole or in part taken place before the commencement of Part XIII of this Ordinance,

but the Financial Secretary has not before the commencement of Part XIII of this Ordinance instituted an inquiry with reference to the insider dealing under section 16(2) of the repealed Securities (Insider Dealing) Ordinance, then the repealed Securities (Insider Dealing) Ordinance shall continue to have application in connection with the insider dealing and with any inquiry, appeal, and other matters relating thereto (including, without limiting the generality of the foregoing, the exercise of any power to appoint any person as a member (whether as the chairman or other member) or as a temporary member of the Insider Dealing Tribunal referred to in section 15 of that Ordinance for the purposes of any inquiry relating thereto) as if—

(i) this Ordinance had not been enacted; and

(ii) the repealed Securities (Insider Dealing) Ordinance had been amended in the manner described in section 80.

79. For the purposes of section 78, where—

(a) a series of conduct has taken place, partly before the commencement of Part XIII of this Ordinance, and partly on or after such commencement;

(b) apart from this section, such series of conduct—

(i) by reason of the part that has taken place before the commencement of Part XIII of this Ordinance, would constitute one or more insider dealing taking place under the repealed Securities (Insider Dealing) Ordinance by reference to information which constitutes relevant information within the meaning of section 9(1)(a), (b), (c), (d), (e) or (f) or (2) of the repealed Securities (Insider Dealing) Ordinance; and

(ii) by reason of the part that has taken place on or after the commencement of Part XIII of this Ordinance, would but for the enactment of this Ordinance also constitute one or more insider dealing taking place under the repealed Securities (Insider Dealing) Ordinance by reference to information which constitutes relevant information within the meaning of section 9(1)(a), (b), (c), (d), (e) or (f) or (2) of the repealed Securities (Insider Dealing) Ordinance; and

(c) the information referred to in paragraph (b)(i) and (ii) is the same or substantially the same information,

the series of conduct shall be regarded as constituting an insider dealing within the meaning of section 78 which has in part taken place before the commencement of Part XIII of this Ordinance.

80. Where section 78 applies, the repealed Securities (Insider Dealing) Ordinance shall apply as if it had been amended—

(a) by adding—

"**27A. Recommendations to Financial Secretary to institute inquiry**

At the conclusion of any inquiry or as soon as is reasonably practicable thereafter, where it appears to the Tribunal that insider dealing has taken place or may have taken place by reference to the conduct of any person, it may, where it considers appropriate, recommend the Financial Secretary to institute an inquiry under section 16 to inquire into the matter.";

(b) in the Schedule, in paragraph 17, by adding ", at the first sitting of the Tribunal relating to the inquiry," after "shall determine".

81. Where, by virtue of section 77 or 78, any inquiry is or is to be instituted or continued, and disposed of, under the repealed Securities (Insider Dealing) Ordinance, then, without limiting the generality of sections 77 and 78 (including the exercise of the power to appoint any person as a member (whether as the chairman or other member) or as a temporary member of the Insider Dealing Tribunal referred to in section 15 of that Ordinance)—

(a) any person who immediately before the commencement of Part XIII of this Ordinance holds any office as a member (whether as the chairman or other member) or as a temporary member of the Insider Dealing Tribunal shall, for the purposes of the inquiry, continue to hold the same office on the same terms and conditions as if this Ordinance had not been enacted; and

(b) the Insider Dealing Tribunal shall, for the purposes of the inquiry, continue in existence as if this Ordinance had not been enacted.

Part XV of this Ordinance (Disclosure of Interests)

82. The repeal of the Securities (Disclosure of Interests) Ordinance (Cap. 396) shall not affect any duty of disclosure or duty to give notification that has arisen under that Ordinance, and such duty shall be performed in accordance with that Ordinance as if this Ordinance had not been enacted, whether or not—

(a) a duty of disclosure or duty to give notification in respect of the same subject matter (or part thereof) has arisen under this Ordinance; or

(b) the duty referred to in paragraph (a) has been performed in accordance with this Ordinance.

83. Any exemption that is granted under section 2A of the repealed Securities (Disclosure of Interests) Ordinance and is in effect immediately before the commencement of Part XV of this Ordinance shall, upon such commencement, continue to have effect and be deemed to have been granted, subject to the same conditions as were applicable had this Ordinance not been enacted, under section 309 of this Ordinance.

84. Where an application has been made under the repealed Securities (Disclosure of Interests) Ordinance but has not been finally determined before the commencement of Part XV of this Ordinance, the application shall, upon such commencement, continue to be dealt with in accordance with that Ordinance as if this Ordinance had not been enacted.

85. Any restrictions imposed, or any orders made, by the court or the Financial Secretary (as the case may be) under the repealed Securities (Disclosure of Interests) Ordinance and are in effect immediately before the commencement of Part XV of this Ordinance shall, upon such commencement, continue to have effect as if this Ordinance had not been enacted.

86. Where an investigation is carried out under the repealed Securities (Disclosure of Interests) Ordinance but has not been concluded before the commencement of Part XV of this Ordinance—

(a) any power that is exercisable under that Ordinance for the purposes of the investigation shall, upon such commencement, remain exercisable as if this Ordinance had not been enacted; and

(b) the provisions of the repealed Securities (Disclosure of Interests) Ordinance shall continue to apply to the exercise of the power and to any other matters relating thereto as if this Ordinance had not been enacted.

87. Any register (including any part of it and any index) or report that is kept or maintained under the repealed Securities (Disclosure of Interests) Ordinance immediately before the commencement of Part XV of this Ordinance shall, upon such commencement, be regarded as kept under this Ordinance and, subject to section 88, the relevant provisions of this Ordinance relating to the keeping and inspection of such register or report (as the case may be) shall

apply, and the penalty for non-compliance with such provisions may be imposed, accordingly.

88. Where a register (including any part of it and any index) or report is kept or maintained under the repealed Securities (Disclosure of Interests) Ordinance immediately before the commencement of Part XV of this Ordinance, and such register or report is required to be kept, or any entry of such register is not to be removed, under that Ordinance until the elapse of 6 years, the 6-year period shall be computed in accordance with the relevant provisions of that Ordinance as if this Ordinance had not been enacted.

General

89. Where any rules have been published in the Gazette for the purposes of section 28(2) of the Interpretation and General Clauses Ordinance (Cap. 1), as rules made by the Commission under any provision of this Ordinance, after the enactment of this Ordinance but before the commencement of Part XVI of this Ordinance, section 398(1) to (3) of this Ordinance shall for all purposes be deemed to have been complied with in relation to those rules.

90. For the purposes of section 399 of this Ordinance—

(a) the code published by the Commission as the Code on Takeovers and Mergers and in use immediately before the commencement of Part XVI of this Ordinance; and

(b) the code published by the Commission as the Code on Share Repurchases and in use immediately before such commencement,

shall upon such commencement be regarded as the codes published under section 399(2)(a) and (b) respectively of this Ordinance, and the provisions of this Ordinance shall apply to the codes accordingly.

91. Where—

(a) any provision of an Ordinance repealed under section 406 of this Ordinance provides for the issue, giving or service to, on or by the Commission of any document (whether described as a notice or otherwise) or information;

(b) the document or information has been issued, given or served to, on or by the Commission under or pursuant to the provision; and

(c) any provision in this Ordinance also provides for the issue, giving or service to, on or by the Commission of the document or information,

the document or information shall be deemed to have been issued, given or served to, on or by the Commission under or pursuant to such provision in this Ordinance.

92. Where—

(a) any period of time specified for the purposes of any provision (***repealed provision***) of an Ordinance repealed under section 406 of this Ordinance is running at the time of the repeal of the repealed provision; and

(b) there is a provision (***corresponding provision***) in this Ordinance which in the opinion of the Commission corresponds to the repealed provision,

then, in reckoning the period of time for the purposes of the corresponding provision, this Ordinance shall have effect on the basis that—

(i) the period of time specified for the purposes of the repealed provision is to apply, whether or not any other period of time is specified for the purposes of the corresponding provision; and

(ii) subject to paragraph (i), the corresponding provision had come into operation when the period of time, which is to apply under paragraph (i), began to run.

93. Except as otherwise provided in this Part, any judicial proceedings commenced under, or by virtue of the performance of any function conferred by, any provision of an Ordinance repealed under section 406 of this Ordinance, and pending or otherwise not finally determined at the time of the repeal of the provision may after the repeal be continued and disposed of in all respects as if this Ordinance had not been enacted.

Editorial Note:

1 April 2003 was the date appointed under this subsection—see L.N. 14 of 2003.

@ 1 April 2003 was the date appointed under this subsection—see L.N. 15 of 2003.

* 1 January 2020 was the date appointed under this subsection—see L.N. 133 of 2019.

Part 2

(Omitted as spent—E.R. 2 of 2012)

Part 3

Savings and Transitional Provisions Relating to Securities and Futures and Companies Legislation (Structured Products Amendment) Ordinance 2011

1. Section 103(1) of this Ordinance does not apply in relation to a structured product that is the subject of—

(a) a programme prospectus and its addenda, if any, and an issue prospectus and its addenda, if any, that, before the date of commencement+ of section 18 of the Securities and Futures and Companies Legislation (Structured Products Amendment) Ordinance 2011 (8 of 2011), were authorized and registered under section 38D of the relevant Ordinance; or

(b) in the case of a company incorporated outside Hong Kong, a programme prospectus and its addenda, if any, and an issue prospectus and its addenda, if any, that, before the date of commencement+ of section 19 of the Securities and Futures and Companies Legislation (Structured Products Amendment) Ordinance 2011 (8 of 2011), were authorized and registered under section 342C of the relevant Ordinance.

(Amended 28 of 2012 ss. 912 & 920)

2. Section 1(a) ceases to have effect in relation to a structured product on the earlier of—

(a) the earliest of the dates specified in section 8 of Part 1 of the Twenty-first Schedule to the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32); or *(Amended 28 of 2012 ss. 912 & 920)*

(b) the day after the last date of the period specified in the issue prospectus as being the period during which the structured product is offered to the public.

3. Section 1(b) ceases to have effect in relation to a structured product on the earlier of—

(a) the earliest of the dates specified in section 8 of Part 2 of the Twenty-first Schedule to the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32); or *(Amended 28 of 2012 ss. 912 & 920)*

(b) the day after the last date of the period specified in the issue prospectus as being the period during which the structured product is offered to the public.

4. For the period of 6 months beginning on the date of commencement[+] of section 14(5) of the Securities and Futures and Companies Legislation (Structured Products Amendment) Ordinance 2011 (8 of 2011), Part V of this Ordinance does not apply in relation to the carrying on of a business in a regulated activity if—

(a) the business was carried on immediately before that date; and

(b) the activity is a regulated activity only because of paragraph (g) of the definition of ***securities*** in section 1 of Part 1 of Schedule 1 to this Ordinance (as added by section 14(5) of the Securities and Futures and Companies Legislation (Structured Products Amendment) Ordinance 2011 (8 of 2011)).

(Part 3 added 8 of 2011 s. 16)

Editorial Note:
[+] Commencement date: 13 May 2011.

Part 4

Savings and Transitional Provisions Relating to Securities and Futures (Amendment) Ordinance 2012

1. Any application made under section 185 of this Ordinance that was pending or otherwise not finally determined before the date of commencement[++] of section 40 of the Securities and Futures (Amendment) Ordinance 2012 (9 of 2012) may be continued and determined on or after that date as if section 40 of the Securities and Futures (Amendment) Ordinance 2012 (9 of 2012) had not been enacted.

2. The Commission may make an application under section 185 of this Ordinance on or after the date of commencement[++] of section 40 of the Securities and Futures (Amendment) Ordinance 2012 (9 of 2012) whether the subject matter of the application arose before, on or after that date, unless an application had been made under section 185 of this Ordinance in relation to the same subject matter before that date.

3. Any proceedings instituted under section 252 of this Ordinance that were pending or otherwise not finally determined before the date of commencement[++] of Part 3 of the Securities and Futures (Amendment) Ordinance 2012 (9 of 2012) may be continued and determined on or after that date as if Part 3 of the Securities and Futures (Amendment) Ordinance 2012 (9 of 2012) had not been enacted.

4. The Commission may institute proceedings under section 252 of this Ordinance on or after the date of commencement[++] of Part 3 of the Securities and Futures (Amendment) Ordinance 2012 (9 of

2012) whether the subject matter of the proceedings arose before, on or after that date, unless proceedings had been instituted under section 252 of this Ordinance in relation to the same subject matter before that date.

(Part 4 added 9 of 2012 s. 48)

Editorial Note:
++ Commencement date: 4 May 2012.

Part 5

Savings and Transitional Provisions Relating to Consequential Amendments to Securities and Futures Ordinance (Cap. 571) made by Companies Ordinance (Cap. 622)

1. During the period during which section 128(3) and section 129(3) of the relevant Ordinance have a continuing effect under Schedule 11 to the Companies Ordinance (Cap. 622) in relation to accounts of a corporation, section 332(5), despite its repeal, continues to apply to a report prepared under section 332, in relation to any information of that corporation.

2. During the period during which section 128(3) and section 129(3) of the relevant Ordinance have a continuing effect under Schedule 11 to the Companies Ordinance (Cap. 622) in relation to accounts of a corporation, section 336(11), despite its repeal, continues to apply to a register of interests in shares and short positions or an index of the names recorded in the register, in relation to any information of that corporation. Section 336(10)(b) is subject to section 336(11) during the period during which section 336(11) so continues to apply.

3. During the period during which section 128(3) and section 129(3) of the relevant Ordinance have a continuing effect under Schedule 11 to the Companies Ordinance (Cap. 622) in relation to accounts of a corporation, section 352(12), despite its repeal, continues to apply to a register of directors' and chief executives' interests and short positions or an index of the names recorded in the register, in relation to any information of that corporation. Section 352(11)(b) is subject to section 352(12) during the period during which section 352(12) so continues to apply.

(Part 5 added 28 of 2012 ss. 912 & 920)

Part 6

Savings and Transitional Provisions Relating to Part 4 of Securities and Futures (Amendment) Ordinance 2014

(Amended 17 of 2021 s. 87)

1. Subject to section 2, section 374 of this Ordinance as substituted by section 64 of the Securities and Futures (Amendment) Ordinance 2014 (6 of 2014) applies to a specified document if the duty to give or deliver the document arose on or after the commencement date of section 64 of the Securities and Futures (Amendment) Ordinance 2014 (6 of 2014).

2. If the duty to give or deliver a specified document arose before the commencement date of section 64 of the Securities and Futures (Amendment) Ordinance 2014 (6 of 2014), the document is to be regarded as duly given or delivered if it is—

   (a) delivered, left or sent on or after that date in accordance with section 374 of this Ordinance as in force immediately before that date; or

(b) sent in accordance with section 374 of this Ordinance as substituted by section 64 of the Securities and Futures (Amendment) Ordinance 2014 (6 of 2014).

3. In this Part—

specified document (指明文件) means a document referred to in section 374(1) of this Ordinance as substituted by section 64 of the Securities and Futures (Amendment) Ordinance 2014 (6 of 2014).

(Part 6 added 6 of 2014 s. 65)

OTC Clear Rates and FX Derivatives Clearing Rules

Table of Contents

RULES

Preface

General

This preface is intended to give a general explanation of the purpose of the Clearing Rules of OTC Clearing Hong Kong Limited ("**OTC Clear**") in respect of the clearing and settling of certain interest rate derivatives and FX derivatives in the over-the-counter derivatives market. This preface does not form part of the Clearing Rules and does not affect the construction of the Clearing Rules.

OTC Clear has been established to operate a clearing house for the purpose of clearing and settling over-the-counter derivatives transactions that OTC Clear has been approved by the SFC to clear (such transactions, the "**OTC Derivatives Contracts**"). OTC Clear has been recognized by the SFC as a recognized clearing house pursuant to the SFO.

OTC Clear may from time to time clear and settle OTC Derivatives Contracts other than interest rate derivatives or FX derivatives. In such case, OTC Clear may decide to amend or expand the Clearing Rules such that they may operate to govern the terms and conditions of clearing such other types of OTC Derivatives Contracts, or to introduce separate rules and documentation to govern the terms and conditions of clearing such other types of OTC Derivatives Contracts.

In its provision of the clearing services and implementation of the Clearing Rules, OTC Clear will comply with its statutory duties under the SFO and will seek to ensure general compliance with the relevant principles set out in the "Principles for financial market infrastructures" issued by the Committee on Payment and Settlement Systems and Technical Committee of the International Organization of Securities Commissions dated April 2012.

Membership

Clearing Members of OTC Clear may be admitted to clear interest rate derivatives and/or FX derivatives. In addition, with the prior written approval of OTC Clear, designated branches of a Clearing Member and/or designated affiliates of such Clearing Member may submit interest rate derivatives and/or FX derivatives for registration in the name of such Clearing Member. OTC Clear may introduce new membership categories if it decides to clear other types of OTC Derivatives Contracts.

Relationship to the Hong Kong Exchanges and Clearing Limited

OTC Clear is a 76% directly-owned subsidiary of the Hong Kong Exchanges and Clearing Limited.

OTC Clear as Counterparty

In accordance with the Clearing Documentation, OTC Clear clears certain interest rate derivatives and FX derivatives in the over-the-counter derivatives market, calculates the risk associated with such cleared contracts, calls margin to cover this risk, ensures the proper settlement of the cleared contracts as a central counterparty, and performs all other functions specified in the Clearing Documentation.

Guarantee Resources

OTC Clear holds various resources to support the obligations of OTC Clear as counterparty under Contracts in respect of the Rates and FX Clearing Service. The management of OTC Clear monitors the level of the guarantee resources continuously, with particular reference to the risk level in OTC Clear's system. The guarantee resources will be made up as follows:

(1) Clearing Members' contributions funded upfront as a precondition to becoming a Clearing Member and recalculated by OTC Clear from time to time;

(2) Clearing Members' contributions funded as and when required by OTC Clear, subject to a maximum amount calculated by OTC Clear from time to time. Each Clearing Member has an unconditional obligation to pay its proportionate share of such contribution calculated by OTC Clear at the relevant time; and

(3) contribution from OTC Clear itself.

Risk Management

OTC Clear has a number of powers which it uses for its risk management process. These include, but are not limited to:

(1) the power to demand margin from Clearing Members;

(2) the power to require payment of additional margin from time to time, including intra-day, from Clearing Members;

(3) the power to impose position limits;

(4) the power to terminate one or more cleared contracts in limited circumstances such as the occurrence of a force majeure event with respect to either OTC Clear itself or one or more Clearing Members for purposes of reducing the risks associated with OTC Clear in such circumstances;

(5) the management of the guarantee resources; and

(6) the management of the default management process in case of a default by one or more Clearing Members.

Governance

OTC Clear has implemented a corporate governance structure to enhance its accountability with, and ensure that it deals fairly with, its shareholders, Clearing Members and other stakeholders, as well as to maintain high standards of business ethics and integrity. OTC Clear's corporate governance structure comprises the following:

(1) the board of OTC Clear – responsible for establishing corporate policies, setting strategic direction, ensuring that an effective internal control environment is in place, and overseeing the functions of OTC Clear's committees;

(2) various committees or groups are established by OTC Clear to assist OTC Clear and/or the board of OTC Clear in managing and operating the clearing services and these include:

    (a) the risk management committee – primarily responsible for monitoring and minimising the risks associated with OTC Clear in its provision of clearing services;

    (b) the default management group – primarily responsible for assisting OTC Clear in the default management process upon the occurrence of a default by one or more Clearing Members or in other limited circumstances; and

    (c) the user committee – primarily responsible for reviewing and assessing operational matters relating to existing products and new products eligible for registration with OTC Clear, including the terms, operational policies, practices, and in relation to

new products, development plans, surrounding the provision of the clearing services to such products.

Copyright

The copyright to these Clearing Rules is owned by OTC Clear. Unauthorized reproduction is strictly prohibited.

PART I GENERAL PROVISIONS

Chapter 1 Definitions and Interpretation

Definitions

101. In these Clearing Rules, unless the context otherwise requires:

"**2006 ISDA Definitions**"	means the definitions and provisions contained in the 2006 ISDA Definitions, as published by ISDA;
"**Ad Hoc Intra-day VM Call**"	has the meaning given to it in section 4.4.3 of the Clearing Procedures;
"**Ad Hoc Intra-day Variation Margin**"	means, with respect to a Clearing Member, any Collateral provided by such Clearing Member to OTC Clear for purposes of satisfying its Ad Hoc Intra-day VM Call;
"**Additional Amount**"	has the meaning given to it in Clearing Rule 1101;
"**Additional Margin**"	has the meaning given to it in section 4.1(iii)(b) of the Clearing Procedures. Any Additional Margin delivered by a Clearing Member for any of its Position Accounts will be recorded to the Collateral Account relating to the relevant Position Account;
"**Affected AET Contract**"	means any Contract automatically terminated in accordance with Clearing Rule 1303 that was registered in the name of the relevant Defaulting Clearing Member in relation to its Client Clearing Services immediately prior to the occurrence of the relevant Automatic Early Termination Event;
"Affected Clearing Member"	has the meaning given to it in section 3.19 of the Clearing Procedures;
"**Affected Contract**"	means: (1) if the relevant DMP Event with respect to the Defaulting Clearing Member is not an Automatic Early Termination Event, any Contract registered in the name of the Defaulting Clearing Member in relation to its Client Clearing Services; or (2) if the relevant DMP Event with respect to the Defaulting Clearing Member is an Automatic Early Termination Event, any Affected AET Contract;
"**Affiliates**"	means, with respect to any specified Person, any other Person that Controls, is Controlled by, or is under common Control with, such specified Person;
"**Appeal Period**"	has the meaning given to it in Clearing Rule 1409;
"**Applicable Laws**"	means any applicable national, federal, supranational, state, regional, provincial, local or other statute, law, ordinance, regulation, rule, code, guidance, order, published practice or concession,

	judgment or decision of a Governmental Authority and, for the avoidance of doubt, includes all the provisions of the SFO;
"**Applicant**"	means a legal person that wishes to be admitted as a Clearing Member;
"**Application Form**"	has the meaning given to it in section 2.1.1 of the Clearing Procedures;
"**Approved Trade Registration System**"	has the meaning given to it in section 3.2 of the Clearing Procedures;
"**Articles of Association**"	means the Articles of Association of OTC Clear in force from time to time;
"**ATRS Guide**"	means the Approved Trade Registration System User Guide in force from time to time, which sets out each data field on an Approved Trade Registration System accepted by OTC Clear, and the application of values in respect of certain data fields, in each case, for the purpose of submission of an Original Transaction for registration as Contracts via such Approved Trade Registration System;
"**Auction**"	means the auction process operated in accordance with Chapter 19 of these Clearing Rules;
"**Auction Book**"	means, in respect of a Defaulting Clearing Member at any given time, all the Auction Positions relating to such Defaulting Clearing Member at such time, excluding any Auction Positions relating to Auction Contracts that have been registered to a Successful Bidder following the completion of Auction in accordance with Chapter 19 of these Clearing Rules;
"**Auction Contract**"	means each Contract entered into by OTC Clear with a Successful Bidder, on the same economic terms as the Auction Positions that such Successful Bidder has bid for, following the completion of an Auction;
"Auction Failed Position"	means each Auction Position in an Auction Portfolio which is not the subject of a Successful Bid, and OTC Clear reasonably believes that further round(s) of Auction will not be successful in dealing with the Auction Positions in such Auction Portfolio within a reasonable timeframe as determined by OTC Clear in accordance with Clearing Rule 1918A;
"**Auction Losses**"	means, with respect to an Auction Portfolio constructed as a result of the DMP Event with respect to a Defaulting Clearing Member, the losses (including without limitation and without double-counting (i) any Auction Receivable payable by OTC Clear to the Successful Bidder, (ii) the Unsettled VM Amounts in respect of the Auction Contracts comprised in such Auction Portfolio (to the extent that such Unsettled VM Amount is payable by the Defaulting Clearing Member to OTC Clear) and/or (iii) any hedging costs relating to such Auction Portfolio) suffered by OTC Clear as a result of such DMP

	Event attributable to such Auction Portfolio;
"**Auction Payment**"	means the amount a Successful Bidder must pay to OTC Clear for the registration of the relevant Auction Contract to such Successful Bidder, which shall be an amount equal to the absolute value of the difference between (i) the value attributed to such Auction Contract by the Bid of the Successful Bidder and (ii) the net present value in respect of such Auction Contract as determined by OTC Clear pursuant to Chapter 5 of the Clearing Procedures as of the date of the relevant Auction;
"**Auction Payment Date**"	means, with respect to an Auction Portfolio and its Auction Payment, if any, the Currency Day relating to such Auction Payment immediately following the conclusion of the Auction for such Auction Portfolio;
"**Auction Portfolio**"	means a portfolio of Auction Positions from the Auction Book;
"**Auction Position**"	means, in respect of a Defaulting Clearing Member, (1) each of the notional trades comprising the notional portfolio created on the Special Default Account relating to such Defaulting Clearing Member; and (2) any Hedging transactions executed as a result of the occurrence of the DMP Event with respect to such Defaulting Clearing Member;
"**Auction Receivable**"	means the amount a Successful Bidder must receive from OTC Clear in order to complete the registration of the relevant Auction Contract to such Successful Bidder, which shall be an amount equal to the absolute value of the difference between (i) the value attributed to such Auction Contract by the Bid of the Successful Bidder and (ii) the net present value in respect of such Auction Contract as determined by OTC Clear pursuant to Chapter 5 of the Clearing Procedures as of the date of the relevant Auction;
"**Auction Receivable Payment Date**"	means, with respect to an Auction Portfolio and its Auction Receivable, if any, the Currency Day relating to such Auction Receivable immediately following the conclusion of the Auction for such Auction Portfolio;
"**Auction Transfer Costs(t)**"	means, with respect to an OTC Clear Clearing Day t, the costs (converted, where applicable, into the Base Currency at the Latest Exchange Rate determined on such OTC Clear Clearing Day t) representing the total costs incurred by OTC Clear on such OTC Clear Clearing Day t for the purpose of transferring one or more Auction Portfolios constructed during such Loss Distribution Period to the relevant Successful Bidders of each such Auction Portfolio. For the avoidance of doubt, Auction Transfer Costs shall include, without limitation, any administrative costs incurred by OTC Clear for the purpose of liquidating Collateral in satisfaction of the Auction Receivables payable in respect of any such Auction Portfolio;
"**Authorized Institution**"	has the same meaning as in the Banking Ordinance;

"**Automatic Early Termination Event**"	has the meaning given to it in Clearing Rule 1303;
"**Banking Ordinance**"	means the Banking Ordinance (Laws of Hong Kong Cap. 155);
"**Base Currency**"	means Hong Kong dollars, or such other Eligible Currency as designated by OTC Clear and notified to the Clearing Members from time to time;
"**Better Bidder**"	means, with respect to an Auction Portfolio, a Bidder who has submitted a Bid to OTC Clear that has a higher value than the Bid of the Successful Bidder for such Auction Portfolio;
"**Bid**"	means a bid submitted to OTC Clear by a Bidder in an Auction, which for the purpose of determining whether the relevant Bidder is a Better Bidder, Equal Bidder, Lower Bidder or Poor Bidder, shall have (1) a negative value if it requires OTC Clear to pay such value to the Bidder to dispose of the relevant Auction Portfolio, or (2) a positive value if it requires the Bidder to pay such value to OTC Clear for registration of the relevant Auction Portfolio in its name;
"**Bidder**"	means each Non-Defaulting Clearing Member who is required to bid for an Auction Portfolio pursuant to these Clearing Rules;
"Bulk Settlement Run"	has the meaning given to it in section 3.11.2(i) of the Clearing Procedures;
"Bulk Settlement Run process"	has the meaning given to it in section 3.11.2(i) of the Clearing Procedures;
"**Business Day**"	means, with respect to a Contract, a day (other than Saturday and Sunday) on which commercial banks in the relevant financial centers specified in such Contract are open for general business;
"**Capital**"	means, (1) in respect of an entity that is an Authorized Institution incorporated in Hong Kong, "Tier 1 capital" as defined in the Banking (Capital) Rules (Cap. 155L); (2) in respect of an entity that is a Licensed Corporation, "liquid capital" as defined in the Financial Resources Rules; (3) in respect of an entity that is a futures commission merchant registered with the U.S. Commodities Futures Trading Commission, "adjusted net capital" as defined in CFTC Regulation 1.17; (4) in respect of an entity that is a broker-dealer registered with the U.S. Securities and Exchange Commission, "net capital" as defined in SEC Rule 15c3-1; (5) in respect of an entity that is a firm registered with the U.K. Financial Services Authority, "tier one capital" as calculated under the General Prudential sourcebook; (6) in respect of an entity that is an institution licensed by the German Federal Financial Supervisory Authority, "tier one capital" as defined in section 10(2a) of the German Banking Act and as calculated under section 10 of the German Banking Act and the rules stipulated under the Solvency Regulation (*Solvabilitätsverordnung*); (7) in respect of an entity that is a commercial bank incorporated in the People's Republic of China, the

	aggregate of "Core Tier 1 Capital" and "Other Tier 1 Capital" as defined in the Administrative Measures for Capital of Commercial Banks *(Tentative Implementation)* and (8) in respect of an entity that is not subject to any of the aforementioned rules, such other classes, categories or description of capital as set out in the Clearing Procedures or as otherwise may be determined by OTC Clear in its discretion. In the event that an entity falls within more than one category referred to in the immediately foregoing, then OTC Clear shall have the sole right and discretion to select one of the above categories as applicable to such entity for the purposes of the Clearing Documentation and will notify the relevant Clearing Member of such selection;
"**Capped Liability Period**"	means the period from the date of occurrence of any DMP Event that does not fall within 20 OTC Clear Business Days after the occurrence of a preceding DMP Event, and ending on the 20th OTC Clear Business Day after such DMP Event, provided that such period shall be extended by 20 OTC Clear Business Days each time there is a subsequent DMP Event occurring prior to the expiry of such period (as may be extended from time to time) starting from the date of such subsequent DMP Event and (unless further extended in the manner set out above) ending on the 20th OTC Clear Business Day following such subsequent DMP Event;
"**CFTC**"	means the U.S. Commodity Futures Trading Commission;
"**Clearing Documentation**"	means the Membership Agreement, these Clearing Rules (including the Clearing Procedures and all exhibits, attachments, annexes, schedules and appendices thereto, and any document incorporated by reference therein, if any), the Clearing Notices and any Deed of Charge, as each such document is amended from time to time;
"**Clearing Member**"	means any legal entity admitted as a member for the clearing of FX Derivatives and/or Rates Derivatives in accordance with Clearing Rule 302 and in respect of which a Membership Termination Date has not occurred, and "**Membership**" shall be construed accordingly;
"**Clearing Notice**"	means any notice, announcement, circular, guidance or practice note issued by OTC Clear under these Clearing Rules and stated to be a clearing notice which relates to the interpretation, application or implementation of these Clearing Rules or the operation or facilities of OTC Clear;
"**Clearing Organization**"	means any clearing house duly authorized, regulated, recognized or licensed under Applicable Laws in any jurisdiction, including any recognized clearing house, recognized overseas clearing house, derivatives clearing organization or similar entity;
"**Clearing Procedures**"	means the practices, procedures and administrative requirements prescribed by OTC Clear from time to time in effect, which shall form part of, and supplement, these Clearing Rules;
"**Clearing Rules**"	means these rules of OTC Clear in respect of the Rates and FX

	Clearing Services, as from time to time in effect and shall include the Clearing Procedures;
"**Client**"	means a Person to whom a Clearing Member provides its Client Clearing Services;
"**Client Account**"	means a Client Position Account or Client Collateral Account;
"**Client Auction Portfolio**"	has the meaning given to it in Clearing Rule 1913A;
"**Client Clearing Agreement**"	means the client clearing agreement between a Clearing Member and a Client which governs the terms on which Client Clearing Services are provided and which contains the terms set out in Clearing Rule 817(3);
"**Client Clearing Category**"	has the meaning given to it in Clearing Rule 819;
"Client Clearing Category 1 Account Balance"	means, in respect of a Client Clearing Category 1 Client, the Margin Balance of the relevant Client Clearing Category 1 Collateral Account held by the relevant Clearing Member on behalf of such Client (together with any receivables, rights, intangibles and any other collateral or assets deposited or held with OTC Clear in connection with such an account) as adjusted by any payments made or received under the relevant Affected Contracts by OTC Clear during the period between the occurrence of the relevant DMP Event and the time immediately prior to porting of such Affected Contracts to the Replacement Clearing Member;
"**Client Clearing Category 1 Account Basis**"	means Client Clearing Services which are provided by a Clearing Member to the relevant Client through a Client Clearing Category 1 Position Account;
"**Client Clearing Category 1 Accounts**"	means, in respect of each Client Clearing Category 1 Client, the Client Clearing Category 1 Position Account and Client Clearing Category 1 Collateral Account relating to such Client;
"**Client Clearing Category 1 Client**"	means a Client in respect of whom a Clearing Member offers Client Clearing Services on Client Clearing Category 1 Account Basis;
"**Client Clearing Category 1 Collateral Account**"	means, in respect of a Client Clearing Category 1 Position Account opened in the name of a Clearing Member for the purpose of providing Client Clearing Services to a single Client, an account opened in the books of OTC Clear for the purpose of recording the type(s) and amount of Collateral attributed by OTC Clear to such Client Clearing Category 1 Position Account in accordance with these Clearing Rules;
"**Client Clearing Category 1 Position Account**"	has the meaning given to it in Clearing Rule 902(2);
"**Client Clearing Category 2 Account**	means, in respect of an individual Client Clearing Category 2 Client, such part of the Margin Balance of the Client Clearing Category 2 Collateral Account held by the relevant Clearing Member on behalf of

Balance"	such Client which is attributed by the OTC Clear to such Client (together with any receivables, rights, intangibles and any other collateral or assets deposited or held with OTC Clear in connection with such an account) as adjusted by any payments made or received under the relevant Affected Contracts by OTC Clear during the period between the occurrence of the relevant DMP Event and the time immediately prior to porting of such Affected Contracts to the Replacement Clearing Member;
"**Client Clearing Category 2 Account Basis**"	means Client Clearing Services which are provided by a Clearing Member to the relevant Client through a Client Clearing Category 2 Position Account;
"**Client Clearing Category 2 Accounts**"	means, in respect of each Client Clearing Category 2 Client, the Client Clearing Category 2 Position Account and Client Clearing Category 2 Collateral Account relating to such Client;
"**Client Clearing Category 2 Client**"	means a Client in respect of whom a Clearing Member offers Client Clearing Services on Client Clearing Category 2 Account Basis;
"**Client Clearing Category 2 Collateral Account**"	means, in respect of a Client Clearing Category 2 Position Account opened in the name of a Clearing Member for the purpose of providing Client Clearing Services to one or more Clients, an account shared by one or more Clients on an omnibus net basis opened in the books of OTC Clear for the purpose of recording the type(s) and amount of Collateral attributed by OTC Clear to such Client Clearing Category 2 Position Account in accordance with these Clearing Rules;
"**Client Clearing Category 2 Position Account**"	has the meaning given to it in Clearing Rule 902(3);
"**Client Clearing Services**"	means the clearing services provided by a Clearing Member to its Clients so as to enable the Clearing Member's Clients to access the Rates and FX Clearing Services provided by OTC Clear;
"**Client Clearing Services Notice**"	means the notice which a Clearing Member shall deliver to its Client(s) prior to the provision of Client Clearing Services to such Client(s) in the form prescribed by OTC Clear;
"**Client Collateral Account**"	means a Client Clearing Category 1 Collateral Account or Client Clearing Category 2 Collateral Account;
"**Client Entitlement**"	means: (1) in respect of a Non-Porting Client of a Defaulting Clearing Member, the entitlement to Collateral and to any net sums payable by OTC Clear to that Defaulting Clearing Member in respect of the Affected Contracts relating to that Non-Porting Client, as determined by OTC Clear in accordance with Clearing Rule 1309; and (2) in respect of a Porting Client of a Defaulting Clearing Member, the entitlement to any net sums payable by OTC

	Clear to that Defaulting Clearing Member in respect of Contracts relating to that Porting Client, determined by OTC Clear in accordance with Clearing Rule 1309A;
"**Client Position Account**"	means a Client Clearing Category 1 Position Account or Client Clearing Category 2 Position Account;
"Close-out Variation Margin"	has the meaning given to it in section 10.1 of the Clearing Procedures;
"**CM Branch**"	means a branch of a Clearing Member;
"**CM Funded Contribution Amount**"	means, with respect to each Clearing Member, the amount determined for such Clearing Member in accordance with section 6.1.1 of the Clearing Procedures;
"**CM Payable Balance**"	has the meaning given to it in Clearing Rule 1324(4)(a);
"**CM Unfunded Contribution Amount**"	means, with respect to each Clearing Member, its proportionate share of the Rates and FX Assessments;
"**CNY**"	means the lawful currency of the People's Republic of China excluding, for the purpose of this definition only, Hong Kong, Macau and Taiwan;
"**CNY (offshore)**"	means the currency denomination in respect of an amount payable in Renminbi under a transaction that will be settled solely by transfer to a Renminbi bank account maintained in an Offshore CNY Center;
"**CNY (offshore) Disruption Provisions**"	means the "Additional Disruption Event Provisions for an Offshore Deliverable CNY Transaction dated as of September 8, 2016" as published by ISDA or a recognized successor;
"**Collateral**"	means money, securities and other property as may, from time to time, be so designated by OTC Clear as permissible for Margin or Rates and FX Contribution in respect of the Rates and FX Clearing Services, in each case in such form as may be required by OTC Clear;
"**Collateral Account**"	has the meaning given to it in Clearing Rule 903;
"Commencement Time"	has the meaning given to it in section 3.11.2(ii) of the Clearing Procedures;
"**Compounding/ Averaging Matrix**"	has the meaning given to it in the ISDA Definitions;
"**Compression Cash Settlement Payments**"	means, in respect of a Multilateral Compression Cycle, any cash payments to be made by a Compression Clearing Member to OTC Clear and/or by OTC Clear to a Compression Clearing Member as settlement of the unrealised value of the Eligible Compression Contracts that are proposed to be terminated, amended and/or replaced as set out in the Unwind Proposal relating to that Multilateral Compression Cycle, where such Unwind Proposal has been accepted by all Compression Clearing Members participating in

	that Multilateral Compression Cycle and has been implemented by OTC Clear;
"**Compression Clearing Member**"	means, in relation to a Multilateral Compression Cycle, a Clearing Member who has adhered to the relevant Compression Documentation with the relevant Compression Service Provider and has notified the relevant Compression Service Provider within the period specified in the relevant Compression Documentation that it wishes to participate in that Multilateral Compression Cycle;
"**Compression Documentation**"	means the agreements and documents as may be required by the relevant Compression Service Provider and/or OTC Clear in order to allow a Clearing Member to receive the services of the relevant Compression Service Provider and participate in a Multilateral Compression Cycle, and such other documentation relating to any Compression Service Provider which OTC Clear may prescribe from time to time, including but not limited to the triReduce® OTC Clear Compression Protocol;
"**Compression Execution Date**"	means, in respect of a Multilateral Compression Cycle, the date designated by OTC Clear and notified to Clearing Members via a Clearing Notice on which OTC Clear is scheduled to implement the Unwind Proposal relating to that Multilateral Compression Cycle;
"**Compression Service Provider**"	means such service providers as approved by OTC Clear from time to time and notified to Clearing Members, including but not limited to TriOptima AB;
"**Compression Time**"	means, in respect of a Multilateral Compression Cycle, the time on the Compression Execution Date set out in the Compression Documentation at which OTC Clear implements the Unwind Proposal relating to that Multilateral Compression Cycle, by terminating Eligible Compression Contracts, amending the terms thereof and/or simultaneously registering new Contracts in the names of the Compression Clearing Members participating in that Multilateral Compression Cycle;
"**Conditional Approval Breach Period**"	has the meaning given to it in Clearing Rule 308(1);
"**Contract**"	means a contract between OTC Clear and a Clearing Member arising in accordance with these Clearing Rules, the terms and conditions of which are the relevant Contract Terms;
"Contract Termination Event"	has the meaning given to it in Clearing Rule 1918A;
"Contract Termination Losses"	means, with respect to an Auction Portfolio constructed as a result of the DMP Event with respect to a Defaulting Clearing Member, the sum of (without double-counting): (i) the aggregate Contract Termination Net Payments payable by OTC Clear to Non-Defaulting Clearing Members as a result of a Contract Termination Event, (ii) the Unsettled VM Amounts in respect of the Auction Failed Positions comprised in such Auction Portfolio (to the extent that such Unsettled VM Amount is payable by the Defaulting Clearing Member to OTC

	Clear) and (iii) any hedging losses attributable to such Auction Failed Positions;
"Contract Termination Net Payment"	has the meaning given to it in Clearing Rule 1918B;
"**Contract Terms**"	means any of the Standard Rates Derivatives Contract Terms, Standard Cross-currency Rates Derivatives Contract Terms, Non Deliverable Rates Derivatives Contract Terms, Non Deliverable FX Derivatives Contract Terms, Deliverable FX Forward Contract Terms and Deliverable FX Swap Contract Terms, as applicable;
"**Contractual Currency**"	means: (1) in respect of a Standard Rates Derivatives Contract or an Original Standard Rates Derivatives Transaction, the Currency in which the notional amount of such Standard Rates Derivatives Contract or Original Standard Rates Derivatives Transaction, as the case may be, is denominated; (2) in respect of a Standard Cross-currency Rates Derivatives Contract or an Original Standard Cross-currency Rates Derivatives Transaction, the Currencies in which the notional amounts of such Standard Cross-currency Rates Derivatives Contract or Original Standard Cross-currency Rates Derivatives Transaction, as the case may be, are denominated; (3) in respect of a Non Deliverable Rates Derivatives Contract or an Original Non Deliverable Rates Derivatives Transaction, the "Settlement Currency" of such Non Deliverable Rates Derivatives Contract or Original Non Deliverable Rates Derivatives Transaction, as the case may be; (4) in respect of a Non Deliverable FX Derivatives Contract or an Original Non Deliverable FX Derivatives Transaction, the "Settlement Currency" of such Non Deliverable FX Derivatives Contract or Original Non Deliverable FX Derivatives Transaction, as the case may be; (5) in respect of a Deliverable FX Forward Contract or an Original Deliverable FX Forward Transaction, the Currencies in which the notional amounts of such Deliverable FX Forward Contract or Original Deliverable FX Forward Transaction, as the case may be, are denominated; and (6) in respect of a Deliverable FX Swap Contract or an Original Deliverable FX Swap Transaction, the Currencies in which the notional amounts of such Deliverable FX Swap Contract or Original Deliverable FX Swap Transaction, as the case may be, are denominated, where "Settlement Currency" as used in paragraphs (3) and (4)

	above has the meaning given to it in the FX Definitions;
"**Control**"	means any Person or entity who is entitled to exercise or control the exercise of 35% or more of the voting power at general meetings of the other entity or Person, or who is in a position to control the composition of a majority of the board of directors of the other entity or Person;
"**Corresponding Client Transaction**"	means any transaction between a Clearing Member and its Client with commercial terms that correspond to the commercial terms of a Contract cleared by the Clearing Member on behalf of such Client;
"**Currency/Business Day Matrix**"	has the meaning given to it in the ISDA Definitions;
"**Currency Cum MTM(t)**"	means, with respect to each OTC Clear Clearing Day t during the Loss Distribution Period and a currency, the sum of Currency MTM Chg relating to the Currency Payment in such currency for each OTC Clear Clearing Day from (and including) the DMP Day to (and including) such OTC Clear Clearing Day t;
"**Currency Cum VM Flow(t)**"	means, with respect to each OTC Clear Clearing Day t during the Loss Distribution Period and a currency, the total sum, if any, actually paid by OTC Clear to such Non-Defaulting Clearing Member (expressed as a positive number) or by such Non-Defaulting Clearing Member to OTC Clear (expressed as a negative number) in respect of the Currency VM Flow in such currency from (and including) the DMP Day to (and including) such OTC Clear Clearing Day t. Currency Cum VM Flow(t-1) shall be the value for Currency Cum VM Flow(t) calculated on the OTC Clear Clearing Day immediately preceding OTC Clear Clearing Day t during the Loss Distribution Period, provided that where OTC Clear Clearing Day t is the DMP Day, Currency Cum VM Flow(t-1) shall be zero;
"**Currency Day**"	means, in respect of a currency (including any Contractual Currency), a day on which commercial banks and foreign exchange markets in places where payment or settlement of such currency is normally settled are open for general business (including dealings in foreign exchange and foreign currency deposits);
"**Currency MTM Chg(t)**"	means, with respect to each OTC Clear Clearing Day t during the Loss Distribution Period and a currency, the Currency Payment in such currency (converted, where applicable, into the Base Currency at the Latest Exchange Rate determined on such OTC Clear Clearing Day t) which would be paid by OTC Clear to such Non-Defaulting Clearing Member (expressed as a positive number) or by such Non-Defaulting Clearing Member to OTC Clear (expressed as a negative number) on such OTC Clear Clearing Day;
"**Currency Pair**"	means a currency pair the quotation of which provides the relative value of a currency unit against the unit of another currency;
"**Currency Pair (swap and FX)"**	means, in respect of an Original Standard Cross-currency Rates Derivatives Transaction, an Original Deliverable FX Forward

	Transaction, an Original Deliverable FX Swap Transaction, a Standard Cross-currency Rates Derivatives Contract, a Deliverable FX Forward Contract or a Deliverable FX Swap Contract, the currency pair in which the notional amounts are denominated;
"**Currency Payment**"	means, in respect of any OTC Clear Clearing Day and a currency, the aggregated amount which would be paid by OTC Clear to a Non-Defaulting Clearing Member (expressed as a positive number) or by such Non-Defaulting Clearing Member to OTC Clear (expressed as a negative number) (including all Variation Margin, coupons and fees but excluding payments of any notional amount in respect of a Deliverable FX Derivatives Contract, Initial Exchange Amount, Final Exchange Amount and VM Reversal due on that OTC Clear Clearing Day) in such currency on such OTC Clear Clearing Day without application of the VM Haircut;
"**Currency VM Flow(t)**"	means, with respect to each OTC Clear Clearing Day t during the Loss Distribution Period and a currency, an amount equal to the net Currency Payment in such currency for that OTC Clear Clearing Day after taking into account the additional amount payable to OTC Clear or the amount received from OTC Clear pursuant to Clearing Rule 1524(2) or 1524(3);
"**Custodian**"	means any custodian appointed by OTC Clear from time to time;
"**Daily GF Value**"	has the meaning given to it in section 6.1.1(6) of the Clearing Procedures;
"**Damage**"	means any damage, loss, cost or expense of whatsoever nature;
"**DCM GF Shortfall**"	means, with respect to an Auction Portfolio constructed as a result of the occurrence of a DMP Event with respect to a Defaulting Clearing Member, the amount by which (1) the remaining Auction Losses or Contract Termination Losses relating to such Auction Portfolio after all applications pursuant to Clearing Rule 1914(1) exceeds (2) the product of RAP relating to such Auction Portfolio and the Rates and FX Contribution of such Defaulting Clearing Member;
"**DCM GF Surplus**"	means, with respect to an Auction Portfolio constructed as a result of the occurrence of a DMP Event with respect to a Defaulting Clearing Member, the amount by which (1) the product of RAP relating to such Auction Portfolio and the Rates and FX Contribution of such Defaulting Clearing Member exceeds (2) the remaining Auction Losses or Contract Termination Losses relating to such Auction Portfolio after utilization of the Initial House Resources in full;
"**DCM Margin**"	has the meaning given to it in Clearing Rule 1913(A)(1);
"**Deed of Charge**"	means a deed of charge between a Clearing Member and OTC Clear in respect of non-cash Collateral;
"**Default Interest Rate**"	means, with respect to an Eligible Currency, the higher of (i) best lending rate obtained by OTC Clear from its banker plus 2% per annum and (ii) the relevant interbank offered rate for such Eligible

	Currency plus 2% per annum as set out in the Fees Schedule;
"**Default Management Group**"	means the default management group established by OTC Clear in accordance with Clearing Rule 1605;
"**Default Management Process**"	has the meaning given to it in Clearing Rule 1601;
"**Defaulting Clearing Member**"	means any Clearing Member in respect of which a DMP Event has occurred;
"**Deliverable FX Derivatives**"	means both Deliverable FX Forwards and Deliverable FX Swaps;
"**Deliverable FX Derivatives Contract**"	means a Contract relating to Deliverable FX Derivatives;
"**Deliverable FX Forward**"	means the types of derivatives transactions satisfying the Product Eligibility Requirements for Deliverable FX Forwards set out in section 3.4 of the Clearing Procedures;
"**Deliverable FX Forward Contract**"	means a Contract relating to a Deliverable FX Forward;
"**Deliverable FX Forward Contract Terms**"	has the meaning given to it in Clearing Rule 2601;
"**Deliverable FX Swap**"	means the types of derivatives transactions satisfying the Product Eligibility Requirements for Deliverable FX Swaps set out in section 3.4 of the Clearing Procedures;
"**Deliverable FX Swap Contract**"	means a Contract relating to a Deliverable FX Swap;
"**Deliverable FX Swap Contract Terms**"	has the meaning given to it in Clearing Rule 2601;
"**DTC**"	means a "deposit-taking company" which has the same meaning as in the Banking Ordinance;
"**Derivative Transaction**"	means: (1) any transaction (including an agreement with respect to any such transaction) now existing or hereafter to which a Clearing Member is party to (a) which is a rate swap transaction, swap option, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, credit protection transaction, credit swap, credit default swap, credit default option, total return swap, credit spread transaction, repurchase transaction, reverse

	repurchase transaction, buy/sell-back transaction, securities lending transaction, weather index transaction or forward purchase or sale of a security, commodity or other financial instrument or interest (including any option with respect to any of these transactions) or (b) which is a type of transaction that is similar to any transaction referred to in (a) above that is currently, or in the future becomes, recurrently entered into in the financial markets (including terms and conditions incorporated by reference in such agreement) and which is a forward, swap, future, option, or other derivative on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, economic indices or measures of economic risk or value, or other benchmarks against which payments or deliveries are to be made; and (2) any combination of these transactions;
"**Designated Person**"	means, with respect to a Clearing Member, an Affiliate or a CM Branch of such Clearing Member who has been approved by OTC Clear to submit Original Transaction to OTC Clear on behalf, and in the name, of such Clearing Member in accordance with Chapter 7 of these Clearing Rules;
"**Disciplinary Appeals Committee**"	means the disciplinary appeals committee of OTC Clear or such other committee which the OTC Clear Board has from time to time delegated its power to consider disciplinary appeals;
"**Disciplinary Committee**"	means the disciplinary committee of OTC Clear or such other committee to which the OTC Clear Board has from time to time delegated its power to adjudicate disciplinary matters;
"**DMG Delegate**"	has the meaning given to it in Clearing Rule 1609(1);
"**DMG Information**"	means: (1) information (including but not limited to portfolio data and documents) disclosed to a DMG Member, or to which a DMG Member obtains or otherwise has access as a result of participation in the Default Management Process as a member of the Default Management Group, and which is not available to the public; (2) the knowledge that a Person has received any information which is DMG Information; and (3) details of the Permitted Purpose and any of the proposals, terms, conditions, facts or other matters relating to any of the foregoing;
"**DMG Member**"	means, at any time, a DMG Delegate selected by OTC Clear to participate in the Default Management Group at such time;
"**DMP Day**"	means the date on which the relevant DMP Event occurs;
"**DMP Event**"	means each of the events described in Clearing Rule 1601;

"**DMP Information**"	means, with respect to a Default Management Process, any information provided by OTC Clear to a Receiving Clearing Member relating to such Default Management Process;
"**Early Termination Date**"	means, in respect of a Contract registered in the name of a Clearing Member, the date determined as an Early Termination Date for such Contract in accordance with Clearing Rule 210(1), 1303, 1305, 1320(1), 1321 or 1322, as the case may be. A Contract shall be terminated or novated with effect from the Early Termination Date relating to it;
"**Economic Terms**"	means the terms of a Contract derived from the Transaction Data relating to the corresponding Original Transaction;
"**Eligible Compression Contracts**"	means, in respect of a Multilateral Compression Cycle, Contracts registered to a Compression Clearing Member's House Position Account which are Standard Rates Derivatives Contracts, Non Deliverable Rates Derivatives Contracts and Standard Cross-currency Rates Derivatives Contracts and which will not have matured on or before the scheduled Compression Execution Date of that Multilateral Compression Cycle;
"**Eligibility Requirements**"	means, with respect to an Original Transaction submitted for registration with OTC Clear, the eligibility requirements applicable to such Original Transaction as set out in sections 3.4 and 4.6 of the Clearing Procedures;
"**Eligible Currency**"	means any of Hong Kong dollars, U.S. dollars ("**USD**"), Euros ("**EUR**") and CNY (offshore). The list of Eligible Currencies may be amended or updated by OTC Clear from time to time;
"**Emergency Close-Out**"	means the process by which: (1) a Contract with the same terms as an existing Contract is created by OTC Clear pursuant to Clearing Rule 210, provided that (a) in respect of a Rates Derivatives Contract, if the Clearing Member is a floating rate payer under such Rates Derivatives Contract, such Clearing Member shall become the fixed rate payer under the new Rates Derivatives Contract and vice versa; (b) in respect of a Rates Derivatives Contract, if the Clearing Member is floating rate payer I under such Rates Derivatives Contract, such Clearing Member shall become the floating rate payer II under the new Rates Derivatives Contract and vice versa; (c) in respect of a Non Deliverable FX Derivatives Contract, if the Clearing Member is a Reference Currency Buyer under such Non Deliverable FX Derivatives Contract, such Clearing Member shall become the Reference Currency Seller under the new Non Deliverable FX Derivatives Contract and vice versa; and (d) in respect of a Deliverable FX Derivatives Contract, if the Clearing Member is a payer of a notional amount under such Deliverable FX Derivatives Contract, such Clearing Member shall become the receiver of such

	notional amount under the new Deliverable FX Derivatives Contract and vice versa, and in each case, at a price and on the terms as determined by OTC Clear in a commercially reasonable manner; (2) a Contract is novated from the relevant Clearing Member to another Clearing Member by agreement between OTC Clear and such other Clearing Member in a commercially reasonable manner on the designated Early Termination Date; or (3) a Contract is terminated at a price and on the terms determined by OTC Clear in a commercially reasonable manner on the designated Early Termination Date;
"**EMTA**"	means the Emerging Markets Trade Association;
"**EMTA Template**"	has the meaning given to it in Clearing Rule 2404;
"**Encumbrance**"	means any claim, charge, mortgage, security, lien, equity, beneficial interest, power of sale, option or other right to purchase, usufruct, hypothecation, retention of title, right of pre-emption or other third party right or security interest of any kind or an agreement to create any of the foregoing;
"**Equal Bidder**"	means, with respect to an Auction Portfolio, a Bidder, other than the Successful Bidder, who has submitted a Bid the value of which is exactly the same as the Successful Bid for such Auction Portfolio;
"**Error Contract**"	has the meaning given to it in Clearing Rule 814;
"**EUR**"	means the lawful currency of the member states of the European Union that adopt the single currency in accordance with the EC Treaty (as such term is defined in the Currency/Business Day Matrix);
"**Event of Default**"	has the meaning given to it in Clearing Rule 1301;
"**Excess Margin**"	means, in relation to a Clearing Member and any of its Position Account(s), the amount by which its Margin Balance exceeds the aggregate value of its Initial Margin requirements, Additional Margin requirements and Variation Margin requirements in respect of any Routine Intra-day VM Call and any Ad Hoc Intra-day VM Call (but excluding any requirements in respect of end-of-day Variation Margin), in each case, applicable to the relevant Position Account;
"**Failure to Pay Notice**"	has the meaning given to it in Clearing Rule 1317;
"Final Exchange Amount"	has the meaning given to it in the ISDA Definitions;
"Final Exchange Date"	has the meaning given to it in the ISDA Definitions;
"**Final Order Notice**"	has the meaning given to it in Clearing Rule 1414;
"**Financial**	means, with respect to any Clearing Member, any situation in which

Emergency"	the financial or operational condition of such Clearing Member is not or is likely not to be adequate for such Clearing Member to meet its obligations (including, without limitation, its obligations to comply with these Clearing Rules) or to engage in business, or is such that it would not be in the best interests of OTC Clear or the marketplace for such Clearing Member to continue to be a Clearing Member;
"**Financial Resources Rules**"	means Securities and Futures (Financial Resources) Rules (Laws of Hong Kong Cap. 571N);
"**Floating Rate Matrix**"	has the meaning given to it in the ISDA Definitions;
"**Floating Rate Option**"	has the meaning given to it in the ISDA Definitions or means its equivalent defined in the 2006 ISDA Definitions as set out opposite each such floating rate option in Appendix VI to the Clearing Procedures;
"**Force Majeure Event**"	means any event beyond the control of any of OTC Clear, its Affiliates, a recognized exchange controller which is the controller of OTC Clear or any of their respective Representatives, or the relevant Clearing Member which may hinder, prevent or render it impossible or impracticable for OTC Clear or the relevant Clearing Member to perform any absolute or contingent obligation to make a payment or delivery or to receive a payment or delivery in respect of a Contract or to comply with other material provision of the Clearing Documentation and/or Contract Terms under such Contract, and may include, but shall not be limited to, acts of God or the public enemy, acts of a civil or military authority, embargoes, fires, floods, explosions, accidents, labor disputes, mechanical breakdowns, failures in the payment systems or settlement systems, computer or system failures or other failures of equipment, failures of or defects in computer or system software, unavailability of or restrictions on any communication media for whatever reason (whether or not such media is used by Clearing Members), interruptions (whether in whole or in part) of power supplies or other utility or service, any law, decree, regulation or order of any government, competent authority or any court or tribunal;
"**Former Clearing Member**"	means, at any time, a Person who was a Clearing Member but a Membership Termination Date has occurred in respect of it prior to such time;
"**FXC**"	means The Foreign Exchange Committee;
"**FX Derivatives**"	means both Deliverable FX Derivatives and Non Deliverable FX Derivatives;
"**FX Derivatives Clearing Services**"	means the service provided by OTC Clear in respect of clearing FX Derivatives transactions in the over-the-counter derivatives market in accordance with the Clearing Documentation;
"**FX Derivatives**	means a Contract relating to FX Derivatives;

Contract"	
"**FX Definitions**"	means the 1998 FX and Currency Option Definitions (including Annex A thereto) as published by ISDA, EMTA and FXC;
"**Gainer VM Flow Adjustment(t)**"	means the Gainer VM Flow Adjustment Base Currency(t) converted into the currency in which the relevant Currency Payment is denominated at the Latest Exchange Rate determined on OTC Clear Clearing Day t;
"**Gainer VM Flow Adjustment Base Currency(t)**"	means an amount determined in the Base Currency on the relevant OTC Clear Clearing Day t for each Currency Payment relating to a Position Account as follows: Currency MTM Chg(t) – (Currency Cum MTM(t) X (1-VM Haircut(t)) – Currency Cum VM Flow(t-1))
"**General Losses**"	has the meaning given to it in Clearing Rule 1515(2);
"**GF Account**"	has the meaning given to it in Clearing Rule 905;
"**GF Increase Effective Date**"	has the meaning given to it in Clearing Rule 1512;
"**Governmental Authority**"	means any Regulatory Authority and any national, federal, supranational, state, regional, provincial, local or other government, government department, ministry, governmental or administrative authority, regulator, agency, commission, secretary of state, minister, court, tribunal, judicial body or arbitral body or any other Person exercising judicial, executive, interpretative, enforcement, regulatory, investigative, fiscal, taxing or legislative powers or authority anywhere in the world with competent jurisdiction;
"**Hedging**"	means the process of mitigating or reducing the market risk associated with the occurrence of a DMP Event with respect to a Clearing Member, as described in Chapter 18 of these Clearing Rules;
"**HKEX**"	means Hong Kong Exchanges and Clearing Limited, a recognized exchange controller under the SFO which is the controller of OTC Clear;
"**HKEX website**"	means the official website of HKEX at http://www.hkex.com.hk or at such other website address specified by HKEX or OTC Clear from time to time;
"HKICL"	has the meaning given to it in section 3.11.1 of the Clearing Procedures;
"**HKMA**"	means the Hong Kong Monetary Authority;
"**Hong Kong**"	means the Hong Kong Special Administrative Region;
"**Hong Kong dollars**", "**HK$**" or "**HKD**"	means the lawful currency of Hong Kong;
"**House Account**"	means a House Position Account or House Collateral Account;

"**House Auction Portfolio**"	has the meaning given to it in Clearing Rule 1913A;
"**House Business**"	means Contracts recorded in the House Position Account of a Clearing Member;
"**House Collateral Account**"	means, in respect of a House Position Account opened in the name of a Clearing Member, an account opened in the books of OTC Clear for the purposes of recording the type(s) and amount of Collateral attributed by OTC Clear to such House Position Account in accordance with these Clearing Rules;
"**House Credit**"	has the meaning given to it in Clearing Rule 1306A(3);
"**House Position Account**"	has the meaning given to it in Clearing Rule 902(1);
"**Hypothetical IM Percentage**"	has the meaning given to it in Clearing Rule 1914(1)(c);
"**Identified Contract**"	has the meaning given to it in Clearing Rule 1918A;
"**Illegality**"	means due to the adoption of, or any change in, any Applicable Laws after the date on which a Contract is registered by OTC Clear, or due to the promulgation of, or any change in, the interpretation by any court, tribunal or Regulatory Authority with competent jurisdiction of any Applicable Laws after such date, it becomes unlawful for a Clearing Member and/or OTC Clear who are a party to the Contract to perform any absolute or contingent obligation to make a payment or delivery or to receive a payment or delivery in respect of such Contract or to comply with other material provision of the Clearing Documentation and/or Contract Terms;
"**Increased Risk**"	has the meaning given to it in Clearing Rule 1510;
"**Indebtedness**"	means any obligation (whether present or future, contingent or otherwise, as principal or surety or otherwise) in respect of payment or, repayment of borrowed money (which term shall include, without limitation, deposits and reimbursement obligations arising from drawings pursuant to letters of credit) or any Derivative Transaction;
"**Information Barrier**"	means an information barrier established within different divisions of a firm to ensure any and all applicable confidentiality obligation is respected in order to avoid any conflict of interest;
"Initial Exchange Amount"	has the meaning given to it in the ISDA Definitions;
"Initial Exchange Date"	has the meaning given to it in the ISDA Definitions;
"**Initial House Resources**"	has the meaning given to it in Clearing Rule 1913A(1);
"**Initial Margin**"	means, with respect to each Clearing Member and a Position Account, an amount required to cover OTC Clear's potential future

	exposure in respect of such Position Account, as calculated in accordance with section 4.2 of the Clearing Procedures;
"**Initial Non-Porting Client Resources**"	has the meaning given to it in Clearing Rule 1913B(1);
"**Initial Order Notice**"	has the meaning given to it in Clearing Rule 1408;
"INR"	means the lawful currency of India;
"**Insolvency Proceedings**"	means where an entity: (1) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (2) becomes insolvent or unable to pay its debts or fails or admits in writing in a judicial, regulatory or administrative proceeding or filing its inability generally to pay its debts as they become due; (3) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (4) institutes or has instituted against it a proceeding seeking judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights or a petition is presented for its winding-up or liquidation and in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition: (a) results in a judgment of insolvency or bankruptcy, or the entry of an order for relief, or the making of an order for winding-up or liquidation; or (b) is not dismissed, discharged, stayed or restrained in each case within 30 calendar days of the institution or presentation thereof; (5) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (6) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; (7) has a secured party take possession of all or substantially all its assets, or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained in each case within 30 calendar days thereafter; or (8) causes or is subject to any event with respect to it which,

	under Applicable Laws, has an analogous effect to any of the events specified in paragraphs (1) to (7) above;
"**ISDA**"	means the International Swaps and Derivatives Association, Inc.;
"**ISDA Amendment**"	has the meaning given to it in Clearing Rule 2207;
"**ISDA Definitions**"	means the definitions and provisions contained in the 2021 ISDA Interest Rate Derivatives Definitions, including the Compounding/Averaging Matrix, Currency/Business Day Matrix and Floating Rate Matrix (and any successor matrix thereto), each as published by ISDA on its website (http://www.isda.org);
"**ISDA FX Amendment**"	has the meaning given to it in Clearing Rule 2408;
"**ISDA FX Definitions**"	has the meaning given to it in Clearing Rule 2403;
"**ISDA FX Deliverables Amendment**"	has the meaning given to it in Clearing Rule 2607;
"**Junior Tranche**"	has the meaning given to it in Clearing Rule 1914(4)(a);
"KRW"	means the lawful currency of the Republic of Korea;
"**Latest Exchange Rate**"	means, with respect to any day, the exchange rate determined and applied by OTC Clear on such day for converting a Currency Payment denominated in a currency other than the Base Currency into the Base Currency;
"**Licensed Corporation**"	means a corporation which is licensed to carry on regulated activity under section 116 of the SFO;
"**Limited Recourse Applicable Percentage**"	has the meaning given to it in Clearing Rule 1538(2);
"**Limited Recourse Final CM Payable**"	has the meaning given to it in Clearing Rule 1537(4);
"**Limited Recourse Interim CM Payable**"	has the meaning given to it in Clearing Rule 1537(1);
"**Limited Recourse CM Receivable**"	has the meaning given to it in Clearing Rule 1537(1);
"**Loser VM Flow Adjustment(t)**"	means the Loser VM Flow Adjustment Base Currency(t) converted into the currency in which the relevant Currency Payment is denominated in at the Latest Exchange Rate determined on OTC Clear Clearing Day t;
"**Loser VM Flow Adjustment Base Currency(t)**"	means an amount determined in the Base Currency on the relevant OTC Clear Clearing Day t for each Currency Payment relating to a Position Account as follows:

	Currency MTM Chg(t) – (Currency Cum MTM(t) – Currency Cum VM Flow(t-1))
"**Loss Distribution Period**"	means the period from (and including) the DMP Day to (but excluding) the OTC Clear Clearing Day on which all Auction Portfolios constructed for the relevant DMP Event have either been successfully auctioned or the subject of a Contract Termination Event, and all Auction Receivables, Auction Payments and/or Contract Termination Net Payments (as applicable) in respect of each such Auction Portfolio has been discharged in full by the relevant party on or prior to the relevant date of payment; or if one or more subsequent DMP Events occur prior to the end of a Loss Distribution Period, such Loss Distribution Period shall be extended and will end on the day on which all Auction Portfolios constructed for each such subsequent DMP Event have either been successfully auctioned or the subject of a Contract Termination Event and the related Auction Receivables and/or Auction Payments and/or Contract Termination Net Payments (as applicable) have been discharged in full by the relevant party on or prior to the relevant date of payment;
"**Loss Distribution Process**"	has the meaning given to it in Clearing Rule 1523;
"**Lower Bidder**"	means, with respect to an Auction Portfolio, any Bidder, other than any Better Bidder, Equal Bidder or Successful Bidder, who has submitted a Bid the value of which is equal to or greater than (1) the value of the Successful Bid less (2) the value determined by OTC Clear to be the riskiness of such Auction Portfolio, calculated by reference to the hypothetical Initial Margin of such Auction Portfolio determined by OTC Clear in its sole and absolute discretion as at the latest practicable time before the commencement of the Auction for such Auction Portfolio assuming that the Contracts forming part of such Auction Portfolio were all booked into a single separate hypothetical position account;
"**Margin**"	means Initial Margin (including any intra-day Initial Margin), Additional Margin and Variation Margin (including any intra-day Variation Margin) required by OTC Clear pursuant to these Clearing Rules;
"**Margin Allocation Percentage**"	means: (1) in respect of a House Auction Portfolio, the margin allocation percentage determined by OTC Clear and assigned to such House Auction Portfolio representing the risk that such House Auction Portfolio bears to the aggregate risk of all House Auction Portfolios constructed in respect of a DMP Event; and (2) in respect of a Client Auction Portfolio and a Client Collateral Account, the margin allocation percentage determined by OTC Clear and assigned to such Client Collateral Account

	representing the risk that the Contracts in the Client Position Account attributed to such Client Collateral Account bears to the aggregate risk of all Client Auction Portfolios constructed in respect of a DMP Event which comprise Contracts of the Client Position Account to which such Client Collateral Account is attributed;
"**Margin Balance**"	means, in respect of a Clearing Member and a Position Account, the aggregate value (as determined in accordance with Chapter 7 of the Clearing Procedures and including any Excess Margin) of Collateral provided in respect of Initial Margin, Additional Margin, Ad Hoc Intra-day Variation Margin and Routine Intra-day Variation Margin by (and not being requested to be redelivered to) such Clearing Member, in each case, as recorded in the corresponding Collateral Account, and subject to application in accordance with Chapter 13, Chapter 15 or Chapter 19 of these Clearing Rules;
"**Maximum Current Liability**"	has the meaning given to it in Clearing Rule 1544;
"**Max EUL**"	has the meaning given to it in section 6.1.1(6) of the Clearing Procedures;
"**Membership**"	has the meaning given to it in the definition of Clearing Member;
"**Membership Agreement**"	means the agreement in prescribed form between a Clearing Member and OTC Clear regulating the terms and conditions of such Clearing Member's membership in OTC Clear;
"**Membership Termination Date**"	means: (1) in respect of a voluntary resignation by a Clearing Member pursuant to Clearing Rule 604, the Resignation Effective Date; (2) in respect of the termination of a Clearing Member's Membership by OTC Clear pursuant to Clearing Rule 1224(2), the date notified by OTC Clear to the relevant Clearing Member; (3) in respect of the termination of a Clearing Member's Membership by OTC Clear pursuant to Clearing Rule 1405, the date determined in accordance with Clearing Rule 1409; (4) in respect of any occurrence of an Automatic Early Termination Event or delivery of a Notice of Default, the date determined by OTC Clear, and notified, to the Defaulting Clearing Member pursuant to Clearing Rule 1311, which shall fall on a date subsequent to the completion of the Default Management Process; and (5) in respect of the designation of an Early Termination Date arising out of: (a) an OTC Clear Failure to Pay Event pursuant to Clearing Rule 1321; (b) an OTC Clear Insolvency Event pursuant to Clearing

	Rule 1322; or (c) such designation by OTC Clear during the OTC Clear Failure to Pay Grace Period pursuant to Clearing Rule 1320(1), in each case referred to in paragraphs (5)(a), (b) and (c) above, if an OTC Clear Default CM Receivable is payable by OTC Clear, the Membership Termination Date shall be the day on which such OTC Clear Default CM Receivable becomes due and payable by OTC Clear; and if an OTC Clear Default Final CM Payable is payable by the relevant Clearing Member, the Membership Termination Date shall be the day on which the relevant Clearing Member has fully discharged its obligation to pay the OTC Clear Default Final CM Payable pursuant to Clearing Rule 1324(7)(d);
"**Middle Tranche**"	has the meaning given to it in Clearing Rule 1914(4)(b);
"**Minimum Capital Requirement**"	means, in respect of any day in a calendar month: (1) with respect to any Clearing Member who is an Authorized Institution that is a bank (incorporated in Hong Kong or overseas*), an Authorized Institution that is a DTC or RLB incorporated overseas*, or a Remotely Regulated Entity, the higher of: (a) HK$10 billion; and (b) an amount equal to the product of (i) 5% and (ii) the average of the aggregate Initial Margin requirements in respect of all Position Accounts (including the House Position Account and all Client Position Accounts) of the Clearing Member for each day falling in the immediately preceding calendar month; (2) with respect to any Clearing Member who is an Authorized Institution that is a DTC or RLB incorporated in Hong Kong, the higher of: (a) HK$ 390 million; (b) the capital requirement applicable to such Clearing Member set forth in the Seventh Schedule to the Banking Ordinance; and (c) an amount equal to the product of (i) 5% and (ii) the average of the aggregate Initial Margin requirements in respect of all Position Accounts (including the House Position Account and all Client Position Accounts) of the Clearing Member for each day falling

* Note: Introduction of remote membership is being considered by HKEX at the moment, and is not intended to be available during the initial phase of establishment of OTC Clear.

	in the immediately preceding calendar month; and (3) with respect to any Clearing Member who is a Licensed Corporation, the higher of: (a) HK$ 390 million; (b) the "required liquid capital" set forth by the Financial Resources Rule; and (c) an amount equal to the product of (i) 5% and (ii) the average of the aggregate Initial Margin requirements in respect of all Position Accounts (including the House Position Account and all Client Position Accounts) of the Clearing Member for each day falling in the immediately preceding calendar month;
"**Minimum Capital Requirement Breach Period**"	has the meaning given to it in Clearing Rule 404(1);
"Mitigating Measures"	means the measures set out in sub-paragraphs (ii)(b), (ii)(c) and (ii)(d)(B) of section 3.19 of the Clearing Procedures;
"**Multilateral Compression Cycle**"	means a multilateral compression cycle established by OTC Clear and facilitated by a Compression Service Provider nominated by OTC Clear, which shall be open to participation by Clearing Members in respect of their House Business only, in accordance with the provisions of the Clearing Rules and relevant Compression Documentation;
"**Multilateral Compression Fees**"	means, in respect of a Multilateral Compression Cycle, the fees payable by a Compression Clearing Member in respect of each Unwind Proposal that has been accepted by all Compression Clearing Members participating in that Multilateral Compression Cycle, as set out in Appendix I to the Clearing Procedures;
"MYR"	means the lawful currency of the Federation of Malaysia;
"**NDCM GF**"	has the meaning given to it in Clearing Rule 1913A(4);
"**NDCM GF Shortfall**"	means, with respect to an Auction Portfolio, the amount by which (1) the remaining Auction Losses or Contract Termination Losses relating to such Auction Portfolio after utilization of the OTC Clear First Contribution in full pursuant to Clearing Rule 1914(3) exceeds (2) the product of RAP and NDCM GF (each relating to such Auction Portfolio);
"**NDCM GF Surplus**"	means, with respect to an Auction Portfolio, the amount by which (1) the product of RAP and NDCM GF (each relating to such Auction Portfolio) exceeds (2) the remaining Auction Losses or Contract Termination Losses relating to such Auction Portfolio after utilization of the OTC Clear First Contribution in full pursuant to Clearing Rule 1914(3);
"**ND IRS Amendment**"	has the meaning given to it in Clearing Rule 2308;

"**ND IRS Definitions**"	has the meaning given to it in Clearing Rule 2303;
"**ND IRS Template**"	has the meaning given to it in Clearing Rule 2304;
"**No Position NDCM**"	means, with respect to an Auction Portfolio, a Non-Defaulting Clearing Member who does not, on any day during the 20 OTC Clear Business Day-period immediately preceding the Auction of such Auction Portfolio, have any Contract registered in its name of a Transaction Category which is the same as any Auction Positions within such Auction Portfolio and who chooses not to bid for such Auction Portfolio;
"**Non-Bidder**"	means a Non-Defaulting Clearing Member who is required to bid for an Auction Portfolio but fails to do so;
"**Non-Defaulting Clearing Member**"	means at any time, any Clearing Member who is not a Defaulting Clearing Member at such time;
"**Non-Default Unwind**"	means, in relation to a Clearing Member, the process by which the Clearing Member unwinds its Contracts through a liquidation or other form of close-out of its Contracts as part of the resignation of a Clearing Member's Membership;
"Non Deliverable FX Derivatives"	means the types of derivative transactions satisfying the Product Eligibility Requirements for Non Deliverable FX Derivatives set out in section 3.4 of the Clearing Procedures;
"Non Deliverable FX Derivatives Contract"	means a Contract relating to Non Deliverable FX Derivatives;
"Non Deliverable FX Derivatives Contract Terms"	has the meaning given to it in Clearing Rule 2401;
"**Non Deliverable Rates Derivatives**"	means the types of derivative transactions satisfying the Product Eligibility Requirements for Non Deliverable Rates Derivatives set out in section 3.4 of the Clearing Procedures;
"**Non Deliverable Rates Derivatives Contract**"	means a Contract relating to Non Deliverable Rates Derivatives;
"**Non Deliverable Rates Derivatives Contract Terms**"	has the meaning given to it in Clearing Rule 2301;
"Non-delivering Clearing Member"	means the Clearing Member responsible for a "Notional Exchange Failure";
"**Non-Porting AET Contract**"	means, in respect of a Porting Client of a Defaulting Clearing Member in respect of which an Automatic Early Termination Event has occurred, any Affected AET Contract that was recorded in the relevant Client Position Account immediately prior to the occurrence of that Automatic Early Termination Event and which had a scheduled Termination Date or Settlement Date, as the case may

	be, that would have fallen prior to the relevant porting being completed;
"**Non-Porting Client**"	has the meaning given to it in Clearing Rule 1708;
"**Non-Porting Client Credit**"	has the meaning given to it in Clearing Rule 1306A(4);
"**Non-Porting Client Deficit**"	has the meaning given to it in Clearing Rule 1306A(3);
"**Non-Porting Client Margin**"	has the meaning given to it in Clearing Rule 1913B(1);
"Non-Porting Contracts"	means, in respect of a Porting Client of a Defaulting Clearing Member, the Contracts recorded in the relevant Client Position Account that remain outstanding as at the date the relevant DMP Event occurs and which have a scheduled Termination Date or Settlement Date, as the case may be, that falls prior to the relevant porting being completed;
"**Non Rule-Based Clearing Member**"	means a Clearing Member who is not a Rule-Based Clearing Member;
"**Notice of Default**"	has the meaning given to it in Clearing Rule 1304;
"**Notice of Disciplinary Appeals Committee Hearing**"	has the meaning given to it in Clearing Rule 1410;
"**Notice of Disciplinary Committee Hearing**"	has the meaning given to it in Clearing Rule 1406;
"Notional Exchange Failure"	means a failure by a Clearing Member (a "Non-delivering Clearing Member") to deliver, by the Notional Exchange USD/HKD Settlement Ready Time for the Currency Pair (swap and FX) of USD and HKD, or the Notional Exchange USD/CNY (offshore) Settlement Ready Time for the Currency Pair (swap and FX) of USD and CNY (offshore): (1) an Initial Exchange Amount or Final Exchange Amount of a Standard Cross-currency Rates Derivatives Contract as the case may be, on the Initial Exchange Date or Final Exchange Date respectively of a Standard Cross-currency Rates Derivatives Contract and/or (2) a notional amount of a Deliverable FX Derivatives Contract on the Settlement Date of a Deliverable FX Derivatives Contract;
"Notional Exchange Failure Adjustment Amount"	has the meaning given to it in section 3.19 of the Clearing Procedures;
"**Notional Exchange Failure Margin**"	has the meaning given to it in Clearing Rule 1002A;

"Notional Exchange Risk Limit"	has the meaning given to it in section 4.6.1.3 of the Clearing Procedures;
"Notional Exchange Settlement Cutoff Time"	has the meaning given to it in section 3.12 of the Clearing Procedures;
"Notional Exchange USD/CNY (offshore) Settlement Cutoff Time"	has the meaning given to it in section 3.12 of the Clearing Procedures;
"Notional Exchange USD/HKD Settlement Cutoff Time"	has the meaning given to it in section 3.12 of the Clearing Procedures;
"Notional Exchange USD/CNY (offshore) Settlement Ready Time"	has the meaning given to it in section 3.12 of the Clearing Procedures;
"Notional Exchange USD/HKD Settlement Ready Time"	has the meaning given to it in section 3.12 of the Clearing Procedures;
"**Offshore CNY Center**"	means the jurisdiction specified as such by a Clearing Member or a Client to an Original Transaction, or if no Offshore CNY Center is specified by the Clearing Member or Client, as the case may be, the Offshore CNY Center shall be Hong Kong;
"**open position**"	means a position that arises if a Person is a party to a Contract which has not been closed and is not offset by the position arising from other Contracts to which such Person is a party;
"**Original Deliverable FX Forward Transaction**"	means an Original Transaction in relation to a Deliverable FX Forward transaction;
"**Original Deliverable FX Swap Transaction**"	means an Original Transaction in relation to a Deliverable FX Swap transaction;
"**Original Non Deliverable FX Derivatives Transaction**"	means an Original Transaction in relation to a Non Deliverable FX Derivatives transaction;
"**Original Non Deliverable Rates Derivatives Transaction**"	means an Original Transaction in relation to a Non Deliverable Rates Derivatives transaction;

"Original Standard Cross-currency Rates Derivatives Transaction"	means an Original Transaction in relation to a Standard Cross-currency Rates Derivatives transaction;
"**Original Standard Rates Derivatives Transaction**"	means an Original Transaction in relation to a Standard Rates Derivatives transaction;
"**Original Transaction**"	means a transaction in relation to Rates Derivatives or FX Derivatives originally entered into between two Clearing Members, a Clearing Member and a Client, or two Clients, and that is submitted for registration with OTC Clear in accordance with these Clearing Rules;
"**OTC Clear**"	means OTC Clearing Hong Kong Limited, a company incorporated under the laws of Hong Kong, which is a subsidiary of HKEX;
"**OTC Clear Board**"	means the board of directors of OTC Clear and, where the context so permits, any committee of that board;
"**OTC Clear Business Day**"	means a day (other than Saturday and Sunday) on which commercial banks are open for general business in Hong Kong;
"**OTC Clear Clearing Day**"	means, at any time, each day appearing on the OTC Clear Clearing Days Calendar that is in effect at such time;
"**OTC Clear Clearing Days Calendar**"	means the OTC Clear clearing days calendar published by OTC Clear which includes each day on which the Rates and FX Clearing Services is in operation, as updated from time to time;
"**OTC Clear Contribution**"	means OTC Clear First Contribution and OTC Clear Second Contribution together;
"**OTC Clear Default Applicable Percentage**"	has the meaning given to it in Clearing Rule 1324(8)(b);
"**OTC Clear Default CM Receivable**"	has the meaning given to it in Clearing Rule 1324(7)(a);
"**OTC Clear Default Final CM Payable**"	has the meaning given to it in Clearing Rule 1324(7)(d);
"**OTC Clear Default Interim CM Payable**"	has the meaning given to it in Clearing Rule 1324(7)(a);
"**OTC Clear Failure to Pay Event**"	has the meaning given to it in Clearing Rule 1318;
"**OTC Clear Failure to Pay Grace Period**"	means the period from (but excluding) the day on which OTC Clear receives a Failure to Pay Notice from a Relevant Clearing Member to (and including) the 21st OTC Clear Business Day following such day;
"**OTC Clear First Contribution**"	means an amount equal to HK$ 150 million, which represents the first tranche of the contribution payable by OTC Clear to the Rates

	and FX Guarantee Resources as may be replenished by OTC Clear from time to time in accordance with Clearing Rule 1511;
"**OTC Clear Insolvency Event**"	has the meaning given to it in Clearing Rule 1322;
"**OTC Clear Second Contribution**"	means an initial amount of HK$ 6 million which may be built up to a maximum value of HK$ 650 million as described in section 6.4 of the Clearing Procedures, and represents the second tranche of the contribution payable by OTC Clear to the Rates and FX Guarantee Resources. OTC Clear may replenish the OTC Clear Second Contribution from time to time in accordance with Clearing Rule 1511;
"**OTC Derivatives Contract**"	has the meaning given to it in the Preface to the Clearing Rules;
"**Outright Transfer Margin Balance**"	means, with respect to any Position Account and at any time, any unused Margin Balance recorded in the Collateral Account relating to such Position Account (but excluding the aggregate value of any non-cash Collateral comprising such Margin Balance provided to OTC Clear on a security interest basis for such Position Account);
"**Paying Clearing Member**"	has the meaning given to it in Clearing Rule 814B(3);
"**Permitted Purpose**"	means, with respect to a Default Management Process, any purpose the objective of which is to allow the Clearing Member to fulfil its duties under such Default Management Process;
"**Person**"	means any individual, partnership, firm, body corporate, association, trust, unincorporated organization or other entity;
"**Personal Data (Privacy) Ordinance**"	means the Personal Data (Privacy) Ordinance (Laws of Hong Kong Cap. 486);
"**Poor Bidder**"	means, with respect to an Auction Portfolio, any Bidder who submitted a Bid the value of which is lower than (1) the value of the Successful Bid less (2) the value determined by OTC Clear to be the riskiness of such Auction Portfolio, calculated by reference to the hypothetical Initial Margin of such Auction Portfolio determined by OTC Clear in its sole and absolute discretion as at the latest practicable time before the commencement of the Auction for such Auction Portfolio assuming that the Contracts forming part of such Auction Portfolio were all booked into a single separate hypothetical position account;
"**Porting AET Contract**"	means, in respect of a Porting Client of a Defaulting Clearing Member in respect of which an Automatic Early Termination Event has occurred, any Affected AET Contract that was recorded in the relevant Client Position Account immediately prior to the occurrence of that Automatic Early Termination Event and which had a scheduled Termination Date or Settlement Date that would have fallen on or after the relevant porting being completed;

“**Porting Client**”	has the meaning given to it in Clearing Rule 1708;
“**Porting Instruction**”	means the instructions to OTC Clear, in such form as OTC Clear may require from time to time, provided by a Client, its original Clearing Member and the Replacement Clearing Member appointed by such Client, which evidence the consent of all parties thereto to: (1) if a DMP Event (other than an Automatic Early Termination Event) occurs with respect to the original Clearing Member, terminate all Affected Contracts registered in the name of the original Clearing Member in respect of the Client Position Account relating to such Client and re-establishing the same with the Replacement Clearing Member; or (2) if an Automatic Early Termination Event occurs with respect to the original Clearing Member, enter into new Contracts with the Replacement Clearing Member on the same terms as the Porting AET Contracts for such Client;
“**Position Account**”	means a Client Position Account or House Position Account;
“**Position Account Cum MTM(t)**”	means, with respect to each Position Account and each OTC Clear Clearing Day t during the Loss Distribution Period, the sum of Currency Cum MTM(t) in all currencies payable on such Position Account;
“**Position Account Gain**”	means, with respect to each Position Account Gainer and an OTC Clear Clearing Day during the Loss Distribution Period, the amount of positive Position Account Cum MTM in respect of such Position Account Gainer on such OTC Clear Clearing Day;
“**Position Account Gainer**”	means, with respect to any OTC Clear Clearing Day during the Loss Distribution Period, each Position Account of a Non-Defaulting Clearing Member in respect of which the value of the Position Account Cum MTM on such OTC Clear Clearing Day is greater than zero;
“**Position Account Loser**”	means, with respect to any OTC Clear Clearing Day during the Loss Distribution Period, each Position Account of a Non-Defaulting Clearing Member in respect of which the value of the Position Account Cum MTM on such OTC Clear Clearing Day is equal to or less than zero;
“**Position Limit**”	means, with respect to a Clearing Member, an Account Limit and/or an Absolute Risk Limit, whether in relation to its House Position Account or Client Position Account(s) relating to such Clearing Member as described in section 4.6.1 of the Clearing Procedures;
“**Preliminary Available Resources**”	has the meaning given to it in Clearing Rule 1913;
“**RAP**”	means, in respect of each Auction Portfolio, the risk allocation percentage determined by OTC Clear and assigned to such Auction

	Portfolio representing the risk that such Auction Portfolio bears to the aggregate risk of the Auction Book;
"**Rates and FX Assessments**"	means an amount determined by OTC Clear in accordance with section 6.1.2 of the Clearing Procedures;
"**Rates and FX Clearing Services**"	means Rates Derivatives Clearing Services and FX Derivatives Clearing Services together;
"**Rates and FX Clearing System**"	means the IT system managed by OTC Clear and providing Clearing Members with technical access to the Rates and FX Clearing Service;
"**Rates and FX Clearing Termination Event**"	has the meaning given to it in Clearing Rule 1530;
"**Rates and FX Contribution**"	means, with respect to each Clearing Member, the Collateral that has been provided by such Clearing Member as contribution to the Rates and FX Guarantee Fund or Rates and FX Assessments pursuant to Clearing Rule 1502;
"**Rates and FX Contribution Balance**"	means, with respect to each Clearing Member, the aggregate value of its Rates and FX Contribution, which is subject to application in accordance with Chapter 13, Chapter 15 and Chapter 19 of these Clearing Rules;
"**Rates and FX Contribution Determination Date**"	means each of the days referred to in Clearing Rule 1503;
"**Rates and FX Contribution Excess**"	means, in relation to a Clearing Member, the amount (if any) by which its Rates and FX Contribution Balance exceeds its Rates and FX Liability;
"**Rates and FX Guarantee Fund**"	means, at any given time, the aggregate value of all CM Funded Contribution Amounts at such time;
"**Rates and FX Guarantee Resources**"	means the aggregate of the Rates and FX Guarantee Fund, Rates and FX Assessments and OTC Clear Contribution;
"**Rates and FX Liability**"	means, in respect of a Clearing Member, the aggregate of its CM Funded Contribution Amount and, if demanded in accordance with Clearing Rule 1507, its CM Unfunded Contribution Amount;
"**Rates and FX Loss**"	has the meaning given to it in Clearing Rule 1515;
"**Rates and FX Minimum Contribution Amount**"	means the amount set out in section 6.1.1(i) of the Clearing Procedures;
"**Rates Derivatives**"	means Standard Rates Derivatives, Standard Cross-currency Rates Derivatives and Non Deliverable Rates Derivatives together;

"**Rates Derivatives Clearing Services**"	means the service provided by OTC Clear in respect of clearing Rates Derivatives transaction in the over-the-counter derivatives market in accordance with the Clearing Documentation;
"**Rates Derivatives Contract**"	means a Contract relating to Rates Derivatives;
"**Receiving Clearing Member**"	has the meaning given to it in Clearing Rule 2001;
"**recognized exchange controller**"	has the same meaning as in the SFO;
"**Registration Time**"	means, with respect to each Contract, the time shown in the "OTC Clear Trade Report (Report Number TDRP01, TDRP02 or TDRP11)" in respect of a House Position Account or Report Number TDRP01_C, TDRP02_C or TDRP11_C in respect of a Client Position Account) as the "Registration Time";
"**Regulated Exchange**"	means any exchange or similar body duly authorized, regulated, recognized or licensed (to the extent necessary) under Applicable Laws in any jurisdiction, including, but not limited to, any recognized exchange company, recognized investment exchange, recognized overseas investment exchange, designated investment exchange, designated contract market, exempt commercial market, regulated market, alternative trading system, multilateral trading facility or similar entity;
"**Regulatory Authority**"	means any governmental authority which exercises a regulatory or supervisory function under the laws of any jurisdiction in relation to financial services, the financial markets, Regulated Exchanges or Clearing Organizations (including, without limitation, the SFC, any Person given powers under the SFO, the HKMA and the Financial Secretary of Hong Kong);
"**Regulatory Capital Requirement**"	means any requirement regarding capitalization, solvency, liquidity or similar financial requirement with which an entity is required to comply under Applicable Laws, and for the avoidance of doubt includes the (1) Financial Resources Rules for Licensed Corporations; and (2)(a) Part XVIA and the Seventh Schedule (section 6) of the Banking Ordinance and (b) the Banking (Capital) Rules (Laws of Hong Kong Cap. 155L) for Authorized Institutions incorporated in Hong Kong;
"**Relevant Clearing Member**"	has the meaning given to it in Clearing Rule 1317;
"**Relevant CM Contract**"	has the meaning given to it in Clearing Rule 1319;
"**relevant proportion of the OTC Clear First Contribution**"	means, with respect to an Auction Portfolio, the product of (1) RAP of such Auction Portfolio and (2) the OTC Clear First Contribution determined immediately prior to the commencement of the relevant

	Auction;
"**relevant proportion of the OTC Clear Second Contribution**"	means, with respect to an Auction Portfolio, the product of (1) RAP of such Auction Portfolio and (2) the OTC Clear Second Contribution determined immediately prior to the commencement of the relevant Auction;
"**relevant proportion of the Rates and FX Assessments**"	means, with respect to each Non-Defaulting Clearing Member and an Auction Portfolio, the product of (1) RAP of such Auction Portfolio and (2) the CM Unfunded Contribution Amount of such Non-Defaulting Clearing Member determined immediately prior to the commencement of the relevant Auction;
"**relevant proportion of the Rates and FX Guarantee Fund**"	means, with respect to each Non-Defaulting Clearing Member and an Auction Portfolio, the product of (1) RAP of such Auction Portfolio and (2) the CM Funded Contribution Amount of such Non-Defaulting Clearing Member determined immediately prior to the commencement of the relevant Auction;
"**Remaining Balance**"	has the meaning given to it in Clearing Rule 1534(1);
"**Remaining Non-Porting Client Deficit**"	has the meaning given to it in Clearing Rule 1306A(4);
"**Remotely Regulated Entity**"	has the meaning given to it in Clearing Rule 401(4)(b);
"**Replacement Clearing Member**"	means, in relation to Client Clearing Services, the Clearing Member appointed by a Client who will be acting as a replacement Clearing Member in the event of the occurrence of an Event of Default with respect to such Client's original Clearing Member, and as notified to OTC Clear;
"**Representative**"	means any Person that carries out or is responsible for (or purports to carry out or be responsible for) any of the functions of another Person, including without limitation any director, partner, officer, executive, employee, Affiliate, Client, contractor or agent of that other Person;
"**Resignation Effective Date**"	has the meaning given to it in Clearing Rule 604;
"**Risk Management Committee**"	means the risk management committee established by OTC Clear whose main function is to manage the risk that is, or may be, assumed by OTC Clear in respect of its provision of the Rates and FX Clearing Services;
"**RLB**"	means a "restricted licence bank" which has the same meaning as in the Banking Ordinance;
"**Routine Intra-day VM Call**"	has the meaning given to it in section 4.4.2 of the Clearing Procedures;
"**Routine Intra-day**	means, with respect to a Clearing Member, any Collateral provided

Variation Margin"	by such Clearing Member to OTC Clear for purposes of satisfying its Routine Intra-day VM Call;
"**Rule-Based Clearing Member**"	means a Clearing Member who is incorporated in Hong Kong and who only provides Client Clearing Services through its Hong Kong head office, or a Clearing Member incorporated in other suitable jurisdictions as notified by OTC Clear from time to time;
"**Security Deed**"	means a security deed or similar instrument (that is in form and substance satisfactory to OTC Clear) entered into by a Non Rule-Based Clearing Member in favour of its Clients(s) in respect of any relevant Client Entitlements under which such Clearing Member charges, assigns and agrees to assign absolutely to its Client(s) its rights, title and interest (present and future) in and to the Contracts booked in its Client Position Account(s) designated by the Clearing Member for such Client(s) and the Collateral standing to the credit of the corresponding Client Collateral Account(s) to such Client(s) as security for the amounts owing to such Client(s) under the relevant Client Clearing Agreement(s);
"**Senior Tranche**"	has the meaning given to it in Clearing Rule 1914(4)(c);
"**SFC**"	means the Securities and Futures Commission which was established under the repealed Securities and Futures Commission Ordinance (Laws of Hong Kong Cap. 24) and whose existence continued by virtue of section 3(1) of the SFO or any other body which assumes in whole or in part the powers and functions of the Securities and Futures Commission and has jurisdiction over OTC Clear under the SFO;
"**SFO**"	means the Securities and Futures Ordinance (Laws of Hong Kong Cap. 571);
"**Special Default Account**" 清算所记录交易名义投资组合的记账账簿。即在发生AET事件或发出违约通知前以违约会员名义登记的合同组成的投资组合	means the book-keeping account of OTC Clear for the purpose of recording the notional portfolio of trades the economic terms of which is the same as the portfolio of Contracts registered in the name of a Defaulting Clearing Member immediately prior to the occurrence of an Automatic Early Termination Event or delivery of a Notice of Default, but excluding any Affected Contract registered in the name of such Defaulting Clearing Member which have been successfully ported in accordance with Chapter 17 of these Clearing Rules. For the avoidance of doubt, if a DMP Event has occurred with respect to more than one Clearing Member, and the relevant Default Management Processes are continuing, there will be one notional portfolio created on the Special Default Account for each relevant Defaulting Clearing Member;
"**Sponsored Settlement Member**" or "**SSM**"	means a Client Clearing Category 1 Client of a Clearing Member that has been admitted by OTC Clear to be a sponsored settlement member of such Clearing Member in accordance with Clearing Rule 7A02 and that has not been terminated as a sponsored settlement member in accordance with Clearing Rule 7A04 or 7A05;

"**SSM Eligibility Criteria**"	has the meaning given to it in Clearing Rule 7A02;
"**SSM Payment Amount**"	means, in respect of a sponsoring Clearing Member and OTC Clear, any payment owed between that sponsoring Clearing Member and OTC Clear of Variation Margin (other than Routine Intra-day Variation Margin) (for the avoidance of doubt, as adjusted for price alignment interest in accordance with Section 4.3.2 of the Clearing Procedures), coupon payments of a Standard Rates Derivatives Contract, a Standard Cross-currency Rates Derivatives Contract and a Non Deliverable Rates Derivatives Contract, settlement amounts due in respect of an FX Derivatives Contract, and the Initial Exchange Amount and the Final Exchange Amount of a Standard Cross-currency Rates Derivatives Contract, in respect of Contracts registered to the Client Account relating to a Sponsored Settlement Member who is a Client of that sponsoring Clearing Member, and such other amounts as have been specified as SSM Payment Amounts by OTC Clear in Clearing Notices issued from time to time;
"SSM Tripartite Agreement"	means an agreement between OTC Clear, a relevant sponsoring Clearing Member and its Client which is substantially in the form set out in Appendix VII or VIII of the Clearing Procedures (the relevant form to be determined according to the jurisdiction of incorporation of that sponsoring Clearing Member) and which sets out, amongst other things, the terms on which payments of amounts equal to (and in the same currency as) SSM Payment Amounts may be made directly between OTC Clear and that Client;
"Standard Cross-currency Rates Derivatives"	means the types of derivative transactions satisfying the Product Eligibility Requirements for Standard Cross-currency Rates Derivatives set out in section 3.4 of the Clearing Procedures;
"Standard Cross-currency Rates Derivatives Contract"	means a Contract relating to Standard Cross-currency Rates Derivatives;
"Standard Cross-currency Rates Derivatives Contract Terms"	has the meaning given to it in Clearing Rule 2501;
"**Standard Rates Derivatives**"	means the types of derivative transactions satisfying the Product Eligibility Requirements for Standard Rates Derivatives set out in section 3.4 of the Clearing Procedures;
"**Standard Rates Derivatives Contract**"	means a Contract relating to Standard Rates Derivatives;
"**Standard Rates Derivatives Contract Terms**"	has the meaning given to it in Clearing Rule 2201;

"**Successful Bid**"	means a Bid that has been accepted by OTC Clear pursuant to Clearing Rule 1912 and the Clearing Procedures;
"**Successful Bidder**"	means a Bidder of a Successful Bid;
"**SWIFT**"	means the secured messaging services platform and interface software provided by the Society for Worldwide Interbank Financial Telecommunication;
"**t**"	means an OTC Clear Clearing Day t;
"**t-1**"	means the OTC Clear Clearing Day preceding OTC Clear Clearing Day t;
"**Tax**"	means any present or future tax, levy, impost, duty, charge, assessment, or fee of any nature (including interest, penalties, and additions thereto) that is imposed by any Governmental Authority or taxing authority;
"**Tax Information Exchange Framework"**	means: (1) sections 1471 to 1474 of the United States Internal Revenue Code of 1986, as amended (the "**Code**") or any similar or successor legislation introduced by the United States; (2) any agreement described in section 1471(b) of the Code; (3) any regulations or guidance pursuant to any of the foregoing; (4) any official interpretations of any of the foregoing; (5) any intergovernmental agreement (an "**IGA**") to facilitate the implementation of any of the foregoing; or (6) any law implementing an IGA;
"THB"	means the lawful currency of the Kingdom of Thailand;
"**The Hong Kong Observatory**"	means a government department of Hong Kong which is responsible for forecasting weather and issuing warnings on weather-related hazards;
"**Total Available Resources**"	has the meaning given to it in Clearing Rule 1516;
"**Total Gains(t)**"	means, with respect to each OTC Clear Clearing Day t during the Loss Distribution Period, the sum of all Position Account Gains in respect of all Position Account Gainers on such OTC Clear Clearing Day t;
"**Total Position Accounts Cum MTM(t)**"	means, with respect to any OTC Clear Clearing Day t during the Loss Distribution Period, the sum of Total Position Accounts Currency Cum MTM(t) in all currencies;
"**Total Position Accounts Currency**	means, with respect to each OTC Clear Clearing Day t during the Loss Distribution Period, the sum of the Total Position Accounts

Cum MTM(t)"	Currency MTM for each OTC Clear Clearing Day from (from including) the DMP Day to (and including) such OTC Clear Clearing Day t;
"**Total Position Accounts Currency MTM(t)**"	means, with respect to each OTC Clear Clearing Day t during the Loss Distribution Period, the sum of Currency MTM Chg(t) in respect of all Position Accounts of all Non-Defaulting Clearing Members;
"**triReduce® OTC Clear Compression Protocol**"	means a protocol on compression of cleared trades to be established between TriOptima AB, OTC Clear, and the relevant Clearing Members;
"**Tranche**"	has the meaning given to it in Clearing Rule 1914(4)(c);
"**Transaction Category**"	means any of the following: (1) Standard Rates Derivatives Contract – single currency interest rate swap denominated in USD; (2) Standard Rates Derivatives Contract – single currency interest rate swap denominated in EUR; (3) Standard Rates Derivatives Contract – single currency interest rate swap denominated in HK dollars; (4) Standard Rates Derivatives Contract – single currency interest rate swap denominated in CNY (offshore); (5) Standard Rates Derivatives Contract – single currency basis swap denominated in USD; (6) Standard Rates Derivatives Contract – single currency basis swap denominated in EUR; (7) Standard Rates Derivatives Contract – single currency basis swap denominated in HK dollars; (8) Standard Cross-currency Rates Derivatives Contract – cross currency interest rate swap denominated in CNY (offshore) and USD; (9) Standard Cross-currency Rates Derivatives Contract – cross currency basis swap denominated in CNY (offshore) and USD; (10) Standard Cross-currency Rates Derivatives Contract – cross currency interest rate swap denominated in HK dollars and USD; (11) Standard Cross-currency Rates Derivatives Contract – cross currency basis swap denominated in HK dollars and USD; (12) Non Deliverable Rates Derivatives Contract denominated in CNY; (13) Non Deliverable Rates Derivatives Contract denominated in INR;

	(14) Non Deliverable Rates Derivatives Contract denominated in KRW; (15) Non Deliverable Rates Derivatives Contract denominated in MYR; (16) Non Deliverable Rates Derivatives Contract denominated in THB; (17) Non Deliverable Rates Derivatives Contract denominated in TWD; (18) Non Deliverable FX Derivatives Contract denominated in CNY; (19) Non Deliverable FX Derivatives Contract denominated in INR; (20) Non Deliverable FX Derivatives Contract denominated in KRW; (21) Non Deliverable FX Derivatives Contract denominated in TWD; (22) Deliverable FX Forward Contract denominated in CNY (offshore) and USD; (23) Deliverable FX Forward Contract denominated in HK dollars and USD; (24) Deliverable FX Swap Contract denominated in CNY (offshore) and USD; and (25) Deliverable FX Swap Contract denominated in HK dollars and USD;
"**Transaction Data**"	means, in respect of an Original Transaction, the economic terms relating to such Original Transaction as designated by the Clearing Member(s) or Client(s) to such Original Transaction;
"**Transaction Register**"	means any database available to OTC Clear for retrieval of records of Contracts;
"**Transferor Clearing Member**"	has the meaning given to it in Clearing Rule 825;
"**Transferee Clearing Member**"	has the meaning given to it in Clearing Rule 825;
"TWD"	means the lawful currency of the Republic of China;
"**U.S. Person**"	has the same meaning as is given to that term by the CFTC;
"**USD**"	means the lawful currency of the United States of America;
"**Unpaid Amounts**"	any amounts that became payable in respect of Contracts recorded in a Defaulting Clearing Member's House Position Account or Client Position Accounts on or prior to such DMP Event and which remain

	unpaid as at the completion of a successful Auction or the occurrence of a Contract Termination Event (as applicable) in respect of all Auction Portfolios relating to such DMP Event (excluding, for the avoidance of doubt, any Unsettled VM Amounts);
"**Unsettled VM Amount**"	means, in respect of a Position Account and: (a) in respect of each Auction Contract relating to that Position Account: (1) the net present value of that Auction Contract as determined by OTC Clear pursuant to Chapter 5 of the Clearing Procedures on the date on which that Auction Contract is registered to a Successful Bidder; minus (2) the aggregate net Variation Margin settled by or with the relevant Defaulting Clearing Member in respect of the Contract with the relevant Defaulting Clearing Member corresponding to that Auction Contract up to but excluding the date on which that Auction Contract is registered to a Successful Bidder; and (b) in respect of each Auction Failed Position relating to that Position Account: (1) the net present value of that Auction Failed Position as determined by OTC Clear pursuant to Chapter 5 of the Clearing Procedures as of the last End-of Day Settlement Process immediately preceding the relevant Final Settlement Cycle Determination Date; minus (2) the aggregate net Variation Margin settled by or with the relevant Defaulting Clearing Member in respect of the Contract with the relevant Defaulting Clearing Member corresponding to that Auction Failed Position as of the last End-of Day Settlement Process immediately preceding the relevant Final Settlement Cycle Determination Date;
"**Unwind Proposal**"	means, in relation to a Multilateral Compression Cycle, a proposal produced by a Compression Service Provider which may comprise a combination of termination of Eligible Compression Contracts, amendment to the terms thereof and/or replacement with new Contracts, as the case may be;
"**Variation Margin**"	means, in respect of each House Position Account and each Client Position Account of a Clearing Member, the aggregate amount (including any Intra-day Variation Margin) determined by OTC Clear in accordance with Clearing Rules 1206 and 1207 and the Clearing Procedures on each OTC Clear Clearing Day, which is payable to, or receivable by, the Clearing Member in respect of such Position Account;
"**VM Flow Adjustment(t)**"	means either the Gainer VM Flow Adjustment(t) or Loser VM Flow Adjustment(t), as applicable;

"VM Haircut(t)"	means, on each OTC Clear Clearing Day t during the Loss Distribution Period, an amount equal to the (1) VM Shortfall(t) divided by (2) Total Gains(t), expressed as a percentage figure;
"VM Reversal"	means, (1) in respect of a Standard Cross-currency Rates Derivatives Contract that expires on an OTC Clear Clearing Day, the amount which would be paid by OTC Clear to a Non-Defaulting Clearing Member (expressed as a positive number) or by such Non-Defaulting Clearing Member to OTC Clear (expressed as a negative number) on such OTC Clear Clearing Day, calculated by: (a) aggregating the amount of Variation Margin, in relation to the change in market value of Initial Exchange Amount and Final Exchange Amount, paid by such Clearing Member to OTC Clear during the term of such Standard Cross-currency Rates Derivatives Contract (excluding the amount of any Variation Margin calculated in respect of the expiry date); and (b) subtracting the aggregate amount of Variation Margin, in relation to the change in market value of Initial Exchange Amount and Final Exchange Amount, paid by OTC Clear to such Clearing Member during the term of such Standard Cross-currency Rates Derivatives Contract (excluding the amount of any Variation Margin calculated in respect of the expiry date); For the avoidance of doubt, Variation Margin, in relation to the change in market value of coupons, paid or received by OTC Clear during the term of such Standard Cross-currency Rates Derivatives Contract will not form part of the VM Reversal. (2) in respect of a Deliverable FX Derivatives Contract that expires on an OTC Clear Clearing Day, the amount which would be paid by OTC Clear to a Non-Defaulting Clearing Member (expressed as a positive number) or by such Non-Defaulting Clearing Member to OTC Clear (expressed as a negative number) on such OTC Clear Clearing Day, calculated by: (a) aggregating the amount of Variation Margin, in relation to the change in market value of Notional Amount, paid by such Clearing Member to OTC Clear during the term of such Deliverable FX Derivatives Contract (excluding the amount of any Variation Margin calculated in respect of the expiry date); and (b) subtracting the aggregate amount of Variation Margin, in relation to the change in market value of Notional Amount, paid by OTC Clear to such Clearing Member

	during the term of such Deliverable FX Derivatives Contract (excluding the amount of any Variation Margin calculated in respect of the expiry date);
"**VM Shortfall(t)**"	means, in respect of OTC Clear Clearing Day t, the greater of (1) zero and (2) an amount equal to (i) Total Position Accounts Cum MTM(t) plus (ii) the Auction Transfer Costs less (iii) the Total Available Resources, each determined on such OTC Clear Clearing Day t, but excluding any Rates and FX Assessments which have not been deposited with OTC Clear on such day;
"**Voluntary Recap Amount**"	has the meaning given to it in Clearing Rule 1541;
"**Voluntary Recap Request Notice**"	has the meaning given to it in Clearing Rule 1541;
"**Web Portal**"	means a user interface via which a Clearing Member can, amongst other things, lodge a request for movement of Collateral or retrieve a report; and
"**Withholding Tax**"	means any withholding or deduction pursuant to the Tax Information Exchange Framework.

Interpretation

102. Where the context so permits, words importing the singular number include the plural and vice versa and words importing the masculine gender shall include the feminine and neuter genders and vice versa.

103. The headings shall not affect the construction of these Clearing Rules.

104. Where reference is made in the Clearing Documentation to a Chapter or Clearing Rule, such reference is to the relevant Chapter or Clearing Rule of these Clearing Rules except as otherwise expressly provided in these Clearing Rules. Schedules to these Clearing Rules form part of these Clearing Rules.

105. References to any law or regulation in the Clearing Documentation shall include any rule, notice, order, guidance, example or subordinate legislation made from time to time under such law or regulation.

106. References to any law, regulation or directive in the Clearing Documentation shall be construed as references to such law, regulation or directive as in force from time to time. To the extent any liability arises under such law, regulation or directive as a result of an act or omission by a Person, the reference to such law, regulation or directive shall include any relevant law, regulation or directive which was applicable at the time of such act or omission.

107. Except as otherwise expressly provided in these Clearing Rules, a reference to these Clearing Rules include the Clearing Procedures. The Clearing Procedures supplement and form part of these Clearing Rules, and therefore, subject to Clearing Rule 108, shall take effect and shall be binding on Clearing Members. OTC Clear may from time to time issue Clearing Notices, which shall be binding on all Clearing Members.

108. In the event of any conflict between:

(1) any definition or provision contained in these Clearing Rules, the Clearing Procedures or any Clearing Notices, unless OTC Clear otherwise determines, the document first listed shall have precedence and shall prevail over the documents listed later, in descending order, as follows:

(a) these Clearing Rules;

(b) the Clearing Procedures; and

(c) the Clearing Notices.

(2) the Clearing Rules or any Membership Agreement on the one hand and any Client Clearing Agreement, the Security Deed or any Deed of Charge on the other, any Clearing Rules or the Membership Agreement shall prevail.

(3) any Client Clearing Agreement and any Security Deed, the Security Deed will prevail over the Client Clearing Agreement.

(4) the Clearing Rules, the Clearing Procedures, any Client Clearing Agreement or any other agreement between all or any of the parties to

an SSM Tripartite Agreement on the one hand and any SSM Tripartite Agreement on the other, the SSM Tripartite Agreement will prevail.

109. OTC Clear shall, at all times, act in good faith and in a commercially reasonable manner in its interpretation of these Clearing Rules. The interpretation by OTC Clear of these Clearing Rules and Clearing Notices shall be final, conclusive and binding on all Clearing Members and the parties to all Contracts.

110. These Clearing Rules are in the English language.

Chapter 2 General Provisions

Amendment

201. Subject to the SFO and the Articles of Association of OTC Clear:

(1) the OTC Clear Board, after consultation with the Risk Management Committee, shall have the power to amend this Clearing Rule 201, or to add to, vary or waive any of these Clearing Rules set out in Chapter 3, Chapter 4, Chapter 6, Chapter 12, Chapter 13, Chapter 15 and Chapter 16 to Chapter 21 of these Clearing Rules; and

(2) the OTC Clear Board shall have the power to amend, add to, vary or waive any of the remaining Clearing Rules which are not referred to in sub-paragraph (1) above without first consulting the Risk Management Committee.

Without prejudice to the foregoing, OTC Clear recognizes that circumstances may arise which may require OTC Clear to make ad hoc or urgent decisions on a case specific basis or where a meeting of the OTC Clear Board and/or the Risk Management Committee cannot be convened in a timely manner. Accordingly, the OTC Clear Board may delegate its powers under sub-paragraphs (1) and (2) above to the chief executive or such other senior executives of OTC Clear as it considers appropriate, provided that in respect of matters referred to sub-paragraph (1) above, the chairman of the Risk Management Committee shall be consulted before a decision is made.

Liability

202. A Clearing Member shall be liable for any Damage incurred or suffered by OTC Clear or any of its officers or employees as a consequence of such Clearing Member's breach of any of its obligations under the Clearing Documentation or the terms of a Contract or any Applicable Laws.

203. Except as otherwise expressly provided in these Clearing Rules, OTC Clear, its Affiliates, a recognized exchange controller which is the controller of OTC Clear, or any of their respective Representatives shall not be liable to any Clearing Member or to any other Person in respect of anything done or omitted to be done by it in good faith in connection with the operations of the Rates and FX Clearing Services, the provision of such services and facilities available thereunder, and all other matters as contemplated in these Clearing Rules, including but not limited to any civil liability, whether arising in contract, tort, defamation, equity or otherwise for any Damage suffered or incurred directly or indirectly by a Clearing Member or any other Person as a result of or in connection with the following matters:

(1) any error, interruption, failure or malfunction of, or inability to use any systems, communication lines or facilities or technology supplied, operated or used (directly or indirectly) by OTC Clear for purposes of operating its Rates and FX Clearing System and/or providing its services;

(2) any action or omission by any of them in connection with the operation of the Rates and FX Clearing System, the provision of services and

facilities available thereunder, and all other matters as contemplated in these Clearing Rules;

(3) any suspension, restriction or closure of OTC Clear or its services or any relevant over-the-counter derivatives market;

(4) any act or omission, including any delay on the part, of any Clearing Member, any Client or any other third party;

(5) any dispute relating to the validity, existence or terms of any Contract;

(6) a failure by a Clearing Member to comply with any Clearing Documentation;

(7) the taking of action or the omission of taking of actions by OTC Clear authorized, permitted or contemplated in the Clearing Documentation;

(8) the inability of OTC Clear to perform as a result of the invalidity or, cancellation of any insurance or assurances effected by OTC Clear or the insolvency of such insurers or assurers (provided that the selection of such insurance, assurances or insurers by OTC Clear shall not have been unreasonable at the time of selection);

(9) any act or omission by OTC Clear in accordance with the directions of any Governmental Authority, or an order made or directions given by a court in exercise of its proper jurisdiction, where it is required to do so by Applicable Law;

(10) any failure by OTC Clear to obtain appropriate warranties, certificates or other commitments from any system's supplier or a failure to take any steps to enforce the same;

(11) any acts or omissions, or delay on the part, of the owners and licensees of all hardware and software operated or used by the OTC Clear for the purposes of providing the Rates and FX Clearing Services (or any acts or omissions of the employees or agents of those owners and licensees);

(12) any proceeding or investigation brought by or on behalf of any Governmental Authority, self-regulatory organization, or other regulatory authority exercising any disciplinary functions to which one or more Clearing Member is subject;

(13) any acts or omissions, including any delay on the part, of OTC Clear's own banker, or any other custodians, sub-custodians, depositaries, clearing systems, if any, appointed or used by OTC Clear in relation to Collateral, or the occurrence of an Insolvency Proceedings with respect to such Persons (provided that the selection by OTC Clear of such Persons shall not have been unreasonable); and

(14) any inability by any Clearing Member or any other Person to use any programme or system for purposes of accessing the Rates and FX Clearing Services.

204. OTC Clear reserves the right to act in accordance with the directions of any Governmental Authority, or an order made or directions given by a court in exercise of its proper jurisdiction, where it is required to do so by Applicable Law.

205. OTC Clear, its Affiliates, a recognized exchange controller which is the controller of OTC Clear, or any of their respective Representatives shall not be liable to any Clearing Member or to any other Person in respect of any information and statistics (including but not limited to market prices, numbers of Contracts cleared and risk management assumptions) provided or made available by OTC Clear in good faith in connection with the operations of the Rates and FX Clearing Services, the provision of such services and facilities available thereunder, and all other matters as contemplated in these Clearing Rules, including but not limited to any civil liability, whether arising in contract, tort, defamation, equity or otherwise for any Damage suffered or incurred directly or indirectly by a Clearing Member or any other Person.

Force Majeure Events and Illegality

206. Neither OTC Clear (its Affiliates, a recognized exchange controller which is the controller of OTC Clear, or any of their respective Representatives) nor a Clearing Member will under any circumstances be liable for any failure, hindrance or delay in the performance in whole or in part of its obligations under these Clearing Rules or under any Contract if such failure, hindrance or delay arises as a result of the occurrence of a Force Majeure Event or Illegality. Without limiting the generality of the immediately foregoing, if the Force Majeure Event or Illegality occurs with respect to OTC Clear only, the exclusion of liability provided for OTC Clear (its Affiliates, a recognized exchange controller which is the controller of OTC Clear, or any of their respective Representatives) under this Clearing Rule 206 shall extend to any civil liability, whether arising in contract, tort, defamation, equity or otherwise for any Damage to any Clearing Member or to any other Person.

207. A Clearing Member shall immediately notify OTC Clear if it becomes aware that an event that could be a Force Majeure Event or Illegality has occurred or is likely to occur with respect to it.

208. In respect of the occurrence of events that may give rise to a Force Majeure Event or Illegality with respect to OTC Clear and/or a Clearing Member, such determination will be made by the OTC Clear Board, and to the extent practicable, having consulted with the Risk Management Committee. If OTC Clear is unable to convene a meeting of the OTC Clear Board sufficiently promptly in the circumstances, the relevant determination will be determined by the chief executive of OTC Clear. In the event that the chief executive of OTC Clear is unavailable at the time for any reason, any Representative of OTC Clear designated by the OTC Clear Board from time to time for purposes of the applicable determination may make such determination. If the relevant determination is being made by the chief executive or a Representative of OTC Clear, OTC Clear shall convene a meeting of the OTC Clear Board as soon as practicable thereafter to ratify such determination, rescind such determination (only where such rescission is possible or practicable) or where rescission is desired but not possible or practicable, to amend such determination as appropriate.

Without prejudice to any potential rescission of, or amendment to, a determination made by the chief executive or Representative(s) of OTC Clear pursuant to this Clearing Rule 208, decisions made by the OTC Clear Board, the

chief executive of OTC Clear or a Representative of OTC Clear pursuant to this Clearing Rule 208 shall be final and binding against all Clearing Members for the purposes of these Clearing Rules and not be subject to challenge by any such Clearing Members or any other Person under these Clearing Rules or otherwise.

209. If, pursuant to Clearing Rule 208, it is determined that a Force Majeure Event or Illegality has occurred, either with respect to one or more Clearing Members or OTC Clear itself, OTC Clear shall declare the occurrence of such Force Majeure Event or Illegality and notify all Clearing Members of such occurrence.

210. Upon the declaration of the occurrence of a Force Majeure Event or Illegality, as the case may be, with respect to one or more Clearing Member or OTC Clear itself by OTC Clear pursuant to Clearing Rule 209:

(1) OTC Clear shall be entitled to perform Emergency Close-Out in respect of:

(a) any Contract affected by such Force Majeure Event or Illegality;

(b) the Contract with equal but opposite terms which was created from the same Original Transaction or otherwise that corresponds to the Contract referred to in sub-paragraph (a) above; and

(c) any other Contract associated with the Contracts referred to in sub-paragraphs (a) and (b) above for the purpose of ensuring OTC Clear is risk-neutral overall,

in each case, in accordance with this Clearing Rule 210, and each Clearing Member who is party to such Contract agrees to such Emergency Close-Out as may be selected by OTC Clear. OTC Clear may designate an Early Termination Date in case of an Emergency Close-Out;

(2) OTC Clear shall be entitled to require Clearing Members to comply with any directions issued by OTC Clear regarding the performance of, or otherwise in respect of, such affected Contracts as are specified by OTC Clear;

(3) if the Force Majeure Event or Illegality occurs with respect to a Clearing Member only but not OTC Clear, and such Force Majeure Event or Illegality affects the relevant Clearing Member's ability to perform its payment obligation under a Contract, OTC Clear shall have the right to suspend any payment obligations OTC Clear has towards another Clearing Member under a related Contract whose terms are equal but opposite to the affected Contract, until receipt of the relevant payments from the affected Clearing Member. Any suspension of payment by OTC Clear pursuant to this sub-paragraph (3) shall not constitute failure to pay on the part of OTC Clear;

(4) in the event the Force Majeure Event or Illegality occurs only with respect to one or more Clearing Members but not OTC Clear itself, OTC Clear shall be entitled to commence the Default Management Process (with such adjustments as OTC Clear, in consultation with the Risk

Management Committee, deem appropriate in applying such process in respect of a Force Majeure Event or Illegality);

(5) if a Force Majeure Event occurs with respect to OTC Clear, OTC Clear shall be entitled to suspend the whole or any part of the operations of the Rates and FX Clearing Services. OTC Clear shall notify all Clearing Members as soon as practicable upon a decision to either suspend or resume any operation of the Rates and FX Clearing Services pursuant to this sub-paragraph (5);

(6) if a Force Majeure Event or Illegality has occurred with respect to a Clearing Member, such Clearing Member shall use all reasonable endeavours to mitigate the effects of the same upon its ability to perform its obligations to OTC Clear; and

(7) each Clearing Member affected by the Force Majeure Event or Illegality shall notify OTC Clear immediately as soon as its ability to perform is no longer affected by the Force Majeure Event or Illegality (or, if OTC Clear is the person affected by the Force Majeure Event or Illegality, OTC Clear shall notify all Clearing Members in relation to the cessation of the Force Majeure Event or Illegality).

211. In exercising its powers under Clearing Rule 210, OTC Clear shall act in good faith and have regard to its duties as a recognized clearing house under the SFO. Any decisions made pursuant to, and any exercise of powers under, Clearing Rule 210 shall be final and binding against all Clearing Members for the purposes of these Clearing Rules and not be subject to challenge by any such Clearing Members or any other Person under these Clearing Rules or otherwise.

Disclosure of Information

212. All information provided to or in the possession of OTC Clear regarding past or current positions carried by OTC Clear for a Clearing Member, Margin payments between OTC Clear and a Clearing Member or deliveries made by or to a Clearing Member and any financial statements submitted to OTC Clear by any Clearing Member shall be kept confidential by OTC Clear in accordance with such procedures or policies as OTC Clear may from time to time determine. Notwithstanding the foregoing, OTC Clear may disclose any information described in the immediately preceding sentence, any information received from a Clearing Member and any other information in connection with a Clearing Member at any time:

(1) with the written consent of the Clearing Member involved;

(2) to HKEX and any of its Affiliates and any Representatives, committees, auditors or advisers of HKEX or any Affiliate of OTC Clear which is a recognized exchange company or a recognized clearing house under the SFO;

(3) pursuant to any requirement or request of any Governmental Authority, including, but not limited to, the SFC, HKMA and the Inland Revenue Department of the Hong Kong government; or to any Person required by or in accordance with the Tax Information Exchange Framework;

(4) pursuant to any order of a court of competent jurisdiction;

(5) as expressly permitted by the Clearing Documentation, including, without limitation, to one or several Clearing Members, to the extent that such disclosure is necessary for the proper management of an Event of Default and the implementation by OTC Clear and Clearing Members of settlement of any Contract provided that where OTC Clear discloses any information to any Clearing Member in such circumstances, the receiving Clearing Member shall treat such information as confidential information and shall not make the information known or available to any other Person or use the information for any purpose other than that for which it has been disclosed by OTC Clear;

(6) to any insurer, insurance broker or banker in connection with any arrangement in support of the Rates and FX Guarantee Resources;

(7) to any professional advisers, auditors or consultants of OTC Clear;

(8) as required by any Applicable Law;

(9) to any trade repository or Governmental Authority (whether in Hong Kong or elsewhere) with whom OTC Clear or HKEX has entered into an information sharing arrangement or reporting service agreement or pursuant to the Tax Information Exchange Framework, such trade repository or Governmental Authority may use, handle, store, transfer and disclose such information in accordance with the terms of any such information sharing arrangement, reporting service agreement or pursuant to the Tax Information Exchange Framework;

(10) to any service provider or third party contractor whom OTC Clear has engaged to provide data processing or other similar services for OTC Clear, provided that any such persons shall be bound by confidentiality obligation or undertaking;

(11) to any Person if the information comes into the public domain, other than as a result of a breach of this Clearing Rule 212 by OTC Clear or any of its Representatives;

(12) to any Client or Designated Person to which the information relates; or

(13) insofar as a Clearing Member is a Compression Clearing Member in relation to a particular Multilateral Compression Cycle, such information as the relevant Compression Service Provider requires that OTC Clear provide to it for the purposes of preparing the Unwind Proposal relating to that Multilateral Compression Cycle,

provided that, in any such case other than under sub-paragraphs (1), (3), (4), (5), (9) and (11) above, the confidentiality of the information is made known to the recipient (it being understood that, if more than one sub-paragraph of this sentence applies to a particular disclosure and that include any of sub-paragraph (1), (3), (4), (5), (9) or (11) above, then the confidentiality of the information need not be made known to the recipient).

Each Clearing Member agrees that OTC Clear has the power to publish aggregated trade information in respect of Contracts cleared and settled through OTC Clear, whether relating to data on open positions, trade volumes, types of

Contracts cleared and settled by OTC Clear, provided that the identity of Clearing Members or Clients cannot reasonably be determined from the data, statistics or other materials so published.

213. OTC Clear may direct a Clearing Member to provide it with any information requested by a trade repository or Governmental Authority (whether in Hong Kong or elsewhere) with whom OTC Clear or HKEX has entered into an information sharing or reporting service agreement or arrangement or pursuant to the Tax Information Exchange Framework.

214. To the extent that the information to be provided by a Clearing Member to OTC Clear under Clearing Rule 213 or pursuant to any other obligations under the Clearing Rules constitutes personal data as defined in the Personal Data (Privacy) Ordinance, the Clearing Member shall:

(1) ensure that the disclosure of personal data by the Clearing Member or its Representatives to OTC Clear is in all respects and in each case lawful;

(2) ensure that the Clearing Member has obtained (and if requested by OTC Clear, provide) all necessary consents from the data subject prior to the disclosure of such personal data to OTC Clear, such consent to be sufficient to allow disclosure by OTC Clear of such personal data to any trade repository or Governmental Authority (whether in Hong Kong or elsewhere) upon request or as required by Applicable Law or the terms of any information sharing or reporting service agreement or arrangement that OTC Clear or HKEX has entered into or pursuant to the Tax Information Exchange Framework and to allow any subsequent use, handling, storage, transfer and disclosure by any such trade repository or Governmental Authority in accordance with the terms of any such information sharing or reporting service agreement or arrangement or pursuant to such Tax Information Exchange Framework;

(3) ensure that the Clearing Member has fully complied with its obligations as a data user under the Personal Data (Privacy) Ordinance;

(4) take all practicable steps to ensure that all personal data collected from relevant data subjects and disclosed to OTC Clear is accurate in all material respects;

(5) where a Clearing Member provides Client Clearing Services to its Clients who are individuals, obtain from such Client a duly attested consent confirmation in the form prescribed by OTC Clear (from time to time) so as to ensure that personal data of such Client may be disclosed, transferred or provided by OTC Clear to any trade repository or Governmental Authority (whether in Hong Kong or elsewhere) upon request or as required by Applicable Law or the terms of any information sharing or reporting service agreement or arrangement that OTC Clear or HKEX has entered into or pursuant to the Tax Information Exchange Framework, and thereafter be used, handled, stored, transferred and disclosed by such trade repository or Governmental Authority in accordance with the terms of any such information sharing or reporting service agreement or arrangement or pursuant to such Tax Information Exchange Framework;

(6) where a data subject withdraws, revokes or modifies any consent as described in sub-paragraph (2) above, the Clearing Member shall immediately inform OTC Clear of the same.

For the purpose of this Clearing Rule 214, the terms "**personal data**", "**data subject**" and "**data user**" shall have the meanings given to them under the Personal Data (Privacy) Ordinance.

Governing Law

215. Except as otherwise expressly provided in these Clearing Rules, these Clearing Rules shall be governed by, and construed in accordance with, the laws of Hong Kong.

216. Each Clearing Member irrevocably agrees for the benefit of OTC Clear that the courts of Hong Kong shall have exclusive jurisdiction to hear and determine any action or dispute which may arise out of or in connection with these Clearing Rules. Each Clearing Member irrevocably submits to the exclusive jurisdiction of Hong Kong courts and agree to waive any objection it might otherwise have to such jurisdiction, save that this submission to the exclusive jurisdiction of the courts of Hong Kong shall not (and shall not be construed so as to) limit the right of OTC clear to take proceedings in any other court of competent jurisdiction, nor shall the taking of action in one or more jurisdictions preclude OTC Clear from taking action in any other jurisdiction, whether concurrently or not.

217. Any definitions or documents incorporated by reference by these Clearing Rules and any Contracts shall be governed by and construed in accordance with the laws of Hong Kong.

218. Each Clearing Member irrevocably waives, to the extent permissible by Applicable Laws, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from:

(1) suit or proceedings;

(2) jurisdiction of any court or arbitral tribunal;

(3) relief by way of injunction or order for specific performance or recovery of property;

(4) attachment of its assets (whether before or after judgment or award), any effort to confirm, enforce, or execute any decision, settlement, award, judgment, service of process, execution order or attachment that results from any judicial or administrative proceedings; and

(5) execution or enforcement of any judgment or award to which it or its revenues or assets might otherwise be entitled in any proceedings before an arbitral tribunal or in the courts of any jurisdiction.

Each Clearing Member irrevocably agrees, to the extent permitted by law, that it will not claim any such immunity, or assert a defence of sovereign immunity, in any proceedings. The rights and obligations of a Clearing Member under these Clearing Rules and in relation to any Contract are of a commercial and not a governmental nature.

Notice

219. Except as otherwise expressly provided in these Clearing Rules, all notices, requests, demands or other communications from OTC Clear to Clearing Members may be given orally or in writing, in person or by post, by electronic or wire transmission (including authenticated SWIFT), by telephone or facsimile, by posting on the HKEX website, or by any means of computer data transmission. Notwithstanding the immediately foregoing, in respect of any Notice of Default, Notice of Disciplinary Appeals Committee Hearing, Notice of Disciplinary Committee Hearing, or any other notices relating to suspension of Membership, or designation of an Early Termination Date in respect of the Contract(s) registered in the name(s) of some (but not all) Clearing Members, OTC Clear shall deliver such notices to the relevant Clearing Member(s) by post, electronic or wire transmission or facsimile.

220. In the case of communications sent by post to the address last specified by a Clearing Member as its address, the communications from OTC Clear shall be deemed to have been received by the Clearing Member on the following OTC Clear Business Day if the address is in Hong Kong and, if the address is outside Hong Kong, on such day as OTC Clear may from time to time specify with reference to the time the communications would be delivered to such address in the ordinary course of post. If the communications are delivered in person to such address, the communications will be deemed to have been received by the Clearing Member at the time of delivery made to such address.

221. In the case of communications made by OTC Clear to a Clearing Member by electronic or wire transmission, by telephone or facsimile, by posting on the HKEX website or any other instantaneous means, the communications shall be deemed to have been received by the Clearing Member immediately.

222. Unless otherwise provided in these Clearing Rules, all notices from Clearing Members to OTC Clear shall be given in writing and delivered in person or sent by post, or by facsimile transmission to the address of OTC Clear (as OTC Clear may from time to time notify Clearing Members) or by authenticated SWIFT.

223. Notice by Clearing Members to OTC Clear shall be deemed to have been given at the time of receipt by OTC Clear.

Process Agent

224. Where an entity not incorporated or registered in Hong Kong is admitted as a Clearing Member, such Clearing Member shall appoint and maintain an agent in Hong Kong to act as its agent to accept service of process issued out of the courts of Hong Kong in relation to any proceedings in connection with any Clearing Documentation and shall deliver to OTC Clear a copy of the agreement relating to such appointment countersigned by such agent. No Clearing Member shall give any notice of revocation to, or otherwise terminate the appointment of, any such agent unless prior to such termination it has validly appointed a replacement agent in Hong Kong to accept service of process issued out of the courts of Hong Kong in relation to any proceedings in connection with any Clearing Documentation, and has delivered to OTC Clear an agreement relating to the appointment of such replacement agent and countersigned by such replacement agent. If for any other reason any agent appointed under this

Clearing Rule 224 ceases to be such an agent, the Clearing Member shall forthwith appoint a replacement agent in Hong Kong, and deliver to OTC Clear a copy of the new agent's acceptance of that appointment within 10 OTC Clear Business Days of such appointment. Nothing in the Clearing Documentation or any Contract shall affect the right of OTC Clear to serve process in any other manner permitted by law.

Time Reference

225. Where reference is made in the Clearing Documentation to a time or deadline, it shall mean Hong Kong time, except as otherwise expressly provided in the Clearing Documentation.

Calculations and Currency

226. The calculations made by OTC Clear pursuant to these Clearing Rules shall be conclusive and binding on all Clearing Members. If a Clearing Member believes that there is any error in OTC Clear's calculations, the Clearing Member shall immediately notify OTC Clear in writing and in any event, no later than 17:00 hours Hong Kong time on the immediately following OTC Clear Clearing Day upon receipt of the relevant calculations.

227. In exercising its right of netting, set-off, consolidation or combination of accounts under these Clearing Rules, OTC Clear may convert any sums subject to such netting, set-off, consolidation or combination into either the Base Currency or the currency in which the other amount is denominated, in each case, at the rate of exchange at which OTC Clear would be able to, acting in a reasonable manner and in good faith, purchase the relevant amount of such currency.

Third Party Rights

228. Unless expressly provided to the contrary in these Clearing Rules, a person who is not OTC Clear or a Clearing Member has no right under the Contracts (Rights of Third Parties) Ordinance (Cap. 623) to enforce or to enjoy the benefit of any term or provision of these Clearing Rules.

PART II MEMBERSHIP

Chapter 3 General Provisions

OTC Clear Membership

301. The OTC Clear Board shall have the power to establish categories of membership in the provision of clearing services in respect of different types of OTC Derivatives Contracts, and to attach different rights, benefits, obligations and liabilities to each category established as it may from time to time consider appropriate after consultation with the Risk Management Committee. These Clearing Rules may be expanded, or separate sets of rules and procedures may be introduced, to govern the clearing of different types of OTC Derivatives Contracts and different categories of membership.

Clearing Members

302. OTC Clear may admit Clearing Members for the clearing of FX Derivatives and/or Rates Derivatives and/or such other types of OTC Derivatives Contracts as OTC Clear may determine from time to time. OTC Clear will only register an Original Transaction if such transaction satisfies the Eligibility Requirements applicable to the Original Transaction at the time of its submission to OTC Clear for registration, through to the Registration Time. Clearing Members may register Contracts to their House Account and, if permitted to do so under Applicable Laws and if approved by OTC Clear, and subject to the provisions in Chapter 8 and other relevant provisions of the Clearing Rules relating to client clearing, to one or more Client Accounts.

Qualification

303. To be eligible for admission as a Clearing Member, an Applicant must enter into a Membership Agreement with OTC Clear and must be able to comply, and be able to demonstrate to the satisfaction of OTC Clear the ability to comply, at all times with each of the requirements set out in Clearing Rule 401 and in Chapter 2 of the Clearing Procedures.

Applications and Approval

304. Applications for admission as a Clearing Member, or to change the types of contracts a Clearing Member may register with OTC Clear or any other conditions to which a Clearing Member is subject, shall be made in accordance with the Clearing Procedures. OTC Clear shall have the power to charge a fee for the processing of any applications.

305. Each Applicant shall provide OTC Clear with such further information as OTC Clear may require for dealing with the application.

306. The OTC Clear Board shall determine, in consultation with the Risk Management Committee (provided that such committee has been constituted), whether to approve or reject applications made under Clearing Rule 304. The decision of the OTC Clear Board shall be final and binding.

307. The OTC Clear Board in consultation with the Risk Management Committee shall give written notice of approval or rejection to each Applicant and, in the case where an application is made by an Applicant or a Clearing Member for the provision of Client Clearing Services, the OTC Clear Board in consultation with

the Risk Management Committee shall give written notice of approval or rejection to each such application.

308. Any notice of approval issued pursuant to Clearing Rule 307 may be granted subject to such conditions as the OTC Clear Board, in consultation with the Risk Management Committee (provided that such committee has been constituted), thinks fit. Applicants may be required to satisfy such conditions within a certain time period specified in the notice of approval, or on a continued basis. In the former case, Applicants must satisfy all conditions attached to their approval within the time period specified in the notice of approval (or such longer period as the OTC Clear Board may allow). In the event that an Applicant becomes a Clearing Member on the basis of a conditional approval, but fails to satisfy the relevant conditions within the time period specified, and the period for satisfaction is not extended by OTC Clear Board, OTC Clear may determine that such failure constitutes an Event of Default in accordance with Clearing Rule 1301, provided that OTC Clear shall not make such determination in the case where:

(1) the relevant Clearing Member remedies such breach within 10 OTC Clear Business Days (the "**Conditional Approval Breach Period**"); or

(2) such breach continues and is existing upon the expiry of the Conditional Approval Breach Period, but the relevant Clearing Member has given notice of resignation in accordance with Clearing Rule 608 prior to the expiry of such Conditional Approval Breach Period and the related Non-Default Unwind is completed within 10 OTC Clear Business Days following the expiry of the Conditional Approval Breach Period, provided that the Clearing Member is at all relevant times in full compliance with its obligations set out in Clearing Rules 608 and 609.

309. OTC Clear may publish on its website a list of the names of the Clearing Members from time to time.

Chapter 4 Legal Obligations

Continuing Obligations

401. Each Clearing Member shall at all times:

(1) adhere strictly to, and be bound by, the Clearing Documentation and any conditions stipulated in the notice of approval of its Membership;

(2) comply with the decisions, directions, directives, determinations, findings of fact and/or interpretation of the OTC Clear in the exercise or performance of any right, power, privilege, discretion, function, duty or obligation conferred on it by or pursuant to the Clearing Documentation;

(3) be validly incorporated and existing under the laws of its jurisdiction of incorporation which is a jurisdiction acceptable to OTC Clear, (if relevant in such jurisdiction) be in good standing and have all the necessary approvals, licences and authorisations in place for the carrying on of its business in all jurisdictions;

(4) have established a place of business in Hong Kong and be a Licensed Corporation or an Authorized Institution, provided that:

(a) a Licensed Corporation or an Authorized Institution which is not incorporated in Hong Kong may become a Clearing Member; and

(b) OTC Clear may admit any Person that is neither a Licensed Corporation nor an Authorized Institution (a "**Remotely Regulated Entity**")* as a Clearing Member subject to such Person having in place, in its country of incorporation and any other jurisdiction in which it conducts business, all regulatory authorizations, licenses, permissions and approvals which OTC Clear reasonably determines to be necessary for the Clearing Member to carry out its business as a Clearing Member in the relevant jurisdictions and subject to the provision of such opinions or other information as OTC Clear may require from time to time,

and provided further that in each case, the relevant Clearing Member satisfies the obligations set out in section 2.1.8 of the Clearing Procedures;

(5) act in good faith in its dealings with OTC Clear;

(6) maintain Capital in an amount not less than the Minimum Capital Requirement and comply with all applicable Regulatory Capital

* Note: Introduction of remote membership is being considered by HKEX at the moment, and is not intended to be available during the initial phase of establishment of OTC Clear.

Requirement and related obligations evidencing compliance with such requirements;

(7) pay when due all amounts required by OTC Clear in accordance with the Clearing Documentation, including, without limitation, its Margin requirement, its Rates and FX Liability and cash payment obligations, including but not limited to fees, levies, duties, charges and fines;

(8) hold an account or accounts (as necessary) for settlement purposes as prescribed under the Clearing Procedures;

(9) have, to the satisfaction of OTC Clear, adequate personnel, operational capability, systems, facilities, equipment and controls in place to ensure that:

(a) it is able to support the proper performance of its business as a Clearing Member, including such computer hardware and software systems as may be specified by OTC Clear for gaining access to the Rates and FX Clearing System used or managed by OTC Clear;

(b) it has an effective management and organisational structure to enable it to conduct its business in a sound, efficient and effective manner;

(c) it has adequate risk management systems that are applied appropriately;

(d) it is able to continuously monitor communication facilities for receipt of communications from OTC Clear; and

(e) it is able to promptly review Clearing Notices and other communications delivered or made available to the Clearing Member or its Representatives by OTC Clear, and

ensure that such personnel, operational capability, systems, facilities equipment and controls are properly maintained;

(10) have in place sufficient procedures providing for business continuity reasonably satisfactory to OTC Clear;

(11) satisfy OTC Clear that it has a sufficient level of knowledge about the types of Contracts that it intends to clear and any risks involved in relation to the same;

(12) maintain accurate daily records of all Contracts to which it is or has been party and make such regular financial returns as may from time to time be prescribed by OTC Clear, including but not limited to those required pursuant to Clearing Rule 504 and the Clearing Procedures;

(13) undertake to certify on an annual basis that the information or representations provided or given in its Application Form, Membership Agreement or otherwise in connection with its application of Membership is true, complete and accurate;

(14) if such Clearing Member is providing Client Clearing Services to its Clients, comply with the provisions relating to Client Clearing Services in Chapter 8 of these Clearing Rules;

(14A) if such Clearing Member is a U.S. Person, limit its submission of Original Transactions to OTC Clear for registration to those transactions in which one of the counterparties is: (i) such Clearing Member; (ii) a Client of such Clearing Member who is not a U.S. Person; or (iii) a Client of such Clearing Member who is a U.S. Person that falls within such Clearing Member's "proprietary account", as that term is defined in CFTC Regulation 1.3(y) (17 C.F.R. § 1.3(y));

(14B) if such Clearing Member is not a U.S. Person, limit its submission of Original Transactions to OTC Clear for registration on behalf of Clients who are U.S. Persons to those U.S. Persons that fall within such Clearing Member's "proprietary account", as that term is defined in CFTC Regulation 1.3(y) (17 C.F.R. § 1.3(y));

(14C) if such Clearing Member is registered with the CFTC as a futures commission merchant (an "FCM"), limit its submission of Original Transactions to OTC Clear for registration to those transactions in which one of the counterparties is either: (i) such FCM; or (ii) a Client of such FCM who is a U.S. Person that falls within such Clearing Member's "proprietary account", as that term is defined in CFTC Regulation 1.3(y) (17 C.F.R. § 1.3(y));

(14D) if such Clearing Member submits Original Transactions to OTC Clear for registration on behalf of Clients who are Affiliates that are registered with the CFTC as FCMs, limit its submission of such Original Transactions to those transactions in which one of the counterparties is one of such FCMs;

(15) if such Clearing Member is providing Client Clearing Services to its Clients, undertake to disclose to OTC Clear (i) the identity of its Clients which are its Affiliates and (ii) the Client Accounts which are held by such Clearing Member for the benefit of its Affiliates;

(16) if such Clearing Member is providing Client Clearing Services to its Clients, undertake not to comingle positions and Collateral held on behalf of its Affiliates with positions and Collateral held on behalf of Clients who are not its Affiliates;

(17) have registered with OTC Clear:

(a) a Person, having director, general partner, trustee or senior officer status at the Clearing Member (or a Person occupying a similar status or performing similar functions) who is acceptable to OTC Clear and is both responsible for the clearing operations of the Clearing Member and authorized to act on behalf of the Clearing Member in respect of all transactions with or involving OTC Clear; and

(b) an alternate Person that satisfies the requirements set out in sub-paragraph (a) above and who is authorized to act on behalf

of the Clearing Member in the event that the first Person is incapable or unable to act;

(18) in the event that OTC Clear in its reasonable discretion so directs, allow formal audits, inspection (including on-site inspection) or system tests related to its business with OTC Clear at the expense of the Clearing Member;

(19) participate in the implementation of the Default Management Process, including participation in regular fire drills, in accordance with the Clearing Documentation;

(20) comply with any procedures or enter into any documentation from time to time prescribed by OTC Clear and which relate to the business of OTC Clear;

(21) be fit and proper, have sufficient qualities of financial responsibility, reputation and competence as OTC Clear, in its discretion, considers necessary or appropriate and satisfy OTC Clear that its directors, officers and Representatives also satisfy such tests;

(22) not be subject to Insolvency Proceedings;

(23) ensure and undertake, at all times, that it will not cause OTC Clear to violate any Applicable Laws as a result of the provision of Client Clearing Services to its Clients by the Clearing Member;

(24) (a) be subject to Applicable Laws relating to money laundering and terrorist financing that requires it to undertake due diligence and identity verification measures on its Clients to the extent that it provides Client Clearing Services, (b) comply with all Applicable Laws relating to its status, the conduct of its business and the performance of its obligations as a Clearing Member, including, for the avoidance of doubt, all Applicable Laws relating to the prevention of bribery, money laundering, financial crimes and terrorist financing and (c) not be subject to any sanctions promulgated or imposed by the United Nations or any Governmental Authority relevant to it or its clearing activities;

(25) have all necessary authorisations, licences, permissions, approvals or equivalent in respect of each Regulatory Authority required to enter into and clear Original Transactions, including, where relevant, Original Transactions with or on behalf of Clients, through OTC Clear; and

(26) be able to demonstrate, to the satisfaction of OTC Clear, the ability to comply with the above.

402. Subject to the Maximum Current Liability applicable in respect of a Clearing Member's Rates and FX Guarantee Liability, OTC Clear may from time to time impose on any Clearing Member new, additional or special capital, margin, financial, or operational requirements, including but not limited to requirements to change the personnel, facilities or other aspects of the internal operations of such Clearing Member. Each Clearing Member shall comply with any such requirements within the time frame and in accordance with any instructions specified by OTC Clear in connection with such requirements.

Capital Requirement

403. Each Clearing Member must at all times maintain Capital:

(1) in an amount not less than the Minimum Capital Requirement and comply with the applicable Regulatory Capital Requirement; and

(2) at a level such that the Capital requirements set out in section 2.3.1 of the Clearing Procedures will be satisfied.

404. In the event that a Clearing Member fails to maintain Capital in an amount not less than the Minimum Capital Requirement, OTC Clear may determine that such failure constitutes an Event of Default in accordance with Clearing Rule 1301, provided that OTC Clear shall not make such determination in the case where:

(1) the relevant Clearing Member remedies such breach within 10 OTC Clear Business Days following the receipt of a notification of such breach (the "**Minimum Capital Requirement Breach Period**"); or

(2) such breach continues and is existing upon the expiry of the Minimum Capital Requirement Breach Period, but the relevant Clearing Member has given notice of resignation in accordance with Clearing Rule 608 prior to the expiry of such Minimum Capital Requirement Breach Period and the related Non-Default Unwind is completed within 10 OTC Clear Business Days following the expiry of the Minimum Capital Requirement Breach Period, provided that the Clearing Member is at all relevant times in full compliance with its obligations set out in Clearing Rules 608 and 609.

Transfer of Membership

405. Unless the prior written approval of the OTC Clear Board, in consultation with the Risk Management Committee, has been obtained, Membership shall not be capable of being transferred and no Clearing Member shall attempt to sell or transfer its Membership.

406. A Clearing Member shall not pledge or mortgage, or create any trust, charge, lien or other Encumbrance over, its Membership.

407. Save and except for, in the case of a Clearing Member who is a Rule-Based Clearing Member, the right of its Client to receive any Client Entitlement from OTC Clear under Clearing Rules 1308A, 1308B, 1309 and 1309A and, in the case of a Non Rule-Based Clearing Member, any Encumbrance created pursuant to a Security Deed, a Clearing Member shall not assign any of its rights, benefits, privileges or obligations as a Clearing Member and such rights, benefits and privileges shall be incapable of assignment.

408. OTC Clear shall not be bound or in any way compelled to recognize (even if it has notice of the same) any purported dealing or disposition made in contravention of Clearing Rule 405, 406 or 407.

Reporting Obligation

409. Each Clearing Member shall notify OTC Clear and provide OTC Clear with the following information upon submitting an Original Transaction for registration which it, its Affiliate or its CM Branch, pursuant to CFTC rules and regulations,

either voluntarily reports or is required to report, to a swap data repository registered with the CFTC:

(1) the unique swap identifier for each such Original Transaction;

(2) the name of each swap data repository to which each such Original Transaction was reported; and

(3) any other information set out in Clearing Notices issued from time to time by OTC Clear in order for OTC Clear to comply with its reporting obligations under the Dodd-Frank Wall Street Reform and Consumer Protection Act and any related rules or regulations issued by the CFTC or any other applicable Governmental Authority.

410. Upon acceptance of each Original Transaction for registration and the creation of the relevant Contracts, each Clearing Member or its Affiliate or CM Branch who has reporting obligations under the Part 45 rules issued by the CFTC to implement Section 2(a)(13)(G) of the Commodity Exchange Act shall report the termination of such Original Transaction to the relevant swap data repository to whom the primary economic terms data was originally reported.

411. In order to avoid duplicative reporting, neither a Clearing Member nor its Affiliates and CM Branches shall report to any swap data repository registered with the CFTC any details of the Contracts created upon acceptance of an Original Transaction for registration.

412. Each Clearing Member at all times represents and warrants to OTC Clear that the provision of information by such Clearing Member to OTC Clear pursuant to Clearing Rule 409, and the reporting of such information by OTC Clear in order for OTC Clear to comply with its reporting obligations under the Dodd-Frank Wall Street Reform and Consumer Protection Act and any related rules or regulations issued by the CFTC or any other applicable Governmental Authority, would not result in any breach of any Applicable Law.

Chapter 5 Information Obligations

Notifications by Clearing Members

501. Each Clearing Member shall notify OTC Clear in writing without delay providing full particulars known to it of:

(1) any non-compliance with a Regulatory Capital Requirement or any failure to maintain Capital in an amount not less than the Minimum Capital Requirement;

(2) a decrease in Capital by more than 10% from the amount of Capital shown on its most recent financial information as provided to OTC Clear pursuant to Clearing Rule 504;

(3) any events or matters which relate to the Clearing Member's clearing activities and exposure to general and financial risks as from time to time specified in the Clearing Procedures or as OTC Clear may from time to time specify or notify to Clearing Members;

(4) any material breach, infringement of or non-compliance with any provisions of the Clearing Documentation, or where it has reason to suspect any such breach, infringement or non-compliance whether by itself, its Representatives, other Persons acting on its behalf; and

(5) anything relating to the Clearing Member which would cause any statement or information previously furnished to OTC Clear in connection with (a) the Rates Derivatives Clearing Services and/or FX Derivatives Clearing Services, (b) its application for admission to be a Clearing Member, or (c) the Tax Information Exchange Framework, to be inaccurate, incomplete or superseded.

Right to Demand Documents

502. Every Clearing Member shall, within a period as OTC Clear may specify, submit to it such statements, books, records, accounts, other documents or information which relate to the Clearing Member's clearing activities or its exposure to general and financial risks as OTC Clear may reasonably demand, and shall promptly respond to all queries from OTC Clear.

Organization Structure

503. A Clearing Member shall send to OTC Clear:

(1) as soon as reasonably practicable subsequent to any reorganisation of its corporate group, an updated group organization chart;

(2) on an annual basis, a list of each of its direct and indirect shareholders holding more than a 10% interest in the share capital or voting rights of the Clearing Member;

(3) as soon as reasonably practicable following a change (direct or indirect) affecting 10% or more in the share capital or voting rights of the Clearing Member (including any change in the interest of an existing shareholder who holds an interest (direct or indirect) of 10% or more in the share capital or voting rights of the Clearing Member and any new shareholder

acquiring an interest (direct or indirect) of 10% or more in the share capital or voting rights of the Clearing Member), the relevant information setting out such change; and

(4) as soon as reasonably practicable subsequent to any change to the identity of those Persons referred to in Clearing Rule 401(17), the updated list of such Persons.

This is without prejudice to OTC Clear's right to reasonably request such or other information more frequently if it wishes to do so, and without prejudice to its rights under Clearing Rules 501 and 502.

Financial Information

504. Each Clearing Member must file the following information with OTC Clear:

(1) audited financial statements and audited consolidated financial statements, including balance sheet and profit and loss accounts, with the auditor's report drawn up in accordance with Applicable Law and accounting standards within 120 days of the end of the Clearing Member's fiscal year;

(2) quarterly balance sheet and profit and loss statements that are signed by authorized signatory or signatories of such Clearing Member, drawn up in accordance with Applicable Law and accounting standards, within 30 days of its quarter-end date, together with evidence of signing authority and specimen signatures. Save and except for any changes made to a Clearing Member's list of authorized signatory(ies), a Clearing Member is only required to provide evidence of signing authority and specimen signatures for the first time its quarterly balance sheet and profit and loss statements are delivered to OTC Clear;

(3) copies of all financial returns made by a Clearing Member to its regulator as soon as reasonably practicable following such returns are submitted to the relevant regulator; and

(4) such financial or other relevant information which relate to the Clearing Member's clearing activities or its exposure to general and financial risks, in addition to what is explicitly required by this Clearing Rule 504, as may be requested by OTC Clear at its reasonable discretion from time to time.

Record Keeping

505. Each Clearing Member is required to keep all books, records or documents relating to each Contract registered in its name for the term of such Contract and for at least seven years following the termination of each such Contract.

Chapter 6 Suspension and Termination of Membership

Suspension

601. OTC Clear shall be entitled to suspend a Clearing Member:

(1) if OTC Clear in its reasonable discretion determines that an Event of Default has occurred in respect of a Clearing Member;

(2) as a result of disciplinary proceedings brought against that Clearing Member pursuant to Chapter 14 of these Clearing Rules;

(3) in the event of any Force Majeure Event or Illegality affecting the Clearing Member;

(4) if OTC Clear at its discretion considers that suspension of the Membership of such Clearing Member is necessary to protect the interests of OTC Clear or its Clearing Members (excluding the Clearing Member concerned); or

(5) if and to the extent permitted by any provision in the Articles of Association.

In respect of a suspension under Clearing Rules 601(1) to (4), the suspension may occur on such terms and for such period as OTC Clear may think fit. In respect of a suspension under Clearing Rule 601(5), the suspension may occur on such terms and for such period as OTC Clear may think fit and as contemplated in the relevant provisions in the Articles of Association.

602. Where a Clearing Member is suspended:

(1) all monies, including any Margin requirements and its Rates and FX Liability, due to OTC Clear shall remain due and payable by the Clearing Member as if it had not been suspended;

(2) it shall not enter into any new Contracts other than to offset any existing Contracts, or otherwise directed by, or with the consent of, OTC Clear;

(3) OTC Clear may, after consultation with the Risk Management Committee, order the liquidation of all or a portion of the Contracts of the Clearing Member;

(4) subject to sub-paragraph (3) above, the suspension shall not in any way affect the validity or enforceability of any Contract or other agreement or arrangement to which that Clearing Member was party prior to the suspension;

(5) OTC Clear may take such action pursuant to these Clearing Rules as it, in its absolute discretion, sees fit;

(6) a suspended Clearing Member shall, prior to its Membership Termination Date, continue to be bound by the Clearing Documentation during such period of suspension; and

(7) notice of suspension of Membership of any Clearing Member shall be given by OTC Clear as soon as reasonably practicable to all Clearing Members and the SFC.

603. OTC Clear shall be entitled, at any time and at its discretion, to revoke the suspension imposed on a Clearing Member under Clearing Rule 601.

Resignation

604. A Clearing Member may resign its Membership by giving written notice at any time to OTC Clear, such resignation to become effective on the later of:

(1) the OTC Clear Clearing Day on which each of the:

(a) Initial Margin requirements (in respect of each Position Account of such resigning Clearing Member) shown on the end-of-day Margin report published on such day; and

(b) the net notional of all Contracts recorded in the name of such resigning Clearing Member,

becomes zero; and

(2) the date designated by such resigning Clearing Member,

(the "**Resignation Effective Date**").

605. A notice of resignation may only be revoked with the prior written consent of OTC Clear. The resigning Clearing Member is required to submit a written request to OTC Clear giving reasons for the revocation within five OTC Clear Business Days of its submission of the resignation notice. OTC Clear will notify such Clearing Member in writing whether it accepts the revocation request.

606. If OTC Clear is satisfied that a Clearing Member is resigning its Membership pursuant to a reorganization of the group of companies of which the Clearing Member is a member and in circumstances where another company in the same group ("**substitute company**") is to become a Clearing Member and to continue the business of the existing Clearing Member (the "**resigning Clearing Member**") in place of the resigning Clearing Member (and for this purpose a company shall be regarded as in the same group as another company if, in the opinion of OTC Clear, the ultimate beneficial owners of both companies are the same or substantially the same), then, upon written application of the resigning Clearing Member, OTC Clear may issue a written notice exempting the resigning Clearing Member from compliance with Clearing Rules 608(2) and 609. OTC Clear may, in its absolute discretion, allow the resigning Clearing Member's Rates and FX Contribution to be credited to the substitute company with effect from a date stipulated by OTC Clear (such date not to be later than the date upon which the new member becomes a Clearing Member). Any such notice may be issued on such conditions as OTC Clear thinks fit. OTC Clear shall have an absolute discretion to determine whether or not the ultimate beneficial ownership of companies is "**the same or substantially the same**" and OTC Clear's decision in relation to the same shall be final and binding.

Termination

607. A Clearing Member's Membership may be terminated as a result of:

(1) the operation of Clearing Rule 1224(2);

(2) the operation of Clearing Rule 1311;

(3) the operation of Clearing Rules 1405 and 1409; or

(4) a Clearing Member resigning in accordance with Clearing Rules 604 to 612, provided that no such termination shall be effective if it becomes a Defaulting Clearing Member at the time of notice of resignation or subsequently.

Resignation and Termination

608. Unless otherwise determined by OTC Clear, a Clearing Member who gives notice of resignation of its Membership or whose Membership is being terminated by OTC Clear pursuant to Clearing Rule 1224(2) or 1405 shall, prior to the relevant Membership Termination Date:

(1) subject to Clearing Rule 609, continue to be obliged to pay when due all amounts required by OTC Clear in accordance with the Clearing Documentation, including without limitation, its Margin requirements, its Rates and FX Liability and cash payment obligations until its Membership Termination Date;

(2) in respect of a Clearing Member who gives notice of resignation of its Membership, at the time it gives such notice or within such time period specified by OTC Clear, submit to OTC Clear a plan for a Non-Default Unwind of all Contracts to which it is party, and shall adhere to that plan until the Resignation Effective Date;

(3) in respect of a Clearing Member whose Membership is being terminated by OTC Clear, cooperate with OTC Clear in winding down its business with OTC Clear;

(4) not enter into any new Contracts, except if such new Contracts are risk-reducing as determined by OTC Clear; and

(5) continue to be bound by the Clearing Documentation until the Membership Termination Date.

609. A Clearing Member's liability after its Membership Termination Date in respect of any Rates and FX Loss shall be limited to any Rates and FX Loss arising out of any DMP Event occurring in any Capped Liability Period that has commenced prior to its Membership Termination Date (even if the expiry of the relevant Capped Liability Period occurs after the Membership Termination Date). In addition, any application of the Rates and FX Contribution Balance or demand for the CM Unfunded Contribution Amount after a Clearing Member's Membership Termination Date in respect of such Rates and FX Loss shall be limited to its Maximum Current Liability in respect of the relevant Capped Liability Period.

610. In respect of a Clearing Member whose Membership is being terminated by OTC Clear pursuant to Clearing Rule 1405, or in respect of a resigning Clearing Member who has failed to comply with Clearing Rule 608(2) (including its obligation to adhere to the Non-Default Unwind plan), OTC Clear may deem such Clearing Member as Defaulting Clearing Member and take all necessary steps, including but not limited to those set out in Clearing Rules 1306, 1306A, 1306B, 1306C and 1307 or to initiate the Default Management Process in order

to ensure the orderly winding down of such Clearing Member's business in relation to OTC Clear.

611. Termination of a Clearing Member's Membership shall not affect the validity and operation of Clearing Rules 212 to 214, 609, 612, 613, 1002A, 1220, 1316, 1529, 1538 and 1547, which shall survive termination of a Clearing Member's Membership.

612. Following its Membership Termination Date, a Former Clearing Member shall be entitled to the redelivery of Collateral in form and amount equal to the Rates and FX Contribution delivered by such Clearing Member, to the extent not applied in accordance with Chapter 15 and Chapter 19 of these Clearing Rules, and subject to, and in accordance with, the provisions of Clearing Rules 1546 and 1547.

Former Clearing Members

613. OTC Clear and any Former Clearing Member shall remain:

(1) subject to any arbitration, investigations, panels or proceedings, and provisions of any of the Clearing Documentation which relate in whole or in part to any acts or omissions of OTC Clear or the Former Clearing Member while it was a Clearing Member; and

(2) liable in respect of all cash payment obligations including fees, levies, duties, fines, charges and payments under the Clearing Documentation, amounts due to OTC Clear or the Former Clearing Member as a result of the Clearing Documentation and any other liabilities entered into and accrued prior to the relevant Membership Termination Date.

Chapter 7 Designated Person

General

701. A Designated Person may submit an Original Transaction to OTC Clear on behalf, and in the name, of its Clearing Member for purposes of registering such Original Transaction to form a Contract between OTC Clear and such Clearing Member.

702. In order to be approved as a Designated Person by OTC Clear, a Clearing Member may submit for OTC Clear's approval one or more of its Affiliates and/or CM Branches to act as its Designated Person(s) and it must clearly indicate the branch location or jurisdiction of incorporation and the location from which it may utilize the Rates and FX Clearing Services (including the location from which it may submit an Original Transaction), as applicable, of each CM Branch or Affiliate whom it proposes to become its Designated Person.

703. A Designated Person can only be attached to one (and not more than one) Clearing Member at any given time and a CM Branch can only be a Designated Person of the Clearing Member of which it is a branch.

704. OTC Clear has the sole right and discretion in determining whether to approve an Affiliate or a CM Branch to be a Designated Person of a Clearing Member. OTC Clear will only accept for registration Original Transactions submitted by the Clearing Member or by its Designated Person(s).

705. Each Clearing Member represents that unless prior written approval has been obtained from OTC Clear, it will only utilize the Rates and FX Clearing Services through its place of business in Hong Kong, or through its Designated Person(s) at the branch location or jurisdiction of incorporation or the location from which it may submit an Original Transaction, as applicable, each of which as approved by OTC Clear.

706. Each Clearing Member acknowledges that its Affiliate may submit Original Transactions for registration in the capacity as the Designated Person of such Clearing Member.

706A. An Affiliate of a Clearing Member wishing to utilize the clearing services offered by OTC Clear in respect of Original Transactions to which it is a party may enter into a Client Clearing Agreement with (and become a Client of) its Clearing Member or any other Clearing Member.

707. A Clearing Member may request OTC Clear to remove the status of one or more Designated Persons and OTC Clear will only be required to accept such request if no Contracts relating to the Original Transaction that have been originally submitted for registration by such Designated Person is outstanding, and OTC Clear is satisfied that there is no outstanding liability or sums owing to OTC Clear in respect of such Contracts.

Continuing Authority of a Designated Person

708. Each Clearing Member confirms that it has granted continuing authority to each of its Designated Person(s) to carry out any and all acts on behalf of such Clearing Member, and accordingly:

(1) it waives any defences it may otherwise have as to the lack of authority of its Designated Persons to act on its behalf; and

(2) in respect of any instruction initiated or provided by a Designated Person, OTC Clear is under no obligation to notify, or verify such instruction with, the relevant Clearing Member. OTC Clear shall be deemed to have acted in good faith if it acts in accordance with the instructions of a Designated Person.

Acknowledgment by a Designated Person

709. Without prejudice to the operation of Clearing Rule 708, OTC Clear may, from time to time, limit, restrict or vary the scope in which a Designated Person may submit Original Transaction to OTC Clear on behalf, or in the name, of its Clearing Member and OTC Clear will notify the relevant Clearing Member of any such limitation, restriction or variation.

Chapter 7A Sponsored Settlement Member

General

7A01. To simplify the payments between OTC Clear and a Clearing Member in respect of Contracts and between such Clearing Member and its Client under the Corresponding Client Transactions, and to provide for the continued clearing and performance of Contracts recorded to the Client Position Account of Clients following the occurrence of a DMP Event but prior to Porting of the relevant Contracts to a Replacement Clearing Member (or their termination if Porting does not occur) in order to manage risks relating to such DMP Event, OTC Clear may approve certain Clients to become Sponsored Settlement Members. A Sponsored Settlement Member may settle SSM Payment Amounts with OTC Clear in respect of the Client Clearing Category 1 Accounts relating to such Sponsored Settlement Member, as set out in the Clearing Procedures, and in the case of Sponsored Settlement Members incorporated in England or France, on the terms and subject to the conditions set out in the SSM Tripartite Agreement to which that Sponsored Settlement Member, OTC Clear and the relevant Clearing Member are party. Each relevant sponsoring Clearing Member which is incorporated in Hong Kong and OTC Clear agree that:

(1) OTC Clear's obligation to pay SSM Payment Amounts to that sponsoring Clearing Member in respect of any Contract shall be extinguished or reduced to the extent of payment of the same by OTC Clear to the Sponsored Settlement Member with which that sponsoring Clearing Member has a Corresponding Client Transaction in respect of that Contract; and

(2) that sponsoring Clearing Member's obligation to pay SSM Payment Amounts to OTC Clear in respect of any Contract shall be extinguished or reduced to the extent of payment of the same by the Sponsored Settlement Member with which that sponsoring Clearing Member has a Corresponding Client Transaction in respect of that Contract to OTC Clear.

For the avoidance of doubt, the relevant Clearing Member shall remain liable to OTC Clear for all its obligations in respect of the Contracts and Client Accounts registered in its name as further set out in Clearing Rule 817. In the event of a failure to pay all or part of any SSM Payment Amount by the Sponsored Settlement Member to OTC Clear, the Clearing Member shall remain liable to pay any such unpaid amount.

7A02. A Clearing Member may submit for OTC Clear's approval any of its Clients to act as its Sponsored Settlement Member in respect of the Client Clearing Category 1 Accounts relating to such Client upon satisfaction of the following eligibility criteria ("**SSM Eligibility Criteria**"):

(1) the relevant sponsoring Clearing Member is incorporated in Hong Kong, England or France;

(2) the relevant Client is validly incorporated and existing under the laws of its jurisdiction of incorporation, (if relevant in such jurisdiction) is in good standing and is an Authorized Institution;

(3) the relevant Client satisfies OTC Clear's internal credit assessment metrics applicable to a Sponsored Settlement Member;

(4) the relevant Client complies with all relevant payment settlement operational arrangements applicable to a Sponsored Settlement Member to the satisfaction of OTC Clear, including, without limitation, being a member of, and having the operational capability to settle cash payments through the RTGS system; and

(5) in the case of sponsoring Clearing Members who are incorporated in England or France, the relevant Client, the relevant sponsoring Clearing Member and OTC Clear have entered into the relevant SSM Tripartite Agreement.

A Client may be a Sponsored Settlement Member in respect of one or more of its Clearing Members at any given time. Notwithstanding the SSM Eligibility Criteria, OTC Clear retains the sole right and discretion in determining whether to approve a Client to be a Sponsored Settlement Member of a Clearing Member and shall issue a notice of approval to the Clearing Member and the relevant Sponsored Settlement Member if it decides to approve the relevant application.

7A03. Each sponsoring Clearing Member agrees that each of its Clients who is its Sponsored Settlement Member may settle SSM Payment Amounts with OTC Clear in respect of the Client Clearing Category 1 Accounts relating to such Sponsored Settlement Member in accordance with the Clearing Procedures.

7A04. Each sponsoring Clearing Member shall have procedures in place to notify the Sponsored Settlement Members approved by OTC Clear in relation to such Clearing Member of the ongoing requirements applicable to Sponsored Settlement Members in the Clearing Rules and Clearing Procedures from time to time (including, without limitation, any amounts to be paid by those Sponsored Settlement Members to OTC Clear pursuant to any SSM Tripartite Agreement), and shall procure the Sponsored Settlement Member's compliance with OTC Clear's directions or requests for information from time to time. Failure by any Sponsored Settlement Member to satisfy the SSM Eligibility Criteria and the ongoing requirements relating to Sponsored Settlement Members (including the requirement to comply with OTC Clear's directions or requests for information) at all times may result in termination by OTC Clear of its status as Sponsored Settlement Member.

7A05. A Clearing Member may not request OTC Clear to terminate any Sponsored Settlement Member's status unless it has complied with all requirements of OTC Clear for such termination as notified to the Clearing Member at the relevant time, which may include, without limitation, a requirement that the Clearing Member does not trigger a breach of its Notional Exchange Risk Limit as Clients' exposures are aggregated with House Business for the purposes of ensuring compliance with a Clearing Member's Notional Exchange Risk Limit.

7A06. OTC Clear shall notify each relevant Clearing Member as soon as reasonably practicable if an SSM Failure to Pay Event occurs or if OTC Clear otherwise decides to terminate any Client's status as Sponsored Settlement Member for

any reason, including a failure by such Client to satisfy the SSM Eligibility Criteria.

PART III CLEARING OPERATIONS

Chapter 8 Clearing by OTC Clear

Acceptance for Registration of Original Transactions

801. Clearing Members (or Designated Person on behalf of the relevant Clearing Member) and Clients may from time to time submit Original Transactions to OTC Clear for registration in accordance with the Clearing Procedures. In order to qualify for registration, an Original Transaction must satisfy the Eligibility Requirements applicable to such Original Transaction. The Eligibility Requirements applicable to an Original Transaction are determined by OTC Clear and will be set out in the Clearing Procedures.

802. Without prejudice to Clearing Rule 801, OTC Clear may at any time reject any Original Transaction submitted for registration if, at the relevant time:

(1) an Event of Default has occurred, or in OTC Clear's reasonable opinion, is likely to occur, in relation to the relevant Clearing Member;

(2) the Original Transaction does not satisfy the applicable Eligibility Requirements; or

(3) the Clearing Member in whose name such Original Transaction will be registered has not satisfied its Margin requirements.

803. If OTC Clear determines that an Original Transaction is acceptable for registration, such Original Transaction will be registered in accordance with Clearing Rule 806, provided that OTC Clear may, in its sole discretion, apply any other conditions to the registration of such Original Transaction.

804. In the event that an Original Transaction fails to be accepted for registration pursuant to these Clearing Rules, OTC Clear shall, in accordance with the Clearing Procedures, notify the relevant Clearing Member(s) of its decision.

805. Any Original Transaction that fails to be accepted for registration shall remain in full force and effect as between the two original parties to such Original Transaction pursuant to the terms therein.

Creation of Contracts through Submission of Original Transactions by Clearing Members or Clients

806. Any Original Transaction submitted for, and accepted by, OTC Clear for registration by a Clearing Member, a Client or a Designated Person submitting an Original Transaction on behalf of its Clearing Member will result in the novation of the Original Transaction and the formation of two Contracts in its place with effect from the Registration Time, as follows:

(1) if the Original Transaction is between two Clearing Members, then:

(a) one Contract is created between a Clearing Member ("**Clearing Member 1**") who was party to the Original Transaction and OTC Clear (as principal), under which:

(A) the rights and obligations of OTC Clear arising from the Economic Terms of such Contract will be the same as those of the other Clearing Member ("**Clearing Member**

2") who was party to the Original Transaction under the economic terms of the Original Transaction; and

(B) the rights and obligations of Clearing Member 1 arising from the Economic Terms of such Contract will be the same as those it had under the economic terms of the Original Transaction against Clearing Member 2, except that such rights and obligations are modified by the replacement of OTC Clear as the counterparty to Clearing Member 1,

and are subject to any changes as a result of the operation of the Contract Terms (as supplemented by the Clearing Procedures and the ATRS Guide) for that Contract;

(b) another Contract is created between Clearing Member 2 with OTC Clear (as principal), under which:

(A) the rights and obligations of OTC Clear arising from the Economic Terms of such Contract will be the same as those of Clearing Member 1 under the economic terms of the Original Transaction; and

(B) the rights and obligations of Clearing Member 2 arising from the Economic Terms of such Contract will be the same as those it had under the economic terms of the Original Transaction against Clearing Member 1, except that such rights and obligations are modified by the replacement of OTC Clear as the counterparty to Clearing Member 2,

and are subject to any changes as a result of the operation of the Contract Terms (as supplemented by the Clearing Procedures and the ATRS Guide) for that Contract; and

(c) in respect of the Original Transaction between two Clearing Members, upon the creation of the two Contracts under sub-paragraphs (a) and (b) above, the rights and obligations of the parties to the corresponding Original Transaction will be automatically and completely discharged and of no further force or effect, save and except for any amounts which are due and payable (or deliverable) by one party to the other prior to the Registration Time pursuant to the terms of such Original Transaction and which remain unpaid (or undelivered);

(2) if the Original Transaction is between a Clearing Member and a Client (the "**Relevant Client**"), then:

(a) one Contract is created between the Clearing Member who provides Client Clearing Services to the Relevant Client ("**Clearing Member 3**") (in respect of its Client Position Account relating to the Relevant Client) and OTC Clear (as principal), under which:

(A) the rights and obligations of OTC Clear arising from the Economic Terms of such Contract will be the same as those of the Clearing Member ("**Clearing Member 4**") who was party to the Original Transaction with the Relevant Client under the economic terms of the Original Transaction; and

(B) the rights and obligations of Clearing Member 3 (in respect of its Client Position Account relating to the Relevant Client) arising from the Economic Terms of such Contract will be the same as those the Relevant Client had under the economic terms of the Original Transaction against Clearing Member 4, except that such rights and obligations are modified by the replacement of OTC Clear as counterparty to Clearing Member 3 (in respect of its Client Position Account relating to the Relevant Client),

and are subject to any changes as a result of the operation of the Contract Terms (as supplemented by the Clearing Procedures and the ATRS Guide) for that Contract;

(b) one Contract is created between Clearing Member 4 (in respect of its House Position Account) and OTC Clear (as principal), under which:

(A) the rights and obligations of OTC Clear arising from the Economic Terms of such Contract will be the same as those of the Relevant Client under the economic terms of the Original Transaction; and

(B) the rights and obligations of Clearing Member 4 (in respect of its House Position Account) arising from the Economic Terms of such Contract will be the same as those it had under the economic terms of the Original Transaction against the Relevant Client, except that such rights and obligations are modified by the replacement of OTC Clear as the counterparty to Clearing Member 4 (in respect of its House Position Account),

and are subject to any changes as a result of the operation of the Contract Terms (as supplemented by the Clearing Procedures and the ATRS Guide) for that Contract;

(c) where Clearing Member 3 and Clearing Member 4 are the same Clearing Member, then for the purposes of this sub-paragraph (2), the Contract created pursuant to sub-paragraph (a) above will be recorded to such Clearing Member's Client Position Account relating to the Relevant Client, and the Contract created pursuant to sub-paragraph (b) above will be recorded to such Clearing Member's House Position Account; and

(d) in respect of the Original Transaction between Clearing Member 4 and the Relevant Client, upon the creation of the two Contracts under sub-paragraphs (a) and (b) above, the rights and obligations of the parties to the corresponding Original Transaction will be automatically and completely discharged and of no further force or effect, save and except for any amounts which are due and payable (or deliverable) by one party to the other prior to the Registration Time pursuant to the terms of such Original Transaction and which remain unpaid (or undelivered); and

(3) if the Original Transaction is between two Clients ("**Client 1**" and "**Client 2**"), then:

(a) one Contract is created between the Clearing Member who provides Client Clearing Services to Client 1 ("**Clearing Member 5**") (in respect of its Client Position Account relating to Client 1) and OTC Clear (as principal), under which:

(A) the rights and obligations of OTC Clear arising from the Economic Terms of such Contract will be the same as those of Client 2 under the economic terms of the Original Transaction; and

(B) the rights and obligations of Clearing Member 5 (in respect of its Client Position Account relating to Client 1) arising from the Economic Terms of such Contract will be the same as those of Client 1 under the economic terms of the Original Transaction, except that such rights and obligations are modified by the replacement of OTC Clear as counterparty to Clearing Member 5 (in respect of its Client Position Account relating to Client 1),

and are subject to any changes as a result of the operation of the Contract Terms (as supplemented by the Clearing Procedures and the ATRS Guide) for that Contract;

(b) one Contract is created between the Clearing Member who provides Client Clearing Services to Client 2 ("**Clearing Member 6**") (in respect of its Client Position Account relating to Client 2) and OTC Clear (as principal), under which:

(A) the rights and obligations of OTC Clear arising from the Economic Terms of such Contract will be the same as those of Client 1 under the economic terms of the Original Transaction; and

(B) the rights and obligations of Clearing Member 6 (in respect of its Client Position Account relating to Client 2) arising from the Economic Terms of such Contract will be the same as those of Client 2 under the economic terms of the Original Transaction, except that such rights and obligations are modified by the replacement of OTC

Clear as the counterparty to Clearing Member 6 (in respect of its Client Position Account relating to Client 2),

and are subject to any changes as a result of the operation of the Contract Terms (as supplemented by the Clearing Procedures and the ATRS Guide) for that Contract;

(c) where Clearing Member 5 and Clearing Member 6 are the same Clearing Member, then for the purposes of this sub-paragraph (3), the Contract created pursuant to sub-paragraph (a) above will be recorded to such Clearing Member's Client Position Account relating to Client 1, and the Contract created pursuant to sub-paragraph (b) above will be recorded to such Clearing Member's Client Position Account relating to Client 2; and

(d) upon the creation of the two Contracts under sub-paragraphs (a) and (b) above, the rights and obligations of the parties to the corresponding Original Transaction will be automatically and completely discharged and of no further force or effect, save and except for any amounts which are due and payable (or deliverable) by one party to the other prior to the Registration Time pursuant to the terms of such Original Transaction and which remain unpaid (or undelivered).

807. When an Original Transaction is submitted for registration, the relevant party shall specify (i) whether such Original Transaction is being submitted for registration as part of a Clearing Member's Client Clearing Services and (ii) to which of the relevant Clearing Member's Position Account the corresponding Contract(s) should be booked, in accordance with the following:

(1) each Contract created under Clearing Rule 806(1) or Clearing Rule 806(2)(b) should be booked to the House Position Account of the Clearing Member who was party to the corresponding Original Transaction; and

(2) each Contract created under Clearing Rule 806(2)(a), Clearing Rule 806(3)(a) or Clearing Rule 806(3)(b) should be booked to a Client Position Account relating to the relevant Client.

Any Contract arising as a result of submission of an Original Transaction by a Designated Person on behalf, and in the name, of a Clearing Member shall be recorded to such Clearing Member's House Position Account.

808. Each Contract created under Clearing Rule 806 shall be governed by the applicable Contract Terms for that Contract. OTC Clear's obligations and liabilities under any Contract shall be limited to those pursuant to the Clearing Documentation.

809. Each Clearing Member agrees to be bound by each Contract pursuant to the particulars submitted by it or its Designated Person that is entered in such Clearing Member's name as principal and not as agent, and on the terms set out in the Clearing Documentation.

810. The Transaction Register, or such other record as OTC Clear shall accept in its sole discretion, shall constitute conclusive evidence of Contracts which have been validly made unless OTC Clear otherwise determines. The relevant reports published by OTC Clear in reliance or, on the basis, of the Transaction Register shall be final and conclusive in determining whether a Contract has been registered with, or de-registered by, OTC Clear.

811. Following the creation of a Contract with effect from the Registration Time of such Contract:

(1) such Contract will be a "market contract" as defined in, and for purposes of, the SFO;

(2) each relevant Clearing Member shall, or shall procure its Designated Person, to the extent applicable, to update its books and records to reflect such registration;

(3) notwithstanding any non-performance of a party's obligations under the Original Transaction, or any invalidity, unenforceability, revocation or avoidance of the Original Transaction, the terms and validity of the corresponding Contracts shall remain in full force and effect; and

(4) notwithstanding the occurrence of any Insolvency Proceedings with respect to a Clearing Member in whose name a Contract is registered during or prior to the Registration Time of such Contract, and regardless of whether OTC Clear is aware, or could reasonably be expected to be aware, of such occurrence of Insolvency Proceedings, the Contract, once created, shall remain in full force and effect.

Clearing Members' Representations as at Registration Time

812. In relation to each Contract, OTC Clear will, and will be entitled to, rely on the following representations and warranties from each Clearing Member proposing to become a party to any Contract (whether in respect of an Original Transaction submitted by such Clearing Member itself or by its Designated Person in the name, and on behalf, of such Clearing Member), which are deemed to arise automatically pursuant to these Clearing Rules immediately prior as at the Registration Time:

(1) that the Clearing Member is in full compliance with the Clearing Documentation and with all Applicable Laws in respect of such Original Transaction;

(2) that the Clearing Member has authorized all data submitted to OTC Clear and such data is complete and correct in all aspects; and

(3) any representation that an Original Transaction was, pursuant to CFTC rules and regulations, either voluntarily reported, or required to be reported, to a swap data repository registered with the CFTC.

Creation of Contracts other than through Submission of Original Transaction by Clearing Members or Clients

813. Contracts may be created by ways other than through submission of Original Transaction by Clearing Members or Clients as described in Clearing Rule 806 if such Contracts arise as a result of the operation of Clearing Rule 210(1),

1320(1), 1321, 1703 or 1921, in each case, with effect from the Registration Time applicable to the relevant Contract.

Termination of Contracts relating to Ineligible Original Transactions after Registration

814. If, subsequent to the registration of an Original Transaction, OTC Clear determines in its sole discretion that such Original Transaction would otherwise have been rejected under Clearing Rule 802 for registration at the Registration Time, or in respect of an Original Transaction submitted as part of a Clearing Member's Client Clearing Services, OTC Clear determines in its sole discretion that the relevant Clearing Member has not been approved of providing client clearing services, or was in breach of one or more conditions or requirements stipulated by OTC Clear in connection with it providing Client Clearing Services, or OTC Clear determines in its sole discretion that any consent provided by the Clearing Member, its Clients or their respective contact persons pursuant to Clearing Rule 212(1), 214(2) or 214(5), as the case may be, respectively, has been revoked, at the Registration Time:

(1) OTC Clear will terminate the Contracts corresponding to such Original Transaction (each, an "**Error Contract**") as soon as reasonably practicable, and such Error Contracts shall have no further force or effect thereafter;

(2) any payments made by OTC Clear or a Clearing Member, including, without limitation, for purposes of satisfying any end-of-day Variation Margin requirements (but excluding Initial Margin, Additional Margin, Ad Hoc Intra-day Variation Margin or Routine Intra-day Variation Margin), in connection with such Error Contracts shall be retained by the receiving party thereto; and

(3) if OTC Clear determines that the value of an Error Contract has changed in between the time when the Variation Margin was last calculated and when such Error Contract was terminated, then a payment representing such difference in value shall be made between the Clearing Members in whose names the Error Contracts were registered. Any payment made pursuant to the immediately foregoing sentence will be made outside of the Rates and FX Clearing System, and shall fully discharge a party's obligations under such Error Contract.

OTC Clear will notify the relevant Clearing Member of any termination of an Error Contract registered in the name of such Clearing Member pursuant to this Clearing Rule 814. Without prejudice to Clearing Rule 203, OTC Clear shall not be liable to any Person in any way whatsoever in consequence of registration of any Original Transaction and the subsequent termination of, any related Error Contracts.

814A. OTC Clear shall have the discretion to avoid Contracts corresponding to an Original Transaction if one or more of such Contracts whether in whole or in part are made or received by OTC Clear subsequent to the institution of a proceeding against the relevant Clearing Member(s) seeking judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights or the presentation of a petition for its

winding-up or liquidation against the relevant Clearing Member(s) (the "**Insolvent Clearing Member**").

814B. If Contracts corresponding to an Original Transaction are avoided pursuant to Clearing Rule 814A, OTC Clear shall as soon as practicable notify the affected Clearing Members and upon such notification:

(1) the affected Contracts corresponding to the relevant Original Transaction shall be void ab initio from the time the Contracts are created;

(2) save for subparagraphs (3), (4) and (5) below, OTC Clear and the affected Clearing Members shall not have any rights, liabilities and obligations under the affected Contracts;

(3) any payments made by OTC Clear to an affected Clearing Member, including, without limitation, for purposes of satisfying any end-of-day Variation Margin requirements, in connection with an affected Contract corresponding to the relevant Original Transaction shall as soon as practicable be returned by such affected Clearing Member (the "**Paying Clearing Member**") to OTC Clear without interest;

(4) if the relevant affected Contract corresponding to the Original Transaction is registered to the House Position Account, any payments made by an affected Clearing Member to OTC Clear, including, without limitation, for purposes of satisfying any end-of-day Variation Margin requirements (but excluding Initial Margin, Additional Margin, Ad Hoc Intra-day Variation Margin or Routine Intra-day Variation Margin which, for the avoidance of doubt, shall form part of the Margin Balance), in connection with such affected Contract shall as soon as practicable be returned by OTC Clear to such affected Clearing Member without interest, provided that the payment obligations of OTC Clear under this subparagraph (4) shall be limited to such amount OTC Clear has actually received from the Paying Clearing Member under subparagraph (3) above;

(5) if the relevant affected Contract corresponding to the Original Transaction is registered to a Client Position Account of an affected Clearing Member that is not the Insolvent Clearing Member, any payments made by such affected Clearing Member to OTC Clear, including, without limitation, for purposes of satisfying any end-of-day Variation Margin requirements (but excluding Initial Margin, Additional Margin, Ad Hoc Intra-day Variation Margin or Routine Intra-day Variation Margin which, for the avoidance of doubt, shall form part of the Margin Balance), in connection with such affected Contract shall as soon as practicable be returned by OTC Clear to such affected Clearing Member without interest, provided that the payment obligations of OTC Clear under this subparagraph (5) shall be limited to such amount OTC Clear has actually received from the Paying Clearing Member under subparagraph (3) above;

(6) if the relevant Contract corresponding to the Original Transaction is registered to a Client Position Account of the Insolvent Clearing Member, any payments made by the Insolvent Clearing Member to OTC Clear,

including, without limitation, for purposes of satisfying any end-of-day Variation Margin requirements (but excluding Initial Margin, Additional Margin, Ad Hoc Intra-day Variation Margin or Routine Intra-day Variation Margin which, for the avoidance of doubt, shall form part of the Margin Balance), in connection with such affected Contract shall, subject to entering into relevant documentation between OTC Clear and the relevant Client (which may, without limitation, include an indemnity (secured or otherwise) to OTC Clear in respect of any loss or liability arising from the legal invalidity of any payment of such moneys to the relevant Client), be returned directly by OTC Clear to the relevant Client without interest, provided that the payment obligations of OTC Clear under this subparagraph (6) shall be limited to such amount OTC Clear has actually received from the Paying Clearing Member under subparagraph (3) above. If the relevant Client fails to enter into relevant documentation with OTC Clear, OTC Clear shall reserve the right to withhold payment of such amounts until such time such relevant documentation has been properly entered into; and

(7) if OTC Clear determines that no further amounts in respect of any amount payable by the Paying Clearing Member under subparagraph (3) are likely to be recovered and notifies the same to the affected Clearing Member and/or the relevant Client (as the case may be), then the unpaid balance of any payment payable by OTC Clear under subparagraphs (4), (5) and (6) above shall thereafter be extinguished and the affected Clearing Member and the relevant Client (as the case may be) shall have no further recourse to OTC Clear (its Affiliates, a recognized exchange controller which is the controller of OTC Clear, or any of their respective Representatives) in respect thereof.

Transfers of Contracts

815. Save and except for, in the case of a Clearing Member who is a Rule-Based Clearing Member, the right of its Client to receive any Client Entitlement from OTC Clear under Clearing Rules 1308A, 1308B, 1309 and 1309A and, in the case of a Non Rule-Based Clearing Member, any Encumbrance created pursuant to a Security Deed, a Clearing Member shall not assign, novate, transfer or create any Encumbrance whatsoever in relation to any of its rights, liabilities or obligations under a Contract.

Client Clearing

816. A Clearing Member shall, prior to offering Client Clearing Services to its Clients, obtain relevant approval from OTC Clear. OTC Clear may stipulate any conditions or requirements in connection with a Clearing Member’s application to provide Client Clearing Services. Any purported client clearing services provided by a Clearing Member prior to the relevant approval being obtained or in breach of any condition or requirement stipulated by OTC Clear in the relevant approval shall not be considered Client Clearing Services under these Clearing Rules, and the clients of such Clearing Member shall not be considered as Clients under these Clearing Rules. Accordingly, Original Transactions submitted as such Clearing Member’s Client Clearing Services shall not be registered as Contracts.

817. A Clearing Member providing Client Clearing Services to its Clients shall be liable to OTC Clear and be responsible for all its obligations as principal in respect of the Contracts and Client Accounts registered in its name. Each Clearing Member acknowledges that, save and except for the Client's right to receive (i) any Client Entitlement directly from OTC Clear under Clearing Rules 1309 or 1309A (in the case of a Clearing Member who is a Rule-Based Clearing Member) or pursuant to a Security Deed (in the case of a Clearing Member who is a Non Rule-Based Clearing Member) or (ii) amounts equal to (and in the same currency as) SSM Payment Amounts directly from OTC Clear (in the case of a Client which is a Sponsored Settlement Member of a sponsoring Clearing Member which is incorporated in England or France under the terms of a relevant SSM Tripartite Agreement which governs payment of those amounts), OTC Clear owes no obligation towards any Client or any other Person that is not a Clearing Member whatsoever in respect of the Contracts or any Client Accounts. It is the responsibility of the Clearing Member (and not OTC Clear) to ensure its own compliance with Applicable Laws relating to conduct of business, client money and segregation of client assets. Subject to the provisions of these Clearing Rules, Client Clearing Services may be provided by a Clearing Member to its Clients on whatever terms the Clearing Member decides should apply, provided that each Clearing Member must, prior to providing Client Clearing Services to a Client:

(1) in the case of a Clearing Member who is a Non Rule-Based Clearing Member, enter into a Security Deed in favour of that Client which is legal, valid, binding and enforceable, in accordance with its terms, and provide written confirmation to OTC Clear that it has complied with Clearing Rule 818 in respect of that Security Deed;

(2) provide written confirmation to OTC Clear showing that it has delivered the Client Clearing Services Notice to such Client, and has undertaken to do all such things as OTC Clear may from time to time reasonably require to ensure that such Client is informed of the nature, costs and risks of the Client Clearing Services (including each Client Clearing Category);

(3) in the case of a Client that is to become a Sponsored Settlement Member of a sponsoring Clearing Member which is incorporated in England or France, such sponsoring Clearing Member must, prior to that Client becoming a Sponsored Settlement Member, enter into a legal, valid, binding and enforceable SSM Tripartite Agreement with that Client and OTC Clear; and

(4) enter into a Client Clearing Agreement with that Client that incorporates provisions with the following effect:

(a) in the case of a Clearing Member who is a Rule-Based Clearing Member, the Clearing Member confirms that the positions and Collateral held in the relevant Client Account(s) by the Clearing Member as well as any Client Entitlement calculated by OTC Clear in respect thereto each relate to the corresponding positions between the Client and the Clearing Member and that, pursuant to the power of OTC Clear to make rules under section

40(2A) of the SFO, following an Event of Default of the Clearing Member, in the case of a Non-Porting Client such Client Entitlement shall be returned by OTC Clear directly to that Client pursuant to Clearing Rules 1308A and 1309 and in the case of a Porting Client such Client Entitlement shall be returned by OTC Clear directly to that Client pursuant to Clearing Rules 1308B and 1309A;

(b) in the case of a Clearing Member who is a Non Rule-Based Clearing Member, each of the Clearing Member and the Client confirms that the positions and Collateral held in the relevant Client Account(s) by the Clearing Member as well as any Client Entitlement calculated by OTC Clear in respect thereto each relate to the corresponding positions between the Client and the Clearing Member and, following an Event of Default of the Clearing Member, in the case of a Non-Porting Client such Client Entitlement shall be returned by OTC Clear to that Client pursuant to Clearing Rule 1309 and the terms of the Security Deed entered into by the Defaulting Clearing Member in favour of such Client and in the case of a Porting Client such Client Entitlement shall be returned by OTC Clear to that Client pursuant to Clearing Rule 1309A and the terms of the Security Deed entered into by the Defaulting Clearing Member in favour of such Client;

(c) Corresponding Client Transactions shall be transacted pursuant to the terms of the Client Clearing Agreement and be segregated (contractually or otherwise) from any other transactions entered into between the Clearing Member and the Client;

(d) upon the occurrence or designation of an Early Termination Date in respect of the Clearing Member following an Event of Default, any Corresponding Client Transaction with the Defaulting Clearing Member must either (i) be automatically terminated and re-established with, transferred or novated to a Replacement Clearing Member or (ii) the Client must have the right to terminate such transaction and re-establish, transfer or novate such transaction to a Replacement Clearing Member;

(e) if a Corresponding Client Transaction is terminated following such Early Termination Date, the net replacement value of the Corresponding Client Transaction shall be equal to the value attributed by OTC Clear to the Contract to which the Corresponding Client Transaction relates following such Early Termination Date;

(f) any non-cash collateral in respect of Corresponding Client Transactions shall be provided by way of full title transfer from the Client to the Clearing Member;

(g) that "two way payments" arise in the event of a termination of all Corresponding Client Transactions, the substantive effect of

which is that either a Clearing Member or a Client will be entitled to receive payment under the relevant termination provisions if the net replacement value of all terminated Corresponding Client Transactions effected under the Client Clearing Agreement is in its favour;

(h) an acknowledgement from the Client that the provision of Client Clearing Service by the Clearing Member to it will not give rise to any liability owed by OTC Clear to the Client (other than, in the case of a Client which is a Sponsored Settlement Member of a sponsoring Clearing Member which is incorporated in England or France, in respect of amounts payable by OTC Clear to that Sponsored Settlement Member as provided for in an SSM Tripartite Agreement with that Sponsored Settlement Member);

(i) the Clearing Member shall have the right in the event of a Rates and FX Clearing Termination Event relating to OTC Clear, to terminate the Corresponding Client Transaction;

(j) upon the request of a Transferee Clearing Member to OTC Clear to port to the Transferee Clearing Member a Client's portfolio of Contracts registered with the Transferor Clearing Member in the relevant Client Position Account in full pursuant to Clearing Rule 830 or in part pursuant to Clearing Rule 831 from the Transferor Clearing Member to the Transferee Clearing Member, the Transferor Clearing Member shall have the right to (i) terminate the relevant Corresponding Client Transaction with such Client and/or (ii) have the relevant Corresponding Client Transaction re-established with, transferred or novated to the Transferee Clearing Member;

(k) in the event that OTC Clear exercises its right under section 3.19 of the Clearing Procedures to vary the Economic Terms of a Standard Cross-currency Rates Derivatives Contract, the relevant Affected Clearing Member shall have the right to vary the terms and conditions of the relevant Corresponding Client Transaction to reflect such variation;

(l) the Clearing Member shall only accept from the Client, as collateral for the Corresponding Client Transactions, the same types of Collateral which OTC Clear accepts from the Clearing Member in respect of the relevant Client Position Account to which Contracts relating to such Corresponding Client Transactions are recorded;

(m) no margin financing or collateral transformation services shall be provided by the Clearing Member to the Client under the Client Clearing Agreement; and

(n) in the case of a Client Clearing Agreement with a Client that is a Sponsored Settlement Member of such Clearing Member, the Clearing Member and such Sponsored Settlement Member shall agree that (i) payment by OTC Clear to such Sponsored

Settlement Member of amounts corresponding to (and in the same currency as) any SSM Payment Amounts in respect of one or more Contracts shall (to the extent of such payment) satisfy and discharge the Clearing Member's obligation to pay the corresponding amount to such Sponsored Settlement Member under the Corresponding Client Transactions relating to those Contracts; and (ii) payment by such Sponsored Settlement Member to OTC Clear of amounts corresponding to (and in the same currency as) any SSM Payment Amounts in respect of one or more Contracts shall (to the extent of such payment) satisfy and discharge the Sponsored Settlement Member's obligation to pay the corresponding amount to the Clearing Member under the Corresponding Client Transactions relating to those Contracts,

and to the extent there is no Client Clearing Agreement in full force and effect or there is any deficiency in the Client Clearing Agreement, the Clearing Member and the Client will be deemed to have entered into a binding agreement into which the terms set out in this Clearing Rule 817(3) shall be deemed to have been incorporated. Any changes made to the terms of a Contract by OTC Clear shall be deemed to be reflected in the Corresponding Client Transaction.

818. Where any formalities or registration requirements apply in respect of a Security Deed (and any other document which OTC Clear may from time to time determine), a Clearing Member is required to comply with such obligations or to procure by agreement that such requirements are to be complied with.

Types of Client Clearing Categories

819. Client Clearing Services may be provided by a Clearing Member to its Clients, and Contracts will be entered into by a Clearing Member with OTC Clear in respect of such Clients on a Client Clearing Category 1 Account Basis, a Client Clearing Category 2 Account Basis, or any other basis as OTC Clear may decide to introduce from time to time (each a "**Client Clearing Category**").

820. A Clearing Member that offers Client Clearing Services to one or more Clients shall offer its Clients the choice between the Client Clearing Category 1 Account Basis and the Client Clearing Category 2 Account Basis, and shall inform them of the costs and level of protection associated with each option. The Clearing Member shall procure that each Client confirms its choice in writing. A Client must be allocated to one single Client Clearing Category at any given time, provided that a Client may, at any time but subject to the prior approval by OTC Clear and subject to any conditions that OTC Clear may impose (including without limitation any requirements as to Margin and Rates and FX Liability), elect to change to a different Client Clearing Category. Upon approval by OTC Clear of a Client's request to change the Client Clearing Category to which it belongs and (if applicable) confirmation by OTC Clear that all relevant conditions have been satisfied, the Clearing Member shall be solely responsible for effecting any related adjustments to the relevant Client Account(s). A Clearing Member may operate one or more Client Clearing Category 1 Accounts and/or one or more Client Clearing Category 2 Accounts, but each Client may not be allocated to more than one Client Position Account at any point in time.

821. In respect of any Client Clearing Services provided by a Clearing Member to its Clients, such Clearing Member shall:

(1) provide OTC Clear with accurate information relating to the identity of the Client(s) in respect of whom Client Clearing Services are being provided. In the event that OTC Clear reasonably requests the provision of any further information relating to the Clearing Member's Client Clearing Services or a Client, the Clearing Member shall, as soon as reasonably practicable, deliver, or procure the delivery of, such information;

(2) maintain and regularly update the books and records relating to its Client Clearing Services; the Clearing Member shall provide such information relating to each Client as reasonably requested by OTC Clear, including at the end of each OTC Clear Business Day. In particular, the Clearing Member or its insolvency practitioner shall promptly provide such information to OTC Clear in the event that an Automatic Early Termination Event occurs or OTC Clear declares an Event of Default in respect of such Clearing Member;

(3) comply with the terms of the Clearing Documentation and any condition or requirement stipulated in the relevant approval obtained from OTC Clear in its provision of such Client Clearing Services, including but not limited to any trading, risk or credit limits applicable to the Client Account(s) registered in the name of such Clearing Member;

(4) indemnify and hold OTC Clear, its Affiliate and a recognized exchange controller which is the controller of OTC Clear harmless against any liability to its Clients as a result of the provision by it of Client Clearing Services to its Clients;

(5) require each Client to comply with such security obligations as OTC Clear may reasonably request or are otherwise prudent to protect the financial integrity of OTC Clear;

(6) ensure that any acts or omissions of its Clients will not prevent it from complying with the Clearing Rules;

(7) require each of its Clients to comply with the following requirements:

(a) such Client shall not breach any Applicable Laws or requirements of any Regulatory Authority or any of these Clearing Rules which would be likely to have a material adverse effect on the Client's suitability as a Client in respect of the Client Clearing Services;

(b) such Client shall comply with all Applicable Laws relating to its status, the conduct of its business and the performance of its obligations as a Client in relation to the Corresponding Client Transaction, including, for the avoidance of doubt, all Applicable Laws relating to the prevention of bribery, money laundering, financial crimes and terrorist financing and (b) not be subject to any sanctions promulgated or imposed by the United Nations or any Governmental Authority relevant to it or its clearing activities;

(c) the use of the Client Clearing Services by such Client shall not cause OTC Clear to be in breach of any Applicable Laws or requirements of any Regulatory Authority;

(d) such Client shall not engage in any other practice or take any action which in OTC Clear's opinion is likely to damage the reputation or impair the financial integrity of OTC Clear,

and shall, at the request of OTC Clear, immediately take action to ensure that no further Original Transactions are cleared on behalf of a Client by reducing its Position Limits relating to that Client to zero in the event that OTC Clear reasonably believes such Client is in breach of any of the prohibitions referred to in in this Clearing Rule 821(7);

(8) only accept from each Client, as collateral for the relevant Corresponding Client Transactions, the same types of Collateral which OTC Clear accepts in respect of the Client Position Account to which Contracts relating to each relevant Corresponding Client Transactions are recorded; and

(9) not provide any margin financing or collateral transformation services to the Client under the Client Clearing Agreement.

822. A Clearing Member shall inform each of its Client(s) that:

(1) should such Client wish to effect porting upon the occurrence of a DMP Event with respect to the Clearing Member, complete Porting Instructions shall be delivered to OTC Clear as soon as reasonably practicable at or after commencement of clearing operations in relation to the Client Account(s) relating to such Client and a Replacement Clearing Member must be appointed prior to the occurrence of a DMP Event with respect to the original Clearing Member;

(2) subsequent to the submission of Porting Instructions and prior to the occurrence of a DMP Event with respect to the original Clearing Member, a Client who wishes to appoint a different Replacement Clearing Member may deliver, or procure the delivery of, new Porting Instructions appointing another Replacement Clearing Member. The latest Porting Instructions received by OTC Clear in respect of the Client Accounts relating to a Client will be deemed to have superseded and replaced previous Porting Instructions relating to such Client; and

(3) all Porting Instructions must be received by OTC Clear by 5:00pm (Hong Kong time) on the OTC Clear Clearing Day immediately following the occurrence of a DMP Event with respect to the original Clearing Member.

Segregation of Client Accounts

823. A Clearing Member shall ensure due segregation of Contracts and their related Collateral between its House Account and its Client Account(s). A Clearing Member shall clearly identify the exact type(s) and amount of Collateral provided to OTC Clear in respect of each of its House Collateral Account and Client Collateral Account(s), and retain the same information in its file for record. In particular:

(1) Collateral held in respect of a Clearing Member's Client Position Account shall never be applied to meet any payment or delivery demands in respect of any other Client Position Account(s) or House Position Account of such Clearing Member; and

(2) Excess Margin held in respect of a Clearing Member's House Position Account may be applied to meet any payment or delivery demands in respect of one or more Client Position Accounts of such Clearing Member,

provided that this Clearing Rule 823 shall not prejudice the operation of Clearing Rules 1308A and 1309 in the event of the occurrence of a DMP Event.

824. Each Clearing Member represents that it has duly informed each of its Clients that any amounts or monies provided by a Clearing Member to OTC Clear for Margin purposes in respect of its Client Position Account(s) (whether such amounts or monies are provided by the Client or not) are transferred on an outright basis with the effect that, except for the Client's right to receive any Client Entitlement directly from OTC Clear under Clearing Rules 1308A, 1308B, 1309 and 1309A (in the case of a Clearing Member who is a Rule-Based Clearing Members) or pursuant to a Security Deed (in the case of a Clearing Member who is a Non Rule-Based Clearing Member) following the default of such Clearing Member, OTC Clear shall have full legal and equitable interest in the amounts or monies so transferred.

Porting of Contracts relating to Clients

825. Contracts recorded in a Client Account of a Clearing Member shall only be ported in a manner permitted under Clearing Rules 825 to 833 and the Clearing Procedures except upon the occurrence of a DMP Event with respect to such Clearing Member. Porting permitted under this Clearing Rule 825 comprises full portfolio porting in accordance with Clearing Rule 830, partial portfolio porting in accordance with Clearing Rule 831 and porting of Contracts and Collateral between Client Accounts of the same Clearing Member in accordance with section 3.18 of the Clearing Procedures. A Clearing Member in respect of whom Contracts in its Client Account is ported to another Clearing Member in accordance with this Clearing Rule 825 shall be a "**Transferor Clearing Member**", and the Clearing Member nominated by the relevant Client(s) to receive the porting of Contracts from the Transferor Clearing Member in accordance with this Clearing Rule 825 shall be a "**Transferee Clearing Member**".

826. It is the Transferee Clearing Member's obligation to procure the Transferor Clearing Member to consent to the relevant porting request. OTC Clear shall not be responsible for (i) obtaining consent from a Transferor Clearing Member in relation to the porting of Contracts and Collateral or (ii) determining whether any objection from a Transferor Clearing Member has any merit.

827. OTC Clear shall be authorised and entitled to rely conclusively on the instructions of, and any instruction provided by, the relevant Transferee Clearing Member(s) in connection with the porting of any Contracts and Collateral pursuant to these Clearing Rules 825 to 833, and shall not have any liability including, but not limited to, any civil liability, whether arising in contract, tort,

defamation, equity or otherwise for any Damage suffered or incurred directly or indirectly by a Client or any other Person as a result of any porting or failure to port any Contracts and Collateral pursuant to a porting request by OTC Clear in good faith and in accordance with these Clearing Rules.

828. Each Transferee Clearing Member shall indemnify OTC Clear, its Affiliate and a recognized exchange controller which is the controller of OTC Clear and keep OTC Clear, its Affiliate and a recognized exchange controller which is the controller of OTC Clear indemnified from and against any loss, cost (including cost of enforcement), interests, liability (including any tax or other fiscal liability), claim or Damage which OTC Clear, its Affiliate and a recognized exchange controller which is the controller of OTC Clear incurred or suffered in connection with the porting of any Contract and Collateral pursuant to any porting request.

829. In respect of the porting of a Client's portfolio of Contracts registered with the Transferor Clearing Member in the relevant Client Position Account from the Transferor Clearing Member to the Transferee Clearing Member, no amounts shall be payable between and amongst the Transferor Clearing Member, the Transferee Clearing Member and the Client solely as a result of the change in the net present value of such Contracts.

Full Portfolio Porting

830. Upon the instruction or at the request of any Client Clearing Category 1 Client or a Client Clearing Category 2 Client, a Transferee Clearing Member may request OTC Clear to port to the Transferee Clearing Member the relevant Client's portfolio (and not less than its entire portfolio) of Contracts registered with the Transferor Clearing Member in the relevant Client Position Account and, if also requested, to port the Collateral in respect of such Client recorded in the corresponding Client Collateral Account from the Transferor Clearing Member to the Transferee Clearing Member. Such request shall be made in accordance with and subject to the Clearing Procedures. Any request to port Collateral shall be made in accordance with Clearing Rule 831 below and the Clearing Procedures.

Partial Portfolio Porting

831. Upon the instruction or at the request of any Client Clearing Category 1 Client or Client Clearing Category 2 Client to port a portion of that Client's portfolio of Contracts in the relevant Client Position Account, a Transferee Clearing Member may request OTC Clear to port to the Transferee Clearing Member the relevant portion of that Client's portfolio of Contracts registered with the Transferor Clearing Member in the relevant Client Position Account from the Transferor Clearing Member to the Transferee Clearing Member. Such request shall be made in accordance with and subject to the Clearing Procedures. For the avoidance of doubt, in no circumstances may any Collateral recorded in the relevant Client Collateral Account relating to such Contracts be ported in connection with partial portfolio porting.

Porting of Client Collateral

832. In connection with any full portfolio porting that includes the porting of the corresponding Collateral, the Transferee Clearing Member shall notify OTC Clear of the specific Collateral which should comprise the Collateral to be ported

in accordance with the Clearing Procedures, failing which OTC Clear will not proceed with the full portfolio porting. In the event that, for whatever reason, OTC Clear is unable to port such Collateral, OTC Clear will also not proceed with the full portfolio porting.

Conditions Precedent to Porting of Contracts relating to Clients

833. In addition to the requirements set out in the Clearing Procedures, a full portfolio porting and a partial portfolio porting must each satisfy the following conditions precedent:

(1) such porting would not violate or result in the violation of any Applicable Laws;

(2) the porting would not cause the Position Limits applicable to either the Transferee Clearing Member or the Client to be exceeded;

(3) the relevant Client(s), the Transferor Clearing Member and the Transferee Clearing Member have each executed all documents necessary or required by OTC Clear in order to effect such porting (including, where applicable, a Security Deed or Deed of Charge); and

(4) in the event that the porting will lead to a requirement for the Transferor Clearing Member to post additional Collateral to OTC Clear, the Transferor Clearing Member posts sufficient Collateral to OTC Clear.

By making a full portfolio porting or partial portfolio porting request, both the Transferor Clearing Member and the Transferee Clearing Member shall be deemed to have represented to OTC Clear that all of the relevant conditions to such porting set forth herein and all the requirements set forth in the Clearing Procedures have been satisfied.

Completion of Porting

834. Provided that the conditions in Clearing Rule 833 and all requirements in the Clearing Procedures are satisfied in OTC Clear's sole discretion, OTC Clear shall port the relevant Contracts to be ported (and, if applicable, any Collateral to be ported that is not subject to the Deed of Charge entered into between the Transferor Clearing Member and OTC Clear) into the name of the Transferee Clearing Member in the relevant Client Account of the Client(s) by way of novation of all of the Transferor Clearing Member's rights and obligations in respect of such Contracts and Collateral to the Transferee Clearing Member, at the time and manner set out in the Clearing Procedures.

835. In respect of any Collateral to be ported that is subject to a Deed of Charge entered into between the Transferor Clearing Member and OTC Clear, such porting shall be effected as follows:

(1) any equities of redemption held by the Transferor Clearing Member in respect of that Collateral shall be assigned absolutely to the Transferee Clearing Member, such that those equities of redemption become subject to the security interests granted in favour of OTC Clear pursuant to the Deed of Charge between the Transferee Clearing Member and OTC Clear; and

(2) OTC Clear shall release that Collateral from the security interests granted in favour OTC Clear pursuant to the Deed of Charge between the Transferor Clearing Member and OTC Clear, such that the Transferee Clearing Member becomes entitled to redeem that Collateral pursuant to any equities of redemption assigned to it pursuant to sub-paragraph (1) above.

Transfer of Contracts between Client Accounts and House Accounts

836. (1) If at any time an early termination date (howsoever described) occurs in respect of the relevant Client Clearing Agreement between a Clearing Member and a Client, and at the time of such early termination date such Clearing Member is not a Defaulting Clearing Member, such Clearing Member may instruct OTC Clear to transfer all Contracts relating to the Corresponding Client Transactions between such Clearing Member and such Client from its Client Position Account relating to such Client to its House Position Account and to transfer the Collateral recorded in the corresponding Client Collateral Account to its House Collateral Account, and OTC Clear will, subject to Clearing Rule 837 below, arrange such transfer of Contracts and Collateral within 24 hours of its receipt of such instructions together with receipt to its satisfaction of the following documents:

(a) a copy of the notice from such Clearing Member to the relevant Client or from the relevant Client to such Clearing Member designating the relevant early termination date or, if such early termination date has occurred automatically, evidence of the relevant event of default or termination event;

(b) a copy of a notice served by such Clearing Member on the relevant Client alerting that Client of its intention to request a transfer of the relevant Contracts pursuant to this Clearing Rule 836.

(2) Each Clearing Member shall indemnify OTC Clear, its Affiliate and a recognized exchange controller which is the controller of OTC Clear and keep OTC Clear, its Affiliate and a recognized exchange controller which is the controller of OTC Clear indemnified from and against any loss, cost (including cost of enforcement), interests, liability (including any tax or other fiscal liability), claim or Damage which OTC Clear, its Affiliate and a recognized exchange controller which is the controller of OTC Clear, incurred or suffered in connection with any transfer of Contracts and Collateral set out in Clearing Rule 836(1).

837. In the event that the transfer set out in Clearing Rule 836(1) will lead to a requirement for the relevant Clearing Member to post additional Collateral to OTC Clear for the account of its House Collateral Account (after taking into account any Collateral that will be transferred from the relevant Client Collateral Account to the House Collateral Account as part of such transfer), the Clearing Member shall ensure that it has posted sufficient additional Collateral to OTC Clear prior to the transfer set out in Clearing Rule 836(1). If the relevant Clearing Member has failed to post such additional Collateral to OTC Clear by the transfer time specified in Clearing Rule 836(1), OTC Clear will continue to

arrange for the transfer of Contracts and Collateral in accordance with Clearing Rule 836(1) but shall have the right to demand for such additional Collateral in accordance with the Clearing Procedures.

Multilateral Compression

838. Clearing Members who have adhered to relevant Compression Documentation with a Compression Service Provider may participate in a Multilateral Compression Cycle in respect of all Eligible Compression Contracts registered to their House Position Account.

839. Contracts registered to a Clearing Member's Client Position Account are not eligible for compression.

840. In respect of each Multilateral Compression Cycle, OTC Clear will effect the compression or decompression of Eligible Compression Contracts by terminating certain offsetting or redundant Contracts, amending the terms of certain Contracts by increasing the notional amount or converting the reference rate and/or registering one or more new Contracts, all in accordance with the Unwind Proposal generated in respect of that Multilateral Compression Cycle. Any new Contract created pursuant to a Multilateral Compression Cycle is entered into by OTC Clear for the purpose of clearing and settlement of the relevant Compression Clearing Member's House Business. Any Contract, as created, amended or terminated pursuant to a Multilateral Compression Cycle, shall be a "market contract" as defined in, and for the purposes of, the SFO, as described in Clearing Rule 811(1).

841. When OTC Clear intends to run a Multilateral Compression Cycle, it shall nominate a Compression Service Provider to facilitate such Multilateral Compression Cycle. OTC Clear and the relevant Compression Service Provider shall then notify Clearing Members meeting the criteria set out in Clearing Rule 838 above of the Transaction Category(ies) of Eligible Compression Contracts forming part of that Multilateral Compression Cycle and implement the processes set out in the relevant Compression Documentation. For the avoidance of doubt, OTC Clear may, at its sole and absolute discretion, exclude Eligible Compression Contracts in any number of Transaction Category(ies) from a Multilateral Compression Cycle.

842. In any Multilateral Compression Cycle, compression shall only take place in accordance with the terms of an Unwind Proposal which has been accepted by all participating Compression Clearing Members.

843. Each participating Compression Clearing Member agrees and acknowledges that the Compression Service Provider's confirmation to OTC Clear that such Compression Clearing Member has confirmed its acceptance of the Unwind Proposal to the Compression Service Provider, shall constitute a binding acceptance of the Unwind Proposal by such Compression Clearing Member to OTC Clear. Upon a Compression Clearing Member's acceptance of an Unwind Proposal in the manner set out in the relevant Compression Documentation, such Compression Clearing Member shall be irrevocably bound to the terms of that Unwind Proposal and shall be obligated to settle in full by the time set out in the relevant Compression Documentation, such Compression Clearing Member's increased Initial Margin requirements (if applicable), the

Compression Cash Settlement Payment due to OTC Clear. The amount of Multilateral Compression Fees payable to OTC Clear shall be payable as part of the fees and interest settlement component published in a settlement report from time to time as described in the Clearing Procedures.

844. Save where the Clearing Procedures require otherwise, Compression Cash Settlement Payments due to OTC Clear must be satisfied by payment in cash in the relevant Contractual Currency(ies) specified in the relevant Unwind Proposal.

845. OTC Clear may, at its sole and absolute discretion, at any time prior to the Compression Time, agree to proceed (or decline to proceed) with the implementation of the accepted Unwind Proposal. For the avoidance of doubt, the irrevocable acceptance of an Unwind Proposal by participating Compression Clearing Members shall not bind or require OTC Clear to implement such Unwind Proposal.

846. Save for the Compression Cash Settlement Payments which shall be due to or payable by OTC Clear as settlement of the unrealised value of the Eligible Compression Contracts that are proposed to be amended, terminated and/or replaced under each accepted Unwind Proposal, OTC Clear shall have no involvement in and accepts no responsibility or liability in relation to any Multilateral Compression-related balancing, termination or ancillary payments or fees that participating Compression Clearing Members may agree between themselves in accordance with the relevant Compression Documentation or otherwise. In the event OTC Clear agrees to participate in the processing of ancillary payments or fees pursuant to the relevant Compression Documentation, OTC Clear accepts no liability to any Compression Clearing Member or third party in connection with or related to the processing of such ancillary payments or fees.

847. Without prejudice to any other provisions of these Clearing Rules, or any Compression Documentation, OTC Clear and its Affiliates shall not have any liability whatsoever to any Compression Clearing Member or to any other person in contract, tort (including, without limitation, negligence), trust, as a fiduciary or under any other cause of action in respect of any damages, losses, costs or expenses of whatsoever nature suffered or incurred by a Compression Clearing Member or any other person, as the case may be:

(1) as a result of any action OTC Clear takes under the Clearing Rules or the relevant Compression Documentation, whether in accordance with an Unwind Proposal, in reliance on information provided by Compression Clearing Members or any Compression Service Provider or otherwise;

(2) in relation to a Multilateral Compression Cycle, as a result of any action or omission of a Compression Service Provider, including, without limitation, any error or omission in the terms of any Unwind Proposal; or

(3) in relation to any Multilateral Compression Cycle, as a result of any action or omission of a participating Compression Clearing Member, including, without limitation, any error or omission in the terms of any Unwind Proposal.

Chapter 9 Accounts

Accounts

901. Each Clearing Member shall establish Position Accounts and Collateral Accounts (including Client Position Accounts and Client Collateral Accounts, if applicable) with OTC Clear in accordance with the Clearing Procedures.

Position Accounts

902. OTC Clear shall, with respect to each Clearing Member open one House Position Account and may open one or more Client Position Accounts, in each case, in accordance with the Clearing Documentation, where:

(1) a "**House Position Account**" is a book-keeping account opened by a Clearing Member with OTC Clear in order to book Contracts in respect of such Clearing Member's own account;

(2) a "**Client Clearing Category 1 Position Account**" is a book-keeping account opened by a Clearing Member with OTC Clear in order to book Contracts in respect of its Client Clearing Services provided to a single Client only; and

(3) a "**Client Clearing Category 2 Position Account**" is a book-keeping account opened by a Clearing Member with OTC Clear in order to book Contracts in respect of one or more Clients sharing the same account on an omnibus net basis, where the Contracts in respect of such Clients are recorded/booked on a gross basis and Margin in respect of Contracts in the whole Client Clearing Category 2 Position Account are calculated on a net basis in accordance with Clearing Rules 1012 to 1015.

Collateral Accounts

903. A "**Collateral Account**" is a book-keeping account opened in the books of OTC Clear for the purpose of identifying the type(s) and amount of Collateral provided by each Clearing Member to meet its Margin requirements in respect of each of its Position Account(s). OTC Clear shall maintain:

(1) a House Collateral Account in respect of its House Position Account;

(2) a separate Client Clearing Category 1 Collateral Account in respect of each Client Clearing Category 1 Position Account; and

(3) a separate Client Clearing Category 2 Collateral Account in respect of each Client Clearing Category 2 Position Account.

904. Cash Collateral provided by a Clearing Member for the purpose of satisfying its Margin requirements will be delivered by way of outright transfer and will be held by OTC Clear in accordance with the Clearing Procedures, whereas non-cash Collateral provided by a Clearing Member for the purpose of satisfying its Margin requirements will be transferred to OTC Clear by way of security interest in accordance with the Clearing Procedures.

GF Accounts

905. A "**GF Account**" is an account opened in the books of OTC Clear for the purpose of recording the type(s) and amount of Collateral provided by each Clearing Member in respect of its Rates and FX Liability. There will be one GF Account recorded on the books of OTC Clear in respect of each Clearing Member.

906. Collateral provided by a Clearing Member for the purposes of satisfying its Rates and FX Liability will be delivered by way of outright transfer and will be held by OTC Clear in accordance with the Clearing Procedures.

Multiple Client Accounts

907. In the event that (i) more than one Client Account is established by and in respect of a Clearing Member and (ii) a Termination Date has occurred or been designated in respect of all Contracts registered in the name of such Clearing Member, subject to Clearing Rules 823(2) and 1306A in relation to the application of any excess Margin Balance to set off against losses in respect of any Client Account:

(1) there shall not be any set-off, combination or consolidation between any of the Client Position Accounts in the name of such Defaulting Clearing Member; and

(2) pursuant to Clearing Rules 1306, 1306A, 1306B, 1306C and 1307, the closing out of all open positions with respect to the House Account and each Client Account shall be conducted independently and separately with respect to each such account.

Accounts for Holding of Non-Cash Collateral

908. OTC Clear shall deposit non-cash Collateral received by it with its Custodian(s).

909. OTC Clear may hold non-cash Collateral in the accounts of its Custodian(s) in the following manner:

(1) non-cash Collateral received in respect of Margin Requirements of all the Clearing Members' House Accounts shall be held in one commingled account; and

(2) non-cash Collateral received in respect of Margin Requirements of all the Clearing Members' Client Accounts shall be held in one commingled account,

in each case separate from any account holding OTC Clear's own assets.

Chapter 10 Payments

Contract Payments

1001. Each Clearing Member and OTC Clear shall pay all amounts due under the relevant Contract Terms in respect of a Contract at the times and in such amounts as are required pursuant to the Contract Terms and the Clearing Documentation.

Margin and Rates and FX Contribution

1002. Each Clearing Member shall make any payment to OTC Clear in respect of Margin and Rates and FX Liability from time to time in accordance with Chapter 12 and Chapter 15 of these Clearing Rules.

Reimbursement of Costs and Expenses

1002A Upon the occurrence of a Notional Exchange Failure OTC Clear may, in its absolute discretion, effect Mitigating Measures under section 3.19 of the Clearing Procedures in respect of that Notional Exchange Failure. The Non-delivering Clearing Member in respect of a Notional Exchange Failure shall:

(1) immediately upon demand by OTC Clear, indemnify OTC Clear against all fees, liabilities or Damage incurred by OTC Clear as a result of it effecting any Mitigating Measures in respect of that Notional Exchange Failure; and

(2) for the purpose of collateralising its liabilities to OTC Clear (including its obligation to indemnify OTC Clear pursuant to Clearing Rule 1002A(1)), provide Collateral in the form of cash on an outright transfer basis, in such amount and at such time as may be requested by OTC Clear ("**Notional Exchange Failure Margin**").

If a Clearing Member fails to comply with this Rule, OTC Clear may, on the basis of such failure, determine that that Clearing Member is or appears to be unable, or likely to become unable, to meet its obligations in respect of the Clearing Documentation and/or one or more Contracts to which it is party, such that an Event of Default occurs with respect to that Clearing Member pursuant to Clearing Rule 1301.

Default Interest

1003. If a Clearing Member defaults in the performance of any of its payment obligations, it will, to the extent permitted by Applicable Laws, pay interest on the overdue amount in the currency in which such debt is owed at the Default Interest Rate, such interest will accrue daily during the period from (and including) the original due date for payment to (but excluding) the date of actual payment. In the event that OTC Clear suffers any Damage as a result of the non-performance of a payment obligation by a Clearing Member, OTC Clear, its Affiliate and a recognized exchange controller which is the controller of OTC Clear shall be entitled to be indemnified by such Clearing Member against any Damage reasonably incurred by it pursuant to Clearing Rule 1316.

Interest Rates

1004. Any alteration in the basis of calculating interest rates under Clearing Rule 1003 shall become effective on the date designated and notified by OTC Clear to the Clearing Members.

Income on Cash Collateral

1005. OTC Clear may, but is under no obligation to, pay an amount to Clearing Members representing any income received by OTC Clear on cash Collateral transferred to OTC Clear in satisfaction of its Initial Margin and/or Additional Margin requirements as further described in section 7.6.1.1 of the Clearing Procedures.

Income and Redemption Proceeds on Non-Cash Collateral

1006. Provided that OTC Clear is satisfied that no DMP Event has occurred or is likely to occur with respect to the relevant Clearing Member, OTC Clear will pay an amount to such Clearing Member representing any income received by OTC Clear on non-cash Collateral transferred to OTC Clear, net of any Tax (including net of any Withholding Tax). After the occurrence of a DMP Event with respect to such Clearing Member, any such amounts shall not be paid to such Clearing Member and shall instead form part of the Total Available Resources for application in accordance with Clearing Rule 1516 in respect of such DMP Event.

Distributions of amounts pursuant to this Clearing Rule 1006 will take into account any deduction required to reflect any accommodation charges, administration costs or commitment fees for credit lines incurred by OTC Clear in respect of such non-cash Collateral in accordance with section 7.6.2 of the Clearing Procedures. Without prejudice to the foregoing, to the extent required by the Tax Information Exchange Framework or other Applicable Laws, OTC Clear shall be entitled to deduct or withhold Withholding Tax (whether withheld by OTC Clear or any other parties) from any payment of income received by OTC Clear on the non-cash Collateral to a Clearing Member (or from any other payment made by OTC Clear to a Clearing Member) and shall have no obligation to gross-up any such payment or to pay any additional amount as a result of such Withholding Tax.

1007. Save and except as provided for in Clearing Rule 1006, no interest or other amount will be paid by OTC Clear to a Clearing Member in respect of any non-cash Collateral transferred by such Clearing Member to, and then held by, OTC Clear.

1008. If, for any reason, OTC Clear is unable to pay to a Clearing Member an amount representing income received by it in respect of any non-cash Collateral delivered by such Clearing Member to OTC Clear pursuant to Clearing Rule 1006, such income will not be treated by OTC Clear as Margin.

1008A. Upon the request of the relevant Clearing Member and subject to the consent of OTC Clear, OTC Clear will pay an amount to such Clearing Member representing redemption proceeds received by it in respect of any non-cash Collateral delivered by such Clearing Member to OTC Clear, net of any Tax (including net of any Withholding Tax), provided that after the occurrence of a DMP Event with respect to that Clearing Member, any such amounts shall not be

paid to such Clearing Member and shall instead form part of the Total Available Resources for application in accordance with Clearing Rule 1516 in respect of such DMP Event.

Distributions of amounts pursuant to this Clearing Rule 1008A will take into account any deduction required to reflect any accommodation charges, administration costs or commitment fees for credit lines incurred by OTC Clear in respect of such non-cash Collateral in accordance with section 7.6.2 of the Clearing Procedures. Without prejudice to the foregoing, to the extent required by the Tax Information Exchange Framework or other Applicable Laws, OTC Clear shall be entitled to deduct or withhold Withholding Tax (whether withheld by OTC Clear or any other parties) from any payment of redemption proceeds received by OTC Clear on the non-cash Collateral to a Clearing Member (or from any other payment made by OTC Clear to a Clearing Member) and shall have no obligation to gross-up any such payment or to pay any additional amount as a result of such Withholding Tax.

1008B. No interest or other amount will be paid by OTC Clear to a Clearing Member in respect of any redemption proceeds received by OTC Clear on non-cash Collateral transferred to OTC Clear.

1008C. If, for any reason, OTC Clear is unable to pay to the Clearing Member an amount representing redemption proceeds received by it in respect of any non-cash Collateral delivered by such Clearing Member to OTC Clear pursuant to Clearing Rule 1008A, such redemption proceeds will not be treated by OTC Clear as Margin and shall be subject to haircut in accordance with section 3.14 of the Clearing Procedures.

Fees, Levies and Charges

1009. Each Clearing Member shall pay to OTC Clear, in respect of every Contract to which that Clearing Member is party, such fees as may from time to time be prescribed by OTC Clear.

1010. OTC Clear may add to or change any fees payable by a Clearing Member at any time. OTC Clear shall make available the latest Fees Schedule (which is appended to the Clearing Procedures) on the HKEX website.

1011. All amounts payable by each Clearing Member pursuant to Clearing Rules 1003 to 1010 (inclusive) will, unless stated otherwise, be settled in accordance with the Clearing Procedures.

Payments Calculation

1012. On each OTC Clear Clearing Day, OTC Clear will determine the amounts payable by or to each Clearing Member in respect of its Position Account(s) and shall advise each Clearing Member of such amounts in accordance with the method of communication set out in the Clearing Procedures.

1013. OTC Clear may net the sums which would be payable by the relevant Clearing Member in respect of a particular account to OTC Clear on such date against the sums which would be payable by OTC Clear to such Clearing Member in respect of the same account on such date (in each case, including, without limitation, any amounts which became payable on or prior to such date and which remain unpaid and not otherwise discharged in full as at such date). For

the avoidance of doubt, obligations to deliver an asset other than cash cannot be netted against a cash payment.

1014. Any net sum payable by OTC Clear to each Clearing Member shall be payable at such times and in such manner as shall be specified in the Clearing Procedures.

1015. In addition to any other rights OTC Clear may have under these Clearing Rules, where OTC Clear has an obligation to make a net payment under Clearing Rule 1013 in a Contractual Currency, and OTC Clear considers in its reasonable opinion that it becomes, or has become, impossible to obtain the Contractual Currency for the purpose of settlement of payment, OTC Clear may in lieu of making payment in that Contractual Currency make payment to the Clearing Member concerned, in full or in part, in such other currency or currencies and at such conversion rate(s) as OTC Clear may in its absolute discretion determine to be fair and reasonable having regard to all the circumstances of the case.

Chapter 10A Interest Rate Transition

Interest Rate Transition

10A01. Without prejudice to any other provisions contained in these Clearing Rules, OTC Clear may switch the discounting rate and the PAI calculation reference rate in respect of all Affected FX and Rates Derivatives Contract from an existing rate used by OTC Clear for purposes of constructing OTC Clear's zero coupon yield curves under Section 5 of the Clearing Procedures (the "**Existing Discount Rate**") to an alternative rate formally recommended for use by a supervisor which is responsible for supervising the relevant interest rate for the relevant currency or the administrator of such rate (the "**New Discount Rate**") (each a "**Discounting Switch**") and in relation thereto, OTC Clear may, amongst other things:

(1) create and register new Standard Rates Derivatives Contracts to reflect the change in risk profile of the Affected FX and Rates Derivatives Contracts (the "**Compensating Swaps**"); and

(2) create new payment obligations to reflect the change in the net present value of one or more Affected FX and Rates Derivatives Contracts, and any associated costs arising from or in connection with the Discounting Switch,

in accordance with the relevant Discounting Switch Supplement.

10A02. Prior to a Discounting Switch taking effect, OTC Clear shall deliver the relevant Discounting Switch Notice to the Clearing Members, which will set out amongst other things:

(1) the Existing Discount Rate subject to the Discounting Switch;

(2) the New Discount Rate as a result of the Discounting Switch;

(3) the Discounting Switch Transition Date;

(4) the Discounting Switch Effective Date;

(5) the Affected FX and Rates Derivatives;

(6) the interest rate to be used for the purposes of calculating PAI in respect of an Affected FX and Rates Derivatives Contract from, and including, the Discounting Switch Effective Date under Section 4.3.2 of the Clearing Procedures;

(7) the date by which Clearing Members can opt in or opt out of the Compensating Swaps in relation to such Discounting Switch;

(8) the Discounting Switch Supplement that shall apply in relation to the change of the interest rate referred to above and any dates or information required to be communicated pursuant to such Discounting Switch Supplement; and

(9) any other information as may be relevant to effect the Discounting Switch.

10A03. OTC Clear may, from time to time, amend, modify, supplement, replace, withdraw, or override the terms of the Discounting Switch Notice by issuing a Clearing Notice or such other method as OTC Clear shall determine is appropriate.

10A04. Following the publication of the Discounting Switch Supplement, each Clearing Member hereby appoints OTC Clear, with the full power and authority of that Clearing Member, to:

(1) register in the name of that Clearing Member, one or more Standard Rates Derivatives Contracts as Compensating Swaps on terms as set out in the Discounting Switch Supplement; and

(2) (A) execute in the Clearing Member's name and on the Clearing Member's behalf any document, contract, deed or other agreement, or (B) do, or cause to be done, any acts, in each case as OTC Clear determines necessary (acting in good faith and in a commercially reasonable manner) to give effect to the new Standard Rates Derivatives Contracts entered into pursuant to the foregoing,

provided however that, in all cases, the terms of each Standard Rates Derivatives Contract entered into and registered pursuant to the foregoing provisions and the accounts in which such Standard Rates Derivatives Contracts shall be registered shall be determined pursuant to the methodology set out in the Discounting Switch Supplement pursuant to which such powers are exercised.

10A05. Upon the publication of the Discounting Switch Supplement, there shall arise a standing instruction to OTC Clear for itself and on behalf of the Clearing Members authorising OTC Clear to take the steps set out in the Discounting Switch Supplement, including, if applicable under the terms of that Discounting Switch Supplement, to enter into and register certain Standard Rates Derivatives Contracts as Compensating Swaps on behalf of certain Clearing Members pursuant to Clearing Rule 10A04 and the Discounting Switch Supplement.

10A06. Any Standard Rates Derivatives Contract entered into pursuant to Clearing Rule 10A04 as a Compensating Swap shall be deemed to satisfy any registration requirements under the Clearing Rules, including but not limited to being deemed to be registered in accordance with Clearing Rule 806.

10A07. The Discounting Switch Supplement may give rise to one or more payment obligations being owed by OTC Clear to a Clearing Member or by a Clearing Member to OTC Clear (each, an "**Interest Rate Change Payment**"). The calculation of each Interest Rate Change Payment and the due date for payment of such Interest Rate Change Payment in each case shall be on the terms set out in the Discounting Switch Supplement.

10A08. For the purposes of this Chapter 10A:

"**Affected FX and Rates Derivatives Contracts**" means Contracts relating to Affected FX and Rates Derivatives to which the relevant Discounting Switch shall apply.

"**Affected FX and Rates Derivatives**" means the types of Standard Rates Derivatives, Non-Deliverable Rates Derivatives, FX Derivatives and Standard Cross-currency Rates Derivatives which are specified to be in-scope for the Discounting Switch in the relevant Discounting Switch Notice.

"**Compensating Swaps**" has the meaning given to it in Clearing Rule 10A01(2).

"**Discounting Switch**" has the meaning given to it in Clearing Rule 10A01.

"**Discounting Switch Effective Date**" means the date as identified in the Discounting Switch Notice on which the Discounting Switch shall take effect.

"**Discounting Switch Notice**" means a Clearing Notice delivered by OTC Clear to its Clearing Members setting out the details of the Discounting Switch.

"**Discounting Switch Supplement**" means the Supplement identified by OTC Clear in the Discounting Switch Notice as being applicable to the Discounting Switch, and as may be

supplemented, modified, amended, replaced or withdrawn by OTC Clear from time to time in accordance with the terms of such Supplement.

"**Discounting Switch Transition Date**" means the date as identified in the Discounting Switch Supplement on which new Standard Rates Derivatives Contracts may be created and registered and Interest Rate Change Payments may be registered and recorded/booked.

"**Existing Discount Rate**" has the meaning given to it in Clearing Rule 10A01.

"**Interest Rate Change Payment**" has the meaning given to it in Clearing Rule 10A07.

"**New Discount Rate"** has the meaning given to it in Clearing Rule 10A01.

"PAI" has the meaning given to it in Section 4.3.2 of the Clearing Procedures.

Chapter 11 Tax

Tax

1101. In the event that any payment made by a Clearing Member to OTC Clear under the Clearing Documentation or any Contract is subject to deduction or withholding (either at the time of such payment or in the future) for or on account of any Tax and/or any Withholding Tax, then the Clearing Member shall pay to OTC Clear an amount (the "**Additional Amount**"), in addition to the payment to which OTC Clear is otherwise entitled under the Clearing Documentation or any Contract, necessary to ensure that the net amount actually received by OTC Clear (free and clear of any such deduction or withholding for or on account of any such Tax and/or Withholding Tax), will be equal to the full amount OTC Clear would have received in the absence of any such deduction or withholding.

1102. OTC Clear shall make any payments due to a Clearing Member under the Clearing Documentation or any Contract net of any deduction or withholding for or on account of any Tax it is required to make from such payments and (to the extent required by the Tax Information Exchange Framework or Applicable Laws) net of any Withholding Tax, and OTC Clear shall have no obligation to gross-up any such payment or to pay any additional amount as a result of such deduction, withholding or payment of any such Tax or any such Withholding Tax.

1103. If:

(1) a Clearing Member is required by any Applicable Law, as modified by the practice of any relevant Governmental Authority, to make any deduction or withholding from any payment made to OTC Clear under the Clearing Documentation or any Contract for or on account of any Tax, in respect of which the Clearing Member would be required to pay an Additional Amount to OTC Clear under Clearing Rule 1101;

(2) the Clearing Member does not so deduct or withhold; and

(3) a liability resulting from such Tax is assessed directly against OTC Clear, then, except to the extent the Clearing Member has satisfied or then satisfies the liability resulting from such Tax, the Clearing Member will promptly pay to OTC Clear the amount of such liability (including any related liability for interest, penalties and costs).

1104. Each Clearing Member will pay any stamp, registration, documentation, excise, sales or value added Tax or any other similar Tax levied or imposed upon it or in respect of its execution or performance of any agreement, contract or transaction in connection with the Clearing Documentation and will indemnify OTC Clear against any such stamp, registration, documentation, excise, sales or value added Tax (to the extent that OTC Clear is not able, in OTC Clear's commercially reasonable judgment, to reclaim or recover such value added Tax) or any other similar Tax levied or imposed upon OTC Clear or in respect of OTC Clear's execution or performance of any agreement, contract or transaction in connection with the Clearing Documentation. Any payment required to be made by a Clearing Member to OTC Clear under this Clearing Rule 1104 shall include an additional amount equal to any Tax levied or imposed on OTC Clear as a result of the receipt of any payment under this Clearing Rule 1104.

1105. Each Clearing Member shall provide OTC Clear with sufficient Information so as to enable OTC Clear to determine whether any payments to be made by it under the Clearing Documentation or any Contract are withholdable payments pursuant to the Tax Information Exchange Framework and to enable OTC Clear to meet any applicable obligations relating to the Tax Information Exchange Framework.

PART IV RISK MANAGEMENT AND DEFAULT PROCEDURES

Chapter 12 Margin

Margin and Collateral

1201. Each Clearing Member shall, in respect of each Contract registered in its name, pay or provide, on demand by OTC Clear, Collateral in respect of Margin in such amounts, in such forms and at such times in accordance with the Clearing Procedures.

1202. OTC Clear will determine the amount of Initial Margin, Additional Margin and Variation Margin payable by or (in some cases in respect of Variation Margin) to each Clearing Member in accordance with the Clearing Procedures.

1203. Margin (including Initial Margin, Additional Margin and Variation Margin) in respect of the House Position Account and each Client Position Account, if any, of a Clearing Member will be calculated by OTC Clear separately and shall be satisfied by a Clearing Member in the manner set out in the Clearing Procedures.

Initial Margin, Additional Margin, Variation Margin, and Intra-day Variation Margin

1204. Each Clearing Member shall deliver sufficient Collateral as Margin as a pre-condition for (i) the registration of an Original Transaction by OTC Clear and (ii) the implementation of an Unwind Proposal by OTC Clear.

1205. OTC Clear shall calculate and, where appropriate, demand Initial Margin on each OTC Clear Clearing Day and Compression Execution Date, as applicable. In addition, OTC Clear may, from time to time, in its absolute discretion and on any OTC Clear Clearing Day and Compression Execution Date, make an intra-day call for Initial Margin.

1206. OTC Clear shall calculate the Variation Margin payable by or to a Clearing Member on each OTC Clear Clearing Day. If such calculation indicates an increase in the Variation Margin payable by a Clearing Member, OTC Clear will be entitled to demand additional Collateral from such Clearing Member.

1207. OTC Clear may on any OTC Clear Business Day demand Routine Intra-day Variation Margin from one or more Clearing Members. In addition, OTC Clear may on any OTC Clear Clearing Day demand from, or pay to, a Clearing Member Ad Hoc Intra-day Variation Margin. The amount of any Routine Intra-day Variation Margin or Ad Hoc Intra-day Variation Margin shall be calculated by OTC Clear using such methods as prescribed in the Clearing Procedures.

1208. OTC Clear may impose Additional Margin requirements on any Clearing Member in the circumstances described in section 4.5 of the Clearing Procedures, and may, at its discretion amend or withdraw any such Additional Margin requirements on any Clearing Member.

Margin Settlement

1209. Save where the Clearing Procedures require otherwise, Initial Margin and Additional Margin requirements (other than Notional Exchange Failure Margin requirements) may be satisfied by payment in cash in any Eligible Currency, or

by delivery of non-cash assets specified pursuant to section 7.3 of the Clearing Procedures.

1210. Save where the Clearing Procedures require otherwise, and subject to Clearing Rule 1211, Variation Margin requirements must be satisfied by payments in cash in the relevant Contractual Currency of each Contract pursuant to the relevant Contract Terms of such Contract.

1211. Notwithstanding Clearing Rule 1210, for the purpose of satisfying a Routine Intra-day VM Call and Ad Hoc Intra-day VM Call, a Clearing Member may, in lieu of payment of cash in an Eligible Currency, deliver to OTC Clear non-cash Collateral as is acceptable to OTC Clear in the manner and at or prior to the time specified in the Clearing Procedures. Any Collateral (cash or non-cash) delivered by a Clearing Member for satisfaction of a Routine Intra-day VM Call and Ad Hoc Intra-day VM Call on an OTC Clear Business Day shall not be taken into account when OTC Clear performs its end-of-day Variation Margin and/or Ad Hoc Intra-day VM Call calculation on such day. If, subsequent to the end-of-day Variation Margin calculation on such day, a Clearing Member delivers cash in the relevant Contractual Currency in full satisfaction of its end-of-day Variation Margin requirement determined for such day, such Clearing Member shall be entitled to request OTC Clear to redeliver any Collateral previously delivered by the relevant Clearing Member to satisfy a Routine Intra-day VM Call and Ad Hoc Intra-day VM Call under this Clearing Rule 1211 as Excess Margin provided that if it has opted to utilize its Excess Margin under Clearing Rule 1218A, it may only request such redelivery after it has notified OTC Clear in the manner described in section 3.9.1 or section 3.10.2, as the case may be, of the Clearing Procedures.

1212. If any Margin falls due and the Margin Balance of the relevant Clearing Member is insufficient to cover its Margin requirements as determined by OTC Clear, such Clearing Member shall deliver such Collateral in such form and manner and at or prior to the time specified in the Clearing Procedures.

1213. Cash delivered by Clearing Members to OTC Clear for satisfaction of their Margin requirements will be held by OTC Clear in accordance with the Clearing Procedures. Nothing in these Clearing Rules intends to create in favour of OTC Clear any mortgage, charge, lien, pledge, encumbrance or other security interest in any cash Collateral transferred by a Clearing Member to OTC Clear pursuant to these Clearing Rules. OTC Clear has the power to invest any cash Collateral delivered to it in accordance with its investment policy. OTC Clear may perform any such investment itself as it sees fit, or it may engage an independent third party to perform such investment.

A Clearing Member who intends to transfer non-cash Collateral for purposes of satisfying its Margin requirements shall execute all necessary documentation as may be required by OTC Clear in order to create, and perfect, a valid security interest over the relevant assets. OTC Clear will not re-use, rehypothecate or re-invest any non-cash Collateral delivered by Clearing Members as Margin. If OTC Clear accepts non-cash Collateral from Clearing Members as Margin, then the manner in which OTC Clear will hold such non-cash Collateral will be set out in the Clearing Procedures.

Acceptable Collateral for Margin and Rates and FX Contribution

1214. OTC Clear may restrict or add to the types of Eligible Currencies and acceptable Collateral, or modify any valuation procedures or haircuts set out in Chapter 7 of the Clearing Procedures, or impose a maximum on the amount of each type of Eligible Currency or Collateral which OTC Clear may accept for purposes of satisfying Margin requirements or Rates and FX Liability. In respect of any eligible non-cash Collateral, OTC Clear will only accept delivery of such non-cash Collateral if it is delivered in minimum tradable board lot size applicable to such non-cash Collateral and acceptable to OTC Clear's custodians. OTC Clear will use reasonable endeavours to provide Clearing Members with three-month's advance written notice prior to removing any Collateral from the then existing list of Eligible Currencies and acceptable Collateral. For the avoidance of doubt, OTC Clear may add to the types of Eligible Currencies and acceptable Collateral, or modify any valuation procedures or haircuts set out in the Clearing Procedures, at any time as it thinks fit. The value of any instruments which are not Eligible Currencies or acceptable Collateral will not be taken into account in determining the Margin Balance of such Clearing Member.

1215. OTC Clear may at any time, in its sole and absolute discretion, require a Clearing Member to transfer cash in other Eligible Currencies or other types of Collateral to it in substitution for any Collateral already transferred to it.

1216. OTC Clear may charge Clearing Members accommodation charges, administrative costs and/or commitment fees for credit lines in respect of any non-cash Collateral provided to it as Margin at a rate determined by OTC Clear and set out in the Fees Schedule (see Appendix I to the Clearing Procedures).

1216A. OTC Clear may incur charges or costs or receive negative interest rates when investing any Rates and FX Contribution delivered in the form of cash by Clearing Members. If it does so, OTC Clear shall be entitled to demand reimbursement of such amounts from the relevant Clearing Members.

1217. A Clearing Member may provide Collateral in excess of the Initial Margin and/or Additional Margin requirements applicable to any of its Position Account(s). Any such Collateral provided by a Clearing Member will be credited to the Collateral Account designated by the Clearing Member and shall form part of the Margin Balance relating to such Collateral Account. In addition, any Collateral provided for the purpose of satisfying Routine Intra-day VM Call and Ad Hoc Intra-day VM Call on an OTC Clear Business Day pursuant to Clearing Rule 1211 will not be taken into account when OTC Clear performs its end-of-day Variation Margin calculation in respect of the relevant Position Account on such day, and such Collateral shall form part of the Margin Balance relating to the relevant Collateral Account of such Clearing Member.

1218. A Clearing Member may request OTC Clear to redeliver Collateral in equivalent form and currency as any Collateral it has delivered to OTC Clear as Margin in a value not exceeding the Excess Margin; provided that if it has opted to utilize its Excess Margin under Clearing Rule 1218A, it may only request such redelivery after it has notified OTC Clear in the manner described in section 3.9.1 or section 3.10.2, as the case may be, of the Clearing Procedures. A Clearing

Member shall specify the exact form and currency of the relevant Collateral requested to be redelivered. Following receipt of such request, OTC Clear will deliver to such Clearing Member (in the manner described in section 4.7 of the Clearing Procedures) Collateral in equivalent form and currency as requested in an amount not exceeding the Excess Margin, except that OTC Clear may deliver Collateral in other form or currency determined by OTC Clear if:

(1) with respect to a Defaulting Clearing Member only, the relevant Collateral is delivered prior to any DMP Event and such Collateral or part thereof was applied in such DMP Event; or

(2) any part of the Collateral is of a type or currency that is subject to any foreign exchange or other settlement risk or disruption, as determined by OTC Clear, at the time such Collateral is due to be redelivered to Clearing Members.

1218A. A Clearing Member may opt to utilize its Excess Margin to reduce the Expected Uncollateralized Loss in respect of any of its Position Account(s), where Expected Uncollateralized Loss has the meaning given to it in section 6.1.1(4) of the Clearing Procedures (and as modified by section 6.1.1(8) of the Clearing Procedures if Client Clearing Services are provided by such Clearing Member) by giving OTC Clear no less than five Business Days' notice or such shorter notice period as determined by OTC Clear in its absolute discretion, provided that the Excess Margin to reduce the Expected Uncollateralized Loss for such Clearing Member shall not exceed 30% of the Rates and FX Guarantee Fund as calculated on the immediately preceding Rates and FX Contribution Determination Date. OTC Clear reserves the right at its absolute discretion to impose a lower cap on the Excess Margin that may be utilized to reduce the Expected Uncollateralized Loss for each Clearing Member. The Collateral provided in respect of such Excess Margin will be taken into account as part of the Margin Balance as recorded in the corresponding Collateral Account when OTC Clear performs its Rates and FX Guarantee Fund calculation in respect of the relevant Position Account.

Rights relating to Collateral in respect of Margin and Rates and FX Contribution and Representations of Clearing Members

1219. Unless otherwise stated in Clearing Rules 817 and 1310, OTC Clear will take no account of any right or interest which any Person other than the Clearing Member may have in any Collateral provided by, or on behalf of, such Clearing Member to OTC Clear. The operations of section 56(1) of the SFO shall be modified by this Clearing Rule 1219 as permitted under section 56(2) of the SFO.

1220. Each Clearing Member represents and warrants to OTC Clear that:

(1) immediately prior to delivery of the Collateral to OTC Clear, the Clearing Member is the sole legal and beneficial owner of all Collateral delivered to OTC Clear;

(2) any Collateral delivered to OTC Clear pursuant to these Clearing Rules is not subject to any Encumbrance whatsoever save for:

(a) any Encumbrance in favour of OTC Clear;

(b) any liens granted to the clearing systems through which the Collateral is being transferred;

(c) in the case of a Clearing Member who is a Rule-Based Clearing Member, the right of its Client to receive any Client Entitlement from OTC Clear under Clearing Rules 1308A and 1309; and

(d) in the case of a Clearing Member who is a Non Rule-Based Clearing Member, any Encumbrance created pursuant to a Security Deed;

(3) in delivering the Collateral to OTC Clear pursuant to these Clearing Rules, the Clearing Member is not in breach of any of its contractual obligations towards any third party or under any Applicable Laws;

(4) all filings and registrations necessary for the purpose of the creation, perfection, protection and maintenance of any security conferred or intended to be conferred on OTC Clear by or pursuant to any Deed of Charge between OTC Clear and the Clearing Member have been effected and are in full force and effect; and

(5) any Deed of Charge between OTC Clear and the Clearing Member creates in favour of OTC Clear the security which it is expressed to create with the ranking and priority it is expressed to have.

The representations and warranties made by a Clearing Member pursuant to this Clearing Rule 1220 shall be deemed to be repeated by such Clearing Member on each day Collateral is delivered to OTC Clear pursuant to these Clearing Rules.

1220A. Each Non Rule-Based Clearing Member represents and warrants to OTC Clear that:

(1) all filings and registrations necessary for the purpose of the creation, perfection, protection and maintenance of any security conferred or intended to be conferred on each Client by or pursuant to any Security Deed have been effected and are in full force and effect; and

(2) any Security Deed creates in favour of each Client identified therein security over the relevant Client Entitlement in respect of such Client that is legal, valid, binding and enforceable, in accordance with the terms of such deed.

The representations and warranties made by a Non Rule-Based Clearing Member pursuant to this Clearing Rule 1220A shall be deemed to be repeated by such Clearing Member on each day on which an Original Transaction is submitted for registration as part of such Clearing Member's Client Clearing Services and each day on which Collateral is delivered to OTC Clear pursuant to these Clearing Rules and in connection with such Clearing Member's Client Clearing Services.

1221. A Clearing Member shall be liable to OTC Clear for any Damage incurred by OTC Clear as a result of OTC Clear possessing, holding, perfecting the title to or

otherwise being associated with, any Collateral delivered by such Clearing Member.

Position Limits and Notional Exchange Risk Limits

1222. Pursuant to section 4.6.1 of the Clearing Procedures, unless with the prior written approval from OTC Clear, each Clearing Member is required to impose a House Account Limit in respect of its House Position Account and a Client Account Limit in respect of each of its Client Position Accounts, provided that OTC Clear may, at any time and from time to time, in its absolute discretion, in respect of each Position Account, override, amend or revoke any such Position Limits and/or impose an Absolute Risk Limit and/or a Notional Exchange Risk Limit.

1223. If a Clearing Member exceeds any Position Limits or Notional Exchange Risk Limits imposed, that Clearing Member must immediately notify OTC Clear and take appropriate steps to ensure that, within such period as OTC Clear may specify, it is in compliance with such Position Limits or Notional Exchange Risk Limits, as the case may be. In addition, OTC Clear may, at its discretion:

(1) require a Clearing Member to enter into risk-reducing Contracts, including, without limitation, the measures described in section 3.20 of the Clearing Procedures with respect to any exceedance of a Notional Exchange Risk Limit;

(2) demand such Additional Margin as OTC Clear in its discretion determines including, without limitation, Additional Margin be provided in specific settlement currency(ies) with respect to any exceedance of a Notional Exchange Risk Limit; and/or

(3) take such other action as OTC Clear in its discretion determines.

As further described in section 4.6.1 of the Clearing Procedures, OTC Clear will not register any Original Transactions submitted by a Clearing Member (or by a Designated Person on its behalf) if registration of any such Original Transactions will result in a breach of any Position Limits applicable to such Clearing Member.

1224. If the Clearing Member fails to comply with any requirement imposed on it pursuant to Clearing Rule 1223, the Clearing Member shall be in breach of these Clearing Rules and, without limitation, OTC Clear may, at its discretion, in respect of the Clearing Member concerned:

(1) declare an Event of Default under Clearing Rule 1301;

(2) suspend or terminate Membership of the Clearing Member;

(3) terminate or liquidate such Contracts as OTC Clear at its discretion selects on behalf of the Clearing Member;

(4) instigate an investigation or disciplinary proceedings under Chapter 14 of these Clearing Rules;

(5) impose such other requirements on the Clearing Member as it sees fit; and/or

(6) take such other action as OTC Clear in its discretion determines.

Chapter 13 Default Procedures

Clearing Member Event of Default

1301. In these Clearing Rules, an "**Event of Default**" shall mean any event or circumstance which leads OTC Clear to determine that a Clearing Member is or appears to be unable, or likely to become unable, to meet its obligations in respect of the Clearing Documentation and/or one or more Contracts to which it is party. Without prejudice to the generality of the immediately foregoing, OTC Clear may take the occurrence of any one or more of the following events or circumstances as sufficient ground for determining that a Clearing Member is or appears to be unable, or likely to become unable, to meet such obligations:

(1) failure by a Clearing Member to pay or deliver any amounts when due under the Clearing Documentation, including, without limitation, failure by a Clearing Member to pay any Remaining Balance in accordance with the time frame set out in, and under, Clearing Rule 1534 or failure by a Successful Bidder to pay any Auction Payment or Margin required following the completion of the auction of the relevant Auction Portfolio under Clearing Rule 1923;

(2) failure by a Clearing Member to comply with the Regulatory Capital Requirement;

(3) failure by a Clearing Member to maintain Capital in an amount not less than the Minimum Capital Requirement and such failure continues and is existing upon the expiry of the Minimum Capital Requirement Breach Period and the related Non-Default Unwind is not completed within 10 OTC Clear Business Days following the expiry of the Minimum Capital Requirement Breach Period;

(4) a Clearing Member makes a material misstatement or omission (whether in the Membership Agreement or otherwise) or misleads or attempts to mislead OTC Clear, a recognized exchange controller which is the controller of OTC Clear or their respective employees or officers;

(5) failure by a Clearing Member, within any required time period, to take any action required by OTC Clear to ensure compliance with the Clearing Documentation, including, without limitation, failure by a Clearing Member who is subject to disciplinary proceedings to commence the Non-Default Unwind following the expiry of the relevant Appeal Period pursuant to the terms of Clearing Rule 1409(1);

(6) in respect of a Clearing Member which is also a participant or member of any clearing and settlement system operated by HKEX or any of its Affiliates:

(a) failure to meet any obligation owed by it to the central counterparty or operator of such system;

(b) breach of the rules or terms of participation or membership of such system;

(c) declaration of default by, or suspension or expulsion from participation or membership of such system;

(7) the occurrence of a default, event of default or other similar condition or event (however described) in respect of the Clearing Member under one or more agreements or instruments relating to Indebtedness;

(8) breach of the rules or regulations of a Regulatory Authority to which it is subject or its authorization, licence or approval by a Regulatory Authority is suspended or withdrawn;

(9) the occurrence of Insolvency Proceedings with respect to a Clearing Member;

(10) the occurrence of a Financial Emergency with respect to a Clearing Member;

(11) a Clearing Member is convicted of any criminal offence relating to fraud, dishonesty or any act of bad faith under any Applicable Laws;

(12) a Clearing Member fails to comply with any actions prescribed by OTC Clear under Clearing Rule 1223;

(13) breach of any obligations, undertakings or representations by a Clearing Member under the Membership Agreement to which it is a party; or

(14) the occurrence of any of the above events in respect of (a) any Affiliate of the Clearing Member which in the opinion of OTC Clear has a material adverse effect on the ability of the Clearing Member to meet its obligations under the Clearing Documentation and/or one or more Contract to which it is a party, or (b) a person who has guaranteed or provided an indemnity in favour of OTC Clear in respect of any of the obligations of the Clearing Member.

For the events described in sub-paragraphs (1), (8) and (9) above and, to the extent analogous to sub-paragraphs (8) and (9) above, the event described in sub-paragraph (14) above, OTC Clear may, in its own right, determine whether or not an Event of Default has occurred pursuant to the relevant provisions. In all other cases, in determining whether an Event of Default has occurred with respect to a Clearing Member, OTC Clear will endeavour to consult the Risk Management Committee. Where OTC Clear endeavours to consult the Risk Management Committee but the Risk Management Committee is not available or cannot be convened sufficiently promptly in the circumstances, OTC Clear will consult the chief executive of OTC Clear, provided that if the chief executive of OTC Clear is unavailable at the time for any reason, any Representative of OTC Clear designated by the OTC Clear Board from time to time for purposes of the applicable determination may make such determination.

1302. A Clearing Member shall immediately give notice to OTC Clear if it is, or if it suspects that it is likely to become, unable to meet its obligations under the Clearing Documentation and/or one or more Contracts to which it is party.

Termination following a Clearing Member Event of Default

1303. OTC Clear may from time to time notify Clearing Members specific criteria (including but not limited to the jurisdiction of incorporation of a Clearing

Member) according to which the occurrence of an event described in paragraph (1), (3), (4), (5), (6) or, to the extent analogous thereto, (8) under the definition of Insolvency Proceedings with respect to a Clearing Member will constitute an "**Automatic Early Termination Event**" in respect of such Clearing Member. Where an Automatic Early Termination Event has occurred with respect to a Clearing Member as a result of an event described in paragraph (1), (3), (5), (6) or, to the extent analogous thereto, (8) under the definition of Insolvency Proceedings, an Early Termination Date in respect of all Contracts then registered in the name of such Clearing Member shall occur immediately upon the occurrence of the relevant event; and where an Automatic Early Termination Event has occurred with respect to a Clearing Member as a result of an event described in paragraph (4) or, to the extent analogous thereto, (8) under the definition of Insolvency Proceedings, an Early Termination Date in respect of all Contracts then registered in the name of such Clearing Member shall occur immediately preceding the institution of the relevant proceeding or the presentation of the relevant petition, and in each case, without the need for any other or prior notice or determination by OTC Clear. With effect from, and including, the date on which an Early Termination Date occurs with respect to all Contracts registered in a name of a Clearing Member as a result of an Automatic Early Termination Event, such Clearing Member shall become a Defaulting Clearing Member.

1304. Where an Event of Default has occurred and is continuing with respect to a Clearing Member but such Event of Default does not constitute an Automatic Early Termination Event, OTC Clear may exercise such rights it may have under these Clearing Rules (including without limitation any rights of suspension of Membership) and/or may send to the relevant Clearing Member a default notice declaring such Event of Default (the "**Notice of Default**"). With effect from, and including, the date on which such Clearing Member receives the Notice of Default, the Clearing Member shall become a Defaulting Clearing Member. OTC Clear will notify Non-Defaulting Clearing Members, the SFC and also members of the public following the occurrence of an Automatic Early Termination Event or declaration of an Event of Default with respect to a Clearing Member.

1305. Upon the occurrence of an Automatic Early Termination Event or delivery of a Notice of Default with respect to a Defaulting Clearing Member, OTC Clear may take such steps with respect to such Defaulting Clearing Member as in the circumstances appear to it, in its absolute discretion, best calculated:

(1) to discharge the Defaulting Clearing Member's rights, obligations and liabilities under or in respect of one or more or all Contracts to which the Defaulting Clearing Member is party;

(2) to minimize losses or the potential for losses to OTC Clear as a result of the default of the Defaulting Clearing Member; or

(3) without the need for any prior notice to or consent of such Defaulting Clearing Member:

(a) (where an Automatic Early Termination Event has not occurred) to terminate any Contract of the Defaulting Clearing Member by

designating an Early Termination Date in respect of such Contract;

(b) to apply any Collateral in the form of cash, and arranging for the liquidation of any non-cash Collateral and applying the proceeds of the realization of non-cash Collateral, for the absorption of losses incurred by OTC Clear as a result of the default of the Defaulting Clearing Member;

(c) to obtain any advice or assistance from the Defaulting Clearing Member and/or any third party as OTC Clear may deem necessary for any matter arising out of or in connection with an Event of Default and at the expense of the Defaulting Clearing Member, and/or

(d) to complete the process set out in Clearing Rules 1306, 1306A, 1306B, 1306C and 1307 in relation to such Defaulting Clearing Member,

in each case, acting in consultation with the Default Management Group and in accordance with the Default Management Process.

Upon the occurrence of any of (i) an Automatic Early Termination Event, (ii) the delivery of a Notice of Default in respect of a Clearing Member or (iii) any failure to pay by a Clearing Member (except, for the avoidance of doubt, to the extent that such payment is discharged by a Sponsored Settlement Member), OTC Clear shall not be obliged to: (a) pay any Notional Exchange Failure Adjustment Amount payable by it in respect of such Clearing Member; or (b) make any further payments or deliveries in respect of any Contract registered in the name of such Clearing Member, in either case which would otherwise have fallen due on or after such time, and upon the occurrence of an Early Termination Date in respect of such Contracts, any obligations to pay such Notional Exchange Failure Adjustment Amount or to make such further payments or deliveries and any amounts that are due but unpaid in respect of such Contracts shall be satisfied by the payment by, or to, the Defaulting Clearing Member of a single net sum to be determined in accordance with Clearing Rules 1306, 1306A, 1306B, 1306C and 1307, provided that if a Rates and FX Clearing Termination Event occurs at any time prior to the completion of the Default Management Process with respect to a Defaulting Clearing Member, no net sum shall be payable in accordance with Clearing Rules 1306, 1306A, 1306B, 1306C and 1307 and the applicable termination amounts shall instead be determined in accordance with Clearing Rules 1531 to 1540.

Calculations of Net Payment following a Clearing Member Event of Default

1306. Where the Defaulting Clearing Member has one House Position Account and one or more Client Position Account(s), each Position Account of the Defaulting Clearing Member shall constitute a separate “capacity” pursuant to Part 5 of Schedule 3 to the SFO so that no Client Position Account of the Defaulting Clearing Member shall be combined with any other Position Account of the Defaulting Clearing Member, and the process set out in Clearing Rules 1306A, 1306B, 1306C and 1307 shall be applied to each such capacity separately.

1306A Subject to Clearing Rules 1530 to 1540, subsequent to the completion of the Default Management Process with respect to a Defaulting Clearing Member (including, for the avoidance of doubt, the processes described in Clearing Rules 1516(1), 1516(2) and 1914) and the occurrence of an Early Termination Date in respect of all of the Defaulting Clearing Member's Contracts, for the purposes of Part 5 of Schedule 3 to the SFO, the single net sum payable by OTC Clear to such Defaulting Clearing Member, or by such Defaulting Clearing Member to OTC Clear, in respect of each capacity of the Defaulting Clearing Member relating to the House Account(s) and the Client Accounts of Non-Porting Clients shall be determined as follows:

(1) OTC Clear will determine the aggregate trade value in respect of all of the Contracts in the relevant Position Account in accordance with Clearing Rule 1307. Such aggregate trade value may be zero, positive or negative. A positive aggregate trade value indicates an overall sum being payable by OTC Clear to the Defaulting Clearing Member in respect of such capacity; and a negative aggregate trade value indicates an overall sum being payable by the Defaulting Clearing Member to OTC Clear in respect of such capacity;

(2) if the aggregate trade value determined pursuant to sub-paragraph (1) above is a negative number, such value shall be netted against the value (expressed as a positive number) of all Collateral (including the proceeds of the realization of such Collateral) held by OTC Clear in respect of such capacity as Initial Margin, Additional Margin, Routine Intra-day Variation Margin and Ad Hoc Intra-day Variation Margin in respect of the relevant Position Account and comprising the Margin Balance of the corresponding Collateral Account and any income and redemption proceeds on any non-cash Collateral that have not already been paid to or withdrawn by the Defaulting Clearing Member, each as at the Early Termination Date, reflecting the application of such resources towards (i) Unpaid Amounts in respect of the relevant Position Account pursuant to Clearing Rules 1516(1)(a) or 1516(2)(a), as applicable, (ii) the Auction Losses and/or Contract Termination Losses relating to the relevant Position Account pursuant to Clearing Rule 1914(1) and (iii) in the case of the House Position Account, General Losses pursuant to Clearing Rule 1516(1)(a). If the aggregate trade value determined pursuant to sub-paragraph (1) above is zero or a positive number, such value shall be aggregated with the value (expressed as a positive number) of all Collateral (including any proceeds of the realization of such Collateral) held by OTC Clear in respect of such capacity as Initial Margin, Additional Margin, Routine Intra-day Variation Margin and Ad Hoc Intra-day Variation Margin in respect of the relevant Position Account and comprising the Margin Balance of the corresponding Collateral Account and any income and redemption proceeds on any non-cash Collateral that have not already been paid to or withdrawn by the Defaulting Clearing Member, each as at the Early Termination Date;

(3) if the net sum determined pursuant to sub-paragraph (2) above in respect of the House Position Account is a positive number (a "**House Credit**"), such House Credit shall be used to set off against each

negative net sum determined pursuant to sub-paragraph (2) above for a Client Account of Non-Porting Client(s) (a "**Non-Porting Client Deficit**"), by applying such House Credit to each Non-Porting Client Deficit in the proportion that the absolute value of the Non-Porting Client Deficit of each particular Client Account bears to the absolute value of the aggregate of the Non-Porting Client Deficits for all Client Accounts of Non-Porting Clients of the Defaulting Clearing Member; and

(4) if the net sum determined pursuant to sub-paragraphs (1) to (2) above for a Client Account of a Non-Porting Client(s) is a positive number, such amount (the "**Non-Porting Client Credit**") shall form part of the Client Entitlement to be returned to the Client(s) pursuant to Clearing Rule 1309. If the net sum determined pursuant to sub-paragraph (3) above for a Client Account of a Non-Porting Client(s) remains a negative number (a "**Remaining Non-Porting Client Deficit**"), such amount shall be further netted as set out in Clearing Rule 1306B below. At the end of the processes referred to in sub-paragraphs (1) to (3) above, in respect of each Client Account of Non-Porting Client(s), OTC Clear shall certify a single net sum as being payable by OTC Clear to the Defaulting Clearing Member (in the case of Client Accounts with a Non-Porting Client Credit) or by the Defaulting Clearing Member to OTC Clear (in the case of Client Accounts with a Remaining Non-Porting Client Deficit) or, if there is no such net sum (in the case of Client Accounts where a Non-Porting Client Deficit becomes zero), OTC Clear shall certify that fact.

1306B. If the net sum determined pursuant to Clearing Rule 1306A(2) in respect of the House Position Account is a negative number or, in the case of a Client Account with a Remaining Non-Porting Client Deficit:

(1) such negative sum shall then be further netted against the value (expressed as a positive number) of all Collateral (including the proceeds of the realization of such Collateral) held by OTC Clear as,

(a) the Rates and FX Contribution Balance recorded in such Defaulting Clearing Member's GF Account as at the Early Termination Date to the extent that any Rates and FX Losses are allocated to such Defaulting Clearing Member in accordance with Clearing Rules 1516(1)(b), 1516(2)(b) 1914(2) and 1916(2), and in the amount of such Rates and FX Losses allocated; and

(b) any remaining Rates and FX Contribution Balance relating to such Defaulting Clearing Member that is not allocated pursuant to sub-paragraph (1)(a) above after taking into account any application of such remaining Rates and FX Contribution Balance by OTC Clear pursuant to Clearing Rule 1548,

so as to produce a single net sum (if any) payable by or to the Defaulting Clearing Member;

(2) (i) the net sum of the House Account and each Client Account of Non-Porting Client(s) determined pursuant to sub-paragraph (1) above and (ii) any unused Rates and FX Contribution Balance recorded in such Defaulting Clearing Member's GF Account after being applied pursuant

to Clearing Rules 1516(1)(b), 1516(2)(b) and 1914(2) and taking into account the operation of Clearing Rule 1548 shall be aggregated to arrive at a further net sum. If the further net sum determined is a positive number, then OTC Clear shall pay such net sum to the Defaulting Clearing Member, and if the further net sum determined is a negative number, then the Defaulting Clearing Member shall pay such net sum to OTC Clear;

(3) any property which has been provided by the Defaulting Clearing Member as market collateral shall cease to be market collateral (for the purpose of this sub-paragraph, the term "market collateral" bears the meaning set out in section 18 of the SFO); and

(4) OTC Clear shall certify the net sum referred to in this Clearing Rule 1306B as being payable by OTC Clear to the Defaulting Clearing Member or by the Defaulting Clearing Member to OTC Clear, or, if there is no such net sum, OTC Clear shall certify that fact.

1306C. If the net sum determined pursuant to Clearing Rule 1306A(2) in respect of the House Position Account is zero, if there is a House Credit and no Non-Porting Client Deficits or, if there is a surplus after applying the House Credit to each Non-Porting Client Deficit pursuant to Clearing Rule 1306A(3), then:

(1) such amount shall then be aggregated with the value (expressed as a positive number) of all Collateral (including the proceeds of the realization of such Collateral) held by OTC Clear as,

(a) the Rates and FX Contribution Balance recorded in such Defaulting Clearing Member's GF Account as at the Early Termination Date to the extent that any Rates and FX Losses are allocated to such Defaulting Clearing Member in accordance with Clearing Rules 1516(1)(b), 1516(2)(b), 1914(2) and 1916(2), and in the amount of such Rates and FX Losses allocated; and

(b) any remaining Rates and FX Contribution Balance relating to such Defaulting Clearing Member that is not allocated pursuant to sub-paragraph (1)(a) above after taking into account any application of such remaining Rates and FX Contribution Balance by OTC Clear pursuant to Clearing Rule 1548,

so as to produce a single net sum (if any) payable to the Defaulting Clearing Member.

Any property which has been provided by the Defaulting Clearing Member as market collateral shall cease to be market collateral (for the purpose of this sub-paragraph, the term "market collateral" bears the meaning set out in section 18 of the SFO); and

(2) OTC Clear shall certify the net sum referred to in this Clearing Rule 1306C as being payable by OTC Clear to the Defaulting Clearing Member or, if there is no such net sum, OTC Clear shall certify that fact.

1307. Subject to Clearing Rules 1914(1)(c) and 1914(1)(d), the aggregate trade value in respect of all Contracts in a Position Account for the purposes of Clearing

Rule 1306A(1) above shall be an amount equal to the aggregate of the following (without double-counting): (i) the aggregate Auction Payments relating to that Position Account (if any), (ii) minus the aggregate Auction Losses relating to that Position Account (if any), (iii) plus the Unpaid Amounts due from OTC Clear to the Defaulting Clearing Member in respect of all Contracts in that Position Account (if any), (iv) minus the Unpaid Amounts due from the Defaulting Clearing Member to OTC Clear in respect of all Contracts in that Position Account (if any), (v) plus the Unsettled VM Amount in respect of the Auction Contracts and Auction Failed Positions of that Position Account (to the extent that such Unsettled VM Amount is payable by OTC Clear to the Defaulting Clearing Member (if any)), (vi) plus the aggregate Contract Termination Net Payments payable by Non-Defaulting Clearing Members to OTC Clear as a result of a Contract Termination Event relating to that Position Account (if any), (vii) minus the aggregate Contract Termination Losses as a result of a Contract Termination Event relating to that Position Account (if any), and (viii) in the case of the House Position Account only, minus the aggregate General Losses relating to that Position Account (if any).

OTC Clear will determine such aggregate trade value in the Base Currency, and for the purpose of the calculations under Clearing Rule 1306 to Clearing Rule 1309, OTC Clear may convert any amounts denominated in other currencies into the Base Currency at such rate prevailing at the time of the calculation as it shall reasonably select.

A certificate issued by OTC Clear under Clearing Rules 1306A, 1306B and 1306C in respect of a separate capacity of the Defaulting Clearing Member shall be conclusive as to the discharge of the Defaulting Clearing Member's rights and liabilities in respect of the Contracts registered in its name in such capacity, and OTC Clear and the Defaulting Clearing Member shall duly pay any net sums certified under Clearing Rules 1306A, 1306B and 1306C to each other at the time and in such manner prescribed in these Clearing Rules. If OTC Clear does not have sufficient Base Currency to satisfy any net sum payable under Clearing Rules 1306A, 1306B and 1306C, OTC Clear may satisfy such net sum payable to the Defaulting Clearing Member in any other Eligible Currency such that the overall payment made by OTC Clear to the Defaulting Clearing Member will be equal to the Base Currency value determined pursuant to Clearing Rules 1306A, 1306B and 1306C. Pursuant to Clearing Rule 823(2) and section 3(c) of Part 5 of Schedule 3 to the SFO, a Clearing Member's House Credit may be applied by OTC Clear to set-off any liabilities of that Clearing Member to OTC Clear, including such Clearing Member's Non-Porting Client Deficits.

The process described in Clearing Rules 1306A, 1306B and 1306C with respect to each Defaulting Clearing Member and each of their capacities will only be performed upon the expiry of the Capped Liability Period relating to the relevant DMP Event. Upon the completion of the process in Clearing Rules 1306A, 1306B and 1306C, OTC Clear will make a report as required by section 47(1)(a) of the SFO.

1308. [DELETED]

1308A. In respect of each Non-Porting Client of a Defaulting Clearing Member, OTC Clear will determine the Client Entitlement in accordance with Clearing Rule 1309. In respect of a Rule-Based Clearing Member, OTC Clear recognises that the Client Entitlement relates to the positions corresponding to the Affected Contracts that are entered into between the Defaulting Clearing Member and such Non-Porting Client and, pursuant to the power under section 40(2A) of the SFO, OTC Clear makes rules for the taking of proceedings or other action in respect of the Client Entitlement under Clearing Rule 1309(3). Following an Event of Default in respect of the Clearing Member, OTC Clear shall return the Client Entitlement directly to such Client pursuant to Clearing Rule 1309(3).

1308B. In respect of each Porting Client of a Defaulting Clearing Member, OTC Clear will determine the Client Entitlement in accordance with Clearing Rule 1309A. In respect of a Rule-Based Clearing Member, OTC Clear recognises that the Client Entitlement relates to the positions corresponding to the Contracts recorded in the relevant Client Position Account, and pursuant to the power under section 40(2A) of the SFO, OTC Clear makes rules for the taking of proceedings or other action in respect of the Client Entitlement under Clearing Rule 1309A(3). Following an Event of Default in respect of the Clearing Member, OTC Clear shall return the Client Entitlement directly to such Client pursuant to Clearing Rule 1309A(3).

1309. OTC Clear will determine the Client Entitlement in respect of each Non-Porting Client in accordance with the following:

(1) the Client Entitlement relating to each Client Clearing Category 1 Position Account to which Contracts relating to a Non-Porting Client are recorded shall be an amount equal to (i) the Non-Porting Client Credit in respect of such Client Position Account to which Contracts relating to such Non-Porting Client is recorded (if any) as determined in accordance with Clearing Rule 1306A or (ii) (following the occurrence of a Rates and FX Clearing Termination Event) the Limited Recourse Applicable Percentage of the Limited Recourse CM Receivable in respect of such Client Position Account as determined in accordance with Clearing Rule 1538.

(1A) the Client Entitlement relating to each Client Clearing Category 2 Position Account to which Contracts relating to a Non-Porting Client are recorded shall be the greater of zero and an amount equal to the product of:

(a) the hypothetical Initial Margin with respect to the Affected Contracts of such Non-Porting Client (calculated on a portfolio margining basis assuming that all Affected Contracts of such Non-Porting Client were booked into a single separate hypothetical position account assigned solely to such Non-Porting Client) divided by the aggregate of the hypothetical Initial Margin with respect to the Affected Contracts relating to all Non-Porting Clients of such Client Clearing Category 2 Position Account (each such hypothetical Initial Margin for each individual Non-Porting Client being calculated on a portfolio margining basis assuming that the Affected Contracts of each individual

Non-Porting Client were booked into a single separate hypothetical position account assigned solely to such individual Non-Porting Client), in each case, such Initial Margin being calculated by OTC Clear in its sole and absolute discretion as at the latest practicable time immediately preceding the occurrence of the relevant DMP Event; and

(b) (i) the Non-Porting Client Credit in respect of such Client Position Account to which Contracts relating to such Non-Porting Clients are recorded (if any) as determined in accordance with Clearing Rule 1306A or (ii) (following the occurrence of a Rates and FX Clearing Termination Event) the Limited Recourse Applicable Percentage of the Limited Recourse CM Receivable in respect of such Client Position Account as determined in accordance with Clearing Rule 1538.

(2) OTC Clear will make any determination pursuant to Clearing Rules 1308A and 1309 using its own records based on the information provided to it by the Defaulting Clearing Member. OTC Clear shall be entitled to rely on such records without conducting any independent verification in respect of the same. Notwithstanding the immediately foregoing, OTC Clear may, in its absolute discretion (i) adjust such records to reflect any factors reasonably taken into consideration when performing such valuation and/or (ii) withhold delivery of any Client Entitlement until such time as the Defaulting Clearing Member or its representative provides to OTC Clear any information requested by OTC Clear.

(3) Following the calculation of a Client Entitlement, where the relevant Client instructs OTC Clear to pay an amount to it equal to the Client Entitlement due to be returned in respect of it to the Defaulting Clearing Member, then subject to entering into relevant documentation between OTC Clear and the relevant Client (which may, without limitation, include an indemnity (secured or otherwise) to OTC Clear in respect of any loss or liability arising from the legal invalidity of any payment of the Client Entitlement to the Client), OTC Clear shall determine in its sole and absolute discretion, the period of time during which it will give effect to instructions received from its Client pursuant to Clearing Rule 1309(3) and, within such period of time, pay the Client Entitlement directly to the Client instead of returning the same to the Defaulting Clearing Member.

If the relevant Client fails to enter into relevant documentation with OTC Clear and/or, if applicable, provide OTC Clear with appropriate documentation, each as required under this Clearing Rule 1309(3), OTC Clear shall reserve the right to withhold the delivery of any Client Entitlement until such time such relevant documentation has been properly entered into with OTC Clear and/or, if applicable, such appropriate documentation has been properly provided to OTC Clear.

1309A. OTC Clear will determine the Client Entitlement in respect of each Porting Client in accordance with the following:

(1) if the relevant DMP Event with respect to the Defaulting Clearing Member is not an Automatic Early Termination Event:

(a) the Client Entitlement relating to each Client Clearing Category 1 Position Account to which Contracts (including, for the avoidance of doubt, any Non-Porting Contracts) relating to a Porting Client are (or, immediately prior to the relevant scheduled Termination Date or Settlement Date, as the case may be, were) recorded shall be the aggregate of all amounts that have become due and payable by OTC Clear to the Defaulting Clearing Member on or after the date the relevant DMP Event in respect of any Contracts (including, for the avoidance of doubt, any Non-Porting Contracts) recorded in the relevant Client Position Account which have not already been paid (without prejudice to, and after giving effect to, any rights of set-off, netting and/or currency conversion under the Clearing Rules); and

(b) the Client Entitlement relating to each Client Clearing Category 2 Position Account to which Contracts (including, for the avoidance of doubt, any Non-Porting Contracts) relating to a Porting Client are (or, immediately prior to the relevant scheduled Termination Date or Settlement Date, as the case may be, were) recorded shall be the greater of zero and an amount equal to the product of:

(i) an amount equal to:

(A) the hypothetical net amount payable by OTC Clear to the Defaulting Clearing Member in respect of all amounts that have become due and payable by OTC Clear to the Defaulting Clearing Member or by the Defaulting Clearing Member to OTC Clear, in each case on or after the date the relevant DMP Event occurs in respect of any Contracts (including, for the avoidance of doubt, any Non-Porting Contracts) relating to such Porting Client recorded in the relevant Client Position Account which have not already been paid (calculated on a hypothetical basis after giving effect to any rights of set-off or netting under the Clearing Rules and after converting any amounts denominated in other currencies into the Base Currency at such rate prevailing at the time of the calculation as OTC Clear shall reasonably select) (to the extent such hypothetical net sum is a positive number, such amount a "**Porting Client Hypothetical Net Receivable**"); divided by

(B) the sum of all Porting Client Hypothetical Net Receivables for each of the Porting Clients sharing the relevant Client Clearing Category 2 Position Account; and

(ii) the aggregate of all amounts that have become due and payable by OTC Clear to the Defaulting Clearing Member on or after the date the relevant DMP Event occurs in respect of any Contracts

(including, for the avoidance of doubt, any Non-Porting Contracts) recorded in the relevant Client Position Account which have not already been paid (without prejudice to, and after giving effect to, any rights of set-off, netting and/or currency conversion under the Clearing Rules).

(1A) if the relevant DMP Event with respect to the Defaulting Clearing Member is an Automatic Early Termination Event:

(a) the Client Entitlement relating to relating to a Porting Client which is a Client Clearing Category 1 Client shall be the positive net sum (if any) determined in accordance with Clearing Rule 1703(1A)(a)(ii) in respect of that Porting Client; and

(b) the Client Entitlement relating to a Porting Client which is a Client Clearing Category 2 Client shall be the greater of zero and an amount equal to the product of:

(i) the hypothetical Initial Margin with respect to the Non-Porting AET Contracts of such Porting Client (calculated on a portfolio margining basis assuming that all Non-Porting AET Contracts of such Porting Client had not terminated and were booked into a single separate hypothetical position account assigned solely to such Porting Client) divided by the aggregate of the hypothetical Initial Margin with respect to the Non-Porting AET Contracts relating to all Porting Clients of the relevant Client Clearing Category 2 Position Account (each such hypothetical Initial Margin for each individual Porting Client being calculated on a portfolio margining basis assuming that the Non-Porting AET Contracts of each individual Porting Client were not terminated and were booked into a single separate hypothetical position account assigned solely to such individual Porting Client), in each case, such Initial Margin being calculated by OTC Clear in its sole and absolute discretion as at the latest practicable time immediately preceding the occurrence of the relevant DMP Event; and

(ii) the positive net sum (if any) determined in accordance with Clearing Rule 1704(1A)(a)(ii) in respect of the relevant Client Clearing Category 2 Position Account.

(2) OTC Clear will make any determination pursuant to Clearing Rules 1308B and 1309A using its own records based on the information provided to it by the Defaulting Clearing Member. OTC Clear shall be entitled to rely on such records without conducting any independent verification in respect of the same. Notwithstanding the immediately foregoing, OTC Clear may, in its absolute discretion (i) adjust such records to reflect any factors reasonably taken into consideration when performing such valuation and/or (ii) withhold delivery of any Client Entitlement until such time as the Defaulting Clearing Member or its representative provides to OTC Clear any information requested by OTC Clear.

(3) Following the calculation of a Client Entitlement, where the relevant Client instructs OTC Clear to pay an amount to it equal to the Client Entitlement due to be returned in respect of it to the Defaulting Clearing Member, then subject to entering into relevant documentation between OTC Clear and the relevant Client (which may, without limitation, include an indemnity (secured or otherwise) to OTC Clear in respect of any loss or liability arising from the legal invalidity of any payment of the Client Entitlement to the Client), OTC Clear shall determine in its sole and absolute discretion, the period of time during which it will give effect to instructions received from its Client pursuant to Clearing Rule 1309A(3) and, within such period of time, pay the Client Entitlement directly to the Client instead of returning the same to the Defaulting Clearing Member.

If the relevant Client fails to enter into relevant documentation with OTC Clear and/or, if applicable, provide OTC Clear with appropriate documentation, each as required under this Clearing Rule 1309A(3), OTC Clear shall reserve the right to withhold the delivery of any Client Entitlement until such time such relevant documentation has been properly entered into with OTC Clear and/or, if applicable, such appropriate documentation has been properly provided to OTC Clear.

1310. For the purpose of the processes set out in Clearing Rule 1306 to 1309, OTC Clear may take into account any Client's interest in any Collateral or proceeds thereof forming part of its Client Entitlement pursuant to Clearing Rules 1308A and 1309 and, if applicable, any relevant Security Deed, and the operations of section 56(1) shall be modified by this Clearing Rule 1310, as permitted under section 56(2) of the SFO.

Termination of the Membership of a Defaulting Clearing Member

1311. The Membership of a Defaulting Clearing Member shall terminate with effect from the Membership Termination Date designated by OTC Clear following the completion of the Default Management Process with respect to such Defaulting Clearing Member. Upon the completion of the Default Management Process with respect to a Defaulting Clearing Member, OTC Clear shall promptly notify all Clearing Members of the completion of the relevant Default Management Process. In addition, OTC Clear shall notify the Defaulting Clearing Member of its Membership Termination Date, which shall fall no later than five OTC Clear Business Days after the completion of the Default Management Process.

General Provisions relating to Clearing Member Event of Default

1312. OTC Clear may appoint any Person to take or assist it in taking any step under these Clearing Rules and to complete or assist it in completing the process set out in Clearing Rules 1306, 1306A, 1306B, 1306C and 1307. OTC Clear may at any time consult with any Person, and act in reliance upon advice received, in relation to any action it takes.

1313. Without prejudice to the right of OTC Clear to take any step pursuant to Clearing Rule 1305, OTC Clear may, upon determining that an Event of Default has occurred, issue a cautionary notice to the Defaulting Clearing Member including such directions and requirements to be complied with by the Defaulting Clearing Member within such time period as OTC Clear may think fit.

1314. The exercise by OTC Clear of any of its rights under these Clearing Rules is without prejudice to and shall not preclude OTC Clear from exercising any other rights (including the right to take disciplinary action) in respect of any default by a Clearing Member. Furthermore, no delay or omission on the part of OTC Clear in exercising any right, power or remedy shall impair such right, power or remedy or operate as any kind of waiver.

1315. A receiver, liquidator or other similar official appointed in respect of a Clearing Member must comply with any directions given by OTC Clear (or by any Person appointed by OTC Clear) pursuant to these Clearing Rules.

Indemnity

1316. Each Clearing Member shall indemnify OTC Clear, its Affiliate and a recognized exchange controller which is the controller of OTC Clear and keep OTC Clear, its Affiliate and a recognized exchange controller which is the controller of OTC Clear indemnified from and against any loss, cost (including cost of enforcement), interests, liability (including any tax or other fiscal liability), claim or Damage which OTC Clear, its Affiliate and a recognized exchange controller which is the controller of OTC Clear:

(1) incurred or suffered as a consequence of such Clearing Member's conduct, or a breach of any of such Clearing Member's obligations under the Clearing Documentation or the terms of a Contract or any Applicable Laws, including as a consequence of OTC Clear acting upon the instructions of a Clearing Member's Designated Person(s) in connection with any Original Transaction submitted by such Designated Person(s) on behalf, and in the name, of the Clearing Member;

(2) incurred or suffered directly in connection with OTC Clear's ensuring the settlement of a Contract in the case of a DMP Event relating to any other Clearing Member, whether or not OTC Clear takes any steps pursuant to Clearing Rule 1305 or any other steps under these Clearing Rules, provided that the aggregate amount indemnified by any Non-Defaulting Clearing Member in respect of each Capped Liability Period shall not exceed its Maximum Current Liability and shall be satisfied by application of its Rates and FX Contribution Balance in accordance with Clearing Rule 1549; or

(3) incurred or suffered in connection with any actions taken by OTC Clear or any actions that OTC Clear is required to take to comply with any obligations relating to the Tax Information Exchange Framework (or fails to take relating to Withholding Tax obligations) with respect to such Clearing Member.

OTC Clear Default

OTC Clear Failure to Pay Event

1317. If OTC Clear fails to make, when due, any payment to a Clearing Member (other than a Defaulting Clearing Member) (the "**Relevant Clearing Member**") arising from a Contract, the Relevant Clearing Member may provide written notification (the "**Failure to Pay Notice**") to OTC Clear formally informing OTC Clear of such failure pursuant to this Clearing Rule 1317.

1318. An "**OTC Clear Failure to Pay Event**" shall be deemed to occur if after the receipt of the Failure to Pay Notice by OTC Clear, OTC Clear has not made all relevant payments to the Clearing Member by the end of the relevant OTC Clear Failure to Pay Grace Period, provided that no OTC Clear Failure to Pay Event shall occur if (1) such failure to pay arises as a result of technical or administrative reasons beyond the control of OTC Clear; or (2) during the OTC Clear Failure to Pay Grace Period, OTC Clear has exercised its powers under Clearing Rule 1320(1) and/or 1320(2). During the OTC Clear Failure to Pay Grace Period, the Relevant Clearing Member shall continue to be obliged to pay when due all amounts required by OTC Clear in accordance with the Clearing Documentation and shall satisfy in full all its other obligations under the Clearing Documentation.

1319. Upon the occurrence of an OTC Clear Failure to Pay Event, the Relevant Clearing Member may terminate and liquidate all its outstanding Contracts (each a "**Relevant CM Contract**") by delivering a notice to OTC Clear.

1320. During the OTC Clear Failure to Pay Grace Period, OTC Clear may take the following action or actions:

(1) designate an Early Termination Date in respect of all the Relevant CM Contracts by delivering a notice to the Relevant Clearing Member whereupon all the Relevant CM Contracts shall be novated with effect from the day that falls on the second OTC Clear Clearing Day following the date of delivery of such notice by OTC Clear. Upon the delivery of such notice, the Relevant Clearing Member agrees that OTC Clear shall novate all the Relevant CM Contracts on the designated Early Termination Date by terminating such Relevant CM Contracts and registering in the name of any other Clearing Member (other than a Defaulting Clearing Member) Contracts on substantially similar terms as any Relevant CM Contract with the agreement of such other Clearing Member, and the provisions as set out in Clearing Rule 1324 shall apply; or

(2) declare, and notify all Clearing Members of the occurrence of, a Rates and FX Clearing Termination Event pursuant to the terms set out in Clearing Rule 1530, whether or not OTC Clear has, prior to such declaration of Rates and FX Clearing Termination Event, exercised its power pursuant to sub-paragraph (1) above. Upon the occurrence of a Rates and FX Clearing Termination Event, the Rates and FX Clearing Services will be wound down in accordance with Clearing Rules 1531 to 1540.

1321. In the event that the Relevant Clearing Member delivers a notice to OTC Clear to terminate all the Relevant CM Contracts pursuant to Clearing Rule 1319, OTC Clear shall:

(1) terminate all the Relevant CM Contracts on the day that falls on the second OTC Clear Clearing Day following the date of delivery of such notice by the Relevant Clearing Member (such day being the "**Early Termination Date**" for the purpose of this Clearing Rule 1321) by registering in the name of any other Clearing Member (other than a Defaulting Clearing Member) one or more Contracts on substantially similar terms as any Relevant CM Contract with the agreement of such other Clearing Member on the Early Termination Date and Clearing Rule 1324 shall apply; or

(2) declare, and notify all Clearing Members of the occurrence of, a Rates and FX Clearing Termination Event, upon which the Rates and FX Clearing Services will be wound down in accordance with Clearing Rules 1531 to 1540.

OTC Clear Insolvency Event

1322. An "**OTC Clear Insolvency Event**" shall occur if OTC Clear voluntarily commences a procedure seeking or proposing liquidation, administration, receivership, judicial management or a scheme of arrangement, or other similar relief with respect to itself or its debts under any bankruptcy, insolvency, regulatory, supervisory or similar law, or if any of the foregoing case or procedure is commenced in relation to OTC Clear by any other person and either:

(1) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for OTC Clear's winding-up or liquidation; or

(2) such case or procedure is not dismissed, discharged, stayed or restrained in each case within 21 OTC Clear Business Days of the institution or presentation thereof.

Upon the occurrence of an OTC Clear Insolvency Event, a Non-Defaulting Clearing Member may designate an Early Termination Date for the termination and liquidation of all Contracts then registered in its name.

1323. In the event that a Non-Defaulting Clearing Member delivers a notice to OTC Clear to terminate all of its Contracts then registered with OTC Clear pursuant to Clearing Rule 1322 as a result of the occurrence of an OTC Clear Insolvency Event, then all Contracts of all Clearing Members will be terminated with effect from (and including) the day that falls on the second OTC Clear Clearing Day following the date of delivery of such notice by the Non-Defaulting Clearing Member (such day being the "**Early Termination Date**" for the purpose of this Clearing Rule 1323) and Clearing Rule 1324 will apply to each Clearing Member. Upon receipt of a notice from a Non-Defaulting Clearing Member declaring the occurrence of an OTC Clear Insolvency Event, OTC Clear will notify all Clearing Members of (1) the occurrence of such event and (2) the Early Termination Date with respect to all outstanding Contracts registered in the name of all Clearing Members.

Calculations of Net Payment following OTC Clear Default

1324. Upon the designation of an Early Termination Date with respect to all Contracts then registered in the name of a Clearing Member pursuant to Clearing Rule 1320(1), 1321(1) or 1323:

(1) all obligations of OTC Clear and such Clearing Member in respect of any such Contract between them shall cease to exist and be replaced with the obligation to pay the termination amounts determined under sub-paragraph (3) below. The close-out value for each Contract shall be determined in accordance with section 10.1(ii) of the Clearing Procedures, provided that OTC Clear may also take into account any unpaid amounts that have become due and payable in respect of any Contract on or prior to the designation of the Early Termination Date;

(2) any unused Margin Balance and any income and redemption proceeds on any non-cash Collateral that have not already been paid to or withdrawn by

the Clearing Member(s) then held by OTC Clear in respect of one or more Clearing Members shall be returned to the relevant Clearing Members in accordance with sub-paragraph (6) below; and any unused Rates and FX Contribution Balance then held by OTC Clear in respect of one or more Clearing Members shall be returned to the relevant Clearing Members in accordance with sub-paragraph (8)(d) below;

(3) OTC Clear shall on, or as soon as reasonably practicable after, the Early Termination Date, calculate a net sum payable by or to each Clearing Member separately in relation to each Position Account registered in the name of such Clearing Member. In determining such net sum, OTC Clear will take into account the close-out values established for each Contract pursuant to sub-paragraph (1) above, and the value of all other amounts which is due to OTC Clear from the Clearing Member under these Clearing Rules or which is due to it from OTC Clear (other than OTC Clear's obligation to return any unused Margin Balance, any income and redemption proceeds on any non-cash Collateral that have not already been paid to or withdrawn by the relevant Clearing Member or Former Clearing Member and/or Rates and FX Contribution Balance to the relevant Clearing Member or Former Clearing Member), in each case, whether future, liquidated or unliquidated, actual or contingent. There shall be no combining or set-off between any House Position Account and Client Position Account(s), or between two or more Client Position Accounts. OTC Clear will determine any such net sum payable by, or to, a Clearing Member in the Base Currency. For the purpose of the determination under this sub-paragraph (3), OTC Clear may convert any amounts denominated in any other currency into the Base Currency at such rate prevailing at the time of the calculation as it shall reasonably select;

(4) If, pursuant to sub-paragraph (3) above, a net sum is determined to be payable by a Clearing Member to OTC Clear with respect to one or more of its Position Accounts, OTC Clear shall reduce each such sum by application of the Outright Transfer Margin Balance, if any, relating to the relevant Position Account. With respect to each Clearing Member and each of its Position Account(s), after application of the Outright Transfer Margin Balance relating to the relevant Position Account:

(a) if there remains a balance payable by the Clearing Member to OTC Clear for such Position Account (the "**CM Payable Balance**"), OTC Clear will, as soon as reasonably practicable, notify the relevant Clearing Member of the CM Payable Balance, and the relevant Clearing Member shall pay OTC Clear the CM Payable Balance within three OTC Clear Business Days following receipt of such notification; and

(b) if the Clearing Member fails to pay the CM Payable Balance within the time frame set out in sub-paragraph (4)(a) above, OTC Clear may declare an Event of Default in respect of such Clearing Member. OTC Clear may, in satisfaction of any due but unpaid CM Payable Balance in respect of a Position Account, apply the proceeds of enforcement of any non-cash Collateral comprising the

Margin Balance of the corresponding Collateral Account and any income and redemption proceeds on any non-cash Collateral that have not already been paid to or withdrawn by such Clearing Member;

(5) if, pursuant to sub-paragraph (3) above, a net sum is determined to be payable by OTC Clear to a Clearing Member with respect to one or more of its Position Accounts, each such sum shall form part of an OTC Clear Default CM Receivable with respect to the relevant Position Account;

(6) with respect to each Clearing Member and each of its Position Account(s), taking into account (if applicable) the operation of sub-paragraph (4) above:

(a) any unused Outright Transfer Margin Balance and, if applicable, any remaining proceeds of enforcement of non-cash Collateral further to the application of sub-paragraph (4)(b) above for such Position Account shall be returned to the Clearing Member; and

(b) any non-cash Collateral provided to OTC Clear on a security interest basis and comprising the Margin Balance of the Collateral Account corresponding to such Position Account and any income and redemption proceeds on any non-cash Collateral that have not already been paid to or withdrawn by the Clearing Member shall be redelivered to the Clearing Member in accordance with the relevant security document;

(7) following the completion of the processes described in sub-paragraphs (4) to (6) above:

(a) OTC Clear shall, with respect to each Position Account (without regard to its obligation to return any unused Rates and FX Contribution Balance to the relevant Clearing Member or Former Clearing Member), determine the resulting net sum payable by a Clearing Member to OTC Clear for such Position Account (such sum, an "OTC Clear Default Interim CM Payable"), or the resulting net sum payable by OTC Clear to a Clearing Member for such Position Account (such sum, an "**OTC Clear Default CM Receivable**");

(b) OTC Clear shall notify the relevant Clearing Member of its OTC Clear Default Interim CM Payable(s) or OTC Clear Default CM Receivable(s). Each Clearing Member that receives a notice to pay any OTC Clear Default Interim CM Payable shall pay each such amount to OTC Clear in full within three OTC Clear Business Days following receipt of such notification;

(c) if a Clearing Member fails to pay any OTC Clear Default Interim CM Payable in full within the time frame set out in sub-paragraph (7)(b) above, regardless of whether such OTC Clear Default Interim CM Payable arises out of a House Position Account or Client Position Account belonging to such Clearing Member, OTC Clear may apply any unused Rates and FX Contribution Balance then held by OTC

Clear in respect of such Clearing Member against the unpaid OTC Clear Default Interim CM Payable;

(d) with respect to a Clearing Member and each of its Position Account(s) with an OTC Clear Default Interim CM Payable, following the application of any unused Rates and FX Contribution Balance as described in sub-paragraph (7)(c) above, OTC Clear shall determine the final net sum payable by the Clearing Member, if any (each a "**OTC Clear Default Final CM Payable**") with respect to such Position Account, and notify such Clearing Member of the same. Each Clearing Member that receives a notice to pay any OTC Clear Default Final CM Payable shall pay each such amount to OTC Clear in full at or prior to the time specified by OTC Clear; and

(e) for the avoidance of doubt, a Clearing Member may have an OTC Clear Default Interim CM Payable or OTC Clear Default Final CM Payable in respect of one Position Account registered in its name, but an OTC Clear Default CM Receivable in respect of another Position Account registered in its name;

(8) with respect to each Clearing Member who has an OTC Clear Default CM Receivable, and each Clearing Member or Former Clearing Member with any unused Rates and FX Contribution Balance (taking into account the operation of sub-paragraph (7)(c) above), OTC Clear shall pay each such Clearing Member or Former Clearing Member in proportion to the value of their respective claims on OTC Clear under sub-paragraph (7) above in the following manner:

(a) OTC Clear shall, until the time specified in sub-paragraph (9) below, take reasonable steps to recover any unpaid OTC Clear Default Final CM Payables. and may deduct from such amounts any reasonable costs in connection with such recovery;

(b) following receipt of all or some (if any Clearing Member defaults in its payment of the relevant OTC Clear Default Final CM Payable) OTC Clear Default Final CM Payables, OTC Clear will calculate a percentage ("**OTC Clear Default Applicable Percentage**") equal to the lesser of:

(A) 100%; and

(B) (I) the aggregate value of (i) the Rates and FX Guarantee Resources then held by OTC Clear, (ii) any Margin Balance and any income and redemption proceeds on any non-cash Collateral that have not already been paid to or withdrawn by the Clearing Members or Former Clearing Members applied pursuant to Clearing Rules 1324(3) and/or 1324(4)(b) and (iii) all OTC Clear Default Final CM Payables received; divided by

(II) the aggregate value representing the sum of (i) all OTC Clear Default CM Receivables and (ii) any unused Rates and FX Contribution Balance then held by OTC Clear in

respect of all Clearing Members or Former Clearing Members (taking into account the operation of subparagraph (7)(c) above);

(c) OTC Clear shall pay each Clearing Member with an OTC Clear Default CM Receivable an amount equal to the OTC Clear Default Applicable Percentage of such OTC Clear Default CM Receivable;

(d) OTC Clear shall pay each Clearing Member or Former Clearing Member with unused Rates and FX Contribution Balance an amount equal to the OTC Clear Default Applicable Percentage of such unused Rates and FX Contribution Balance, provided that the aggregate sum payable by OTC Clear in respect of unused Rates and FX Contribution Balance for all Clearing Member(s) and Former Clearing Member(s) shall never exceed the value of the Rates and FX Guarantee Resources then held by OTC Clear. Once the Rates and FX Guarantee Resources have been exhausted, the unpaid balance of any unused Rates and FX Contribution Balance shall be extinguished; and

(e) all payments made under this sub-paragraph (8) shall be made in the Base Currency provided that if OTC Clear does not have sufficient Base Currency to satisfy such payment, it may satisfy such payment obligation in any other Eligible Currency. For this purpose OTC Clear shall be entitled to convert any amounts denominated in the Base Currency into any other Eligible Currency (or vice versa) at such rate prevailing at the time of settlement as it shall reasonably select;

(9) if OTC Clear determines that no further amounts in respect of any OTC Clear Default Final CM Payables are likely to be recovered and notifies the same to the relevant Clearing Member(s) and Former Clearing Member(s), then the unpaid balance of any OTC Clear Default CM Receivable and/or unused Rates and FX Contribution Balance shall thereafter be extinguished and the relevant Clearing Member(s) and Former Clearing Member(s) shall have no further recourse to OTC Clear (its Affiliates, a recognized exchange controller which is the controller of OTC Clear, or any of their respective Representatives) in respect thereof; and

(10) OTC Clear will, as soon as reasonably practicable, inform the SFC of the occurrence of an OTC Clear Failure to Pay Event or OTC Clear Insolvency Event upon becoming aware of the same.

1325. The obligations of a Clearing Member to pay any amounts due and payable to OTC Clear pursuant to the Clearing Documentation shall survive the Membership Termination Date relating to such Clearing Member.

Chapter 14 Disciplinary Actions and Proceedings

Situations Calling for Disciplinary Action

1401. OTC Clear may commence disciplinary proceedings against a Clearing Member:

(1) if the Clearing Member contravenes any provisions of the Clearing Documentation or any conditions attached to its Membership, including any breach of its obligations, undertakings or representations by the Clearing Member under the Membership Agreement to which it is a party;

(2) if the Clearing Member commits any act or omits to commit any act relating to its clearing activities which may adversely affect the reputation of OTC Clear, or the soundness or integrity of OTC Clear as a recognized clearing house;

(3) if OTC Clear has determined that an Event of Default (excluding an Automatic Early Termination Event) has occurred in relation to that Clearing Member;

(4) if the Clearing Member fails to provide information requested by an exchange, clearing house, Regulatory Authority or an organization with whom HKEX or OTC Clear has entered into an information sharing agreement;

(5) if the Clearing Member fails to participate in the Default Management Process when required to do so under the Clearing Documentation or OTC Clear, after consultation with the Risk Management Committee, determines that the Clearing Member participated in the Default Management Process in bad faith;

(6) if a Clearing Member is subject to an adverse finding by any Governmental Authority, Clearing Organization or Regulated Exchange in respect of its activities as a Clearing Member;

(7) if the Clearing Member refuses to answer fully questions or produce books, records or other documents as may be required at or during the course of any disciplinary investigation or proceedings, or testifies falsely;

(8) if the Clearing Member refuses to appear before the Disciplinary Committee, the Disciplinary Appeals Committee or any other committee of OTC Clear duly constituted under these Clearing Rules to deal with disciplinary matters, at or during the course of any disciplinary investigation or proceedings; or

(9) if the Clearing Member fails to meet or comply with any disciplinary sanction or other requirement imposed on it.

OTC Clear will notify the relevant Regulatory Authority of a Remotely Regulated Entity in case any disciplinary proceedings have been commenced by OTC Clear against such Remotely Regulated Entity.

1402. An initial election by OTC Clear to commence disciplinary proceedings against a Clearing Member with respect to whom an Event of Default (excluding Automatic Early Termination Event) has occurred shall not prejudice, or otherwise affect, OTC

Clear's right to subsequently deliver a Notice of Default, provided that an Event of Default is then in existence and continuing (regardless of whether such event constitutes the same, or different, ground of Event of Default which leads to the disciplinary action taken by OTC Clear pursuant to Clearing Rule 1401(3)).

Co-operation

1403. In any investigation into a disciplinary matter or into circumstances possibly giving rise to a disciplinary matter, every Clearing Member shall co-operate with OTC Clear, the OTC Clear Board, the Disciplinary Committee, the Disciplinary Appeals Committee, a recognized exchange controller which is the controller of OTC Clear, the SFC and any other Person or body of Persons to whom the investigation may be entrusted.

Notification

1404. Any proposal to take disciplinary proceedings, and the outcome of any disciplinary proceedings, shall be notified to the SFC.

Disciplinary Actions

1405. Without prejudice to any other rights OTC Clear may have, following the conclusion of disciplinary proceedings carried out against a Clearing Member pursuant to Clearing Rules 1406 to 1408, the Disciplinary Committee may impose no disciplinary action or any of the following disciplinary actions:

(1) to terminate the Membership of a Clearing Member;

(2) to call upon a Clearing Member, by written notice, to resign pursuant to Clearing Rule 604. If the relevant Clearing Member fails to tender its notice of resignation within seven days of receipt of such notice from OTC Clear, OTC Clear may exercise its power to terminate the Membership of such Clearing Member;

(3) to suspend a Clearing Member from Membership pursuant to Clearing Rules 601 to 603 on such terms and for such period as OTC Clear shall think fit;

(4) to impose a fine on a Clearing Member;

(5) to censure publicly or privately a Clearing Member;

(6) to issue a warning, including, as appropriate, a requirement that certain actions be taken (which may include a requirement that the Clearing Member cease and desist from certain actions) within the period specified in the warning and specifying the sanction (including a fine, suspension or revocation) in the event that such actions are not taken within the specified period;

(7) to require for rectification or other remedial action or restitutionary measures to be taken by the Clearing Member within a stipulated period, including, if appropriate, the appointment of independent accountants, solicitors, consultants or other professionals in connection therewith;

(8) to notify the matter to any competent authority to which a Clearing Member is subject; or

(9) to take such other disciplinary action as the Disciplinary Committee shall consider appropriate in the circumstances.

The Disciplinary Appeals Committee may, following the conclusion of appeal hearings carried out pursuant to Clearing Rules 1409 and 1410, overturn any decision made by the Disciplinary Committee or impose any of the disciplinary actions set out in sub-paragraphs (1) to (8) above or take such other disciplinary action as the Disciplinary Appeals Committee shall consider appropriate in the circumstances.

Procedures relating to Disciplinary Committee

1406. If OTC Clear proposes to commence disciplinary proceedings against a Clearing Member in respect of any situation set out in Clearing Rule 1401, it shall provide the Clearing Member and the Disciplinary Committee a notice (the "**Notice of Disciplinary Committee Hearing**") at least 10 OTC Clear Business Days prior to the proposed date of the hearing, and the Notice of Disciplinary Committee Hearing shall include:

(1) the statement of case which shall comprise the charge(s), a summary of the facts to be relied on alleged to give rise to that situation;

(2) a copy of the documents in the possession of OTC Clear which are relied on to support the facts alleged, as well as a copy of any document in the possession of OTC Clear which contradicts the alleged facts; and

(3) the date, time and place of the hearing,

provided that OTC Clear shall have the power (either on its own initiative or upon a request received from the Clearing Member) to postpone or adjourn such hearing to a date, time and place to be determined by OTC Clear. In case of such proposed postponement or adjournment, OTC Clear shall notify the Clearing Member at least 10 OTC Clear Business Days prior to the date on which such proposed or adjourned hearing is due to take place.

1407. The Clearing Member shall have the right to attend the hearing of the Disciplinary Committee and to make representations, and may be legally represented at such hearing. A representative of OTC Clear may also make representations on behalf of OTC Clear.

1408. The Disciplinary Committee will communicate the outcome of such hearing, including any action to be taken by OTC Clear, and/or order as to costs by way of provision of a notice (the "**Initial Order Notice**") to the relevant Clearing Member. Such Initial Order Notice shall set out in reasonable detail the reasons for the conclusions of the Disciplinary Committee.

Appeals to the Disciplinary Appeals Committee

1409. Following receipt of the Initial Order Notice, a Clearing Member may appeal to the Disciplinary Appeals Committee on one of the grounds set out in Clearing Rule 1411 within the Appeal Period, where the "**Appeal Period**" means:

(1) three OTC Clear Business Days from the date of receipt of the Initial Order Notice by a Clearing Member if the Initial Order Notice indicates that such Clearing Member's Membership shall be terminated. If the relevant Clearing Member does not appeal within the Appeal Period, it shall commence the

Non-Default Unwind immediately and its Membership Termination Date shall fall on the OTC Clear Clearing Day on which each of the:

(a) Initial Margin requirements (in respect of each Position Account of such Clearing Member) shown on the end-of-day Margin report published on such day; and

(b) the net notional of all Contracts recorded in the name of such Clearing Member,

becomes zero.

Failure by a Clearing Member to commence the Non-Default Unwind following the expiry of the Appeal Period pursuant to this Clearing Rule 1409(1) shall constitute an Event of Default with respect to such Clearing Member; and

(2) 10 OTC Clear Business Days from the date of receipt of the Initial Order Notice by a Clearing Member if the Initial Order Notice indicates that OTC Clear will take disciplinary measures against the relevant Clearing Member other than termination of its Membership. If no appeal is brought by the Clearing Member prior to the expiry of the Appeal Period, then OTC Clear may, at the end of the Appeal Period, immediately enforce the proposed disciplinary action as set out in the Initial Order Notice against such Clearing Member.

A Clearing Member shall clearly indicate the ground(s) of appeal in its request to appeal. An appeal shall be deemed invalid if a Clearing Member fails to clearly indicate the ground(s) of appeal in its request to appeal within the Appeal Period.

1410. If an appeal on one of the grounds set out in Clearing Rule 1411 is lodged by a Clearing Member within the Appeal Period, then OTC Clear will provide such Clearing Member and the Disciplinary Appeals Committee a notice (the "**Notice of Disciplinary Appeals Committee Hearing**") stating the date, time and place where the appeal hearing will take place, provided that OTC Clear shall have the power (either on its own initiative or upon a request received from the Clearing Member) to postpone or adjourn such hearing to a date, time and place to be determined by OTC Clear. In case of such proposed postponement or adjournment, OTC Clear shall notify the Clearing Member at least 10 OTC Clear Business Days prior to the date on which such proposed or adjourned hearing is due to take place.

Grounds for Appeal

1411. The Disciplinary Appeals Committee shall hear and determine appeals against a decision of the Disciplinary Committee on the following grounds:

(1) that the Disciplinary Committee misdirected or misconducted itself contrary to these Clearing Rules or the rules of natural justice;

(2) that the Disciplinary Committee's decision was one which no reasonable Disciplinary Committee could have reached;

(3) that the Disciplinary Committee's decision was based on an error of law or a gross misinterpretation of these Clearing Rules; or

(4) that any disciplinary action or penalty imposed by the Disciplinary Committee is unduly excessive,

provided that in each case, the onus of proof lies with the Clearing Member who appeals against the decision of the Disciplinary Committee as set out in the Initial Order Notice.

1412. The Clearing Member shall have the right to attend the hearing of the Disciplinary Appeals Committee and to make representations and shall be permitted to be legally represented at such hearing. A representative of OTC Clear may also make representations on behalf of OTC Clear.

1413. Unless otherwise determined by OTC Clear or the Disciplinary Appeals Committee, pending the outcome of any appeal to the Disciplinary Appeals Committee, the decision being appealed against shall be stayed from the date on which the appeal is lodged by the Clearing Member.

1414. The decision of the Disciplinary Appeals Committee on an appeal made to it pursuant to these Clearing Rules shall be final and conclusive. The Disciplinary Appeals Committee will issue and communicate the outcome of such hearing including any action to be taken by OTC Clear and/or order as to costs by way of provision of a notice (the "**Final Order Notice**") to the relevant Clearing Member.

Order as to Costs

1415. Where disciplinary proceedings are commenced against a Clearing Member, the Disciplinary Committee or Disciplinary Appeals Committee, as appropriate, may order any party to the disciplinary proceedings to pay or share such costs and expenses including, without limitation, the remuneration and expenses of the members of the Disciplinary Committee and/or the Disciplinary Appeals Committee adjudicating at the hearing, legal costs, administration costs and expenses, and costs and expenses incurred in the investigation, preparation and presentation of the case.

1416. Subject to Clearing Rule 1417, any costs awarded against a Clearing Member at any disciplinary hearing shall be payable within 10 OTC Clear Business Days of the delivery of the Initial Order Notice (if not appealed) or the Final Order Notice, as applicable and the determination of the amount of the costs.

1417. The Disciplinary Appeals Committee may affirm or reassess any order of costs made by the Disciplinary Committee whether or not an appeal is allowed, dismissed or withdrawn, and such order as to costs made by the Disciplinary Appeals Committee, if any, shall come into effect on the service of the Final Order Notice on the Clearing Member.

Chapter 15 Rates and FX Guarantee Resources

Rates and FX Guarantee Resources Purpose

1501. The purpose of the Rates and FX Guarantee Resources is to provide resources to support the obligations of OTC Clear as a counterparty under Contracts in respect of the Rates and FX Clearing Service but not for any other clearing service that OTC Clear may from time to time offer, and shall only be used in accordance with these Clearing Rules. The Rates and FX Guarantee Resources comprise the Rates and FX Guarantee Fund, Rates and FX Assessments and OTC Clear Contribution.

1502. Each Clearing Member agrees and acknowledges that, for the purpose of securing its liabilities (including to indemnify OTC Clear in the circumstances described in Clearing Rule 1316), it shall provide Collateral on an outright transfer basis in respect of its CM Funded Contribution Amount and CM Unfunded Contribution Amount, each in an amount determined by OTC Clear in accordance with the Clearing Procedures. With respect to a Defaulting Clearing Member, for the purpose of securing its liabilities to OTC Clear in connection with the settlement of its Contracts, the Rates and FX Contribution Balance of such Defaulting Clearing Member shall be taken into account by OTC Clear when determining the net sum payable by, or to, such Defaulting Clearing Member in accordance with Clearing Rules 1306B and 1306C. With respect to a Non-Defaulting Clearing Member, for the purpose of securing its liabilities to indemnify OTC Clear in the circumstances described in Clearing Rule 1316(2), the Rates and FX Contribution Balance of each Non-Defaulting Clearing Member may be applied in accordance with Clearing Rule 1549. Unless otherwise specified in Clearing Rule 1508(1)(a), each Clearing Member must satisfy a demand for CM Funded Contribution Amount and/or CM Unfunded Contribution Amount within one OTC Clear Business Day following the receipt of such demand from OTC Clear.

Calculations relating to the Rates and FX Guarantee Fund, Rates and FX Assessments and Rates and FX Contribution Balance

1503. Subject to Clearing Rule 1508, OTC Clear shall calculate the Rates and FX Guarantee Fund and Rates and FX Assessments and resize the CM Funded Contribution Amount and CM Unfunded Contribution Amount for each Clearing Member, in each case as detailed in section 6.1 of the Clearing Procedures, on each Rates and FX Contribution Determination Date. A "**Rates and FX Contribution Determination Date**" will occur on:

(1) the first or second OTC Clear Business Day of each calendar month, as may be notified by OTC Clear;

(2) on any date if the Max EUL calculated on such date changes by more than 20% from the Max EUL calculated on the immediately preceding Rates and FX Contribution Determination Date, where "Max EUL" has the meaning given to it in section 6.1.1(6) and as modified by section 6.1.1(8) of the Clearing Procedures if Client Clearing Services are provided by one or more Clearing Members on OTC Clear Clearing Days falling within the GF Calculation Period relating to such Rates and FX Contribution Determination Date; and

(3) upon expiry of a Capped Liability Period pursuant to Clearing Rule 1508(2).

The Rates and FX Contribution Balance will be valued by OTC Clear daily in accordance with section 7.5.3 of the Clearing Procedures.

Initial Rates and FX Contribution

1504. A Clearing Member shall, upon receipt of a notice of approval of its application to become a Clearing Member, deliver Collateral with an aggregate value, determined by OTC Clear in accordance with Chapter 7 of the Clearing Procedures, equal to the Rates and FX Minimum Contribution Amount plus such other amount as OTC Clear may determine at its discretion based on projected clearing activity of such Clearing Member as its initial contribution to the Rates and FX Guarantee Fund. OTC Clear will set out any such additional amount required from a Clearing Member as part of its initial contribution to the Rates and FX Guarantee Fund in the notice of approval to become a Clearing Member. A Clearing Member shall satisfy its initial contribution to the Rates and FX Guarantee Fund in full no later than five OTC Clear Business Days from the date of receipt of notice of approval, or if earlier, the day prior to it submitting its first Original Transaction to OTC Clear for registration.

Further Rates and FX Contribution

1505. Following each Rates and FX Contribution Determination Date, each Clearing Member will be notified of its CM Funded Contribution Amount and CM Unfunded Contribution Amount in the Base Currency, each as determined by OTC Clear in the manner set out in Chapter 6 of the Clearing Procedures and calculated as at such Rates and FX Contribution Determination Date. The demand will be issued on the relevant Rates and FX Contribution Determination Date and will specify the amount of any additional Collateral required or any Rates and FX Contribution Excess. Each Clearing Member must satisfy the demand for additional Collateral one OTC Clear Business Day following receipt of such demand.

Rates and FX Assessments Demand

1506. Each Clearing Member agrees and acknowledges that, for the purpose of securing its liabilities in connection with the settlement of its Contracts pursuant to Clearing Rules 1306, 1306A, 1306B, 1306C and 1307 and to indemnify OTC Clear in the circumstances described in Clearing Rule 1316(2), it has an unconditional obligation to pay its CM Unfunded Contribution Amount in cash to the Rates and FX Guarantee Resources if required to do so by OTC Clear pursuant to Clearing Rule 1507.

1507. If, following the occurrence of a DMP Event with respect to one or more Clearing Members:

(1) the Rates and FX Contribution Balance of all Clearing Members (for the avoidance of doubt, excluding any amounts applied by OTC Clear in connection with the DMP Event, but including the value of any Rates and FX Contribution in respect of any earlier demand of Rates and FX Assessments) falls below, or is expected to fall below, 75% of the last calculated value of the Rates and FX Guarantee Fund; or

(2) OTC Clear determines in its sole discretion that all cash or liquid resources comprising the Rates and FX Guarantee Fund then held by it have been utilized in full, or are expected to be utilized in full, regardless of whether the value of the Rates and FX Contribution Balance of all Clearing

Members (for the avoidance of doubt, excluding any amounts applied by OTC Clear in connection with the DMP Event, but including the value of any Rates and FX Contribution in respect of any earlier demand of Rates and FX Assessments) have fallen below 75% of the last calculated value of the Rates and FX Guarantee Fund,

OTC Clear may issue a Rates and FX Assessments demand to each Non-Defaulting Clearing Member demanding it to contribute its CM Unfunded Contribution Amount to bring the total Rates and FX Contribution Balance of all Clearing Members to 100% of the last calculated value of the Rates and FX Guarantee Fund. If a Rates and FX Assessments demand is issued by OTC Clear under this Clearing Rule 1507, unless otherwise specified in Clearing Rule 1508(1)(a), each Clearing Member has an unconditional obligation to deliver its CM Unfunded Contribution Amount so demanded within one OTC Clear Business Day following receipt of such demand from OTC Clear. OTC Clear may issue multiple Rates and FX Assessments demands under this Clearing Rule 1507 following a DMP Event, provided that no such Rates and FX Assessments demands shall cause the Rates and FX Liability in respect of a Clearing Member to exceed its Maximum Current Liability set out in Clearing Rule 1544.

Rates and FX Contribution due to Recalculations or Replenishments

1508. (1) Subject to sub-paragraph (2) below, if the Rates and FX Contribution Balance in respect of a Clearing Member is less than the then current Rates and FX Liability of that Clearing Member, OTC Clear will notify such Clearing Member of the updated CM Funded Contribution Amount in the Base Currency, and:

(a) if the shortfall arises as a result of either market movement affecting the value of such Collateral or change in the applicable Collateral Haircut, or if OTC Clear determines there are wrong-way risk concerns, the Clearing Member shall deliver additional Collateral required to meet such shortfall to OTC Clear within one hour following receipt of such demand;

(b) in all other cases, the Clearing Member shall deliver additional Collateral required to meet such shortfall to OTC Clear within one OTC Clear Business Day following receipt of such demand;

(2) save and except for the circumstance described in Clearing Rule 1510(2), following the occurrence of any DMP Event, any recalculation of the Rates and FX Guarantee Fund and Rates and FX Assessments shall be suspended until after the expiry of the relevant Capped Liability Period. Upon the expiry of a Capped Liability Period, OTC Clear will recalculate the Rates and FX Guarantee Fund, the Rates and FX Assessments and with respect to each Non-Defaulting Clearing Member, the Rates and FX Contribution Balance and the Rates and FX Liability relating to each such Non-Defaulting Clearing Member. In any such recalculation, and with respect to each Non-Defaulting Clearing Member, OTC Clear shall take into account any reduction in the Rates and FX Contribution Balance relating to such Non-Defaulting Clearing Member by the amount applied during the Default Management Process in respect of such Capped Liability Period in accordance with Clearing Rule 1516. If the Default Management

Process(es) in respect of any DMP Event(s) relating to such Capped Liability Period has not been completed at the time of recalculation, OTC Clear shall, for the purpose of determining the Rates and FX Contribution Balance in sub-paragraph (1) above only, and only for so long as the relevant Default Management Process(es) have not been completed, treat the Rates and FX Contribution Balance prior to the end of the Capped Liability Period as having been applied in full regardless of whether such Rates and FX Contribution Balance have in fact been so applied, in whole or in part. Following completion of the relevant Default Management Process(es), OTC Clear will determine the reduction in the Rates and FX Contribution Balance with respect to each Clearing Member, and a Clearing Member may request the redelivery of Collateral in respect of any Rates and FX Contribution Excess in accordance with Clearing Rule 1546. Subject to sub-paragraph (3) below, any Rates and FX Contribution delivered by any Clearing Member following the expiry of such Capped Liability Period shall not be applied in respect of any Rates and FX Loss arising out of any DMP Event occurring prior to the expiry of such Capped Liability Period; and

(3) notwithstanding sub-paragraph (2) above, following the expiry of a Capped Liability Period, OTC Clear may apply any Rates and FX Contribution delivered to it prior to the end of such Capped Liability Period and may demand additional Rates and FX Assessments up to the Maximum Current Liability relating to such Capped Liability Period, in each case, for application in accordance with Clearing Rule 1516 in respect of DMP Event(s) relating to such Capped Liability Period.

1509. Unless otherwise specified in Clearing Rule 1508(1)(a), each Clearing Member shall deliver additional Collateral in respect of its Rates and FX Liability as notified to it by OTC Clear within one OTC Clear Business Day following receipt of demand from OTC Clear. For the avoidance of doubt, in respect of any Rates and FX Contribution Determination Date falling after the occurrence of the DMP Event with respect to a Defaulting Clearing Member, such Defaulting Clearing Member will not be included for the purpose of recalculation of the Rates and FX Guarantee Fund and Rates and FX Assessments by OTC Clear on any such Rates and FX Contribution Determination Date, notwithstanding the fact that the Membership Termination Date of such Defaulting Clearing Member may fall on or after any such Rates and FX Contribution Determination Date.

1510. Notwithstanding the operation of Clearing Rule 1508, if OTC Clear determines that:

(1) the Expected Uncollateralized Loss (“EUL”) with respect to a Clearing Member on any two consecutive OTC Clear Clearing Days during the period between two Rates and FX Contribution Determination Dates exceeds its largest EUL within the GF Calculation Period relating to the earlier of the two Rates and FX Contribution Determination Date by 10% or more, and the EUL for such Clearing Member exceeds 50% of the Rates and FX Guarantee Fund, where Expected Uncollateralized Loss has the meaning given to it in section 6.1.1(4) of the Clearing Procedures (and as modified by section 6.1.1(8) of the Clearing Procedures if Client Clearing Services are provided); or

(2) the EUL with respect to a Clearing Member on any two consecutive OTC Clear Clearing Days during a Capped Liability Period exceeds its largest EUL within the GF Calculation Period relating to the Rates and FX Contribution Determination Date immediately preceding the start of such Capped Liability Period by 10% or more, and the EUL for such Clearing Member exceeds 50% of the Rates and FX Guarantee Fund

(such excess, the "**Increased Risk**"),

then OTC Clear has the right to demand additional Collateral from such Clearing Member in an amount equal to the Increased Risk determined on the relevant second consecutive OTC Clear Clearing Day. The relevant Clearing Member shall provide additional Collateral to OTC Clear on the immediately following OTC Clear Business Day following receipt of OTC Clear's notice. Thereafter, the requirement on additional Collateral will be determined by OTC Clear on a daily basis according to the latest calculation of Increased Risk less the amount of additional Collateral collected under this Clearing Rule 1510. Any additional Collateral provided by the relevant Clearing Member pursuant to this Clearing Rule 1510 shall be treated as part of such Clearing Member's Additional Margin. Additional Collateral provided by a Clearing Member pursuant to a demand made by OTC Clear under this Rule 1510 one day before the later Rates and FX Contribution Determination Date will still be required by OTC Clear as Additional Margin under this Clearing Rule 1510 until the receipt of any additional Collateral demanded by OTC Clear pursuant to Clearing Rule 1505 to reflect the new CM Funded Contribution Amount of such Clearing Member as calculated on the later Rates and FX Determination Date. The Maximum Current Liability determined in respect of a Non-Defaulting Clearing Member during a Capped Liability Period pursuant to Clearing Rule 1513 will not be increased by virtue of the application of this Clearing Rule 1510.

1511. Following the occurrence of any DMP Event, and completion of the related Default Management Process, provided that there is no ongoing Default Management Process relating to other DMP Events taking place at the relevant time, OTC Clear will determine any reduction in the OTC Clear Contribution by the amount applied during the Default Management Process in accordance with Clearing Rule 1516. If prior to the completion of a Default Management Process, a subsequent DMP Event occurs, OTC Clear will only determine any reduction in the OTC Clear Contribution at the time where all relevant Default Management Processes have been completed. To the extent that the OTC Clear First Contribution and/or OTC Clear Second Contribution have been utilized as a result of the operation of the Default Management Process(es), OTC Clear will replenish each of the OTC Clear First Contribution and OTC Clear Second Contribution to its original value using its retained earnings, provided that OTC Clear will only replenish the OTC Clear Second Contribution if the OTC Clear First Contribution has first been replenished in full to its original value. In either case, OTC Clear shall only replenish if and to the extent that OTC Clear's working capital after such replenishment shall not fall below the amount required for its continuous operation for the following 12 months (including but not limited to OTC Clear's ability to meet all its other actual, contingent or anticipated future liabilities (taking into account for these purposes the obligation of OTC Clear to redeliver Collateral in respect of Margin provided in the form of cash and any Rates and FX Liability to the relevant Clearing Members)).

Changes to Calculations relating to the Rates and FX Guarantee Fund and Rates and FX Assessments

1512. Any changes to the methodology for calculating the Rates and FX Guarantee Fund and Rates and FX Assessments that result in an increase to the Rates and FX Guarantee Fund and Rates and FX Assessments of 20% or more shall be effective on the 20th OTC Clear Business Day following the date OTC Clear provides notice to Clearing Members of such change, provided that in respect of any such changes due to a change of requirement in Applicable Laws, rules, regulations or a request of a Regulatory Authority, such changes to the methodology shall be effective on the day as required by the Applicable Laws, rules or regulations, or the day specified in the relevant request of the Regulatory Authority, as applicable (in each case, a "**GF Increase Effective Date**"). Clearing Members shall deliver any additional Collateral required on or prior to the date such change is effective. OTC Clear will not initiate a change to the calculation methodology during a Capped Liability Period unless such change is required or mandated by a change of requirement in Applicable Laws, the rules or regulations or a request of a Regulatory Authority. For the avoidance of doubt, this Clearing Rule 1512 does not apply to any increase to the Rates and FX Guarantee Fund and Rates and FX Assessments resulting from periodic recalculations and not resulting from changes to the methodology.

1513. A Clearing Member who resigns pursuant to Clearing Rule 604 as a result of the increase to the Rates and FX Guarantee Fund and Rates and FX Assessments of 20% or more but who fails to complete the Non-Default Unwind in respect of all of its House Business and Client Clearing Services (if any) prior to the relevant GF Increase Effective Date will be subject to the increased Rates and FX Guarantee Fund and Rates and FX Assessments with effect from (and including) the relevant GF Increase Effective Date, provided that such increased requirement will only apply in respect of the Contracts then registered in the name of such Clearing Member (excluding those which the Clearing Member has successfully unwound as part of its Non-Default Unwind prior to the GF Increase Effective Date).

For the avoidance of doubt, the Maximum Current Liability determined in respect of a Non-Defaulting Clearing Member during a Capped Liability Period will not be increased by virtue of the application of Clearing Rule 1512 and this Clearing Rule 1513.

OTC Clear Use of the Rates and FX Guarantee Resources

1514. Amounts standing to the credit of the Rates and FX Guarantee Resources may only be applied in accordance with Clearing Rule 1516 following the occurrence of a DMP Event or in the following limited circumstances:

(1) to satisfy any amount due to OTC Clear by the Defaulting Clearing Member as a result of the occurrence of a DMP Event (including but not limited to Margin, amounts due pursuant to Contract Terms, fees, dues, assessments, fines and any costs and expenses of recovery against the Defaulting Clearing Member); or

(2) for the purposes described in Clearing Rules 1520 and 1521.

Reduction of Losses on a DMP Event and Application of the Rates and FX Guarantee Resources

1515. The total losses suffered by OTC Clear as a result of the occurrence of a DMP Event relating to a Defaulting Clearing Member (the "**Rates and FX Loss**") are:

(1) all Auction Losses or Contract Termination Losses relating to each Auction Portfolio constructed as a result of such DMP Event;

(2) any other general losses suffered by OTC Clear as a result of such DMP Event which is not attributable to a specific Auction Portfolio or Contract Termination Losses (the "**General Losses**"), including but not limited to any costs involved in entering into Hedging instruments pursuant to Rule 1803 which do not form part of the Auction Portfolio, porting Affected Contracts registered in the name of such Defaulting Clearing Member to the Replacement Clearing Member, the losses or costs incurred by OTC Clear in liquidating any non-cash Collateral, for purchasing equivalent assets for the redelivery of the Rates and FX Contribution Balance to a Clearing Member to the extent utilised pursuant to Clearing Rule 1516, for currency conversion, or as a result of payment of any interest on liquidity facilities, in each case, with respect to the Default Management Process relating to such DMP Event; and

(3) Unpaid Amounts due from such Defaulting Clearing Member to OTC Clear, excluding, for the avoidance of doubt, losses in respect of Contracts relating to Porting Clients.

1516. OTC Clear shall be entitled to apply its resources, in any manner or order including for the avoidance of doubt in an order which is different from the order described hereunder, for satisfaction of the Rates and FX Loss during a Default Management Process invoked as a result of the occurrence of a DMP Event with respect to a Defaulting Clearing Member, provided that upon completion of a successful Auction or the occurrence of a Contract Termination Event (as applicable) in respect of all Auction Portfolios relating to such DMP Event, it shall perform the loss allocation process set out below:

(1) OTC Clear shall first determine the General Losses suffered by it as a result of the DMP Event and the extent to which there are any Unpaid Amounts due from such Defaulting Clearing Member to OTC Clear in respect of Contracts recorded in such Defaulting Clearing Member's House Position Account, and reduce or bear such General Losses and Unpaid Amounts by application of the following resources in descending order as follows:

(a) first, the aggregate of (i) all Auction Payments (if any) received by OTC Clear with respect to one or more House Auction Portfolios constructed as a result of such DMP Event, (ii) any Unpaid Amounts due from OTC Clear to such Defaulting Clearing Member in respect of Contracts recorded in such Defaulting Clearing Member's House Position Account, (iii) the Unsettled VM Amount in respect of the Auction Contracts and/or Auction Failed Positions comprised in House Auction Portfolio(s) (to the extent that such Unsettled VM Amount is payable by OTC Clear to the relevant Defaulting Clearing Member) (if any), (iv) the Margin Balance recorded to the House

Collateral Account, any income and redemption proceeds on any non-cash Collateral recorded to the House Collateral Account and any proceeds of realization of any such non-cash Collateral that have not already been paid to or withdrawn by the Defaulting Clearing Member and (v) the aggregate Contract Termination Net Payments payable by Non-Defaulting Clearing Members to OTC Clear as a result of a Contract Termination Event;

(b) second, the Rates and FX Contribution Balance of the Defaulting Clearing Member (by application in the manner set out in Clearing Rule 1548);

(c) third, the OTC Clear First Contribution;

(d) fourth, the aggregate value of the Rates and FX Contribution Balance in respect of the CM Funded Contribution Amount of each Non-Defaulting Clearing Member (by application in the manner set out in Clearing Rule 1517);

(e) fifth, the OTC Clear Second Contribution; and

(f) sixth, the aggregate value of the Rates and FX Contribution Balance in respect of the CM Unfunded Contribution Amount of each Non-Defaulting Clearing Member (by application in the manner set out in Clearing Rule 1517);

(2) To the extent that there are any Unpaid Amounts due from such Defaulting Clearing Member to OTC Clear in respect of Contracts recorded in such Defaulting Clearing Member's Client Position Account(s), OTC Clear shall reduce or bear each such Unpaid Amounts by application of the following resources in descending order as follows. In respect of such Unpaid Amounts due in respect of a Client Position Account:

(a) first, the aggregate of (i) all Auction Payments (if any) received by OTC Clear with respect to one or more Client Auction Portfolios constructed as a result of such DMP Event which relate to such Client Position Account, (ii) any Unpaid Amounts due from OTC Clear to such Defaulting Clearing Member in respect of Contracts recorded in such Client Position Account, (iii) the Unsettled VM Amount in respect of the Auction Contracts and/or Auction Failed Positions comprised in Client Auction Portfolio(s) which relate to Contracts recorded in such Client Position Account (to the extent that such net amount is payable by OTC Clear to the relevant Defaulting Clearing Member) (if any), (iv) the Margin Balance recorded to the Client Collateral Account attributed to such Client Position Account, (v) any income and redemption proceeds on any non-cash Collateral recorded to the Client Collateral Account attributed to such Client Position Account and any proceeds of realization of any such non-cash Collateral that have not already been paid to or withdrawn by the Defaulting Clearing Member and (vi) the aggregate Contract Termination Net Payments payable by Non-Defaulting Clearing Members to OTC Clear as a result of a

Contract Termination Event relating to Contracts recorded in such Client Position Account;

(b) second, the Rates and FX Contribution Balance of the Defaulting Clearing Member (by application in the manner set out in Clearing Rule 1548);

(c) third, the OTC Clear First Contribution;

(d) fourth, the aggregate value of the Rates and FX Contribution Balance in respect of the CM Funded Contribution Amount of each Non-Defaulting Clearing Member (by application in the manner set out in Clearing Rule 1517);

(e) fifth, the OTC Clear Second Contribution; and

(f) sixth, the aggregate value of the Rates and FX Contribution Balance in respect of the CM Unfunded Contribution Amount of each Non-Defaulting Clearing Member (by application in the manner set out in Clearing Rule 1517);

(3) for the purposes of sub-paragraph (2)(a) above, the amount of Auction Payments in the form of risk concessions that shall be treated as "relating to" a Client Position Account shall be an amount equal to the product of:

(A) with respect to an Auction Portfolio, the hypothetical Initial Margin with respect to the Contracts of that Client Position Account comprised in the relevant Auction Portfolio (calculated on a portfolio margining basis assuming that such Contracts were booked into a single separate hypothetical Client Position Account) divided by the aggregate of the hypothetical Initial Margin of all Client Position Accounts comprised in such Auction Portfolio (where such Auction Portfolio comprises Contracts originally booked to more than one Client Position Account, but the entire Client Position Account is not comprised in such Auction Portfolio, the hypothetical Initial Margin for each such partial Client Position Account shall be calculated on a portfolio margining basis disregarding the fact that such Client Position Account is not whole; for the avoidance of doubt, where such Auction Portfolio comprises Contracts originally booked to more than one Client Position Account and each entire Client Position Account is comprised in such Auction Portfolio, the Initial Margin of such Client Position Accounts shall be aggregated), in each case, such Initial Margin being calculated by OTC Clear in its sole and absolute discretion as at the latest practicable time immediately preceding the occurrence of the relevant DMP Event; and

(B) the amount of Auction Payments in the form of risk concessions relating to the relevant Auction Portfolio referred to in sub-paragraph (3)(A) above; and

(4) upon completion of the process described in sub-paragraphs (1) and (2) above, OTC Clear shall determine the Auction Losses or Contract Termination Losses with respect to each Auction Portfolio constructed as a result of the DMP Event, and shall reduce or bear such losses in accordance with Clearing Rules 1914 to 1916, and

with respect to each DMP Event, the aggregate value of the resources described in sub-paragraphs (1)(a) to (1)(f) and (2)(a) to (2)(f) above is the "**Total Available Resources**" with respect to such DMP Event. The Total Available Resources, together with any Gainer VM Flow Adjustment and/or Voluntary Recap Amount received by OTC Clear pursuant to Clearing Rules 1524(2) and 1542, respectively, shall be the sole source of funds for satisfaction of the Rates and FX Loss arising out of the relevant DMP Event.

1517. OTC Clear will satisfy its claim under the indemnities given by each Non-Defaulting Clearing Member pursuant to Clearing Rule 1316(2) in respect of the Rates and FX Loss, by setting off the amount of loss calculated under Clearing Rules 1516(1)(d), 1516(1)(f), 1516(2)(d), 1516(2)(f), 1913A(4), 1913A(6), 1913B(4) and 1913B(6) against OTC Clear's obligation to pay the amount specified in Clearing Rule 1549.

1518. OTC Clear will notify the affected Clearing Members of any amounts applied pursuant to Clearing Rule 1516 and, where applicable, notify Clearing Members of any obligations to deliver additional Collateral in respect of their respective Rates and FX Liability pursuant to Clearing Rule 1509.

Accounts of Rates and FX Guarantee Resources

1519. OTC Clear shall maintain a separate record of all amounts of the Rates and FX Guarantee Resources from time to time, clearly identifying the amount and type(s) of Collateral provided by each Clearing Member in respect of their respective Rates and FX Liability in the relevant GF Account. In addition, OTC Clear shall maintain a separate account in respect of all the Rates and FX Contribution made (and not reinvested by OTC Clear under Clearing Rule 1520) or required to be made by each Clearing Member to the Rates and FX Guarantee Resources. OTC Clear undertakes to all Clearing Members from time to time to maintain amounts equal to the OTC Clear Contribution in a separate account from its other assets and to use such amounts only for the purposes of investment under Clearing Rule 1520, or meeting shortfalls arising directly or indirectly from Events of Default or a Rates and FX Clearing Termination Event in accordance with this Chapter 15. Simultaneously, with the annual audit of its accounts, OTC Clear shall request its auditors to prepare a report on the Rates and FX Guarantee Resources for circulation to the SFC and, upon request, to Clearing Members.

1520. OTC Clear has the power to invest any cash amount contributed to the Rates and FX Guarantee Resources in accordance with its investment policy. OTC Clear may perform any such investment itself as it sees fit, or it may engage an independent third party to perform such investment. OTC Clear's power to invest any cash amount contributed to the Rates and FX Guarantee Resources shall be suspended in case of occurrence of an OTC Clear Failure to Pay Event or OTC Clear Insolvency Event. OTC Clear may not exercise its power of investment under this Clearing Rule 1520 in respect of any non-cash asset contributed to the Rates and FX Guarantee Resources, provided that in the case of any DMP Event, OTC Clear may sell, liquidate, transfer or create any security or other third party right or

interest in or over any non-cash asset contributed to the Rates and FX Guarantee Resources for the purpose of ensuring that OTC Clear shall in its determination have sufficient liquid resources available to meet its payment obligations in a timely manner as they fall due. For the avoidance of doubt, notwithstanding any such sale, liquidation, transfer or creation of right or interest, OTC Clear shall remain liable to redeliver Rates and FX Contribution in equivalent form and currency to the relevant Clearing Member at the time and to the extent required under Clearing Rules 1546 and 1547.

1521. OTC Clear may apply any amounts contributed to the Rates and FX Guarantee Resources which are in the opinion of OTC Clear surplus to the Rates and FX Guarantee Fund (the reference to "surplus" in the immediately preceding sentence shall mean any gains arising out of the investment of the Rates and FX Guarantee Fund) in such manner as OTC Clear thinks fit. OTC Clear may appropriate such monies out of the Rates and FX Guarantee Resources temporarily or permanently for the following purposes including, but not limited to:

(1) payment of any amount representing interest or money obligations as may be determined from time to time by OTC Clear in respect of Rates and FX Contribution; and

(2) payment for costs and expenses incurred in establishing, maintaining, managing, administering and terminating any arrangements such as bank facilities and policies of insurance as OTC Clear may from time to time consider appropriate for the purpose of providing additional resources to the Rates and FX Guarantee Fund.

Recoveries

1522. If any amount paid out of the Rates and FX Guarantee Fund pursuant to Clearing Rule 1516 is subsequently recovered by OTC Clear, OTC Clear may use such amount (less any costs and expenses of recovery) to refund the relevant Clearing Members or itself in the reverse order of application under Clearing Rule 1516.

Loss Distribution Process

1523. On each OTC Clear Clearing Day during the Loss Distribution Period, OTC Clear will determine whether the Rates and FX Loss resulting from a DMP Event will exceed the Total Available Resources and any relevant Voluntary Recap Amount received or to be received under Clearing Rule 1541 relating to such DMP Event. If it does, then OTC Clear will consult with the SFC and will either invoke the "**Loss Distribution Process**" set out in this Clearing Rule 1523 to Clearing Rule 1528 or invoke the limited recourse wind down with respect to OTC Clear as set out in Clearing Rules 1529 to 1539.

1524. If the Loss Distribution Process applies, then on each OTC Clear Clearing Day during the Loss Distribution Period:

(1) OTC Clear will determine whether a Position Account registered in the name of a Non-Defaulting Clearing Member is a Position Account Gainer or a Position Account Loser;

(2) if the Position Account registered in the name of a Non-Defaulting Clearing Member is a Position Account Gainer, and the Gainer VM Flow Adjustment calculated for a Currency Payment in respect of that Position Account for

that OTC Clear Clearing Day is a positive number, the relevant Non-Defaulting Clearing Member shall pay an amount equal to such Gainer VM Flow Adjustment to OTC Clear. If the Position Account registered in the name of a Non-Defaulting Clearing Member is a Position Account Gainer and the Gainer VM Flow Adjustment calculated for a Currency Payment in respect of that Position Account for that OTC Clear Clearing Day is a negative number, OTC Clear shall pay to the relevant Non-Defaulting Clearing Member an amount equal to the absolute value of such Gainer VM Flow Adjustment; and

(3) if the Position Account registered in the name of a Non-Defaulting Clearing Member is a Position Account Loser, OTC Clear shall pay to the relevant Non-Defaulting Clearing Member an amount equal to the absolute value of such negative Loser VM Flow Adjustment calculated for a Currency Payment in respect of that Position Account for that OTC Clear Clearing Day.

For the purpose of the calculations and adjustments conducted under the Loss Distribution Process, each Position Account of a Non-Defaulting Clearing Member will be treated separately.

If an OTC Clear Clearing Day is not a Currency Day for a Currency Payment, OTC Clear will perform the calculations and adjustment required under the Loss Distribution Process on such OTC Clear Clearing Day, but payment of the relevant Currency Payment, as adjusted by the Gainer VM Flow Adjustment or Loser VM Flow Adjustment, as the case may be, will be deferred to the immediately following Currency Day for such Currency Payment.

1525. On each OTC Clear Clearing Day during the Loss Distribution Period, OTC Clear will apply the Latest Exchange Rate determined on the relevant OTC Clear Clearing Day in making the calculations required to be made under the Loss Distribution Process, including components which relate to payments made, or falling due, on previous days.

1526. On each Loss Distribution Day, OTC Clear shall apply set-off with respect to any payment or receipt of any VM Flow Adjustment on such day against any payments denominated in the same currency as such VM Flow Adjustment payable to, or receivable from, the relevant Clearing Member.

1527. Without prejudice to the operation of Clearing Rule 1531, in the absence of manifest error, any VM Flow Adjustment determined by OTC Clear shall be final and conclusive. Any application of a Gainer VM Flow Adjustment resulting in a reduction of Currency Payment by OTC Clear to a Non-Defaulting Clearing Member shall not constitute a failure to pay by OTC Clear.

1528. Subsequent to the completion of the Loss Distribution Process by OTC Clear, if OTC Clear receives any amounts from the Defaulting Clearing Member, or any other amounts howsoever obtained or recovered during the Default Management Process relating to the Defaulting Clearing Member, OTC Clear shall reimburse the Non-Defaulting Clearing Members (regardless of whether the relevant Non-Defaulting Clearing Member remains a Clearing Member at the time of recovery) on a pro-rata basis by reference to the resources which have been applied pursuant to

Clearing Rule 1516 after deducting any costs or expenses incurred by OTC Clear during the process of such recovery.

For the avoidance of doubt, nothing in this Clearing Rule 1528 shall oblige OTC Clear to pursue any action to recover the amounts contemplated above.

Rates and FX Clearing Service Limited Recourse

1529. The Total Available Resources, together with any Gainer VM Flow Adjustment and/or Voluntary Recap Amount received by OTC Clear pursuant to Clearing Rules 1524(2) and 1542, respectively, shall be the sole source of funds available to cover any Rates and FX Loss arising from a DMP Event. In the event OTC Clear determines that utilization of such resources in their entirety will be insufficient to cover payments due to one or more Clearing Members arising out of such DMP Event, all Contracts will be closed-out in accordance with the procedures set out in Clearing Rules 1530 to 1540 without any further recourse to the capital or any other assets of OTC Clear. As from the occurrence of a Rates and FX Clearing Termination Event, neither OTC Clear nor any Clearing Member shall be required to pay any further amount in respect of any Contract, and any right to receive any further amount in respect of any Contract shall be satisfied by settlement (by payment, set-off or otherwise) of the Limited Recourse Final CM Payable or the Limited Recourse Applicable Percentage of the Limited Recourse CM Receivable payable relating to the Position Account to which such Contract is registered under Clearing Rule 1538. Neither the Clearing Members nor their respective Clients shall have any recourse to any other funds or any other entity, including without limitation any Affiliate or recognized exchange controller which is the controller of OTC Clear once the Total Available Resources, together with any Gainer VM Flow Adjustment and/or Voluntary Recap Amount received by OTC Clear, have been exhausted. In particular, no Clearing Members or Clients shall be entitled to institute steps for the winding-up of, or the appointment of a receiver to, OTC Clear.

Winding Down of the Rates and FX Clearing Services

1530. If OTC Clear determines at any stage that:

(1) (a) the Rates and FX Loss(es) resulting from one or more DMP Events occurring within the same Capped Liability Period will exceed the Total Available Resources with respect to all such DMP Events and decides not to issue a Voluntary Recap Request Notice pursuant to Clearing Rule 1541;

(b) notwithstanding a Voluntary Recap Request Notice has been issued pursuant to Clearing Rule 1541, it has not received any Voluntary Recap Amount within the period set out therein; or

(c) the Rates and FX Loss(es) exceed the Voluntary Recap Amount received by OTC Clear; or

(2) OTC Clear has determined to withdraw the Rates and FX Clearing Services, including without limitation the circumstance contemplated by Clearing Rules 1320(2) and 1321(2) but excluding any temporary suspension of the Rates and FX Clearing Services in accordance with Clearing Rule 210(5),

then a "**Rates and FX Clearing Termination Event**" shall occur and OTC Clear shall notify all Clearing Members of the occurrence of such Rates and FX Clearing Termination Event, and the Rates and FX Clearing Service will be wound down in accordance with Clearing Rules 1531 to 1540. For the avoidance of doubt, a declaration of a Rates and FX Clearing Termination Event shall be irrevocable.

1531. Upon the occurrence of a Rates and FX Clearing Termination Event, with respect to each Clearing Member, all obligations of OTC Clear and such Clearing Member in respect of any Contract between them shall cease to exist and be replaced with the obligation to pay the termination amounts determined under Clearing Rules 1531 to 1540. The close-out value for each Contract shall be determined in accordance with section 10.1(i) of the Clearing Procedures, provided that OTC Clear may also take into account any unpaid amounts that have become due and payable in respect of any Contract on or prior to the occurrence of the Rates and FX Clearing Termination Event, including without limitation, any Gainer VM Flow Adjustment made during the Loss Distribution Period to which the Rates and FX Clearing Termination Event relates.

1532. Following the declaration of a Rates and FX Clearing Termination Event, any unused Margin Balance then held by OTC Clear in respect of one or more Clearing Members and any income and redemption proceeds on any non-cash Collateral that have not already been paid to or withdrawn by the Clearing Member(s) shall be returned to the relevant Clearing Members in accordance with Clearing Rule 1536; and any unused Rates and FX Contribution Balance then held by OTC Clear in respect of one or more Clearing Members or Former Clearing Members shall be returned to the relevant Clearing Members or Former Clearing Members in accordance with Clearing Rule 1538(4).

1533. As soon as reasonably practicable following a Rates and FX Clearing Termination Event, OTC Clear shall calculate a net sum payable by or to each Clearing Member separately in relation to each Position Account registered in the name of such Clearing Member. In determining such net sum, OTC Clear will take into account the close-out values established for each Contract pursuant to Clearing Rule 1531, and the value of all other amounts which is due to OTC Clear from the Clearing Member under these Clearing Rules, or which is due to the Clearing Member from OTC Clear (other than OTC Clear's obligation to return (i) any unused Margin Balance, (ii) any income and redemption proceeds on any non-cash Collateral that have not already been paid to or withdrawn by the relevant Clearing Member or Former Clearing Member and/or (iii) Rates and FX Contribution Balance to the relevant Clearing Member or Former Clearing Member), in each case, whether future, liquidated or unliquidated, actual or contingent. There shall be no combining or set-off between any House Position Account and Client Position Account(s), or between two or more Client Position Accounts. OTC Clear will determine any such net sum payable by, or to, a Clearing Member in the Base Currency. For the purpose of the determination under this Clearing Rule 1533, OTC Clear may convert any amounts denominated in any other currency into the Base Currency at such rate prevailing at the time of the calculation as it shall reasonably select.

1534. If, pursuant to Clearing Rule 1533, a net sum is determined to be payable by a Clearing Member to OTC Clear with respect to one or more of its Position Accounts, OTC Clear shall reduce each such sum by application of the Outright

Transfer Margin Balance, if any, relating to the relevant Position Account. With respect to each Clearing Member and each of its Position Account(s), after application of the Outright Transfer Margin Balance relating to the relevant Position Account:

(1) if there remains a balance payable by the Clearing Member to OTC Clear for such Position Account (the "**Remaining Balance**"), OTC Clear will, as soon as reasonably practicable, notify the relevant Clearing Member of the Remaining Balance, and the relevant Clearing Member shall pay OTC Clear the Remaining Balance within two OTC Clear Business Days following receipt of such notification; and

(2) if the Clearing Member fails to pay the Remaining Balance within the time frame set out in sub-paragraph (1) above, OTC Clear may declare an Event of Default in respect of such Clearing Member. OTC Clear may, in satisfaction of any due but unpaid Remaining Balance in respect of a Position Account, apply the proceeds of enforcement of any non-cash Collateral comprising the Margin Balance of the corresponding Collateral Account and any income and redemption proceeds on any non-cash Collateral that have not already been paid to or withdrawn by such Clearing Member, and if any of the Remaining Balance remains unsatisfied following such application, the unsatisfied amount shall form part of the Limited Recourse Interim CM Payable with respect to the relevant Position Account.

1535. If, pursuant to Clearing Rule 1533, a net sum is determined to be payable by OTC Clear to a Clearing Member with respect to one or more of its Position Accounts, each such sum shall form part of the Limited Recourse CM Receivable with respect to the relevant Position Account.

1536. With respect to each Clearing Member and each of its Position Account(s), taking into account (if applicable) the operation of Clearing Rule 1534:

(1) any unused Outright Transfer Margin Balance and, if applicable, any remaining proceeds of enforcement of non-cash Collateral further to the application of Clearing Rule 1534(2) for such Position Account shall be returned to the Clearing Member; and

(2) any non-cash Collateral provided to OTC Clear on a security interest basis and comprising the Margin Balance of the Collateral Account corresponding to such Position Account and any income and redemption proceeds on any non-cash Collateral that have not already been paid to or withdrawn by the Clearing Member shall be redelivered to the Clearing Member in accordance with the relevant security document.

1537. Following the completion of the processes described in Clearing Rules 1534 to 1536:

(1) OTC Clear shall, with respect to each Position Account (without regard to its obligation to return any unused Rates and FX Contribution Balance to the relevant Clearing Member or Former Clearing Member), determine the resulting net sum payable by a Clearing Member to OTC Clear for such Position Account (such sum, a "**Limited Recourse Interim CM Payable**"),

or the resulting net sum payable by OTC Clear to a Clearing Member for such Position Account (such sum, a "**Limited Recourse CM Receivable**");

(2) OTC Clear shall notify the relevant Clearing Member of its Limited Recourse Interim CM Payable(s) or Limited Recourse CM Receivable(s). Each Clearing Member that receives a notice to pay any Limited Recourse Interim CM Payable shall pay each such amount to OTC Clear in full within two OTC Clear Business Days following receipt of such notification;

(3) if a Clearing Member fails to pay any Limited Recourse Interim CM Payable in full within the time frame set out in sub-paragraph (2) above, regardless of whether such Limited Recourse Interim CM Payable arises out of a House Position Account or Client Position Account belonging to such Clearing Member, OTC Clear will apply any unused Rates and FX Contribution Balance then held by OTC Clear in respect of such Clearing Member against the unpaid Limited Recourse Interim CM Payable;

(4) with respect to a Clearing Member and each of its Position Account(s) with a Limited Recourse Interim CM Payable, following the application of any unused Rates and FX Contribution Balance as described in sub-paragraph (3) above, OTC Clear shall determine the final net sum payable by the Clearing Member, if any (each a "**Limited Recourse Final CM Payable**") with respect to such Position Account, and notify such Clearing Member of the same. Each Clearing Member that receives a notice to pay any Limited Recourse Final CM Payable shall pay each such amount to OTC Clear in full at or prior to the time specified by OTC Clear; and

(5) for the avoidance of doubt, a Clearing Member may have a Limited Recourse Interim CM Payable or Limited Recourse Final CM Payable in respect of one Position Account registered in its name, but a Limited Recourse CM Receivable in respect of another Position Account registered in its name.

1538. With respect to each Clearing Member who has a Limited Recourse CM Receivable (and, for the avoidance of doubt, subject to Rule 1539), and each Clearing Member or Former Clearing Member with any unused Rates and FX Contribution Balance (taking into account the operation of Clearing Rule 1537(3)), OTC Clear shall pay each such Clearing Member or Former Clearing Member in proportion to the value of their respective claims on OTC Clear under Clearing Rule 1537 in the following manner:

(1) OTC Clear shall, until the time specified in Clearing Rule 1540, take reasonable steps to recover any unpaid Limited Recourse Final CM Payables, and may deduct from such amounts any reasonable costs in connection with such recovery;

(2) following receipt of all or some (if any Clearing Member defaults in its payment of the relevant Limited Recourse Final CM Payable) Limited Recourse Final CM Payables, OTC Clear will calculate a percentage ("**Limited Recourse Applicable Percentage**") equal to the lesser of:

(a) 100%; and

(b) (A) the aggregate value of (I) the Rates and FX Guarantee Resources then held by OTC Clear, (II) any Margin Balance and any income and redemption proceeds on any non-cash Collateral that have not already been paid to or withdrawn by the Clearing Members or Former Clearing Members applied pursuant to Clearing Rules 1533 and/or 1534(2) and (III) all Remaining Balance, Limited Recourse Interim CM Payables and/or Limited Recourse Final CM Payables received by OTC Clear; divided by

(B) the aggregate value representing the sum of (I) all Limited Recourse CM Receivables and (II) any unused Rates and FX Contribution Balance then held by OTC Clear in respect of all Clearing Members or Former Clearing Members (taking into account the operation of Clearing Rule 1537(3));

(3) subject to Clearing Rule 1539, OTC Clear shall pay each Clearing Member with a Limited Recourse CM Receivable an amount equal to the Limited Recourse Applicable Percentage of such Limited Recourse CM Receivable;

(4) OTC Clear shall pay each Clearing Member or Former Clearing Member with unused Rates and FX Contribution Balance an amount equal to the Limited Recourse Applicable Percentage of such unused Rates and FX Contribution Balance, provided that the aggregate sum payable by OTC Clear in respect of unused Rates and FX Contribution Balance for all Clearing Member(s) and Former Clearing Member(s) shall never exceed the value of the Rates and FX Guarantee Resources then held by OTC Clear. Once the Rates and FX Guarantee Resources have been exhausted, the unpaid balance of any unused Rates and FX Contribution Balance shall be extinguished; and

(5) all payments made under this Clearing Rule 1538 shall be made in the Base Currency provided that if OTC Clear does not have sufficient Base Currency to satisfy such payment, it may satisfy such payment obligation in any other Eligible Currency.

1539. Where a Limited Recourse CM Receivable relates to a Client Position Account of one or more Non-Porting Clients of a Defaulting Clearing Member, and subject to entering into relevant documentation between OTC Clear and the relevant Non-Porting Client(s) (which may, without limitation, include an indemnity (secured or otherwise) to OTC Clear in respect of any loss or liability arising from the legal invalidity of any payment of the relevant Limited Recourse CM Receivable to the Client(s)), OTC Clear shall pay any amount payable by it under Clearing Rule 1538(3) in relation to such Limited Recourse CM Receivable directly to the relevant Non-Porting Client(s) as Client Entitlement in accordance with Clearing Rules 1308A and 1309. For the purpose of this Clearing Rule 1539, OTC Clear may take into account any Non-Porting Client's interest in any Collateral or proceeds thereof pursuant to Clearing Rules 1308A and 1309 and, if applicable, any relevant Security Deed, and the operations of section 56(1) of the SFO shall be modified by this Clearing Rule 1539, as permitted under section 56(2) of the SFO.

1540. If OTC Clear determines that no further amounts in respect of any Limited Recourse Final CM Payables are likely to be recovered and notifies the same to the relevant Clearing Member(s) and Former Clearing Member(s), then the unpaid balance of any Limited

Recourse CM Receivable and/or unused Rates and FX Contribution Balance shall thereafter be extinguished and the relevant Clearing Member(s) and Former Clearing Member(s) shall have no further recourse to OTC Clear (its Affiliates, a recognized exchange controller which is the controller of OTC Clear, or any of their respective Representatives) in respect thereof.

Voluntary Recapitalisation

1541. If OTC Clear determines at any stage that the Rates and FX Loss resulting from a DMP Event will exceed the Total Available Resources relating to such DMP Event determined under Clearing Rule 1516, it has absolute discretion in determining whether to declare a Rates and FX Clearing Termination Event or to issue a written notice (the "**Voluntary Recap Request Notice**") requesting each Non-Defaulting Clearing Member to make a payment of funds (each a "**Voluntary Recap Amount**") to OTC Clear.

1542. Upon receipt of the Voluntary Recap Request Notice, each Non-Defaulting Clearing Member may, but is not obliged to, provide its Voluntary Recap Amount to OTC Clear within one OTC Clear Business Day following receipt of the Voluntary Recap Request Notice. Any Voluntary Recap Amount made by a Non-Defaulting Clearing Member to OTC Clear may not be withdrawn.

1543. Any Voluntary Recap Amount received by OTC Clear from a Non-Defaulting Clearing Member shall form part of the Rates and FX Contribution Balance relating to such Non-Defaulting Clearing Member, and the usage of the same will be subject to Clearing Rule 1514.

1543A. If, on any OTC Clear Business Day, OTC Clear in its sole discretion determines that any Voluntary Recap Amount that OTC Clear expects to receive from a Non-Defaulting Clearing Member, when aggregated with the Total Available Resources and any Voluntary Recap Amounts that OTC Clear expects to receive from other Non-Defaulting Clearing Members, is insufficient to meet any outstanding obligations and liabilities in relation to the DMP Event, that Voluntary Recap Amount (i) shall not form part of the Rates and FX Contribution Balance relating to that Non-Defaulting Clearing Member, (ii) shall be refunded to the relevant Clearing Member on the next OTC Clear Business Day and (iii) shall in no circumstances be available to pay any other creditor of OTC Clear.

Multiple DMP Events

1544. In respect of one or more DMP Event(s) occurring within a Capped Liability Period, the maximum current liability of a Non-Defaulting Clearing Member to contribute to the Rates and FX Guarantee Resources in respect of such Capped Liability Period shall be capped at the aggregate of the CM Funded Contribution Amount and the CM Unfunded Contribution Amount allocated to such Non-Defaulting Clearing Member on the immediately preceding Rates and FX Contribution Determination Date falling prior to the start of such Capped Liability Period (the "**Maximum Current Liability**").

1545. In the event of multiple DMP Events occurring within a Capped Liability Period, then:

(1) the loss allocation process described in Clearing Rule 1516 will only commence upon completion of the Default Management Processes with respect to all such DMP Events;

(2) multiple Default Management Processes will be invoked as a result of multiple DMP Events occurring within the same Capped Liability Period. Notwithstanding the immediately foregoing, however, "Total Available Resources" and "Rates and FX

Losses" shall be construed to mean the aggregate sum of the Total Available Resources and Rates and FX Losses relating to each such DMP Event, and OTC Clear will consolidate any Loss Distribution Process described in Clearing Rules 1523 to 1528 invoked during such Capped Liability Period into one single process, and will only issue one Voluntary Recap Request Notice during such Capped Liability Period; and

(3) with respect to any Clearing Member who has delivered its Rates and FX Contribution during such Capped Liability Period and who subsequently becomes a Defaulting Clearing Member within the same Capped Liability Period, the entirety of its Rates and FX Contribution Balance shall be applied and utilized in accordance with Clearing Rules 1516(1)(b) and 1516(2)(b), notwithstanding that at the time of provision of such CM Funded Contribution Amount and/or CM Unfunded Contribution Amount, no DMP Event has yet occurred with respect to the relevant Clearing Member.

Terms of Redelivery or Repayment of Rates and FX Contribution

1546. Subject to Clearing Rules 1324, 1530 to 1540, 1548 and 1549, if a Clearing Member's Rates and FX Contribution Balance exceeds its then current Rates and FX Liability, it may request OTC Clear to redeliver Collateral in equivalent form and currency as any Collateral it has delivered to OTC Clear as CM Funded Contribution Amount and/or CM Unfunded Contribution Amount in a value not exceeding the Rates and FX Contribution Excess. A Clearing Member shall specify the exact form and currency of the relevant Collateral requested to be redelivered. Following receipt of such request, OTC Clear shall redeliver Collateral in respect of such Rates and FX Contribution Excess in equivalent form and currency as requested in an amount not exceeding the Rates and FX Contribution Excess, provided that:

(1) if and only to the extent that any Rates and FX Losses are allocated to such Clearing Member in accordance with Clearing Rules 1516 and 1914, then OTC Clear's obligation to redeliver Collateral in equivalent form and currency shall be converted into an obligation to pay an amount equal to the value of the Rates and FX Contribution Balance as determined by OTC Clear; or

(2) in the event that OTC Clear is unable to obtain Collateral in equivalent form and currency for such redelivery, including but not limited to the case where the relevant Rates and FX Contribution is of a type or currency that is the subject of foreign exchange or other settlement risk or disruption, as determined by OTC Clear, at the time such redelivery is due, then OTC Clear may deliver Collateral in other forms or currency determined by OTC Clear.

OTC Clear may apply set-off with respect to any Collateral to be redelivered to a Clearing Member against any obligation such Clearing Member owes to OTC Clear, and OTC Clear may withhold any Collateral to be redelivered to a Clearing Member if such Clearing Member is not in compliance with any of these Clearing Rules.

1547. Subject to Clearing Rules 1306, 1306A,1306B, 1306C, 1307, 1324, 1548 and 1549, OTC Clear will redeliver to a Former Clearing Member Collateral, in equivalent form and currency to the Rates and FX Contribution recorded on the relevant GF Account of such Clearing Member, 21 calendar days after its Membership Termination Date, provided that OTC Clear is satisfied that such Former Clearing Member has no outstanding liability or sums owing to OTC Clear (including pursuant to Clearing Rules 606 and 609), and OTC

Clear's obligation to redeliver any such Collateral (whether in the form of cash or non-cash) will be subject to the relevant custodian being able to process any such withdrawal or release request at the relevant time, provided further that OTC Clear may deliver such Collateral in other forms or currency determined by OTC Clear:

(1) if and only to the extent that any Rates and FX Losses are allocated to such Clearing Member in accordance with Clearing Rules 1516 and 1914, then OTC Clear's obligation to redeliver Collateral in equivalent form and currency shall be converted into an obligation to pay an amount equal to the value of the Rates and FX Contribution Balance as determined by OTC Clear; or

(2) in the event that OTC Clear is unable to obtain Collateral in equivalent form and currency for such redelivery, including but not limited to the case where the relevant Rates and FX Contribution is of a type or currency that is the subject of foreign exchange or other settlement risk or disruption, as determined by OTC Clear, at the time such redelivery is due,

and provided further that OTC Clear may deduct:

(a) any amount in respect of which it is indemnified by a Former Clearing Member pursuant to these Clearing Rules; and

(b) an amount determined by OTC Clear to be adequate to satisfy any outstanding contingent liabilities of a Former Clearing Member.

To the extent that assets of the Rates and FX Guarantee Fund in excess of a Former Clearing Member's Rates and FX Contribution Balance are applied in discharging the rights and liabilities in respect of any Contracts to which it was party, OTC Clear may recover in full the amount so applied from that Clearing Member as a debt due to OTC Clear from it.

This Clearing Rule 1547 shall not be applicable in the occurrence of a Rates and FX Clearing Termination Event. In the event of the occurrence of a Rates and FX Clearing Termination Event, OTC Clear's obligation to return any unused Rates and FX Contribution Balance attributable to a Clearing Member shall be converted into an obligation to pay an amount in respect of such unused Rates and FX Contribution and be returned to such Clearing Member in the manner set out in Clearing Rules 1530 to 1540.

1548. Upon the occurrence of a DMP Event with respect to a Defaulting Clearing Member, OTC Clear's obligation to redeliver Collateral in equivalent form and currency shall be converted into an obligation to pay an amount equal to the value of such Defaulting Clearing Member's Rates and FX Contribution Balance as determined by OTC Clear, and such amount may be applied by OTC Clear in good faith if and only to the extent that any Rates and FX Losses are allocated to such Defaulting Clearing Member pursuant to Clearing Rules 1516(1)(b), 1516(2)(b) and 1914(2). Any remaining Rates and FX Contribution Balance relating to such Defaulting Clearing Member shall be applied by OTC Clear in accordance with Clearing Rules 1516 and 1914 in connection with any other DMP Events occurring in the relevant Capped Liability Period. Upon OTC Clear being satisfied that such Defaulting Clearing Member has no outstanding liability or sums owing to OTC Clear, the remaining value of its Rates and FX Contribution Balance as determined by OTC Clear shall be taken into account by OTC Clear in determining the net sum payable by, or to, such Defaulting Clearing Member in accordance with Clearing Rule 1306B(2).

1549. Upon the occurrence of a DMP Event, in respect of each Non-Defaulting Clearing Member, if and only to the extent that any Rates and FX Losses are allocated to such Non-Defaulting Clearing Member in accordance with Clearing Rules 1516 and 1914, any obligation of OTC Clear to return the Rates and FX Contribution to the Non-Defaulting Clearing Member shall be converted into an obligation of OTC Clear to pay an amount in respect of its Rates and FX Contribution equal to the sum(s) allocated to such Non-Defaulting Clearing Member in accordance with Clearing Rules 1516 and 1914. Such payment shall discharge OTC Clear's obligation to pay the amount set out in Clearing Rule 1546 to the extent of the amount paid, and such Non-Defaulting Clearing Member's GF Account and Rates and FX Contribution Balance shall be adjusted by OTC Clear in good faith accordingly.

Chapter 15A Default relating to a Sponsored Settlement Member

Default relating to a Sponsored Settlement Member

15A01. If a potential Event of Default occurs in respect of a Clearing Member as a result of a Sponsored Settlement Member failing to pay amounts equal to (and in the same currency as) any SSM Payment Amount to OTC Clear (a "**SSM Failure to Pay Event**"):

(1) if OTC Clear determines that the relevant Sponsored Settlement Member is not insolvent or likely to become insolvent and (other than an SSM Failure to Pay Event) no Event of Default has occurred or is likely to occur in respect of the relevant Clearing Member, then OTC Clear may decide at its sole discretion not to deliver a Notice of Default in respect of the Clearing Member for a period of up to 5 OTC Clear Clearing Days ("**SSM Payment Failure Grace Period**"), provided that OTC Clear may charge the relevant Clearing Member default interest on the due but unpaid SSM Payment Amount and any costs, fees and expenses incurred by OTC Clear during the SSM Payment Failure Grace Period attributable to such failure to pay;

(2) if an early termination date (howsoever described) occurs in respect of the relevant Client Clearing Agreement between a Clearing Member and a Client and the transfer of Contracts is effected under Clearing Rule 836(1), and the SSM Failure to Pay Event is continuing, OTC Clear may decide at its sole discretion not to deliver a Notice of Default in respect of the Clearing Member for a period of up to 5 OTC Clear Clearing Days from the date of the termination of the Client Clearing Agreement ("**Early Termination Grace Period**"), provided that the aggregate of any SSM Payment Failure Grace Period (if applicable) and Early Termination Grace Period does not exceed a period of 5 OTC Clear Clearing Days; and

(3) if OTC Clear determines that the SSM Payment Failure Grace Period has expired and the SSM Failure to Pay Event is continuing, then such failure to pay shall constitute an Event of Default in respect of the Clearing Member.

15A02. If a potential Event of Default has occurred or is likely to occur in respect of a sponsoring Clearing Member that has one or more Clients who are Sponsored Settlement Members, but OTC Clear determines that the relevant Sponsored Settlement Member is not insolvent or likely to become insolvent, OTC Clear may deliver a Notice of Default in respect of the relevant Clearing Member and the Default Management Process shall apply, except that OTC Clear may (prior to any porting or termination of the relevant Contracts in accordance with the Default Management Process) continue to pay to the Sponsored Settlement Member amounts equal to (and in the same currency as) the SSM Payment Amounts payable by OTC Clear to the Clearing Member in accordance with Clearing Rule 7A01 (or any SSM Tripartite Agreement with that Sponsored Settlement Member and Clearing Member where applicable) for so long as the Sponsored Settlement Member has paid to OTC Clear amounts equal to (and in the same currency as) the SSM Payment Amounts due to OTC Clear pursuant to Clearing Rule 7A03 (or any SSM Tripartite Agreement with that Sponsored Settlement Member and Clearing Member where applicable).

PART V DEFAULT MANAGEMENT PROCESS

Chapter 16 Default Management Process

Default Management Process

1601. The "**Default Management Process**" means the provisions set out in this PART V of these Clearing Rules and Chapter 8 of the Clearing Procedures, or the process described therein, as applicable, which shall be carried out by OTC Clear, in consultation with, and with the assistance of, the Default Management Group. The Default Management Process shall commence:

(1) immediately following the occurrence of an Automatic Early Termination Event or the delivery of a Notice of Default with respect to one or more Clearing Members;

(2) at a time determined by OTC Clear in the event of the occurrence of a Force Majeure Event or Illegality with respect to one or more Clearing Members pursuant to Clearing Rule 210(4); and

(3) at a time determined by OTC Clear in the event of the occurrence of an event described in Clearing Rule 610 with respect to one or more Clearing Members,

each of the above, a "**DMP Event**".

1602. Upon the occurrence of a DMP Event, OTC Clear will arrange for the following to occur in the order set out below:

(1) to convene the Default Management Group; 组建违约管理小组

(2) if applicable and to the extent reasonably practicable, to arrange for the Affected Contracts to be ported as further described in Chapter 17 of these Clearing Rules; 将违约会员持有的关联合约的全部或任何部分头寸转让其他结算会员

(3) to create on the Special Default Account a notional portfolio the economic profile of which is equivalent to the Contracts registered in the name of the Defaulting Clearing Member (but excluding any Affected Contracts registered in the name of such Defaulting Clearing Member which have been successfully ported pursuant to Chapter 17 of these Clearing Rules); 在Special Default Account创建名义投资组合（经济意义等同于已违约会员名义登记的合同，但不包括已经成功转让的合同）

(4) to execute measures in order to mitigate the risks associated with the DMP Event by putting on Hedging transactions for OTC Clear's own account in accordance with the Hedging strategy proposed by the Default Management Group and approved by OTC Clear, as further described in Chapter 18 of these Clearing Rules; and 以清算所自有账户进行对冲交易

(5) to complete the Auction process as further described in Chapter 19 of these Clearing Rules. 进行拍卖

这个account：清算所记录交易名义投资组合的记账账户。即在发生AET事件或发出违约通知前以违约会员名义登记的合同组成的投资组合

The provisions set out in Chapter 17, Chapter 18 and Chapter 19 of these Clearing Rules are implemented pursuant to Clearing Rule 1601 upon the occurrence of a DMP Event.

1603. Each Clearing Member must participate in the Default Management Process to the extent specified in the Clearing Rules, and take all steps and execute all documents necessary or desirable in relation thereto, including but not limited to executing relevant agreement(s) each in a form prescribed by OTC Clear for the purpose of execution of a Hedging transaction between a Non-Defaulting Clearing Member and OTC Clear.

1604. Whenever the Default Management Process is implemented by OTC Clear in respect of a Defaulting Clearing Member, OTC Clear will, with the assistance of the Default Management Group, provide such ongoing information to the Non-Defaulting Clearing Members as OTC Clear deems reasonably appropriate in respect of the progress of the Default Management Process, provided that OTC Clear is not under any obligation to disclose information in respect of the Default Management Process which, in the reasonable opinion of OTC Clear, may be subject to obligations of confidentiality, may constitute market sensitive data or is, in OTC Clear's reasonable opinion, inappropriate for disclosure to Clearing Members.

Default Management Group

1605. The Default Management Group shall convene:

(1) immediately following the occurrence of a DMP Event, and at sufficiently frequent intervals thereafter for a period so long as may be necessary to assist OTC Clear in the implementation of the Default Management Process relating to such DMP Event; or

(2) at such other time as OTC Clear may deem appropriate and/or necessary from time to time.

1606. The Default Management Group shall be made up of representatives from both OTC Clear and Clearing Members.

1607. Upon request by OTC Clear, a Defaulting Clearing Member shall provide a representative to participate in the Default Management Group.

1608. The terms of reference of the Default Management Group will be published on HKEX website. Any amendment to the terms of reference of the Default Management Group will be subject to the approval of the OTC Clear Board. OTC Clear Board will, if it deems necessary, consult with the Risk Management Committee prior to approving any such proposed amendment.

Undertaking by Clearing Members

1609. Each Clearing Member agrees, and shall procure, that:

(1) it shall, at all times, provide representatives (each a "**DMG Delegate**") to participate in the processes described in Clearing Rules 1611 and 1612. The exact number of DMG Delegates that a Clearing Member shall provide, and the skill and expertise required from each such DMG Delegate will be notified by OTC Clear to each Clearing Member from time to time;

(2) if OTC Clear requests a substitute where it believes a Clearing Member's nominated representative in the Default Management Group, as appropriate, is conflicted for its role as a DMG Member, or does not have the requisite skills or expertise, it shall provide such substitute;

(3) its DMG Member will be fully available, at any time and for such periods of time as OTC Clear may require during the Default Management Process, to perform his function as a member of the Default Management Group including attending meetings in person or by telephone, considering and advising OTC Clear on the Default Management Process. The Clearing Member shall ensure that its DMG Member's other work commitments will not affect his availability for this purpose;

(4) to take all steps to respect the confidential capacity in which its DMG Member receives information through the Default Management Group and to establish adequate procedures to prevent the disclosure or use for any purpose outside the scope of the Default Management Process of any such confidential information by it or its DMG Member. Such procedures shall normally include, without limitation, the establishment of Information Barriers within the Clearing Member; and

(5) to be bound by and to ensure that it and any of its executives, directors or employees serving on the Default Management Group complies with the provisions set out in Chapter 20 and Chapter 21 of these Clearing Rules.

Each DMG Member, in performing its role in the Default Management Process, shall act in the best interests of OTC Clear only and each Clearing Member agrees that it shall not require its DMG Member to undertake any obligations to it which would result in that DMG Member being in breach of this duty.

Amendments to Default Management Process

1610. Notwithstanding any contrary provisions contained in these Clearing Rules, in the event that OTC Clear, after consultation with the Risk Management Committee, deems appropriate to amend the Default Management Process, OTC Clear or the Risk Management Committee may present the relevant proposed amendments to the OTC Clear Board, which shall have the power to amend the Default Management Process in accordance with Clearing Rule 201.

1611. The DMG Delegates shall:

(1) at least once a year, gather for the purpose of reviewing the provisions of the Default Management Process, and to the extent considered appropriate, recommend any amendment or revision to such provisions for consideration by the Risk Management Committee and the OTC Clear Board. The OTC Clear Board may, after consultation with the Risk Management Committee, approve any such proposed amendment or revision to the Default Management Process in accordance with Clearing Rule 201; and

(2) participate in each fire drill conducted by OTC Clear in relation to the Default Management Process. Fire drills in relation to the Default Management Process will be held at least once a year.

1612. If, during the implementation of the Default Management Process following the occurrence of a DMP Event with respect to a Clearing Member, OTC Clear, in consultation with the Default Management Group determines that it would be necessary or desirable for the efficient management of such default to deviate from, or supplement, the Default Management Process, it may, without prior notice to the Clearing Members, implement the Default Management Process in such modified manner or timetable as it sees fit, provided that OTC Clear, with the assistance of the Default Management Group shall promptly notify the Risk Management Committee of such decision. OTC Clear and the Default Management Group shall take into account interest of the investing public, the Non-Defaulting Clearing Members and OTC Clear in determining whether it is necessary or desirable to deviate from, or supplement, the Default Management Process.

Chapter 17 Porting

Porting

1701. An Affected Contract will not be subject to Hedging, and will not form part of the Auction Book, until such time as OTC Clear has determined that the Affected Contract in question will not be ported as described in this Chapter 17.

1702. In respect of each Client Position Account established by a Defaulting Clearing Member with OTC Clear, OTC Clear shall:

(1) calculate the balance of the Client Collateral Account in respect of such Client Position Account;

(2) in respect of each Client Clearing Category 1 Client who has appointed a Replacement Clearing Member, in the absence of an Event of Default with respect to such Replacement Clearing Member, provide to the Replacement Clearing Member details relating to the Affected Contracts registered in the name of such Defaulting Clearing Member in respect of such Client, and the balance of the Client Collateral Account relating to each such Client; and

(3) in respect of all Client Clearing Category 2 Clients sharing one single Client Clearing Category 2 Position Account, provided that all such Client Clearing Category 2 Clients have appointed the same Replacement Clearing Member, provide to the Replacement Clearing Member details relating to the Affected Contracts and the balance of the related Client Clearing Category 2 Collateral Account registered in the name of the Defaulting Clearing Member.

1703. In respect of all Affected Contracts registered in the name of a Defaulting Clearing Member in respect of a Client Clearing Category 1 Position Account relating to a Client, provided that OTC Clear is reasonably satisfied that (i) the Replacement Clearing Member has been appointed prior to the occurrence of the relevant DMP Event, (ii) it has received completed Porting Instructions by 5:00pm (Hong Kong time) on the OTC Clear Clearing Day immediately following the occurrence of such DMP Event, (iii) it has further received the consent of the appointed Replacement Clearing Member to accept the porting of all such Affected Contracts by 5:00pm (Hong Kong time) on the OTC Clear Clearing Day immediately following the occurrence of such DMP Event, (iv) no DMP Event has occurred with respect to the Replacement Clearing Member at the time of purported porting, and (v) the relevant margin and credit check relevant to the purported porting is successfully passed:

(1) if the relevant DMP Event with respect to the Defaulting Clearing Member is not an Automatic Early Termination Event, OTC Clear shall terminate and close-out such Affected Contracts at their market value (as determined by OTC Clear in its discretion) and enter into new Contracts on the same terms to such Affected Contracts with the appointed Replacement Clearing Member;

(1A) if the relevant DMP Event with respect to the Defaulting Clearing Member is an Automatic Early Termination Event:

(a) in respect of all such Affected Contracts that are Non-Porting AET Contracts:

(i) OTC Clear will determine the aggregate trade value in respect of all such Non-Porting AET Contracts as at the relevant Early Termination Date. Such aggregate trade value may be zero, positive or negative. A positive

aggregate trade value indicates a net sum being payable by OTC Clear to the Defaulting Clearing Member in respect of such Non-Porting AET Contracts; and a negative aggregate trade value indicates a net sum being payable by the Defaulting Clearing Member to OTC Clear in respect of such Non-Porting AET Contracts;

(ii) if the aggregate trade value determined pursuant to sub-paragraph (i) above is a positive number, such value shall be netted against any losses incurred by OTC Clear relating to such Non-Porting AET Contracts as a result of the default of the Defaulting Clearing Member. If the aggregate trade value determined pursuant to sub-paragraph (i) above is zero or a negative number, such value shall be aggregated with any such losses;

(iii) if the net sum determined pursuant to sub-paragraph (ii) is a negative number, the Outright Transfer Margin Balance, if any, relating to the relevant Client Clearing Category 1 Position Account and, if necessary, any proceeds of enforcement of any non-cash Collateral comprising the Margin Balance of the corresponding Collateral Account (and any income and redemption proceeds thereon that have not already been paid to or withdrawn by the Defaulting Clearing Member) shall be reduced by an amount equal to the absolute value of such net sum; and

(iv) if the net sum determined pursuant to sub-paragraph (ii) is a positive number, such net sum shall form part of the Client Entitlement to be returned to the relevant Client pursuant to Clearing Rule 1309A; and

(b) in respect of all such Affected Contracts that are Porting AET Contracts, OTC Clear shall enter into new Contracts with the appointed Replacement Clearing Member on the same terms as such Porting AET Contracts;

(2) pursuant to the terms of the Client Clearing Agreement between the Defaulting Clearing Member and such Client, OTC Clear shall transfer, on account of such Client, the Client Clearing Category 1 Account Balance relating to such Client (excluding any Collateral recorded in the Client Clearing Category 1 Collateral Account relating to such Client that is subject to a Deed of Charge between the Defaulting Clearing Member and OTC Clear in respect of the Client Collateral Account(s)) to the appointed Replacement Clearing Member;

(3) the amount due to be returned to the Defaulting Clearing Member in respect of such Client Clearing Category 1 Position Account and related Client Clearing Category 1 Collateral Account shall be reduced by an amount equal to the Client Clearing Category 1 Account Balance referred to in sub-paragraph (2) above; and

(4) in respect of any Collateral recorded in the Client Clearing Category 1 Collateral Account relating to such Client that is subject to a Deed of Charge between the Defaulting Clearing Member and OTC Clear in respect of the Client Collateral Account(s), porting shall be effected as follows:

(a) any equities of redemption held by the Defaulting Clearing Member in respect of that Collateral shall be assigned absolutely to the Replacement Clearing Member, such that those equities of redemption become subject to the security interests granted in favour of OTC Clear pursuant to the Deed of Charge between the Replacement Clearing Member and OTC Clear; and

(b) OTC Clear shall release that Collateral from the security interests granted in favour of OTC Clear pursuant to the relevant Deed of Charge between the Defaulting Clearing Member and OTC Clear, such that the Replacement Clearing Member becomes entitled to redeem that Collateral pursuant to any equities of redemption assigned to it pursuant to sub-paragraph (a) above.

1704. In respect of all Affected Contracts registered in the name of a Defaulting Clearing Member in respect of a Client Clearing Category 2 Position Account, provided that OTC Clear is reasonably satisfied that (i) the Replacement Clearing Member has been appointed by all Clients identified as sharing such Client Clearing Category 2 Position Account prior to the occurrence of the relevant DMP Event, (ii) all such Clients have appointed the same Replacement Clearing Member, (iii) it has received completed Porting Instructions from all of the Clients identified as sharing such Client Clearing Category 2 Position Account by 5:00pm (Hong Kong time) on the OTC Clear Clearing Day immediately following the occurrence of such DMP Event, (iv) OTC Clear has further received the consent of the appointed Replacement Clearing Member to accept the porting of all such Affected Contracts by 5:00pm (Hong Kong time) on the OTC Clear Clearing Day immediately following the occurrence of such DMP Event, (v) no DMP Event has occurred with respect to the Replacement Clearing Member at the time of purported porting, and (vi) the relevant margin and credit check relevant to the purported porting is successfully passed:

(1) if the relevant DMP Event with respect to the Defaulting Clearing Member is not an Automatic Early Termination Event, OTC Clear shall terminate and close-out such Affected Contracts at their market value (as determined by OTC Clear in its discretion) and enter into new Contracts on the same terms to such Affected Contracts with the appointed Replacement Clearing Member;

(1A) if the relevant DMP Event with respect to the Defaulting Clearing Member is an Automatic Early Termination Event:

(a) in respect of all such Affected Contracts that are Non-Porting AET Contracts:

(i) OTC Clear will determine the aggregate trade value in respect of all such Non-Porting AET Contracts as at the relevant Early Termination Date. Such aggregate trade value may be zero, positive or negative. A positive aggregate trade value indicates a net sum being payable by OTC Clear to the Defaulting Clearing Member in respect of such Non-Porting AET Contracts; and a negative aggregate trade value indicates a net sum being payable by the Defaulting Clearing Member to OTC Clear in respect of such Non-Porting AET Contracts;

(ii) if the aggregate trade value determined pursuant to sub-paragraph (i) above is a positive number, such value shall be netted against any losses incurred by OTC Clear relating to such Non-Porting AET Contracts as a result of the default of the Defaulting Clearing Member. If the aggregate trade value determined pursuant to sub-paragraph (i) above is zero or a negative number, such value shall be aggregated with any such losses;

(iii) if the net sum determined pursuant to sub-paragraph (ii) is a negative number, the Outright Transfer Margin Balance, if any, relating to the relevant Client Clearing Category 2 Position Account and, if necessary,

any proceeds of enforcement of any non-cash Collateral comprising the Margin Balance of the corresponding Collateral Account (and any income and redemption proceeds thereon that have not already been paid to or withdrawn by the Defaulting Clearing Member) shall be reduced by an amount equal to the absolute value of such net sum; and

(iv) if the net sum determined pursuant to sub-paragraph (ii) is a positive number, such net sum shall form part of the Client Entitlement to be returned to the relevant Client pursuant to Clearing Rule 1309A; and

(b) in respect of all such Affected Contracts that are Porting AET Contracts, OTC Clear shall enter into new Contracts with the appointed Replacement Clearing Member on the same terms as such Porting AET Contracts;

(2) pursuant to the terms of the Client Clearing Agreement between the Defaulting Clearing Member and each such Client, OTC Clear shall transfer, on account of all such Clients sharing the same Client Clearing Category 2 Position Account, the aggregate Client Clearing Category 2 Account Balances of such Clients (excluding any Collateral recorded in the Client Clearing Category 2 Collateral Account relating to that Client Clearing Category 2 Position Account that is subject to a Deed of Charge between the Defaulting Clearing Member and OTC Clear in respect of the Client Collateral Account(s)) to the appointed Replacement Clearing Member;

(3) the amount due to be returned to the Defaulting Clearing Member in respect of such Client Clearing Category 2 Position Account and such Client Clearing Category 2 Collateral Account shall be reduced by an amount equal to the Client Clearing Category 2 Account Balances referred to in sub-paragraph (2) above; and

(4) in respect of any Collateral recorded in such Client Clearing Category 2 Collateral Account that is subject to a Deed of Charge between the Defaulting Clearing Member and OTC Clear in respect of the Client Collateral Account(s), porting shall be effected as follows:

(a) any equities of redemption held by the Defaulting Clearing Member in respect of that Collateral shall be assigned absolutely to the Replacement Clearing Member, such that those equities of redemption become subject to the security interests granted in favour of OTC Clear pursuant to the Deed of Charge between the Replacement Clearing Member and OTC Clear; and

(b) OTC Clear shall release that Collateral from the security interests granted in favour of OTC Clear pursuant to the relevant Deed of Charge between the Defaulting Clearing Member and OTC Clear, such that the Replacement Clearing Member becomes entitled to redeem that Collateral pursuant to any equities of redemption assigned to it pursuant to sub-paragraph (a) above.

1704A. A Defaulting Clearing Member agrees to waive any of its rights or entitlements to object to the Affected Contracts registered in its name to be ported. In respect of each Affected Contract being ported at a Client's request and pursuant to these Clearing Rules, the Defaulting Clearing Member and the relevant Replacement Clearing Member shall co-operate with OTC Clear and the Client(s) and facilitate such porting arrangement, including:

(1) if the relevant DMP Event with respect to the Defaulting Clearing Member is not an Automatic Early Termination Event, closing-out each Affected Contract and re-establishing a new Contract on the same terms as the relevant Affected Contract with the relevant Replacement Clearing Member; or

(2) if the relevant DMP Event with respect to the Defaulting Clearing Member is an Automatic Early Termination Event, OTC Clear entering into new Contracts with the relevant Replacement Clearing Member on the same terms as such Affected Contracts that are Porting AET Contracts,

and any associated movement of Collateral relating to such Affected Contracts.

1704B. In respect of the porting of a Client's portfolio of Contracts registered with the Defaulting Clearing Member in the relevant Client Position Account from the Defaulting Clearing Member to the Replacement Clearing Member, no amounts shall be payable between and amongst the Defaulting Clearing Member, the Replacement Clearing Member and the Client solely as a result of the change in the net present value of such Contracts.

1705. OTC Clear is entitled to rely on the Porting Instructions or any other document relating thereto reasonably believed by it to be genuine, correct and appropriately authorised, and OTC Clear shall be deemed to have acted in good faith if it has conducted the porting in accordance with the Porting Instructions.

1706. It is the obligation of a Clearing Member to duly advise and inform its Clients that:

(1) if no Replacement Clearing Member has been appointed (or, in the case of a Client Clearing Category 2 Position Account, if all of the Clients identified as sharing such Client Clearing Category 2 Position Account have not appointed the same Replacement Clearing Member or if that Replacement Clearing Member does not accept porting of all of the Clients identified as sharing such Client Clearing Category 2 Position Account), then following designation of such Clearing Member as a Defaulting Clearing Member, any Affected Contracts registered in the name of such Clearing Member will not be ported; and

(2) if a Replacement Clearing Member has been appointed in respect of all Affected Contracts registered in the name of such Clearing Member in respect of a Client Position Account, subsequent to such Clearing Member becoming a Defaulting Clearing Member, whilst OTC Clear will, in accordance with Clearing Rule 1703, arrange for all such Affected Contracts to be ported, whether or not such Affected Contracts will be successfully ported is dependant on whether the Replacement Clearing Member will accept the porting of all such Affected Contracts, or, in the case of a Client Clearing Category 2 Position Account, whether all of the Clients identified as sharing such Client Clearing Category 2 Position Account have appointed the same Replacement Clearing Member or whether the Replacement Clearing Member will accept porting of all of the Clients identified as sharing such Client Clearing Category 2 Position Account. OTC Clear may deem the purported porting of any Affected Contract to the relevant Replacement Clearing Member as having failed if such porting cannot be completed for any reason on or before 19:00 hours Hong Kong Time on the second OTC Clear Clearing Day following the occurrence of such DMP Event. Any Affected Contract that has not been successfully ported will form part of the Auction Book.

OTC Clear shall not have any liability including, but not limited to, any civil liability, whether arising in contract, tort, defamation, equity or otherwise for any Damage suffered or incurred directly or indirectly by a Client or any other Person as a result of a failure to port an Affected Contract registered in the name of the Defaulting Clearing Member.

1707. Each of the Defaulting Clearing Member and the Replacement Clearing Member shall jointly and severally indemnify OTC Clear, its Affiliate and a recognized exchange controller which is the controller of OTC Clear and keep OTC Clear, its Affiliate and a recognized exchange controller which is the controller of OTC Clear indemnified from and against any loss, cost (including cost of enforcement), interests, liability (including any tax or other fiscal liability), claim or Damage which OTC Clear, its Affiliate and a recognized exchange controller which is the controller of OTC Clear incurred or suffered in connection with the porting of any Contract and Collateral pursuant to any porting instruction.

1708. Clients in respect of whom porting has been successfully carried out pursuant to this Chapter 17 are referred to as "**Porting Clients**"; and Clients in respect of whom porting are not, or have not been successfully, carried out pursuant to this Chapter 17 are referred to as "**Non-Porting Clients**", and "**Porting Client**" and "**Non-Porting Client**" shall be construed accordingly.

1709. Pursuant to the power of OTC Clear to make rules under section 40(2A) of the SFO, if an Affected Contract has been successfully ported to the Replacement Clearing Member pursuant to this Chapter 17, any Corresponding Client Transaction corresponding to such Affected Contract may at the option of the Client be terminated with the Defaulting Clearing Member, re-established with, transferred or novated to the Replacement Clearing Member.

1710. References to Affected Contracts being "ported" pursuant to this Chapter 17 shall mean:

(1) in respect of Affected Contracts other than Affected AET Contracts, such Affected Contracts being terminated and OTC Clear entering into new Contracts on the same terms as such Affected Contracts with the relevant Replacement Clearing Member pursuant to Clearing Rule 1703(1) or Clearing Rule 1704(1); or

(2) in respect of Porting AET Contracts, OTC Clear entering into new Contracts with the relevant Replacement Clearing Member on the same terms as Porting AET Contracts pursuant to Clearing Rule 1703(1A)(b) or Clearing Rule 1704(1A)(b).

Chapter 18 Hedging

Hedging

1801. Following the occurrence of the relevant DMP Event in respect of a Defaulting Clearing Member, and subsequent to the completion of porting with respect to all Affected Contracts registered in the name of the Defaulting Clearing Member, provided that the Hedging strategies presented by the Default Management Group have been approved by OTC Clear, the Default Management Group will, on behalf of OTC Clear, conduct Hedging to mitigate, to the extent commercially practicable, any risk or economic exposure which arises as a result of the occurrence of the relevant DMP Event. Notwithstanding the immediately foregoing, OTC Clear has no obligation to conduct Hedging following the occurrence of a DMP Event. Neither OTC Clear nor the Default Management Group shall owe any fiduciary duty to any Clearing Member or any other Person in approving Hedging strategies or executing any such Hedging strategy.

1802. In executing Hedging transactions as part of the Default Management Process, the Default Management Group will take into account the risks introduced by the DMP Event to OTC Clear, other Non-Defaulting Clearing Members and the investing public, and shall at all times endeavour to obtain the best prevailing price and terms available, taking into account any constraints on the time available for execution of such Hedging.

1803. All Hedging shall be undertaken by OTC Clear for its own account. In respect of any Hedging transaction executed between OTC Clear and a Non-Defaulting Clearing Member as a hedge provider pursuant to this Chapter 18 which is intended to form part of an Auction Portfolio, OTC Clear shall register such Hedging transaction as a Contract. Upon completion of the Auction process, OTC Clear shall create and register a Contract between OTC Clear and the Successful Bidder, with equal but opposite terms to the relevant Hedging transaction referred to in this Clearing Rule 1803. In addition, for Hedging of Standard Cross-currency Rates Derivatives Contracts, other Hedging instruments may be considered by OTC Clear at its discretion for liquidity management and Hedging purposes. Such Hedging instruments shall be entered into by OTC Clear for its own account and may be entered into with entities that are not Clearing Members.

1804. For the avoidance of doubt, a single Hedging transaction cannot be split into more than one Auction Portfolio. In addition, any Hedging transactions with entities that are not Clearing Members should not be included in Auction Portfolios. Any losses or costs incurred as a result of the entering into of a Hedging transaction shall be allocated as part of the Auction Losses or Contract Termination Losses relating to the relevant Auction Portfolio.

Chapter 19 Auction

Auction Portfolios

1901. The purpose of the Auction process described in this Chapter 19 is to identify replacement Clearing Members who will enter into Contracts with OTC Clear with the same economic terms as Contracts registered in the name of the Defaulting Clearing Member (other than any Affected Contract that has been successfully ported pursuant to Chapter 17 of these Clearing Rules). The Auction process intends for OTC Clear to remain risk-neutral following the occurrence of a DMP Event, and to assist OTC Clear in determining the termination value of the portfolio of Contracts registered in the name of the Defaulting Clearing Member immediately prior to their termination (other than any Affected Contract that has been successfully ported pursuant to Chapter 17 of these Clearing Rules), which will be used in the calculations performed under Clearing Rules 1306, 1306A, 1306B, 1306C and 1307.

1902. OTC Clear will, in consultation with the Default Management Group, construct one or more Auction Portfolio(s) in respect of the Auction Positions on the Auction Book.

1903. OTC Clear and the Default Management Group will exercise their discretion in constructing Auction Portfolios consisting of Auction Positions with similar risk profile, with the aim to maximize the likelihood of achieving Successful Bids at a commercially reasonable price, provided that Contracts registered to a Defaulting Clearing Member's House Position Account shall not be included in the same Auction Portfolio as Contracts registered to a Defaulting Clearing Member's Client Position Accounts in respect of Non-Porting Clients.

1904. The construction of Auction Portfolios will be determined by OTC Clear, in consultation with the Default Management Group, separately in respect of each DMP Event and therefore may vary from one DMP Event to another.

Auction for Multiple Auction Portfolios

1905. Each Auction Portfolio shall be subject to its own Auction.

Conduct of Auction

1906. A Non-Defaulting Clearing Member must participate in the Auction for an Auction Portfolio if it has, on any day during the 20 OTC Clear Business Day-period immediately prior to such Auction, any Contract of a Transaction Category which is the same as any Contracts registered in the name of a Defaulting Clearing Member within that Auction Portfolio. Each Bidder agrees to enter into Contracts with OTC Clear on the same terms as the Auction Positions upon acceptance by OTC Clear of its Bid.

1907. A Non-Defaulting Clearing Member who, on any day during the 20 OTC Clear Business Day-period immediately prior to the Auction of an Auction Portfolio, does not have a Contract of a Transaction Category which is the same as any Contracts registered in the name of a Defaulting Clearing Member within such Auction Portfolio shall be entitled, but is not obliged, to participate in the Auction for such Auction Portfolio.

1908. Notwithstanding Clearing Rules 1906 and 1907, a resigning Clearing Member is not required to participate in the Auction if each of:

(1) the Initial Margin requirements (in respect of each of its House Position Account and Client Position Accounts (if any)) shown on the end-of-day Margin report published on an OTC Clear Clearing Day; and

(2) the net notional of all Contracts recorded to such resigning Clearing Member,

becomes zero prior to the commencement of the Auction process, provided that such resigning Clearing Member shall notify OTC Clear of the same no later than 5 OTC Clear Business Days prior to the commencement of the Auction.

1909. Each Bidder shall comply with the bidding process set out in these Clearing Rules.

Bidding

1910. Each Bidder shall specify the account to which any Auction Contract should be registered if the Bid is successful.

1911. A DMG Member shall not submit Bids for and on behalf of the Bidder of which it is representative and the identity of each Bidder shall be kept anonymous from the DMG Members.

1912. OTC Clear will oversee the bidding process and ensure that Bids represent fair value of the relevant Auction Portfolio on the basis of such factors as OTC Clear considers appropriate. OTC Clear may, but is not obliged, to consult with the Risk Management Committee prior to accepting any Bids, but OTC Clear will inform the Risk Management Committee regarding the progress of the Default Management Process.

Initial Allocation of Resources

1913. In respect of each Auction Portfolio, OTC Clear will, in consultation with the Default Management Group, determine the RAP and the Margin Allocation Percentage(s) for such Auction Portfolio. OTC Clear will, prior to the commencement of Auction, notify all Non-Defaulting Clearing Members of the RAP for each Auction Portfolio. On the basis of the RAP and the Margin Allocation Percentage(s) determined for an Auction Portfolio, OTC Clear will allocate a pool of resources for such Auction Portfolio (the "**Preliminary Available Resources**").

1913A. In respect of an Auction Portfolio in relation to Contracts registered to a Defaulting Clearing Member's House Position Account (a "**House Auction Portfolio**"), the resources set out in sub-paragraphs (1) to (6) below, to the extent not already applied in accordance with Clearing Rules 1516(1) and 1516(2), shall together constitute the Preliminary Available Resources allocated to such House Auction Portfolio for the purpose of satisfying any Auction Losses or Contract Termination Losses arising from such Auction Portfolio. OTC Clear shall be entitled to apply its resources, in any manner or order including for the avoidance of doubt in an order which is different from the order described hereunder, for satisfaction of the Auction Losses or Contract Termination Losses arising from such House Auction Portfolio, provided that upon completion of a successful Auction or the occurrence of a Contract Termination Event (as applicable) in respect of all Auction Portfolios relating to a DMP Event, it shall perform the loss allocation process set out in Clearing Rules 1914 to 1916:

(1) a pool of assets comprising the following (the "**Initial House Resources**"):

(a) all Auction Payments and Contract Termination Net Payments (if any) received by OTC Clear with respect to such House Auction Portfolio constructed as a result of such DMP Event;

(b) any Unpaid Amounts due from OTC Clear to the Defaulting Clearing Member in respect of Contracts recorded in such Defaulting Clearing Member's House Position Account;

(c) the Unsettled VM Amount in respect of the Auction Contracts and/or Auction Failed Positions comprised in such House Auction Portfolio (to the extent that such Unsettled VM Amount is payable by OTC Clear to the Defaulting Clearing Member) (if any); and

(d) a pool of assets the value of which represents the Margin Allocation Percentage for such House Auction Portfolio applied to the Margin Balance recorded to the House Collateral Account, any income and redemption proceeds on any non-cash Collateral recorded to the House Collateral Account and any proceeds of realization of any such non-cash Collateral that have not already been paid to or withdrawn by the Defaulting Clearing Member in respect of the Defaulting Clearing Member (the "**DCM Margin**");

(2) a pool of assets the value of which represents the RAP (assigned to such House Auction Portfolio) of the Rates and FX Contribution Balance recorded to the GF Account of the Defaulting Clearing Member (by application in the manner set out in Clearing Rule 1548);

(3) a pool of assets the value of which represents the RAP (assigned to such House Auction Portfolio) of the OTC Clear First Contribution;

(4) a pool of assets the value of which represents the RAP (assigned to such House Auction Portfolio) of the aggregate Rates and FX Contribution Balance in respect of the CM Funded Contribution Amount of each Non-Defaulting Clearing Member and recorded to the GF Account of each such Non-Defaulting Clearing Member (by application in the manner set out in Clearing Rule 1517) (the aggregate value of the CM Funded Contribution Amount of all Non-Defaulting Clearing Members is referred to as the "**NDCM GF**");

(5) a pool of assets the value of which represents the RAP (assigned to such House Auction Portfolio) of the OTC Clear Second Contribution; and

(6) a pool of assets the value of which represents the RAP (assigned to such House Auction Portfolio) of the aggregate value of the Rates and FX Contribution Balance in respect of the CM Unfunded Contribution Amount of each Non-Defaulting Clearing Member and recorded to the GF Account of each such Non-Defaulting Clearing Member (by application in the manner set out in Clearing Rule 1517).

For the avoidance of doubt, this Clearing Rule 1913A does not apply to an Auction Portfolio in relation to Contracts registered to a Defaulting Clearing Member's Client Position Account(s) with respect to its Non-Porting Client(s) (a "**Client Auction Portfolio**"). The Preliminary Available Resources for a Client Auction Portfolio are determined as set out in Clearing Rule 1913B.

1913B. In respect of a Client Auction Portfolio, the resources set out in sub-paragraphs (1) to (6) below, to the extent not already applied in accordance with Clearing Rules 1516(1) and 1516(2), shall together constitute the Preliminary Available Resources allocated to such Client Auction Portfolio for the purpose of satisfying any Auction Losses or Contract Termination Losses arising from such Client Auction Portfolio. OTC Clear shall be entitled to apply its resources, in any manner or order including for the avoidance of doubt in an order which is different from the order described hereunder, for satisfaction of the Auction Losses or Contract Termination Losses arising from such Client Auction Portfolio, provided that upon completion of a successful Auction or the occurrence of a Contract Termination

Event (as applicable) in respect of all Auction Portfolios relating to a DMP Event, it shall perform the loss allocation process set out in Clearing Rules 1914 to 1916:

(1) a pool of assets comprising the following (the "**Initial Non-Porting Client Resources**"):

(a) all Auction Payments and Contract Termination Net Payments (if any) received by OTC Clear with respect to such Client Auction Portfolio constructed as a result of such DMP Event;

(b) any Unpaid Amounts due from OTC Clear to the Defaulting Clearing Member in respect of the Contracts corresponding to the Auction Contracts and/or Auction Failed Positions comprised in such Client Auction Portfolio;

(c) the Unsettled VM Amount in respect of the Auction Contracts and/or Auction Failed Positions comprised in such Client Auction Portfolio (to the extent that such Unsettled VM Amount is payable by OTC Clear to the Defaulting Clearing Member) (if any); and

(d) a pool of assets the value of which represents the aggregate of, for each Client Collateral Account corresponding to that Client Auction Portfolio, the Margin Allocation Percentage for that Client Collateral Account and Client Auction Portfolio applied to the aggregate of the Margin Balance recorded to that Client Collateral Account, any income and redemption proceeds on any non-cash Collateral recorded to that Client Collateral Account and any proceeds of realization of any such non-cash Collateral that have not already been paid to or withdrawn by the Defaulting Clearing Member in respect of the Non-Porting Client(s) (the "**Non-Porting Client Margin**");

(2) a pool of assets the value of which represents the RAP (assigned to such Client Auction Portfolio) of the Rates and FX Contribution Balance recorded to the GF Account of the Defaulting Clearing Member (by application in the manner set out in Clearing Rule 1548);

(3) a pool of assets the value of which represents the RAP (assigned to such Client Auction Portfolio) of the OTC Clear First Contribution;

(4) a pool of assets the value of which represents the RAP (assigned to such Client Auction Portfolio) of the NDCM GF (by application in the manner set out in Clearing Rule 1517);

(5) a pool of assets the value of which represents the RAP (assigned to such Client Auction Portfolio) of the OTC Clear Second Contribution; and

(6) a pool of assets the value of which represents the RAP (assigned to such Client Auction Portfolio) of the aggregate value of the Rates and FX Contribution Balance in respect of the CM Unfunded Contribution Amount of each Non-Defaulting Clearing Member and recorded to the GF Account of each such Non-Defaulting Clearing Member (by application in the manner set out in Clearing Rule 1517).

1913C. With respect to each layer of Preliminary Available Resources set out in Clearing Rules 1913A and 1913B, to the extent that it comprises Collateral in more than one currency or form, OTC Clear has the sole discretion in allocating such Collateral, in any currency or form, or combination of currencies or forms and in whatever percentage, as part of the Preliminary Available Resources allocated to an Auction Portfolio. In performing the

immediately foregoing, OTC Clear will consult the Default Management Group, and take into account factors such as risk correlation or foreign exchange risk relating to the Auction Positions comprising the Auction Portfolio.

Loss Allocation

1914. Upon completion of a successful Auction or the occurrence of a Contract Termination Event (as applicable) with respect to all Auction Portfolios constructed as a result of the occurrence of a DMP Event with respect to the Defaulting Clearing Member, and provided that the process described in Clearing Rules 1516(1) and 1516(2) is completed, OTC Clear, in consultation with the Default Management Group, will perform the following loss allocation process with respect to each such Auction Portfolio:

(1) first:

(a) the Initial House Resources allocated to a House Auction Portfolio pursuant to Rule 1913A will be applied towards the Auction Losses or Contract Termination Losses relating to such House Auction Portfolio provided that:

(A) to the extent that the Initial House Resources allocated to such House Auction Portfolio exceed the Auction Losses or Contract Termination Losses relating to such Auction Portfolio, such excess shall be applied to satisfy any Auction Losses or Contract Termination Losses relating to other House Auction Portfolio(s) constructed as a result of the occurrence of a DMP Event with respect to such Defaulting Clearing Member, if any, on a pro-rata basis by reference to the amount of such remaining Auction Losses or Contract Termination Losses;

(B) to the extent that there are (i) any excess Initial House Resources of a Defaulting Clearing Member subsequent to the application of the same pursuant to sub-paragraph (A) above and (ii) any Auction Losses or Contract Termination Losses relating to Client Auction Portfolio(s) constructed as a result of the occurrence of a DMP Event with respect to such Defaulting Clearing Member after the application of the relevant Initial House Resources pursuant to subparagraph 1914(1)(b)(A) below, such excess Initial House Resources shall be applied to satisfy such Auction Losses or Contract Termination Losses relating to the Client Auction Portfolio(s) on a pro-rata basis by reference to the amount of such remaining Auction Losses or Contract Termination Losses; and

(C) to the extent that there is any excess DCM Margin of a Defaulting Clearing Member subsequent to the application of the same pursuant to sub-paragraph (A) and (B) above, such excess DCM Margin shall constitute Excess Margin of such Defaulting Clearing Member pursuant to Clearing Rule 1218;

For the avoidance of doubt, the Initial House Resources of a Defaulting Clearing Member shall not be applied towards any Auction Losses or Contract Termination Losses relating to Auction Portfolio(s) constructed as a result of the occurrence of a DMP Event with respect to any other Defaulting Clearing Member;

(b) the Initial Non-Porting Client Resources allocated to a Client Auction Portfolio pursuant to Clearing Rule 1913B will be applied towards the Auction Losses or Contract Termination Losses relating to such Client Auction Portfolio to the extent that such Auction Losses or Contract Termination Losses relate to the Client Position Account to which the Unsettled VM Amount or Unpaid Amount relates, or in the case of Non-Porting Client Margin, the Client Position Account attributed to the Client Collateral Account in which such Non-Porting Client Margin is recorded, provided that:

(A) subsequent to that application process, to the extent that there are any Initial Non-Porting Client Resources allocated to such Client Auction Portfolio pursuant to Clearing Rule 1913B which are not applied to the Auction Losses or Contract Termination Losses relating to such Auction Portfolio, such excess shall be applied to satisfy any Auction Losses or Contract Termination Losses relating to other Client Auction Portfolio(s) constructed as a result of the occurrence of a DMP Event in respect of the same corresponding Client Position Account(s), if any, on a pro-rata basis by reference to the amount of such remaining Auction Losses or Contract Termination Losses (to the extent that such remaining Auction Losses or Contract Termination Losses relate to the Client Position Account to which the Unsettled VM Amount or Unpaid Amount relates, or in the case of Non-Porting Client Margin, the Client Position Account attributed to the Client Collateral Account in which such excess Non-Porting Client Margin is recorded); and

(B) to the extent that there are any excess Initial Non-Porting Client Resources subsequent to the application of the same pursuant to sub-paragraph (A) above, such excess Initial Non-Porting Client Resources would form part of the Non-Porting Client Credit and, hence, the Client Entitlement of the relevant Client(s);

For the avoidance of doubt, any excess Initial Non-Porting Client Resources shall only form part of the Client Entitlement of the Client(s) to which such Initial Non-Porting Client Resources relate and shall not form part of the Client Entitlement of other Client(s);

(c) for the purposes of sub-paragraph (b)(A) above and Clearing Rule 1307, the amount of Auction Losses or Contract Termination Losses in the form of hedging costs or risk premia that shall be treated as “relating to” a Client Position Account shall be an amount equal to the product of:

(A) with respect to an Auction Portfolio, the hypothetical Initial Margin with respect to the Contracts of that Client Position Account comprised in the relevant Auction Portfolio (calculated on a portfolio margining basis assuming that such Contracts were booked into a single separate hypothetical Client Position Account) divided by the aggregate of the hypothetical Initial Margin of all Client Position Accounts comprised in such Auction Portfolio (where such Auction Portfolio comprises Contracts originally booked to more than one Client Position Account, but the entire Client Position Account is not

comprised in such Auction Portfolio, the hypothetical Initial Margin for each such partial Client Position Account shall be calculated on a portfolio margining basis disregarding the fact that such Client Position Account is not whole; for the avoidance of doubt, where such Auction Portfolio comprises Contracts originally booked to more than one Client Position Account and each entire Client Position Account is comprised in such Auction Portfolio, the Initial Margin of such Client Position Accounts shall be aggregated), in each case, such Initial Margin being calculated as at the latest practicable time immediately preceding the occurrence of the relevant DMP Event as determined by OTC Clear in its sole and absolute discretion (the "**Hypothetical IM Percentage**"); and

(B) the amount of Auction Losses or Contract Termination Losses in the form of hedging costs and risk premia relating to the relevant Auction Portfolio referred to in sub-paragraph (c)(A) above;

(d) for the purposes of sub-paragraph (b)(A) above and Clearing Rule 1307, the amount of Auction Payments or Contract Termination Net Payments in the form of risk concessions that shall be treated as "relating to" a Client Position Account shall be an amount equal to the product of:

(A) with respect to an Auction Portfolio, the Hypothetical IM Percentage for that Client Position Account calculated pursuant to sub-paragraph (c)(A) above; and

(B) the amount of Auction Payments in the form of risk concessions relating to the relevant Auction Portfolio referred to in sub-paragraph (d)(A) above;

For the avoidance of doubt, the process in this sub-paragraph (b) shall be repeated until all the Auction Losses or Contract Termination Losses relating to such Client Auction Portfolio have been applied to the Client Collateral Account(s) comprising the Initial Non-Porting Client Resources allocated to such Client Auction Portfolio pursuant to Clearing Rule 1913B.

(2) second, having utilized the Initial House Resources of the Defaulting Clearing Member in full, any remaining Auction Losses or Contract Termination Losses arising from such Auction Portfolio and attributable to such Defaulting Clearing Member will be satisfied using the RAP of the Rates and FX Contribution Balance of the Defaulting Clearing Member allocated to such Auction Portfolio pursuant to Rule 1913A or 1913B, as the case may be. In the event there is a DCM GF Surplus relating to an Auction Portfolio, such DCM GF Surplus will be applied towards any DCM GF Shortfall relating to other Auction Portfolios (constructed as a result of the occurrence of a DMP Event with respect to such Defaulting Clearing Member), on a pro-rata basis among all such Auction Portfolios by reference to the amount of such DCM GF Shortfall, until the earlier to occur of:

(a) the satisfaction in full of the Auction Losses or Contract Termination Losses with respect to all such Auction Portfolios; and

(b) the utilization of the DCM GF in full.

The above shall be without prejudice to the operation of Clearing Rule 1916.

(3) third, subsequent to the utilization of the Rates and FX Contribution Balance of the Defaulting Clearing Member in full (or, in the occurrence of multiple DMP Events within the same Capped Liability Period, taking into account the operation of Clearing Rule 1916, the utilization of the Rates and FX Contribution Balance of all Defaulting Clearing Members with respect to whom a DMP Event has occurred during the relevant Capped Liability Period), OTC Clear will satisfy the Auction Losses or Contract Termination Losses arising from such Auction Portfolio using the relevant proportion of the OTC Clear First Contribution allocated to such Auction Portfolio pursuant to Rule 1913A or 1913B, as the case may be. To the extent that the relevant proportion of the OTC Clear First Contribution allocated to such Auction Portfolio exceeds the Auction Losses or Contract Termination Losses relating to such Auction Portfolio, such excess shall be applied towards the Auction Losses or Contract Termination Losses relating to other Auction Portfolios (constructed as a result of the occurrence of a DMP Event with respect to such Defaulting Clearing Member) on a pro-rata basis by reference to the amount of such remaining Auction Losses or Contract Termination Losses, until the earlier to occur of:

(a) the satisfaction in full of the Auction Losses or Contract Termination Losses with respect to all such Auction Portfolios; and

(b) utilization of the OTC Clear First Contribution in full;

(4) subsequent to the utilization of the OTC Clear First Contribution in full, with respect to each Auction Portfolio (constructed as a result of the occurrence of a DMP Event with respect to such Defaulting Clearing Member) with remaining Auction Losses or Contract Termination Losses, OTC Clear will (i) in the case of Contract Termination Losses, apply the NDCM GF towards such Contract Termination Losses or (ii) in the case of Auction Losses, apply the relevant proportion of the NDCM GF in the following order:

(a) first, the relevant proportion of the Rates and FX Guarantee Fund of each Non-Bidder and Poor Bidder will be applied (the "**Junior Tranche**");

(b) second, the relevant proportion of the Rates and FX Guarantee Fund of each Lower Bidder will be applied (the "**Middle Tranche**"); and

(c) third, the relevant proportion of the Rates and FX Guarantee Fund of each Successful Bidder, Equal Bidder, Better Bidder and No Position NDCM will be applied (the "**Senior Tranche**", and together with the Junior Tranche and Middle Tranche, the "**Tranches**" and each a "**Tranche**"),

in each case, the relevant proportion of the Rates and FX Guarantee Fund of each Bidder will be applied on a pro-rata basis among each other Bidder within the same Tranche.

The methodology described in item (ii) above shall be referred to as the "**Tranching Methodology**".

In the event that there is an NDCM GF Shortfall relating to an Auction Portfolio, any NDCM GF Surplus relating to other Auction Portfolios (constructed as a result of the occurrence of a DMP Event with respect to such Defaulting Clearing Member) will be applied towards such NDCM GF Shortfall (in the case of Auction Losses, in accordance with the Tranching Methodology for the Auction Portfolio to which that

NDCM GF Surplus relates), on a pro-rata basis among all other Auction Portfolios (constructed as a result of the occurrence of a DMP Event with respect to such Defaulting Clearing Member) with an NDCM GF Shortfall by reference to the amount of such NDCM GF Shortfall, until the earlier to occur of:

(A) the satisfaction in full of the Auction Losses and Contract Termination Losses with respect to all such Auction Portfolios; and

(B) utilization of the NDCM GF in full;

(5) subsequent to the utilization of the NDCM GF in full, with respect to each Auction Portfolio with remaining Auction Losses or Contract Termination Losses, OTC Clear will satisfy such Auction Losses or Contract Termination Losses using the relevant proportion of the OTC Clear Second Contribution allocated to such Auction Portfolio pursuant to Rule 1913A or 1913B, as the case may be. To the extent that the relevant proportion of the OTC Clear Second Contribution allocated to such Auction Portfolio exceeds the Auction Losses or Contract Termination Losses relating to such Auction Portfolio, such excess shall be applied towards the Auction Losses or Contract Termination Losses relating to other Auction Portfolios (constructed as a result of the occurrence of a DMP Event with respect to such Defaulting Clearing Member) on a pro-rata basis by reference to the amount of such remaining Auction Losses or Contract Termination Losses, until the earlier to occur of:

(a) the satisfaction in full of the Auction Losses or Contract Termination Losses with respect to all such Auction Portfolios; and

(b) utilization of the OTC Clear Second Contribution in full; and

(6) subsequent to the utilisation of OTC Clear Second Contribution in full, with respect to each Auction Portfolio with remaining Auction Losses or Contract Termination Losses, OTC Clear will apply the relevant proportion of the Rates and FX Assessments of each Non-Defaulting Clearing Member (using, in the case of Auction Losses, the Tranching Methodology as set out in sub-paragraph (4) above and any references to NDCM GF therein shall be construed to mean Rates and FX Assessments).

The loss allocation process set out in this Clearing Rule 1914 shall be conducted in manner consistent with that set out in Clearing Rule 1517.

For the purpose of this Clearing Rule 1914 but without prejudice to the operation of Clearing Rule 1916, with respect to each DMP Event, any reference to a “Non-Defaulting Clearing Member” shall mean any Clearing Member other than the Defaulting Clearing Member with respect to whom such DMP Event has occurred.

1915. With respect to each layer of Preliminary Available Resources, to the extent that the Collateral of the same Clearing Member comprises more than one form of assets but all of which constitute the same layer of resources, OTC Clear shall have the discretion to utilize any form of such Clearing Member’s Collateral within the same layer of resources in any order and manner as it sees fit.

1916. In the event that more than one DMP Event occurs within the same Capped Liability Period, Clearing Rule 1545 shall apply. In addition, with respect to the Auction Losses

and/or Contract Termination Losses arising out of the DMP Events occurring within the same Capped Liability Period:

(1) OTC Clear may make such adjustments as are necessary in determining the Preliminary Available Resources and the RAP and the Margin Allocation Percentage(s) for each Auction Portfolio constructed as a result of each DMP Event occurring within the same Capped Liability Period. In doing so, OTC Clear will review the aggregate sum of all resources it has then to satisfy the Rates and FX Loss arising out of each such DMP Event, namely, the then Margin Balance held in respect of the Defaulting Clearing Members, any Unsettled VM Amount (to the extent that such Unsettled VM Amount is payable by OTC Clear to the Defaulting Clearing Members) and any income and redemption proceeds on any non-cash Collateral that have not already been paid to or withdrawn by the Defaulting Clearing Members, the OTC Clear Contribution, and the Rates and FX Contribution Balance then held in respect of by all Non-Defaulting Clearing Members; and

(2) (a) to the extent that the Auction Losses and/or Contract Termination Losses arising from all Auction Portfolios constructed for one single Defaulting Clearing Member do not require utilization in full of the Rates and FX Contribution of such Defaulting Clearing Member, any remaining Rates and FX Contribution of such Defaulting Clearing Member shall be utilized to satisfy any Auction Losses and/or Contract Termination Losses arising from one or more Auction Portfolios constructed for another Default Management Process in respect of another Defaulting Clearing Member;

(b) any excess Rates and FX Contribution of a Defaulting Clearing Member will be applied on a pro-rata basis based on the share of Rates and FX Contribution contributed by the relevant Defaulting Clearing Member; and

(c) OTC Clear will always ensure that the Rates and FX Contribution of all Defaulting Clearing Members whose DMP Events occurred within the same Capped Liability have been utilized in full prior to utilizing the OTC Clear First Contribution.

1917. OTC Clear will at all times observe Clearing Rule 823 in carrying out the loss allocation process described in Clearing Rules 1914 to 1916, and Initial Non-Porting Client Resources allocated to a Client Auction Portfolio of a Defaulting Clearing Member shall never be utilized to meet any losses arising out of such or other Defaulting Clearing Members' House Account.

Successive Auction

1918. If an Auction is unsuccessful in dealing with all Auction Positions in the relevant Auction Portfolio, further round(s) of Auction may be held. In order to facilitate the Auction process and/or if OTC Clear declares a Contract Termination Event affecting more than one Auction Portfolio, OTC Clear may, in consultation with the Default Management Group, decide to combine or sub-divide previously constructed Auction Portfolios for successive Auctions or for the purpose of allocating losses relating to a Contract Termination Event.

1918A. If, pursuant to Clearing Rule 1918, an Auction is held and is unsuccessful, and if OTC Clear reasonably believes that further round(s) of Auction will not be successful in dealing with all Auction Positions in one or more Auction Portfolio(s) within a reasonable time frame as determined by OTC Clear, OTC Clear may invoke the contract termination

process as provided for in this Clearing Rule in consultation with the SFC. OTC Clear shall determine which Contracts will be terminated, either in whole or in part, ("**Identified Contracts**") under this Clearing Rule, shall notify the relevant Clearing Members of the details of the relevant Identified Contracts, and shall declare the occurrence of a termination event in respect of such Identified Contracts, either in whole or in part, (a "**Contract Termination Event**"). In making this determination, OTC Clear may:

(i) select (a) those Contracts executed between OTC Clear and any Non-Defaulting Clearing Member for the purpose of Hedging the exposure of OTC Clear in relation to the Auction Failed Positions of the Defaulting Clearing Member and (b) those Contracts between OTC Clear and Non-Defaulting Clearing Members which have equal but opposite terms to the Auction Failed Positions in respect of the Defaulting Clearing Member; or

(ii) select (a) those Contracts executed between OTC Clear and any Non-Defaulting Clearing Member for the purpose of Hedging the exposure of OTC Clear in relation to the Auction Failed Positions of the Defaulting Clearing Member and (b) all Contracts which are of the same Transaction Category as the Contracts described in Clearing Rule 1918A(i)(b), regardless of whether such Contracts are on the same or equal but opposite terms to those of the Auction Failed Positions in respect of the Defaulting Clearing Member; or

(iii) select all Contracts registered at OTC Clear regardless of the Transaction Category of such Contracts.

The Identified Contracts shall be terminated as of the Final Settlement Cycle Determination Date for such Contract Termination Event as determined pursuant to section 10.5 of the Clearing Procedures.

1918B. On the Final Settlement Cycle Determination Date for a Contract Termination Event, all obligations of OTC Clear and the relevant Non-Defaulting Clearing Member in respect of each Identified Contract between them shall cease to exist and be replaced with the obligation of OTC Clear or the relevant Non-Defaulting Clearing Member, as the case may be, to pay a net sum in respect of all such Identified Contracts as between them (each a "**Contract Termination Net Payment**") equal to the change in net present value for each such Identified Contract between the last End-of Day Settlement Process immediately preceding the relevant Final Settlement Cycle Determination Date and 11.00 hours Hong Kong time on the Final Settlement Cycle Determination Date, as determined by OTC Clear in accordance with this Clearing Rule and sections 10.1(iv) and 10.5 of the Clearing Procedures. OTC Clear will, as soon as reasonably practicable on the Final Settlement Cycle Determination Date, notify the relevant Non-Defaulting Clearing Member of the Contract Termination Net Payment payable by it, and the relevant Non-Defaulting Clearing Member shall pay OTC Clear such amount within one OTC Clear Business Day after the Final Settlement Cycle Determination Date. Notwithstanding the above, if at any time during the Contract Termination Event process but prior to the effective date of termination of the relevant Identified Contracts, OTC Clear determines that the Contract Termination Net Payments would result in any of the events set out in Clearing Rule 1530(1), OTC Clear may, instead of proceeding with the Contract Termination Event, declare the occurrence of a Rates and FX Clearing Termination Event, and in such case the Identified Contracts shall not be terminated pursuant to this Clearing Rule 1918B but shall be terminated in accordance with Clearing Rule 1531 instead. Any Contract Termination Net Payment payable by OTC Clear to Non-Defaulting Clearing Members shall form part of the

Contract Termination Losses payable in accordance with Clearing Rules 1515 and 1516 by application of the Total Available Resources of OTC Clear.

1919. Upon the expiry of a Capped Liability Period, with respect to each Auction Portfolio constructed for the DMP Event(s) occurring within such Capped Liability Period that was the subject of a successful Auction, OTC Clear will notify all relevant Bidders the result of the application of the Tranching Methodology with respect to each such Auction Portfolio.

OTC Clear Financial Resources

1920. Following the completion of each Auction, OTC Clear shall determine whether its Total Available Resources are sufficient to meet its obligations arising from such Auction, including but not limited to the ability to credit all Successful Bidders with the relevant Auction Receivables. OTC Clear may only perform its obligations pursuant to Clearing Rules 1921 and 1922 in respect of all Auction Contracts arising from such Auction if it has reasonably determined that its Total Available Resources are sufficient. If OTC Clear determines that, even after exhausting the Total Available Resources, invoking the Loss Distribution Process described in Clearing Rules 1523 to 1528, declaring one or more Contract Termination Events, and/or taking into account any Voluntary Recap Amounts received from one or more Non-Defaulting Clearing Members, it will not be able to meet all the Successful Bids received in respect of all Auction Portfolios arising out of a completed Auction, then the procedure set out in Clearing Rules 1530 to 1540 shall take effect. In such event, OTC Clear shall notify all Bidders of the failure of the Auction and the occurrence of a Rates and FX Clearing Termination Event in accordance with the Clearing Procedures and, for the avoidance of doubt, no Bidder shall be deemed to have a Successful Bid in respect of such Auction and OTC Clear shall not be permitted to register any Auction Contract with any Successful Bidder.

Registration of Auction Contracts

1921. Following the completion of Auction or Contract Termination Event (as applicable) with respect to all Auction Portfolios constructed for a DMP Event, all Successful Bidders will be notified of their Successful Bids and the Auction Payment or Auction Receivable (as applicable) payable in connection the registration of Auction Contracts relating to such Successful Bids. OTC Clear will register the Auction Contracts to the account specified by each Successful Bidder. Auction Contracts will be registered in the name of the Successful Bidder by OTC Clear entering into the Auction Contracts with the Successful Bidder.

1922. Each Successful Bidder will be required to comply with such conditions as may be required by OTC Clear, after consultation with the Default Management Group, to effect the registration of the Auction Contracts. Upon the completion of the Auction(s):

(1) each Successful Bidder shall provide OTC Clear with Collateral to satisfy the Margin required for the registration of the Auction Contracts, such Collateral must be delivered by the Successful Bidder on or prior the relevant Auction Payment Date;

(2) each Successful Bidder shall also pay to OTC Clear any Auction Payment on or prior to the Auction Payment Date; and

(3) OTC Clear will pay any Auction Receivable payable to the relevant Successful Bidder(s) on or prior to the Auction Receivable Payment Date.

Failed Registration

1923. If a Successful Bidder for an Auction Contract fails to pay in full to OTC Clear the corresponding Auction Payment or fails to provide in full the corresponding required Margin to OTC Clear, in either case, on or prior to the relevant Auction Payment Date, such failure shall constitute an Event of Default with respect to the Successful Bidder pursuant to Clearing Rule 1301.

1924. (1) If OTC Clear fails to pay in full an Auction Receivable to a Successful Bidder on or prior to the relevant Auction Receivable Payment Date, such registration of the Auction Contract shall be deemed *void ab initio* and unenforceable against that Successful Bidder;

(2) OTC Clear shall not take such Auction Contract into account for the purpose of calculating that Successful Bidder's Margin requirement on an ongoing basis; and

(3) to the extent a demand for Margin has already been served upon that Successful Bidder, taking into account such Auction Contract, and the relevant Successful Bidder has transferred Collateral in satisfaction of such Margin requirement, the amount of Collateral called in respect of such Auction Contract shall be returned to that Successful Bidder on the second Auction Receivable Payment Date following the completion of the relevant Auction.

Chapter 20 Confidentiality Obligations relating to Receipt of DMP Information

Confidentiality

2001. Each Clearing Member agrees and undertakes that, in consideration of it being provided the DMP Information (in such capacity, each a "**Receiving Clearing Member**"), it shall:

(1) keep all the DMP Information confidential;

(2) only use the DMP Information for the Permitted Purpose and comply with the provisions of the Default Management Process in respect thereof; and

(3) upon demand by OTC Clear and to the extent reasonably practicable, promptly return to OTC Clear all or any part of the DMP Information in its possession in whatever form it may be by a secure method of transportation, or, save and except for any electronic back-up copies which are not readily accessible to the Receiving Clearing Member, destroy or procure the destruction of any copies or reproductions of any material, paper, programme or record incorporating the DMP Information including the destruction or expungement thereof from any memory device or medium, provided that the Clearing Member may retain copies of any DMP Information as required by law.

Upon demand by OTC Clear the Clearing Member shall provide to OTC Clear a written confirmation that all the provisions of sub-paragraph (3) above have been fully complied with.

2002. Each Receiving Clearing Member agrees and undertakes that it shall only disclose the DMP Information to its employees, officers, representatives, advisers or Affiliates for the Permitted Purpose (and to that extent only) on a "**strictly need to know**" basis.

2003. Each Clearing Member shall establish adequate procedures and mechanisms, including but not limited to the establishment of Information Barriers, to ensure that the DMP Information is, at all times, solely used for the Permitted Purpose by it and any of its employees, officers, representatives, advisers or Affiliates.

2004. Nothing in these Clearing Rules shall prohibit disclosure or use of the DMP Information if and to the extent:

(1) it becomes publicly available otherwise than as a result of a breach of the provisions of these Clearing Rules by the Receiving Clearing Member and in particular the Default Management Process;

(2) the Receiving Clearing Member is required to do so by order of a court of competent jurisdiction which arises as a result of an application by a third party;

(3) the Clearing Member is required or requested to do so by any Regulatory Authority asserting jurisdiction over the Clearing Member; or

(4) OTC Clear has given prior written approval to the disclosure.

Term

2005. In respect of each Receiving Clearing Member, the confidentiality obligations set out in this Chapter 20 shall continue for a period of two years from the date on which the DMP Information is provided by OTC Clear to such Receiving Clearing Member. The

immediately foregoing shall not prejudice any other confidentiality obligations imposed on the relevant Receiving Clearing Member under any Applicable Laws.

Rights to DMP Information

2006. The parties acknowledge that the DMP Information or any part of it shall remain the property of OTC Clear, neither the Receiving Clearing Member nor any of its employees, officers, representatives, advisers or Affiliates shall be entitled to any right or licence in respect thereof.

Liability of OTC Clear

2007. Subject to compliance with the terms of these Clearing Rules, and in particular, this Chapter 20, by the Receiving Clearing Member and any other person to whom the DMP Information is provided in accordance with the terms herein, OTC Clear acknowledges and agrees that, participation by a Clearing Member in the Default Management Process shall not prevent such Clearing Member from conducting any transaction, or otherwise providing investment services in respect of, investments that the Clearing Member may subsequently learn are the subject of DMP Information provided that, in such circumstances, the relevant Clearing Member shall establish appropriate Information Barriers to ensure its continued compliance with the terms of these Clearing Rules, and in particular, this Chapter 20. Without prejudice to any other provisions contained in these Clearing Rules and OTC Clear's right to enforce the same, OTC Clear agrees that, it shall not assert that there is a conflict of interest by the Clearing Member in doing so nor shall OTC Clear have a claim or action in respect of the foregoing against the Clearing Member.

Relief

2008. Each Receiving Clearing Member expressly acknowledges and agrees that the DMP Information may contain commercially sensitive information which if used otherwise than in accordance with the Default Management Process or for the Permitted Purpose, may result in irreparable harm to OTC Clear which damages alone may not be an adequate remedy, and will result in it gaining an unfair commercial advantage over other Clearing Members. Accordingly, each Receiving Clearing Member acknowledges that OTC Clear may seek injunctive relief, whether interim or final, specific performance, other equitable reliefs or any other combination of these remedies against the Receiving Clearing Member in the event of any threatened or actual breach of the terms of use of DMP Information as set out in this Chapter 20 by it or any of its employees, officers, representatives, advisers or Affiliates, and no proof of special damages will be necessary to enforce its rights to such remedies.

2009. The rights of OTC Clear under Clearing Rule 2008 shall be in addition to OTC Clear's other rights in law or in equity specific performance, other equitable reliefs or any other combination of these remedies.

Chapter 21 Obligations, Undertaking and Liability of Clearing Members relating to Participation in the Default Management Group

Confidentiality Obligations

2101. In the event that OTC Clear has determined that a DMP Event has occurred, each Clearing Member acknowledges that OTC Clear may demand a Clearing Member to provide one DMG Member to be part of the Default Management Group and such DMG Member shall participate in the Default Management Process.

2102. Each Clearing Member shall procure its DMG Member to keep the DMG Information strictly confidential and secure. The DMG Member shall not disclose the DMG Information to any Person (including, for the avoidance of doubt, the Clearing Member who nominated the appointment of such DMG Member to the Default Management Group or any other employee, officer, representative, adviser or Affiliates of that Clearing Member) without the prior written approval of OTC Clear.

2103. Upon demand by OTC Clear and to the extent reasonably practicable, and in any event upon termination of the membership of the DMG Member with the Default Management Group, the Clearing Member shall procure the DMG Member promptly return to OTC Clear all or any part of the DMG Information in its possession in whatever form it may be by a secure method of transportation of any copies or reproductions of any material, paper, programme or record incorporating the DMG Information including the destruction or expungement thereof from any memory device or medium. Upon demand by OTC Clear, the DMG Member shall provide to OTC Clear a written confirmation that it has fully complied with the foregoing.

Conflict of Interest

2104. In the event that a DMG Member is of the view that there may be a possible conflict of interest in the conduct of any part of the business of the Default Management Group, such DMG Member shall report his/her view promptly to the head of the Default Management Group, who shall act accordingly, taking advice of other DMG Members as he/she sees fit.

Representations and Warranties

2105. Each Clearing Member represents and warrants that:

(1) it is fully aware of the obligations of confidentiality under the Default Management Process;

(2) none of the provisions in the Default Management Process will cause any breach of duty or obligation (whether arising pursuant to contract or otherwise) which the DMG Member owes to the Clearing Member or any other contract counterparty of the DMG Member or under any Applicable Laws; and

(3) it will procure that the DMG Member who is its representative shall use any DMG Information solely for the purpose of properly discharging and fulfilling his/her duties as a DMG Member.

No Liability

2106. Each Clearing Member acknowledges that:

(1) DMG Members are conducting the Default Management Process in order to assist OTC Clear in ensuring the on-going integrity of the Rates and FX Clearing Service

in the interests of OTC Clear, the Non-Defaulting Clearing Members and the investing public; and

(2) in respect of any actions carried out by OTC Clear, a DMG Member or the Default Management Group pursuant to these Clearing Rules, provided that the relevant party has acted in good faith, it shall not have any liability including but not limited to any civil liability, whether arising in contract, tort, defamation, equity or otherwise for any Damage suffered or incurred directly or indirectly by a Clearing Member or any other Person as a result of or in connection with any of its such actions or decisions.

PART VI PRODUCT SPECIFIC TERMS

Chapter 22 Product Specific Terms for Standard Rates Derivatives Contracts

Product Specific Terms for Standard Rates Derivatives Contracts

2201. The terms of a Standard Rates Derivatives Contract shall include the following terms (together, the "**Standard Rates Derivatives Contract Terms**"):

(1) Clearing Rules 2203 to 2210 (the "**Interpretation Provisions**");

(2) the Economic Terms; and

(3) the General Terms, as set out in Clearing Rules 2217 to 2227,

each as interpreted in accordance with the Interpretation Provisions.

2202. In the event of any inconsistency between the Economic Terms and General Terms, the General Terms will prevail.

Interpretation

2203. The ISDA Definitions are incorporated by reference into these Standard Rates Derivatives Contract Terms. Unless otherwise specified, capitalized terms used in the Standard Rates Derivatives Contract Terms but not defined in the Clearing Documentation shall have the meanings given to them in the ISDA Definitions. In the event of any inconsistency between the ISDA Definitions and the Clearing Documentation, the Clearing Documentation will prevail.

2204. In respect of a Standard Rates Derivatives Contract denominated in CNY (offshore), the CNY (offshore) Disruption Provisions shall be incorporated by reference into the relevant Standard Rates Derivatives Contract Terms.

2205. In deriving the Economic Terms of the Standard Rates Derivatives Contract from the Transaction Data of the corresponding Original Standard Rates Derivatives Transaction, all references in the ISDA Definitions to a "**Transaction**" shall be deemed to be an "**Original Standard Rates Derivatives Transaction**".

2206. Subject to subsequent ISDA Amendment adopted by OTC Clear pursuant to Clearing Rule 2207, the ISDA Definitions and the Standard Rates Derivatives Contract Terms applicable to a Standard Rates Derivatives Contract shall be those applicable as at the Registration Time of such Standard Rates Derivatives Contract.

2207. In case of any amendment to the ISDA Definitions, or publication of any supplement, annex or protocol by ISDA relating to the ISDA Definitions or amendment to the CNY (offshore) Disruption Provisions (each an "**ISDA Amendment**"), OTC Clear may, in its sole discretion, determine whether any such ISDA Amendment should be adopted for the purpose of interpreting or implementing the Standard Rates Derivatives Contract Terms, the manner of any such adoption and when such adoption shall take effect, and notify all Clearing Members of the same. Any non-receipt of such notice by Clearing Members shall not invalidate the effectiveness of the adoption of ISDA Amendment by OTC Clear.

2208. In respect of any adoption of ISDA Amendment by OTC Clear, such adopted ISDA Amendment shall govern the Standard Rates Derivatives Contract Terms of each Standard Rates Derivatives Contract then registered with OTC Clear, and any prospective payment obligations arising out of each such Standard Rates Derivatives Contract shall be construed accordingly.

2208A. For the avoidance of doubt, the ISDA Definitions shall govern the Standard Rates Derivatives Contract Terms of each Standard Rates Derivatives Contract then registered with OTC Clear, and any prospective payment obligations arising out of each such Standard Rates Derivatives Contract shall be construed accordingly. Any reference to a Rate Option defined in the 2006 ISDA Definitions as set out in Appendix VI to the Clearing Procedures shall be deemed to be a reference to the equivalent Floating Rate Option as defined in the ISDA Definitions as set out opposite each such Rate Option.

2209. The Standard Rates Derivatives Contract Terms supplement, form part of, and are subject to these Clearing Rules. In the event of any inconsistency between the Standard Rates Derivatives Contract Terms and these Clearing Rules, these Clearing Rules will prevail.

2210. Except where expressly stated otherwise, all reference to "**Sections**" means Sections in the ISDA Definitions.

Economic Terms

2211. The Economic Terms of a Standard Rates Derivatives Contract are derived from the Transaction Data relating to the corresponding Original Standard Rates Derivatives Transaction. The Original Standard Rates Derivatives Transaction submitted to OTC Clear for registration must include information that satisfies each of the Economic Terms fields set out in Clearing Rule 2212.

2212. The Economic Terms fields comprise:

(1) Notional Amount (see Section 4.4.2 of the ISDA Definitions);

(2) Currency (see Section 2.4.1 of the ISDA Definitions);

(3) Trade Date (see Section 3.1.1 of the ISDA Definitions);

(4) Effective Date (see Section 3.1.2 of the ISDA Definitions);

(5) Termination Date (see Section 3.1.3 of the ISDA Definitions);

(6) Additional Payments/Fees:

(a) the Payer of the Additional Payments/Fees (if applicable);

(b) the amount of the Additional Payments/Fees (specify zero if none);

(c) the Additional Payments/Fees dates (if applicable);

(7) Business Days (see Section 2.1.1 of the ISDA Definitions);

(8) Business Day Convention (see Section 2.3 of the ISDA Definitions);

(9) Where Fixed Rate – Floating Rate Swap:

(a) Fixed Amount (see Section 5.1.3 of the ISDA Definitions);

(b) Fixed Amount Payer Payment Dates;

(c) Fixed Amount Payer Delayed Payment and a period of days (if applicable) (see Section 3.1.9 of the ISDA Definitions);

(d) Fixed Rate and Fixed Rate Day Count Fraction;

(e) Floating Amount Payer (see Section 6.1.2 of the ISDA Definitions);

(f) Floating Amount Payer Payment Dates;

(g) Floating Amount Payer compounding dates (if applicable);

(h) Floating Rate Option (see Section 6.5.1 of the ISDA Definitions);

(i) Floating Amount Payer Delayed Payment and a period of days (if applicable) (see Section 3.1.9 of the ISDA Definitions);

(j) Designated Maturity (see Section 6.7.4 of the ISDA Definitions) (if applicable);

(k) Linear Interpolation (see Section 6.10.1 of the ISDA Definitions), Shorter Designated Maturity and Longer Designated Maturity (see Section 6.10.2 of the ISDA Definitions) (if applicable);

(l) Spread (if applicable) (see Section 6.5.4 of the ISDA Definitions);

(m) Reset Dates (see Section 6.5.5 of the ISDA Definitions);

(n) Floating Rate Day Count Fraction (see Section 6.5.3 of the ISDA Definitions);

(o) Floating Rate (if applicable) (see Section 6.3.1 of the ISDA Definitions);

(10) Where Floating Rate – Floating Rate Swap ("**basis**" swap):

(a) Floating Amount Payer 1 (see Section 6.1.2 of the ISDA Definitions):

(A) Floating Amount Payer Payment Dates;

(B) Floating Amount Payer compounding dates (if applicable);

(C) Floating Rate Option (see Section 6.5.1 of the ISDA Definitions);

(D) Floating Amount Payer Delayed Payment and a period of days (if applicable) (see Section 3.1.9 of the ISDA Definitions);

(E) Designated Maturity (see Section 6.7.4 of the ISDA Definitions);

(F) Linear Interpolation (see Section 6.10.1 of the ISDA Definitions), Shorter Designated Maturity and Longer Designated Maturity (see Section 6.10.2 of the ISDA Definitions) (if applicable);

(G) Spread (if applicable) (see Section 6.5.4 of the ISDA Definitions);

(H) Reset Dates (see Section 6.5.5 of the ISDA Definitions);

(I) Floating Rate Day Count Fraction (see Section 6.5.3 of the ISDA Definitions);

(J) Floating Rate (if applicable) (see Section 6.3.1 of the ISDA Definitions);

(b) Floating Amount Payer 2 (see Section 6.1.2 of the ISDA Definitions):

(A) Floating Amount Payer Payment Dates;

(B) Floating Amount Payer compounding dates (if applicable);

(C) Floating Rate Option (see Section 6.5.1 of the ISDA Definitions);

(D) Floating Amount Payer Delayed Payment and a period of days (if applicable) (see Section 3.1.9 of the ISDA Definitions);

(E) Designated Maturity (see Section 6.7.4 of the ISDA Definitions);

(F) Linear Interpolation (see Section 6.10.1 of the ISDA Definitions), Shorter Designated Maturity and Longer Designated Maturity (see Section 6.10.2 of the ISDA Definitions) (if applicable);

(G) Spread (if applicable) (see Section 6.5.4 of the ISDA Definitions);

(H) Reset Dates (see Section 6.5.5 of the ISDA Definitions);

(I) Floating Rate Day Count Fraction (see Section 6.5.3 of the ISDA Definitions);

(J) Floating Rate (if applicable) (see Section 6.3.1 of the ISDA Definitions); and

(11) Details of the relevant financial center(s) must be indicated in the Original Standard Rates Derivatives Transaction.

2213. Pursuant to Clearing Rule 806(1), if Clearing Member 1 was the party paying a rate ("**Rate A**") to, and receiving a rate ("**Rate B**") from, Clearing Member 2, and Clearing Member 2 was the party paying Rate B to, and receiving Rate A from, Clearing Member 1 under an Original Standard Rates Derivatives Transaction, then upon registration of the same as two Standard Rates Derivatives Contracts between OTC Clear and each of Clearing Member 1 and Clearing Member 2, and when deriving the relevant Economic Terms relating to any Floating Amount Payer and/or Fixed Amount Payer from the Transaction Data of the corresponding Original Standard Rates Derivatives Transaction, the terms shall be derived such that OTC Clear will pay Rate A to, and receive Rate B from, Clearing Member 2 and pay Rate B to, and receive Rate A from, Clearing Member 1.

2214. Pursuant to Clearing Rule 806(2), if the Relevant Client was the party paying a rate ("**Rate A**") to, and receiving a rate ("**Rate B**") from, Clearing Member 4, and Clearing Member 4 was the party paying Rate B to, and receiving Rate A from, the Relevant Client under an Original Standard Rates Derivatives Transaction, then upon registration of the same as two Standard Rates Derivatives Contracts between OTC Clear and Clearing Member 3 (in respect of its Client Position Account relating to the Relevant Client) and Clearing Member 4 (in respect of its House Position Account), and when deriving the relevant Economic Terms relating to any Floating Amount Payer and/or Fixed Amount Payer from the Transaction Data of the corresponding Original Standard Rates Derivatives Transaction, the terms shall be derived such that OTC Clear will pay Rate A to, and receive Rate B from, Clearing Member 4 (in respect of its House Position Account) and pay Rate B to, and receive Rate A from, Clearing Member 3 (in respect of its Client Position Account relating to the Relevant Client).

If, pursuant to Clearing Rule 806(2)(c), Clearing Member 3 and Clearing Member 4 are the same Clearing Member, then OTC Clear will pay Rate A to, and receive Rate B from, such Clearing Member's House Position Account, and will pay Rate B to, and receive Rate A from, such Clearing Member's Client Position Account relating to the Relevant Client.

2215. Pursuant to Clearing Rule 806(3), if Client 1 was the party paying a rate ("**Rate A**") to, and receiving a rate ("**Rate B**") from, Client 2, and Client 2 was the party paying Rate B to, and receiving Rate A from, Client 1 under an Original Standard Rates Derivatives Transaction, then upon registration of the same as two Standard Rates Derivatives Contracts between OTC Clear and Clearing Member 5 (in respect of its Client Position Account relating to Client 1) and Clearing Member 6 (in respect of its Client Position Account relating to Client 2), and when deriving the relevant Economic Terms relating to any Floating Amount Payer and/or Fixed Amount Payer from the Transaction Data of the corresponding Original Standard Rates Derivatives Transaction, the terms shall be derived such that OTC Clear will pay Rate A to, and

receive Rate B from, Clearing Member 6 (in respect of its Client Position Account relating to Client 2) and pay Rate B to, and receive Rate A from, Clearing Member 5 (in respect of its Client Position Account relating to Client 1).

If, pursuant to Clearing Rule 806(3)(c), Clearing Member 5 and Clearing Member 6 are the same Clearing Member, then OTC Clear will pay Rate A to, and receive Rate B from, such Clearing Member's Client Position Account relating to Client 2, and will pay Rate B to, and receive Rate A from, such Clearing Member's Client Position Account relating to Client 1.

General Terms

2216. Clearing Rules 2217 to 2227 are designated as General Terms of a Standard Rates Derivatives Contract.

Clearing Rules

2217. A Standard Rates Derivatives Contract shall be subject to the Clearing Rules, which shall form a part of its terms. In the event of any inconsistency between these Contract Terms and the Clearing Rules, the Clearing Rules will prevail.

Economic and Monetary Union (EMU) Provisions

2218. The occurrence or non-occurrence of an event associated with EMU will not alter, discharge or excuse the obligation of a party under a Standard Rates Derivatives Contract, where "**an event associated with EMU**" include those set out in the "**EMU Continuity Provisions**" published by ISDA.

2219. In case of the occurrence of an event associated with EMU, OTC Clear may, in its sole discretion determine whether any changes to the Standard Rates Derivatives Contract Terms are necessary, and whether such changes shall take immediate or deferred effect.

2220. OTC Clear will notify Clearing Members of its decision to implement any changes to the Standard Rates Derivatives Contract Terms as a result of the occurrence of an event associated with EMU, and the time at which such changes will take effect. OTC Clear may deem any such changes to be effective from the time an event associated with EMU occur.

2221. Any non-receipt of such notice by Clearing Members, shall not invalidate the effectiveness of changes made to the Standard Rates Derivatives Contract Terms by OTC Clear.

Floating Negative Interest Rates

2222. Notwithstanding Section 6.8.1 of the ISDA Definitions, "**Floating Negative Interest Rate Method**" will be deemed to apply to a Standard Rates Derivatives Contract, and Sections 6.8.2 and 6.8.3 of the ISDA Definitions will apply to a Standard Rates Derivatives Contract.

2223. [DELETED]

Rounding

2224. Section 4.8 of the ISDA Definitions will apply to a Standard Rates Derivatives Contract.

Tax Provisions

2225. Chapter 11 of these Clearing Rules shall form part of the Standard Rates Derivatives Contract Terms as if they were set out in full herein.

Calculation Agent

2226. OTC Clear shall be deemed the Calculation Agent in respect of each Standard Rates Derivatives Contract.

Governing Law

2227. Each Standard Rates Derivatives Contract shall be governed by and construed in accordance with the laws of Hong Kong and the parties irrevocably agree for the benefit of OTC Clear that the courts of Hong Kong shall have exclusive jurisdiction to hear and determine any action or dispute which may arise here from. Each Clearing Member hereto irrevocably submits to such jurisdiction and agrees to waive any objection it might otherwise have to such jurisdiction, save that this submission to the jurisdiction of the courts of Hong Kong shall not (and shall not be construed so as to) limit the right of OTC Clear to take proceedings in any other court of competent jurisdiction, nor shall the taking of action in one or more jurisdictions preclude OTC Clear from taking action in any other jurisdiction, whether concurrently or not.

Chapter 23 Product Specific Terms for Non Deliverable Rates Derivatives Contracts

Product Specific Terms for Non Deliverable Rates Derivatives Contracts

2301. The terms of a Non Deliverable Rates Derivatives Contract shall include the following terms (together, the "**Non Deliverable Rates Derivatives Contract Terms**"):

(1) Clearing Rules 2303 to 2310 (the "**Interpretation Provisions**");

(2) the Economic Terms; and

(3) the General Terms, as set out in Clearing Rules 2317 to 2322,

each as interpreted in accordance with the Interpretation Provisions.

2302. In the event of any inconsistency between the Economic Terms and General Terms, the General Terms will prevail.

Interpretation

2303. The ISDA Definitions and the FX Definitions (including all supplements thereto notified by OTC Clear as applicable) (the ISDA Definitions and FX Definitions together, the "**ND IRS Definitions**") are incorporated by reference into these Non Deliverable Rates Derivatives Contract Terms. Unless otherwise specified, capitalized terms used in the Non Deliverable Rates Derivatives Contract Terms but not defined in the Clearing Documentation shall have the meanings given to them in the ND IRS Definitions. In the event of any inconsistency between the ISDA Definitions and the FX Definitions, the ISDA Definitions will prevail except that the FX Definitions will prevail for purposes of the "**Settlement Terms**" and "**Other Terms**" as set out in the ND IRS Template. In the event of any inconsistency between the ND IRS Definitions and the Clearing Documentation, the Clearing Documentation will prevail.

2304. The "**Asian Currencies Non-Deliverable Swap Transaction Standard Terms Supplement and Fallback Matrix**" published by ISDA or a recognized successor (the "**ND IRS Template**") are incorporated by reference into the relevant Non Deliverable Rates Derivatives Contract Terms.

2305. If the terms of a ND IRS Template conflict with the ND IRS Definitions, the terms of the ND IRS Template shall prevail.

2306. In deriving the Economic Terms of the Non Deliverable Rates Derivatives Contract from the Transaction Data of the corresponding Original Non Deliverable Rates Derivatives Transaction, all references in the ISDA Definitions to a "**Transaction**" shall be deemed to be "**Original Non Deliverable Rates Derivatives Transaction**".

2307. Subject to the ND IRS Amendment adopted by OTC Clear pursuant to Clearing Rule 2308, the ND IRS Definitions and the Non Deliverable Rates Derivatives Contract Terms applicable to a Non Deliverable Rates Derivatives Contract shall be those applicable as at the Registration Time of such Non Deliverable Rates Derivatives Contract.

2308. In case of any amendment to the ND IRS Definitions, the form of the relevant ND IRS Template, or publication of any supplement, annex or protocol by ISDA relating to the ND IRS Definitions (each a "**ND IRS Amendment**"), OTC Clear may, in its sole discretion, determine whether any such ND IRS Amendment should be adopted for the purpose of interpreting or implementing the Non Deliverable Rates Derivatives Contract Terms, the manner of any such adoption and when such adoption shall take effect, and notify all Clearing Members of the same. Any non-receipt of such notice by Clearing Members shall not invalidate the effectiveness of the adoption of ND IRS Amendment by OTC Clear.

2309. In respect of any adoption of ND IRS Amendment by OTC Clear, such adopted ND IRS Amendment shall govern the Non Deliverable Rates Derivatives Contract Terms of each Non Deliverable Rates Derivatives Contract then registered with OTC Clear, and any prospective payment obligations arising out of each such Non Deliverable Rates Derivatives Contract shall be construed accordingly.

2309A. For the avoidance of doubt, the ISDA Definitions shall govern the Non Deliverable Rates Derivatives Contract Terms of each Non Deliverable Rates Derivatives Contract then registered with OTC Clear, and any prospective payment obligations arising out of each such Non Deliverable Rates Derivatives Contract shall be construed accordingly. Any reference to a Rate Option defined in the 2006 ISDA Definitions as set out in Appendix VI to the Clearing Procedures shall be deemed to be a reference to the equivalent Floating Rate Option as defined in the ISDA Definitions as set out opposite each such Rate Option.

2310. The Non Deliverable Rates Derivatives Contract Terms supplement, form part of, and are subject to these Clearing Rules. In the event of any inconsistency between the Non Deliverable Rates Derivatives Contract Terms and these Clearing Rules, these Clearing Rules will prevail.

Economic Terms

2311. The Economic Terms of a Non Deliverable Rates Derivatives Contract are derived from the Transaction Data relating to the corresponding Original Non Deliverable Rates Derivatives Transaction. The Original Non Deliverable Rates Derivatives Transaction submitted to OTC Clear for registration must include information that satisfies each of the Economic Terms fields set out in Clearing Rule 2312.

2312. The Economic Terms fields comprise:

(1) Trade Date (see Section 3.1.1 of the ISDA Definitions);

(2) Effective Date (see Section 3.1.2 of the ISDA Definitions);

(3) Termination Date (see Section 3.1.3 of the ISDA Definitions);

(4) Business Days (see Section 2.1.1 of the ISDA Definitions);

(5) Business Day Convention (see Section 2.3 of the ISDA Definitions);

(6) Where Fixed Rate – Floating Rate Swap:

(a) Fixed Amount Payer (see Section 5.1.3 of the ISDA Definitions);

(b) Fixed Amount Payer Currency Amount;

(c) Fixed Amount Payer Payment Dates;

(d) Fixed Rate and Fixed Rate Day Count Fraction;

(e) Floating Amount Payer (see Section 6.1.2 of the ISDA Definitions);

(f) Floating Amount Payer Currency Amount;

(g) Floating Amount Payer Payment Dates;

(h) Floating Amount Payer compounding dates (if applicable);

(i) Floating Amount Payer Compounding Period;

(j) Floating Rate Option (see Section 6.5.1 of the ISDA Definitions);

(k) Designated Maturity (see Section 6.7.4 of the ISDA Definitions) (if applicable);

(l) Linear Interpolation (see Section 6.10.1 of the ISDA Definitions), Shorter Designated Maturity and Longer Designated Maturity (see Section 6.10.2 of the ISDA Definitions) (if applicable);

(m) Spread (if applicable) (see Section 6.5.4 of the ISDA Definitions);

(n) Reset Dates (see Section 6.5.5 of the ISDA Definitions);

(o) Floating Rate Day Count Fraction (see Section 6.5.3 of the ISDA Definitions);

(p) Compounding (if applicable) (see Section 6.2.2, 6.2.3 and 6.2.4 of the ISDA Definitions);

(q) Floating Rate (if applicable) (see Section 6.3.1 of the ISDA Definitions);

(7) (a) Reference Currency (Section 1.19 of the FX Definitions);

(b) Settlement Currency (Section 1.16(b) of the FX Definitions);

(c) in the event that the Currency Pair is not expressed in the format of "**Reference Currency – Settlement Currency**", or no election is made with respect to which currency is the Reference Currency and which currency is the Settlement Currency, then the Settlement Currency will be deemed to be USD, or any other currency(ies) as specified by OTC Clear and notified to the Clearing Members from time to time;

(8) Details of the relevant financial center(s) must be indicated in the Original Non Deliverable Rates Derivatives Transaction; and

(9) Additional Payments/Fees:

(a) the Payer of the Additional Payments/Fees (if applicable);

(b) the amount of the Additional Payments/Fees (specify zero if none);

(c) the Additional Payments/Fees dates (if applicable).

2313. Pursuant to Clearing Rule 806(1), if Clearing Member 1 was the party paying a rate ("**Rate A**") to, and receiving a rate ("**Rate B**") from, Clearing Member 2, and Clearing Member 2 was the party paying Rate B to, and receiving Rate A from, Clearing Member 1 under an Original Non Deliverable Rates Derivatives Transaction, then upon registration of the same as two Non Deliverable Rates Derivatives Contracts between OTC Clear and each of Clearing Member 1 and Clearing Member 2, and when deriving the relevant Economic Terms relating to any Floating Amount Payer and/or Fixed Amount Payer from the Transaction Data of the corresponding Original Non Deliverable Rates Derivatives Transaction, the terms shall be derived such that OTC Clear will pay Rate A to, and receive Rate B from, Clearing Member 2 and pay Rate B to, and receive Rate A from, Clearing Member 1.

2314. Pursuant to Clearing Rule 806(2), if the Relevant Client was the party paying a rate ("**Rate A**") to, and receiving a rate ("**Rate B**") from Clearing Member 4, and Clearing Member 4 was the party paying Rate B to, and receiving Rate A from, the Relevant Client under an Original Non Deliverable Rates Derivatives Transaction, then upon registration of the same as two Non Deliverable Rates Derivatives Contracts between OTC Clear and Clearing Member 3 (in respect of its Client Position Account relating to the Relevant Client) and Clearing Member 4 (in respect of its House Position Account), and when deriving the relevant Economic Terms relating to any Floating Amount Payer and/or Fixed Amount Payer from the Transaction Data of the corresponding Original Non Deliverable Rates Derivatives Transaction, the terms shall be derived such that OTC Clear will pay Rate A to, and receive Rate B from, Clearing Member 4 (in

respect of its House Position Account) and pay Rate B to, and receive Rate A from, Clearing Member 3 (in respect of its Client Position Account relating to the Relevant Client).

If, pursuant to Clearing Rule 806(2)(c), Clearing Member 3 and Clearing Member 4 are the same Clearing Member, then OTC Clear will pay Rate A to, and receive Rate B from, such Clearing Member's House Position Account, and pay Rate B to, and receive Rate A from, such Clearing Member's Client Position Account relating to the Relevant Client.

2315. Pursuant to Clearing Rule 806(3), if Client 1 was the party paying a rate ("**Rate A**") to, and receiving a rate ("**Rate B**") from Client 2, and Client 2 was the party paying Rate B to, and receiving Rate A from, Client 1 under an Original Non Deliverable Rates Derivatives Transaction, then upon registration of the same as two Non Deliverable Rates Derivatives Contracts between OTC Clear and Clearing Member 5 (in respect of its Client Position Account relating to Client 1) and Clearing Member 6 (in respect of its Client Position Account relating to Client 2), and when deriving the relevant Economic Terms relating to any Floating Amount Payer and/or Fixed Amount Payer from the Transaction Data of the corresponding Original Non Deliverable Rates Derivatives Transaction, the terms shall be derived such that OTC Clear will pay Rate A to, and receive Rate B from, Clearing Member 6 (in respect of its Client Position Account relating to Client 2) and pay Rate B to, and receive Rate A from, Clearing Member 5 (in respect of its Client Position Account relating to Client 1).

If, pursuant to Clearing Rule 806(3)(c), Clearing Member 5 and Clearing Member 6 are the same Clearing Member, then OTC Clear will pay Rate A to, and receive Rate B from, such Clearing Member's Client Position Account relating to Client 2, and pay Rate B to, and receive Rate A from, such Clearing Member's Client Position Account relating to Client 1.

General Terms

2316. Clearing Rules 2317 to 2322 are designated as General Terms of a Non Deliverable Rates Derivatives Contract.

Clearing Rules

2317. A Non Deliverable Rates Derivatives Contract shall be subject to the Clearing Rules, which shall form a part of its terms. In the event of any inconsistency between these Contract Terms and the Clearing Rules, the Clearing Rules will prevail.

Calculation Agent

2318. OTC Clear shall be deemed the Calculation Agent in respect of each Non Deliverable Rates Derivatives Contract.

Floating Negative Interest Rates

2319. Notwithstanding Section 6.8.1 of the ISDA Definitions, "**Floating Negative Interest Rate Method**" will be deemed to apply to a Non Deliverable Rates Derivatives Contract, and Sections 6.8.2 and 6.8.3 of the ISDA Definitions will apply to a Non Deliverable Rates Derivatives Contract.

Rounding

2320. Section 4.8 of the ISDA Definitions will apply to a Non Deliverable Rates Derivatives Contract.

Tax Provisions

2321. Chapter 11 of these Clearing Rules shall form part of the Non Deliverable Rates Derivatives Contract Terms as if they were set out in full herein.

Governing Law

2322. Each Non Deliverable Rates Derivatives Contract shall be governed by and construed in accordance with the laws of Hong Kong and the parties irrevocably agree for the benefit of OTC Clear that the courts of Hong Kong shall have exclusive jurisdiction to hear and determine any action or dispute which may arise here from. Each Clearing Member hereto irrevocably submits to such jurisdiction and agrees to waive any objection it might otherwise have to such jurisdiction, save that this submission to the jurisdiction of the courts of Hong Kong shall not (and shall not be construed so as to) limit the right of OTC Clear to take proceedings in any other court of competent jurisdiction, nor shall the taking of action in one or more jurisdictions preclude OTC Clear from taking action in any other jurisdiction, whether concurrently or not.

Chapter 24 Product Specific Terms for Non Deliverable FX Derivatives Contracts

Product Specific Terms for Non Deliverable FX Derivatives Contracts

2401. The terms of a Non Deliverable FX Derivatives Contract shall include the following terms (together, the "**Non Deliverable FX Derivatives Contract Terms**"):

(1) Clearing Rules 2403 to 2411 (the "**Interpretation Provisions**");

(2) the Economic Terms; and

(3) the General Terms, as set out in Clearing Rules 2418 to 2422,

each as interpreted in accordance with the Interpretation Provisions.

2402. In the event of any inconsistency between the Economic Terms and the General Terms, the General Terms will prevail.

Interpretation

2403. Section 4.8 of the ISDA Definitions and the FX Definitions (Section 4.8 of the ISDA Definitions and the FX Definitions together, the "**ISDA FX Definitions**") are incorporated by reference into these Non Deliverable FX Derivatives Contract Terms. Unless otherwise specified, capitalized terms used in the Non Deliverable FX Derivatives Contract Terms but not defined in the Clearing Documentation shall have the meanings given to them in the ISDA FX Definitions. In the event of any inconsistency between the ISDA FX Definitions and the Clearing Documentation, the Clearing Documentation will prevail.

2404. Any template terms of a Non Deliverable FX Derivatives Contract recommended by EMTA or a recognized successor (the "**EMTA Template**") are incorporated by reference into the relevant Non Deliverable FX Derivatives Contract Terms.

2405. If the terms of an EMTA Template conflict with the ISDA FX Definitions, the terms of the EMTA Template shall prevail.

2406. In deriving the Economic Terms of the Non Deliverable FX Derivatives Contract from the Transaction Data of the corresponding Original Non Deliverable FX Derivatives Transaction, all references in the ISDA FX Definitions to an "**FX Transaction**" shall be deemed to be references to an "**Original Non Deliverable FX Derivatives Transaction**".

2407. Subject to subsequent ISDA FX Amendment adopted by OTC Clear pursuant to Clearing Rule 2408, the ISDA FX Definitions and the Non Deliverable FX Derivatives Contract Terms applicable to a Non Deliverable FX Derivatives Contract shall be those applicable as at the Registration Time of such Non Deliverable FX Derivatives Contract.

2408. In case of any amendment to the ISDA FX Definitions, the form of the relevant EMTA Template or publication of any supplement, annex or standard terms relating to the ISDA FX Definitions by ISDA, EMTA or FXC jointly or severally (each, an "**ISDA FX Amendment**"), OTC Clear may, in its sole discretion, determine whether any such ISDA FX Amendment should be adopted for the purpose of interpreting or implementing the Non Deliverable FX Derivatives Contract Terms, the manner of any such adoption and when such adoption shall take effect, and notify all Clearing Members of the same. Any non-receipt of such notice by Clearing Members, shall not invalidate the effectiveness of the adoption of ISDA FX Amendment by OTC Clear.

2409. In respect of any adoption of ISDA FX Amendment by OTC Clear, such adopted ISDA FX Amendment shall govern the Non Deliverable FX Derivatives Contract Terms of each Non Deliverable FX Derivatives Contract then registered with OTC Clear, and any prospective

payment obligations arising out of each such Non Deliverable FX Derivatives Contract shall be construed accordingly.

2409A. For the avoidance of doubt, Section 4.8 of the ISDA Definitions shall be incorporated by reference into the Non Deliverable FX Derivatives Contract Terms of each Non Deliverable FX Derivatives Contract then registered with OTC Clear, and any prospective payment obligations arising out of each such Non Deliverable FX Derivatives Contract shall be construed accordingly.

2410. The Non Deliverable FX Derivatives Contract Terms supplement, form part of, and are subject to these Clearing Rules. In the event of any inconsistency between the Non Deliverable FX Derivatives Contract Terms and these Clearing Rules, these Clearing Rules will prevail.

2411. Except where expressly stated otherwise, all reference to "**Sections**" means Sections in the ISDA FX Definitions.

Economic Terms

2412. The Economic Terms of a Non Deliverable FX Derivatives Contract are derived from the Transaction Data relating to the corresponding Original Non Deliverable FX Derivatives Transaction. The Original Non Deliverable FX Derivatives Transaction submitted to OTC Clear for registration must include information that satisfies each of the Economic Terms fields set out in Clearing Rule 2413.

2413. The Economic Terms fields comprise:

(1) Trade Date (Section 1.25 of the FX Definitions);

(2) Reference Currency (Section 1.19 of the FX Definitions);

(3) Reference Currency Notional Amount (Section 1.21 of the FX Definitions);

(4) Notional Amount (Section 1.17(b) of the FX Definitions) or Forward Rate (Section 2.1(a) of the FX Definitions);

(5) Reference Currency Buyer (Section 1.20 of the FX Definitions);

(6) Reference Currency Seller (Section 1.22 of the FX Definitions);

(7) Settlement Currency (Section 1.16(b) of the FX Definitions);

(8) scheduled Settlement Date (Section 1.24 of the FX Definitions) (without prejudice to the adjustments set out in the relevant EMTA Template);

(9) scheduled Valuation Date (Section 1.16(f) of the FX Definitions) (without prejudice to the adjustments set out in the relevant EMTA Template); and

(10) in the event that the Currency Pair is not expressed in the format of "**Reference Currency – Settlement Currency**", or no election is made with respect to which currency is the Reference Currency and which currency is the Settlement Currency, then the Settlement Currency will be deemed to be USD, or any other currency(ies) as specified by OTC Clear and notified to the Clearing Members from time to time.

2414. Pursuant to Clearing Rule 806(1), if Clearing Member 1 was the Reference Currency Seller, and Clearing Member 2 was the Reference Currency Buyer under an Original Non Deliverable FX Derivatives Transaction, then upon registration of the same as two Non Deliverable FX Derivatives Contracts, OTC Clear, in respect of each Non Deliverable FX Derivatives Contract to which it is party pursuant to the corresponding Original Non Deliverable FX Derivatives

Transaction, shall be the Reference Currency Buyer and Reference Currency Seller under such Non Deliverable FX Derivatives Contract, respectively.

2415. Pursuant to Clearing Rule 806(2), if the Relevant Client was the Reference Currency Seller and Clearing Member 4 was the Reference Currency Buyer under an Original Non Deliverable FX Derivatives Transaction, then upon registration of the same as two Non Deliverable FX Derivatives Contracts, one between Clearing Member 3 (in respect of its Client Position Account relating to the Relevant Client) and OTC Clear, and another one between Clearing Member 4 (in respect of its House Position Account) and OTC Clear, OTC Clear shall be the Reference Currency Buyer and Reference Currency Seller under each such Non Deliverable FX Derivatives Contract, respectively.

Pursuant to Clearing Rule 806(2), if the Relevant Client was the Reference Currency Buyer and Clearing Member 4 was the Reference Currency Seller under an Original Non Deliverable FX Derivatives Transaction, then upon registration of the same as two Non Deliverable FX Derivatives Contracts, one between Clearing Member 3 (in respect of its Client Position Account relating to the Relevant Client) and OTC Clear, and another one between Clearing Member 4 (in respect of its House Position Account) and OTC Clear, OTC Clear shall be the Reference Currency Seller and Reference Currency Buyer under each such Non Deliverable FX Derivatives Contract, respectively.

If, pursuant to Clearing Rule 806(2)(c), Clearing Member 3 and Clearing Member 4 are the same Clearing Member, then:

(1) if such Clearing Member (in respect of its Client Position Account relating to the Relevant Client) was the Reference Currency Seller, OTC Clear will be the Reference Currency Buyer in respect of the Contract between OTC Clear and such Clearing Member (in respect of its Client Position Account relating to the Relevant Client), and Reference Currency Seller in respect of the Contract between OTC Clear and such Clearing Member (in respect of its House Position Account); or

(2) if such Clearing Member (in respect of its Client Position Account in respect of the Relevant Client) was the Reference Currency Buyer, OTC Clear will be the Reference Currency Seller in respect of the Contract between OTC Clear and such Clearing Member (in respect of its Client Position Account relating to the Relevant Client), and Reference Currency Buyer in respect of the Contract between OTC Clear and such Clearing Member (in respect of its House Position Account).

2416. Pursuant to Clearing Rule 806(3), if Client 1 was the Reference Currency Seller and Client 2 was the Reference Currency Buyer under an Original Non Deliverable FX Derivatives Transaction, then upon registration of the same as two Non Deliverable FX Derivatives Contracts, one between Clearing Member 5 (in respect of its Client Position Account relating to Client 1) and OTC Clear, and another one between Clearing Member 6 (in respect of its Client Position Account relating to Client 2) and OTC Clear, OTC Clear shall be the Reference Currency Buyer and Reference Currency Seller under each such Non Deliverable FX Derivatives Contract, respectively.

Pursuant to Clearing Rule 806(3), if Client 1 was the Reference Currency Buyer and Client 2 was the Reference Currency Seller under an Original Non Deliverable FX Derivatives Transaction, then upon registration of the same as two Non Deliverable FX Derivatives Contracts, one between Clearing Member 5 (in respect of its Client Position Account relating to Client 1) and OTC Clear, and another one between Clearing Member 6 (in respect of its Client Position Account relating to Client 2) and OTC Clear, OTC Clear shall be the Reference

Currency Seller and Reference Currency Buyer under each such Non Deliverable FX Derivatives Contract, respectively.

If, pursuant to Clearing Rule 806(3)(c), Clearing Member 5 and Clearing Member 6 are the same Clearing Member, then:

(1) if such Clearing Member (in respect of its Client Position Account relating to Client 1) was the Reference Currency Seller, OTC Clear will be the Reference Currency Buyer in respect of the Contract between OTC Clear and such Clearing Member (in respect of its Client Position Account relating to Client 1), and Reference Currency Seller in respect of the Contract between OTC Clear and such Clearing Member (in respect of its Client Position Account relating to Client 2); or

(2) if such Clearing Member (in respect of its Client Position Account in respect of Client 1) was the Reference Currency Buyer, OTC Clear will be the Reference Currency Seller in respect of the Contract between OTC Clear and such Clearing Member (in respect of its Client Position Account relating to Client 1), and Reference Currency Buyer in respect of the Contract between OTC Clear and such Clearing Member (in respect of its Client Position Account relating to Client 2).

General Terms

2417. Clearing Rules 2418 to 2422 are designated as General Terms of a Non Deliverable FX Derivatives Contract.

Clearing Rules

2418. A Non Deliverable FX Derivatives Contract shall be subject to the Clearing Rules, which shall form a part of its terms. In the event of any inconsistency between these Contract Terms and the Clearing Rules, the Clearing Rules will prevail.

Calculation Agent

2419. OTC Clear shall be deemed the Calculation Agent in respect of each Non Deliverable FX Derivatives Contract.

Rounding

2420. Section 4.8 of the ISDA Definitions will apply to a Non Deliverable FX Derivatives Contract.

Tax Provisions

2421. Chapter 11 of these Clearing Rules shall form part of the Non Deliverable FX Derivatives Contract Terms as if they were set out in full herein.

Governing Law

2422. Each Non Deliverable FX Derivatives Contract shall be governed by and construed in accordance with the laws of Hong Kong and the parties irrevocably agree for the benefit of OTC Clear that the courts of Hong Kong shall have exclusive jurisdiction to hear and determine any action or dispute which may arise here from. Each Clearing Member hereto irrevocably submits to such jurisdiction and agrees to waive any objection it might otherwise have to such jurisdiction, save that this submission to the jurisdiction of the courts of Hong Kong shall not (and shall not be construed so as to) limit the right of OTC Clear to take proceedings in any other court of competent jurisdiction, nor shall the taking of action in one or more jurisdictions preclude OTC Clear from taking action in any other jurisdiction, whether concurrently or not.

Chapter 25 Product Specific Terms for Standard Cross-currency Rates Derivatives Contracts

Product Specific Terms for Standard Cross-currency Rates Derivatives Contracts

2501. The terms of a Standard Cross-currency Rates Derivatives Contract shall include the following terms (together, the "**Standard Cross-currency Rates Derivatives Contract Terms**"):

(1) Clearing Rules 2503 to 2510 (the "**Interpretation Provisions**");

(2) the Economic Terms; and

(3) the General Terms, as set out in Clearing Rules 2517 to 2522,

each as interpreted in accordance with the Interpretation Provisions.

2502. In the event of any inconsistency between the Economic Terms and General Terms, the General Terms will prevail.

Interpretation

2503. The ISDA Definitions are incorporated by reference into these Standard Cross-currency Rates Derivatives Contract Terms. Unless otherwise specified, capitalized terms used in the Standard Cross-currency Rates Derivatives Contract Terms but not defined in the Clearing Documentation shall have the meanings given to them in the ISDA Definitions. In the event of any inconsistency between the ISDA Definitions and the Clearing Documentation, the Clearing Documentation will prevail.

2504. In respect of a Standard Cross-currency Rates Derivatives Contract with one of the notional amounts denominated in CNY (offshore), the CNY (offshore) Disruption Provisions shall be incorporated by reference into the relevant Standard Cross-currency Rates Derivatives Contract Terms.

2505. In deriving the Economic Terms of the Standard Cross-currency Rates Derivatives Contract from the Transaction Data of the corresponding Original Standard Cross-currency Rates Derivatives Transaction, all references in the ISDA Definitions to a "**Transaction**" shall be deemed to be an "**Original Standard Cross-currency Rates Derivatives Transaction**".

2506. Subject to subsequent ISDA Amendment adopted by OTC Clear pursuant to Clearing Rule 2507, the ISDA Definitions and the Standard Cross-currency Rates Derivatives Contract Terms applicable to a Standard Cross-currency Rates Derivatives Contract shall be those applicable as at the Registration Time of such Standard Cross-currency Rates Derivatives Contract.

2507. In case of any amendment to the ISDA Definitions, or publication of any supplement, annex or protocol by ISDA relating to the ISDA Definitions or amendment to the CNY (offshore) Disruption Provisions (each an "**ISDA Amendment**"), OTC Clear may, in its sole discretion, determine whether any such ISDA Amendment should be adopted for the purpose of interpreting or implementing the Standard Cross-currency Rates Derivatives Contract Terms, the manner of any such adoption and when such adoption shall take effect, and notify all Clearing Members of the same. Any non-receipt of such notice by Clearing Members shall not invalidate the effectiveness of the adoption of ISDA Amendment by OTC Clear.

2508. In respect of any adoption of ISDA Amendment by OTC Clear, such adopted ISDA Amendment shall govern the Standard Cross-currency Rates Derivatives Contract Terms of each Standard Cross-currency Rates Derivatives Contract then registered with OTC Clear, and any prospective payment obligations arising out of each such Standard Cross-currency Rates Derivatives Contract shall be construed accordingly.

2508A. For the avoidance of doubt, the ISDA Definitions shall govern the Standard Cross-currency Rates Derivatives Contract Terms of each Standard Cross-currency Rates Derivatives Contract then registered with OTC Clear, and any prospective payment obligations arising out of each such Standard Cross-currency Rates Derivatives Contract shall be construed accordingly. Any reference to a Rate Option defined in the 2006 ISDA Definitions as set out in Appendix VI to the Clearing Procedures shall be deemed to be a reference to the equivalent Floating Rate Option as defined in the ISDA Definitions as set out opposite each such Rate Option.

2509. The Standard Cross-currency Rates Derivatives Contract Terms supplement, form part of, and are subject to these Clearing Rules. In the event of any inconsistency between the Standard Cross-currency Rates Derivatives Contract Terms and these Clearing Rules, these Clearing Rules will prevail.

2510. Except where expressly stated otherwise, all reference to "**Sections**" means Sections in the ISDA Definitions.

Economic Terms

2511. The Economic Terms of a Standard Cross-currency Rates Derivatives Contract are derived from the Transaction Data relating to the corresponding Original Standard Cross-currency Rates Derivatives Transaction. The Original Standard Cross-currency Rates Derivatives Transaction submitted to OTC Clear for registration must include information that satisfies each of the Economic Terms fields set out in Clearing Rule 2512.

2512. The Economic Terms fields comprise:

(1) Trade Date (see Section 3.1.1 of the ISDA Definitions);

(2) Effective Date (see Section 3.1.2 of the ISDA Definitions);

(3) Termination Date (see Section 3.1.3 of the ISDA Definitions);

(4) Initial Exchange:

(a) Initial Exchange Date (see Section 3.1.5 of the ISDA Definitions) (if applicable);

(b) Initial Exchange Amounts (see Section 4.1.2 of the ISDA Definitions) (if applicable);

(c) the Payer of each Initial Exchange Amount (if applicable);

(5) Final Exchange:

(a) Final Exchange Date (see Section 3.1.7 of the ISDA Definitions) (if applicable);

(b) Final Exchange Amounts (see Section 4.3.2 of the ISDA Definitions) (if applicable);

(c) the Payer of each Final Exchange Amount (if applicable);

(6) Additional Payments/Fees:

(a) the Payer of the Additional Payments/Fees (if applicable);

(b) the amount of the Additional Payments/Fees (specify zero if none);

(c) the Additional Payments/Fees dates (if applicable);

(7) Business Days (see Section 2.1.1 of the ISDA Definitions);

(8) Business Day Convention (see Section 2.3 of the ISDA Definitions);

(9) Where Fixed Rate – Floating Rate Swap:

(a) Fixed Amount Payer (see Section 5.1.3 of the ISDA Definitions);

(b) Fixed Amount Payer Payment Dates;

(c) Fixed Amount Payer Delayed Payment and a period of days (if applicable) (see Section 3.1.9 of the ISDA Definitions);

(d) Fixed Rate and Fixed Rate Day Count Fraction;

(e) Fixed Amount Payer Currency Amount (see Section 4.4.3 of the ISDA Definitions);

(f) Floating Amount Payer (see Section 6.1.2 of the ISDA Definitions);

(g) Floating Amount Payer Payment Dates;

(h) Floating Amount Payer compounding dates (if applicable);

(i) Floating Amount Payer Currency Amount (see Section 4.4.3 of the ISDA Definitions);

(j) Floating Rate Option (see Section 6.5.1 of the ISDA Definitions);

(k) Floating Amount Payer Delayed Payment and a period of days (if applicable) (see Section 3.1.9 of the ISDA Definitions);

(l) Designated Maturity (see Section 6.7.4 of the ISDA Definitions) (if applicable);

(m) Linear Interpolation (see Section 6.10.1 of the ISDA Definitions), Shorter Designated Maturity and Longer Designated Maturity (see Section 6.10.2 of the ISDA Definitions) (if applicable);

(n) Spread (if applicable) (see Section 6.5.4 of the ISDA Definitions);

(o) Reset Dates (see Section 6.5.5 of the ISDA Definitions);

(p) Floating Rate Day Count Fraction (see Section 6.5.3 of the ISDA Definitions);

(q) Floating Rate (if applicable) (see Section 6.3.1 of the ISDA Definitions);

(10) Where Floating Rate – Floating Rate Swap ("**basis**" swap):

(a) Floating Amount Payer 1 (see Section 6.1.2 of the ISDA Definitions):

(A) Floating Amount Payer Payment Dates;

(B) Floating Amount Payer compounding dates (if applicable);

(C) Floating Amount Payer Currency Amount (see Section 4.4.3 of the ISDA Definitions);

(D) Floating Rate Option (see Section 6.5.1 of the ISDA Definitions);

(E) Floating Amount Payer Delayed Payment and a period of days (if applicable) (see Section 3.1.9 of the ISDA Definitions);

(F) Designated Maturity (see Section 6.7.4 of the ISDA Definitions);

(G) Linear Interpolation (see Section 6.10.1 of the ISDA Definitions), Shorter Designated Maturity and Longer Designated Maturity (see Section 6.10.2 of the ISDA Definitions) (if applicable);

(H) Spread (if applicable) (see Section 6.5.4 of the ISDA Definitions);

(I) Reset Dates (see Section 6.5.5 of the ISDA Definitions);

(J) Floating Rate Day Count Fraction (see Section 6.5.3 of the ISDA Definitions);

(K) Floating Rate (if applicable) (see Section 6.3.1 of the ISDA Definitions);

(b) Floating Amount Payer 2 (see Section 6.1.2 of the ISDA Definitions):

(A) Floating Amount Payer Payment Dates;

(B) Floating Amount Payer compounding dates (if applicable);

(C) Floating Amount Payer Currency Amount (see Section 4.4.3 of the ISDA Definitions);

(D) Floating Rate Option (see Section 6.5.1 of the ISDA Definitions);

(E) Floating Amount Payer Delayed Payment and a period of days (if applicable) (see Section 3.1.9 of the ISDA Definitions);

(F) Designated Maturity (see Section 6.7.4 of the ISDA Definitions);

(G) Linear Interpolation (see Section 6.10.1 of the ISDA Definitions), Shorter Designated Maturity and Longer Designated Maturity (see Section 6.10.2 of the ISDA Definitions) (if applicable);

(H) Spread (if applicable) (see Section 6.5.4 of the ISDA Definitions);

(I) Reset Dates (see Section 6.5.5 of the ISDA Definitions);

(J) Floating Rate Day Count Fraction (see Section 6.5.3 of the ISDA Definitions);

(K) Floating Rate (if applicable) (see Section 6.3.1 of the ISDA Definitions); and

(11) Details of the relevant financial center(s) must be indicated in the Original Standard Cross-currency Rates Derivatives Transaction.

2513. Pursuant to Clearing Rule 806(1), (1) if Clearing Member 1 was the party paying an Initial Exchange Amount ("**Initial Exchange Amount C**") and a Final Exchange Amount ("**Final Exchange Amount D**") to, and receiving an Initial Exchange Amount ("**Initial Exchange Amount E**") and a Final Exchange Amount ("**Final Exchange Amount F**") from, Clearing Member 2, and Clearing Member 2 was the party paying Initial Exchange Amount E and Final Exchange Amount F to, and receiving Initial Exchange Amount C and Final Exchange Amount D from, Clearing Member 1 under an Original Standard Cross-currency Rates Derivatives Transaction, then upon registration of the same as two Standard Cross-currency Rates Derivatives Contracts between OTC Clear and each of Clearing Member 1 and Clearing Member 2, and when deriving the relevant Economic Terms relating to any Payer of Initial Exchange Amount and Payer of Final Exchange Amount from the Transaction Data of the corresponding Original Standard Cross-currency Rates Derivatives Transaction, the terms shall be derived such that OTC Clear will pay Initial Exchange Amount C and Final Exchange Amount D to, and receive Initial Exchange Amount E and Final Exchange Amount F from, Clearing

Member 2 and pay Initial Exchange Amount E and Final Exchange Amount F to, and receive Initial Exchange Amount C and Final Exchange Amount D from, Clearing Member 1; and (2) if Clearing Member 1 was the party paying a rate ("**Rate A**") to, and receiving a rate ("**Rate B**") from, Clearing Member 2, and Clearing Member 2 was the party paying Rate B to, and receiving Rate A from, Clearing Member 1 under an Original Standard Cross-currency Rates Derivatives Transaction, then upon registration of the same as two Standard Cross-currency Rates Derivatives Contracts between OTC Clear and each of Clearing Member 1 and Clearing Member 2, and when deriving the relevant Economic Terms relating to any Floating Amount Payer and/or Fixed Amount Payer from the Transaction Data of the corresponding Original Standard Cross-currency Rates Derivatives Transaction, the terms shall be derived such that OTC Clear will pay Rate A to, and receive Rate B from, Clearing Member 2 and pay Rate B to, and receive Rate A from, Clearing Member 1.

2514. Pursuant to Clearing Rule 806(2), (1) if the Relevant Client was the party paying an Initial Exchange Amount ("**Initial Exchange Amount C**") and a Final Exchange Amount ("**Final Exchange Amount D**") to, and receiving an Initial Exchange Amount ("**Initial Exchange Amount E**") and a Final Exchange Amount ("**Final Exchange Amount F**") from, Clearing Member 4, and Clearing Member 4 was the party paying Initial Exchange Amount E and Final Exchange Amount F to, and receiving Initial Exchange Amount C and Final Exchange Amount D from, the Relevant Client under an Original Standard Cross-currency Rates Derivatives Transaction, then upon registration of the same as two Standard Cross-currency Rates Derivatives Contracts between OTC Clear and Clearing Member 3 (in respect of its Client Position Account relating to the Relevant Client) and Clearing Member 4 (in respect of its House Position Account), and when deriving the relevant Economic Terms relating to any Payer of Initial Exchange Amount and Payer of Final Exchange Amount from the Transaction Data of the corresponding Original Standard Cross-currency Rates Derivatives Transaction, the terms shall be derived such that OTC Clear will pay Initial Exchange Amount C and Final Exchange Amount D to, and receive Initial Exchange Amount E and Final Exchange Amount F from, Clearing Member 4 (in respect of its House Position Account) and pay Initial Exchange Amount E and Final Exchange Amount F to, and receive Initial Exchange Amount C and Final Exchange Amount D from, Clearing Member 3 (in respect of its Client Position Account relating to the Relevant Client), and (2) if the Relevant Client was the party paying a rate ("**Rate A**") to, and receiving a rate ("**Rate B**") from, Clearing Member 4, and Clearing Member 4 was the party paying Rate B to, and receiving Rate A from, the Relevant Client under an Original Standard Cross-currency Rates Derivatives Transaction, then upon registration of the same as two Standard Cross-currency Rates Derivatives Contracts between OTC Clear and Clearing Member 3 (in respect of its Client Position Account relating to the Relevant Client) and Clearing Member 4 (in respect of its House Position Account), and when deriving the relevant Economic Terms relating to any Floating Amount Payer and/or Fixed Amount Payer from the Transaction Data of the corresponding Original Standard Cross-currency Rates Derivatives Transaction, the terms shall be derived such that OTC Clear will pay Rate A to, and receive Rate B from, Clearing Member 4 (in respect of its House Position Account) and pay Rate B to, and receive Rate A from, Clearing Member 3 (in respect of its Client Position Account relating to the Relevant Client).

If, pursuant to Clearing Rule 806(2)(c), Clearing Member 3 and Clearing Member 4 are the same Clearing Member, then OTC Clear will pay Rate A, Initial Exchange Amount C and Final Exchange Amount D to, and receive Rate B, Initial Exchange Amount E and Final Exchange Amount F from, such Clearing Member's House Position Account, and will pay Rate B, Initial Exchange E and Final Exchange Amount F to, and receive Rate A, Initial Exchange Amount C and Final Exchange Amount D from, such Clearing Member's Client Position Account relating to the Relevant Client.

2515. Pursuant to Clearing Rule 806(3), (1) if Client 1 was the party paying an Initial Exchange Amount ("**Initial Exchange Amount C**") and a Final Exchange Amount ("**Final Exchange Amount D**") to, and receiving an Initial Exchange Amount ("**Initial Exchange Amount E**") and a Final Exchange Amount ("**Final Exchange Amount F**") from, Client 2, and Client 2 was the party paying Initial Exchange Amount E and Final Exchange Amount F to, and receiving Initial Exchange Amount C and Final Exchange Amount D from, Client 1 under an Original Standard Cross-currency Rates Derivatives Transaction, then upon registration of the same as two Standard Cross-currency Rates Derivatives Contracts between OTC Clear and Clearing Member 5 (in respect of its Client Position Account relating to Client 1) and Clearing Member 6 (in respect of its Client Position Account relating to Client 2), and when deriving the relevant Economic Terms relating to any Payer of Initial Exchange Amount and Payer of Final Exchange Amount from the Transaction Data of the corresponding Original Standard Cross-currency Rates Derivatives Transaction, the terms shall be derived such that OTC Clear will pay Initial Exchange Amount C and Final Exchange Amount D to, and receive Initial Exchange Amount E and Final Exchange Amount F from, Clearing Member 6 (in respect of its Client Position Account relating to Client 2) and pay Initial Exchange Amount E and Final Exchange Amount F to, and receive Initial Exchange Amount C and Final Exchange Amount D from, Clearing Member 5 (in respect of its Client Position Account relating to Client 1), and (2) if Client 1 was the party paying a rate ("**Rate A**") to, and receiving a rate ("**Rate B**") from, Client 2, and Client 2 was the party paying Rate B to, and receiving Rate A from, Client 1 under an Original Standard Cross-currency Rates Derivatives Transaction, then upon registration of the same as two Standard Cross-currency Rates Derivatives Contracts between OTC Clear and Clearing Member 5 (in respect of its Client Position Account relating to Client 1) and Clearing Member 6 (in respect of its Client Position Account relating to Client 2), and when deriving the relevant Economic Terms relating to any Floating Amount Payer and/or Fixed Amount Payer from the Transaction Data of the corresponding Original Standard Cross-currency Rates Derivatives Transaction, the terms shall be derived such that OTC Clear will pay Rate A to, and receive Rate B from, Clearing Member 6 (in respect of its Client Position Account relating to Client 2) and pay Rate B to, and receive Rate A from, Clearing Member 5 (in respect of its Client Position Account relating to Client 1).

If, pursuant to Clearing Rule 806(3)(c), Clearing Member 5 and Clearing Member 6 are the same Clearing Member, then OTC Clear will pay Rate A, Initial Exchange Amount C and Final Exchange Amount D to, and receive Rate B, Initial Exchange Amount E and Final Exchange Amount F from, such Clearing Member's Client Position Account relating to Client 2, and will pay Rate B, Initial Exchange Amount E and Final Exchange Amount F to, and receive Rate A, Initial Exchange Amount C and Final Exchange Amount D from, such Clearing Member's Client Position Account relating to Client 1.

General Terms

2516. Clearing Rules 2517 to 2522 are designated as General Terms of a Standard Cross-currency Rates Derivatives Contract.

Clearing Rules

2517. A Standard Cross-currency Rates Derivatives Contract shall be subject to the Clearing Rules, which shall form a part of its terms. In the event of any inconsistency between these Contract Terms and the Clearing Rules, the Clearing Rules will prevail.

Floating Negative Interest Rates

2518. Notwithstanding Section 6.8.1 of the ISDA Definitions, "**Floating Negative Interest Rate Method**" will be deemed to apply to a Standard Cross-currency Rates Derivatives Contract and

Sections 6.8.2 and 6.8.3 of the ISDA Definitions will apply to a Standard Cross-currency Rates Derivatives Contract.

Rounding

2519. Section 4.8 of the ISDA Definitions will apply to a Standard Cross-currency Rates Derivatives Contract.

Tax Provisions

2520. Chapter 11 of these Clearing Rules shall form part of the Standard Cross-currency Rates Derivatives Contract Terms as if they were set out in full herein.

Calculation Agent

2521. OTC Clear shall be deemed the Calculation Agent in respect of each Standard Cross-currency Rates Derivatives Contract.

Governing Law

2522. Each Standard Cross-currency Rates Derivatives Contract shall be governed by and construed in accordance with the laws of Hong Kong and the parties irrevocably agree for the benefit of OTC Clear that the courts of Hong Kong shall have exclusive jurisdiction to hear and determine any action or dispute which may arise here from. Each Clearing Member hereto irrevocably submits to such jurisdiction and agrees to waive any objection it might otherwise have to such jurisdiction, save that this submission to the jurisdiction of the courts of Hong Kong shall not (and shall not be construed so as to) limit the right of OTC Clear to take proceedings in any other court of competent jurisdiction, nor shall the taking of action in one or more jurisdictions preclude OTC Clear from taking action in any other jurisdiction, whether concurrently or not.

Chapter 26 Product Specific Terms for Deliverable FX Derivatives Contracts

Product Specific Terms for Deliverable FX Derivatives Contracts

2601. The terms of a Deliverable FX Forward Contract and a Deliverable FX Swap Contract shall include the following terms (the "**Deliverable FX Forward Contract Terms**" and "**Deliverable FX Swap Contract Terms**" respectively):

(1) Clearing Rules 2603 to 2610 (the "**Interpretation Provisions**");

(2) the Economic Terms; and

(3) the General Terms, as set out in Clearing Rules 2617 to 2621,

each as interpreted in accordance with the Interpretation Provisions.

2602. In the event of any inconsistency between the Economic Terms and the General Terms, the General Terms will prevail.

Interpretation

2603. Section 4.8 of the ISDA Definitions and the FX Definitions (Section 4.8 of the ISDA Definitions and the FX Definitions together, the "**ISDA FX Definitions**") are incorporated by reference into these Deliverable FX Forward Contract Terms and Deliverable FX Swap Contract Terms. Unless otherwise specified, capitalized terms used in the Deliverable FX Forward Contract Terms and Deliverable FX Swap Contract Terms but not defined in the Clearing Documentation shall have the meanings given to them in the ISDA FX Definitions. In the event of any inconsistency between the ISDA FX Definitions and the Clearing Documentation, the Clearing Documentation will prevail.

2604. In respect of a Deliverable FX Forward Contract or Deliverable FX Swap Contract with one of the notional amounts denominated in CNY (offshore), the CNY (offshore) Disruption Provisions shall be incorporated by reference into the relevant Deliverable FX Forward Contract Terms or Deliverable FX Swap Contract Terms respectively.

2605. In deriving the Economic Terms of the Deliverable FX Forward Contract or Deliverable FX Swap Contract, as the case may be, from the Transaction Data of the corresponding Original Deliverable FX Forward Transaction or Original Deliverable FX Swap Transaction respectively, all references in the ISDA FX Definitions to an "**FX Transaction**" shall be deemed to be references to an "**Original Deliverable FX Forward Transaction**" or "**Original Deliverable FX Swap Transaction**" respectively.

2606. Subject to subsequent ISDA FX Deliverables Amendment adopted by OTC Clear pursuant to Clearing Rule 2607, the ISDA FX Definitions and the Deliverable FX Forward Contract Terms or Deliverable FX Swap Contract Terms applicable to a Deliverable FX Forward Contract or Deliverable FX Swap Contract respectively shall be those applicable as at the Registration Time of the relevant Deliverable FX Forward Contract or Deliverable FX Swap Contract.

2607. In case of any amendment to the ISDA FX Definitions, publication of any supplement, annex or standard terms relating to the ISDA FX Definitions by ISDA, EMTA or FXC jointly or severally or publication of any supplement, annex or protocol by ISDA relating to amendment to the CNY (offshore) Disruption Provisions (each an "**ISDA FX Deliverables Amendment**"), OTC Clear may, in its sole discretion, determine whether any such ISDA FX Deliverables Amendment should be adopted for the purpose of interpreting or implementing the Deliverable FX Forward Contract Terms or Deliverable FX Swap Contract Terms, as the case may be, the manner of any such adoption and when such adoption shall take effect, and

notify all Clearing Members of the same. Any non-receipt of such notice by Clearing Members shall not invalidate the effectiveness of the adoption of ISDA FX Deliverables Amendment by OTC Clear.

2608. In respect of any adoption of ISDA FX Deliverables Amendment by OTC Clear, such adopted ISDA FX Deliverables Amendment shall govern the Deliverable FX Forward Contract Terms of each Deliverable FX Forward Contract and Deliverable FX Swap Contract Terms of each Deliverable FX Swap Contract, as the case may be, then registered with OTC Clear, and any prospective payment obligations arising out of each such Deliverable FX Forward Contract or Deliverable FX Swap Contract, as the case may be, shall be construed accordingly.

2608A. For the avoidance of doubt, Section 4.8 of the ISDA Definitions shall be incorporated by reference into the Deliverable FX Derivatives Contract Terms of each Deliverable FX Derivatives Contract then registered with OTC Clear, and any prospective payment obligations arising out of each such Deliverable FX Derivatives Contract shall be construed accordingly.

2609. The Deliverable FX Forward Contract Terms and Deliverable FX Swap Contract Terms supplement, form part of, and are subject to these Clearing Rules. In the event of any inconsistency between the Deliverable FX Forward Contract Terms or Deliverable FX Swap Contract Terms and these Clearing Rules, these Clearing Rules will prevail.

2610. Except where expressly stated otherwise, all reference to "**Sections**" means Sections in the ISDA FX Definitions.

Economic Terms

2611. The Economic Terms of a Deliverable FX Forward Contract and Deliverable FX Swap Contract are derived from the Transaction Data relating to the corresponding Original Deliverable FX Forward Transaction and Original Deliverable FX Swap Transaction respectively. The Original Deliverable FX Forward Transaction or Original Deliverable FX Swap Transaction submitted to OTC Clear for registration must include information that satisfies each of the relevant Economic Terms fields set out in Clearing Rule 2612.

2612. The Economic Terms fields comprise:

(1) In respect of a Deliverable FX Forward Contract:

(a) Trade Date (Section 1.25 of the FX Definitions);

(b) Notional Amount (Section 1.17(a) of the FX Definitions) and currency payable by one party and the identity of such party;

(c) Notional Amount (Section 1.17(a) of the FX Definitions) and currency payable by another party and the identity of such party; and

(d) Settlement Date (Section 1.24 of the FX Definitions); and

(2) In respect of a Deliverable FX Swap Contract:

(a) Trade Date (Section 1.25 of the FX Definitions);

(b) In near leg:

(A) Notional Amount (Section 1.17(a) of the FX Definitions) and currency payable by one party and the identity of such party;

(B) Notional Amount (Section 1.17(a) of the FX Definitions) and currency payable by another party and the identity of such party; and

(C) Settlement Date (Section 1.24 of the FX Definitions); and

(c) In far leg:

(A) Notional Amount (Section 1.17(a) of the FX Definitions) and currency payable by one party and the identity of such party;

(B) Notional Amount (Section 1.17(a) of the FX Definitions) and currency payable by another party and the identity of such party; and

(C) Settlement Date (Section 1.24 of the FX Definitions).

2613. Pursuant to Clearing Rule 806(1), (1) if Clearing Member 1 was the party paying Notional Amount A to, and receiving Notional Amount B from, Clearing Member 2, and Clearing Member 2 was the party paying Notional Amount B to, and receiving Notional Amount A from, Clearing Member 1 under an Original Deliverable FX Forward Transaction, then upon registration of the same as two Deliverable FX Forward Contracts between OTC Clear and each of Clearing Member 1 and Clearing Member 2, and when deriving the relevant Economic Terms relating to the relevant payer of each of Notional Amount A and Notional Amount B from the Transaction Data of the corresponding Original Deliverable FX Forward Transaction, the terms shall be derived such that OTC Clear will pay Notional Amount A to, and receive Notional Amount B from, Clearing Member 2 in one Deliverable FX Forward Contract and pay Notional Amount B to, and receive Notional Amount A from, Clearing Member 1 in another Deliverable FX Forward Contract; and (2) under an Original Deliverable FX Swap Transaction if (a) Clearing Member 1 was the party paying Notional Amount C to, and receiving Notional Amount D from, Clearing Member 2, and Clearing Member 2 was the party paying Notional Amount D to, and receiving Notional Amount C from, Clearing Member 1 in the near leg and (b) Clearing Member 1 was the party paying Notional Amount E to, and receiving Notional Amount F from, Clearing Member 2, and Clearing Member 2 was the party paying Notional Amount F to, and receiving Notional Amount E from, Clearing Member 1 in the far leg, then upon registration of the same as two Deliverable FX Swap Contracts between OTC Clear and each of Clearing Member 1 and Clearing Member 2, and when deriving the relevant Economic Terms relating to the relevant payer of each of Notional Amount C, Notional Amount D, Notional Amount E and Notional Amount F from the Transaction Data of the corresponding Original Deliverable FX Swap Transaction, the terms shall be derived such that (c) in one Deliverable FX Swap Contract OTC Clear will pay Notional Amount C to, and receive Notional Amount D from, Clearing Member 2 in the near leg and pay Notional Amount E to, and receive Notional Amount F from, Clearing Member 2 in the far leg and (d) in another Deliverable FX Swap Contract OTC Clear will pay Notional Amount D to, and receive Notional Amount C from, Clearing Member 1 in the near leg and pay Notional Amount F to, and receive Notional Amount E from, Clearing Member 1 in the far leg.

2614. Pursuant to Clearing Rule 806(2), (1) if the Relevant Client was the party paying Notional Amount A to, and receiving Notional Amount B from, Clearing Member 4, and Clearing Member 4 was the party paying Notional Amount B to, and receiving Notional Amount A from, the Relevant Client under an Original Deliverable FX Forward Transaction, then upon registration of the same as two Deliverable FX Forward Contracts between OTC Clear and each of Clearing Member 3 (in respect of its Client Position Account relating to the Relevant Client) and Clearing Member 4 (in respect of its House Position Account), and when deriving the relevant Economic Terms relating to the relevant payer of each of Notional Amount A and Notional Amount B from the Transaction Data of the corresponding Original Deliverable FX Forward Transaction, the terms shall be derived such that OTC Clear will pay Notional Amount A to, and receive Notional Amount B from, Clearing Member 4 (in respect of its House Position Account) in one Deliverable FX Forward Contract and pay Notional Amount B to, and receive Notional Amount A from, Clearing Member 3 (in respect of its Client Position Account

relating to the Relevant Client) in another Deliverable FX Forward Contract; and (2) under an Original Deliverable FX Swap Transaction if (a) the Relevant Client was the party paying Notional Amount C to, and receiving Notional Amount D from, Clearing Member 4, and Clearing Member 4 was the party paying Notional Amount D to, and receiving Notional Amount C from, the Relevant Client in the near leg and (b) the Relevant Client was the party paying Notional Amount E to, and receiving Notional Amount F from, Clearing Member 4, and Clearing Member 4 was the party paying Notional Amount F to, and receiving Notional Amount E from, the Relevant Client in the far leg, then upon registration of the same as two Deliverable FX Swap Contracts between OTC Clear and each of Clearing Member 3 (in respect of its Client Position Account relating to the Relevant Client) and Clearing Member 4 (in respect of its House Position Account), and when deriving the relevant Economic Terms relating to the relevant payer of each of Notional Amount C, Notional Amount D, Notional Amount E and Notional Amount F from the Transaction Data of the corresponding Original Deliverable FX Swap Transaction, the terms shall be derived such that (c) in one Deliverable FX Swap Contract OTC Clear will pay Notional Amount C to, and receive Notional Amount D from, Clearing Member 4 (in respect of its House Position Account) in the near leg and pay Notional Amount E to, and receive Notional Amount F from, Clearing Member 4 (in respect of its House Position Account) in the far leg and (d) in another Deliverable FX Swap Contract OTC Clear will pay Notional Amount D to, and receive Notional Amount C from, Clearing Member 3 (in respect of its Client Position Account relating to the Relevant Client) in the near leg and pay Notional Amount F to, and receive Notional Amount E from, Clearing Member 3 (in respect of its Client Position Account relating to the Relevant Client) in the far leg.

If, pursuant to Clearing Rule 806(2)(c), Clearing Member 3 and Clearing Member 4 are the same Clearing Member, then (3) OTC Clear will pay Notional Amount A to, and receive Notional Amount B from, such Clearing Member's House Position Account in one Deliverable FX Forward Contract, and OTC Clear will pay Notional Amount B to, and receive Notional Amount A from, such Clearing Member's Client Position Account relating to the Relevant Client in another Deliverable FX Forward Contract; and (4)(a) in one Deliverable FX Swap Contract, OTC Clear will pay Notional Amount C to, and receive Notional Amount D from, such Clearing Member's House Position Account in the near leg and pay Notional Amount E to, and receive Notional Amount F from, such Clearing Member's House Position Account in the far leg and (b) in another Deliverable FX Swap Contract, OTC Clear will pay Notional Amount D to, and receive Notional Amount C from, such Clearing Member's Client Position Account relating to the Relevant Client in the near leg and pay Notional Amount F to, and receive Notional Amount E from, such Clearing Member's Client Position Account relating to the Relevant Client in the far leg.

2615. Pursuant to Clearing Rule 806(3), (1) if Client 1 was the party paying Notional Amount A to, and receiving Notional Amount B from, Client 2, and Client 2 was the party paying Notional Amount B to, and receiving Notional Amount A from, Client 1 under an Original Deliverable

FX Forward Transaction, then upon registration of the same as two Deliverable FX Forward Contracts between OTC Clear and each of Clearing Member 5 (in respect of its Client Position Account relating to Client 1) and Clearing Member 6 (in respect of its Client Position Account relating to Client 2), and when deriving the relevant Economic Terms relating to the relevant payer of each of Notional Amount A and Notional Amount B from the Transaction Data of the corresponding Original Deliverable FX Forward Transaction, the terms shall be derived such that OTC Clear will pay Notional Amount A to, and receive Notional Amount B from, Clearing Member 6 (in respect of its Client Position Account relating to Client 2) in one Deliverable FX Forward Contract and pay Notional Amount B to, and receive Notional Amount A from, Clearing Member 5 (in respect of its Client Position Account relating to Client 1) in another Deliverable FX Forward Contract; and (2) under an Original Deliverable FX Swap Transaction if (a) Client 1 was the party paying Notional Amount C to, and receiving Notional Amount D from, Client 2, and Client 2 was the party paying Notional Amount D to, and receiving Notional Amount C from, Client 1 in the near leg and (b) Client 1 was the party paying Notional Amount E to, and receiving Notional Amount F from, Client 2, and Client 2 was the party paying Notional Amount F to, and receiving Notional Amount E from, Client 1 in the far leg, then upon registration of the same as two Deliverable FX Swap Contracts between OTC Clear and each of Clearing Member 5 (in respect of its Client Position Account relating to Client 1) and Clearing Member 6 (in respect of its Client Position Account relating to Client 2), and when deriving the relevant Economic Terms relating to the relevant payer of each of Notional Amount C, Notional Amount D, Notional Amount E and Notional Amount F from the Transaction Data of the corresponding Original Deliverable FX Swap Transaction, the terms shall be derived such that (c) in one Deliverable FX Swap Contract OTC Clear will pay Notional Amount C to, and receive Notional Amount D from, Clearing Member 6 (in respect of its Client Position Account relating to Client 2) in the near leg and pay Notional Amount E to, and receive Notional Amount F from, Clearing Member 6 (in respect of its Client Position Account relating to Client 2) in the far leg and (d) in another Deliverable FX Swap Contract OTC Clear will pay Notional Amount D to, and receive Notional Amount C from, Clearing Member 5 (in respect of its Client Position Account relating to Client 1) in the near leg and pay Notional Amount F to, and receive Notional Amount E from, Clearing Member 5 (in respect of its Client Position Account relating to Client 1) in the far leg.

If, pursuant to Clearing Rule 806(3)(c), Clearing Member 5 and Clearing Member 6 are the same Clearing Member, then (3) OTC Clear will pay Notional Amount A to, and receive Notional Amount B from, such Clearing Member's Client Position Account relating to Client 2 in one Deliverable FX Forward Contract, and OTC Clear will pay Notional Amount B to, and receive Notional Amount A from, such Clearing Member's Client Position Account relating to Client 1 in another Deliverable FX Forward Contract; and (4)(a) in one Deliverable FX Swap Contract, OTC Clear will pay Notional Amount C to, and receive Notional Amount D from, such Clearing Member's Client Position Account relating to Client 2 in the near leg and pay Notional Amount E to, and receive Notional Amount F from, such Clearing Member's Client Position Account relating to Client 2 in the far leg and (b) in another Deliverable FX Swap Contract, OTC Clear will pay Notional Amount D to, and receive Notional Amount C from, such Clearing Member's Client Position Account relating to Client 1 in the near leg and pay Notional Amount F to, and receive

Notional Amount E from, such Clearing Member's Client Position Account relating to Client 1 in the far leg.

General Terms

2616. Clearing Rules 2617 to 2621 are designated as General Terms of a Deliverable FX Forward Contract and a Deliverable FX Swap Contract.

Clearing Rules

2617. A Deliverable FX Forward Contract and a Deliverable FX Swap Contract shall be subject to the Clearing Rules, which shall form a part of their relevant terms. In the event of any inconsistency between these Contract Terms and the Clearing Rules, the Clearing Rules will prevail.

Calculation Agent

2618. OTC Clear shall be deemed the Calculation Agent in respect of each Deliverable FX Forward Contract and Deliverable FX Swap Contract.

Rounding

2619. Section 4.8 of the ISDA Definitions will apply to a Deliverable FX Forward Contract and a Deliverable FX Swap Contract.

Tax Provisions

2620. Chapter 11 of these Clearing Rules shall form part of the Deliverable FX Forward Contract Terms and Deliverable FX Swap Contract Terms as if they were set out in full herein.

Governing Law

2621. Each Deliverable FX Forward Contract and Deliverable FX Swap Contract shall be governed by and construed in accordance with the laws of Hong Kong and the parties irrevocably agree for the benefit of OTC Clear that the courts of Hong Kong shall have exclusive jurisdiction to hear and determine any action or dispute which may arise here from. Each Clearing Member hereto irrevocably submits to such jurisdiction and agrees to waive any objection it might otherwise have to such jurisdiction, save that this submission to the jurisdiction of the courts of Hong Kong shall not (and shall not be construed so as to) limit the right of OTC Clear to take proceedings in any other court of competent jurisdiction, nor shall the taking of action in one or more jurisdictions preclude OTC Clear from taking action in any other jurisdiction, whether concurrently or not.

Supplement I

SOFR DISCOUNTING SWITCH SUPPLEMENT

1 Introduction

1.1 This Supplement effects a "Discounting Switch" (as defined in Clearing Rule 10A01) so as to change the USD discounting rate and the PAI calculation reference rate in respect of all Affected Derivatives Contracts from Fed Funds Rate to the Secured Overnight Financing Rate provided by the Federal Reserve Bank of New York, as administrator (or a successor administrator) ("**SOFR**") (the "**SOFR Discounting Switch**") (the "**SOFR Discounting Switch Supplement**"). This Supplement constitutes a "Discounting Switch Supplement" as defined in Clearing Rule 10A08, and supplements and forms part of Chapter 10A of the Clearing Rules.

1.2 The terms of this Supplement shall apply to all Affected Derivatives Contracts that are registered with OTC Clear as of the end of day on the Transition Date (SOFR) except as expressly set out herein. For the avoidance of doubt, (i) no other Contract shall be subject to, or affected by, the terms of this Supplement and each Contract shall remain in full force and effect, and (ii) except as expressly set out herein, the Contract Terms shall not be amended by the terms of this Supplement.

1.3 Capitalised terms used but not otherwise defined in this Supplement have the meaning given to them in the Clearing Rules.

2 Powers of OTC Clear

2.1 In exercising its powers under Chapter 10A of the Clearing Rules in connection with the change from the Fed Funds Rate to SOFR, OTC Clear sets out in this Supplement the method by which it will:

(a) for each Clearing Member's Position Account (including any Client Position Account(s), if applicable), calculate the Cash Compensation Amount (which shall be an "Interest Rate Change Payment" as defined in Clearing Rule 10A07) payable by OTC Clear to the Clearing Members and/or by Clearing Members to OTC Clear in relation to each such account and the date on which such amount shall be paid. The payment of Cash Compensation Amounts is intended to address the impact on valuation when switching from Fed Funds Rate to SOFR;

(b) for each Swap Opt-in Position Account, determine how certain Compensating Swaps (SOFR) (including any Pre-assigned SOFR Compensating Swaps, Net Auction Swap, Assigned Net Auction Swap, Assigned Net Auction Swap (Client) and Final Compensating Swaps (SOFR)) shall, as applicable, be identified, allocated, registered, recorded/booked and/or entered into between OTC Clear and the relevant Clearing Member in respect of such account pursuant to Chapter 10A of the Clearing Rules and the terms of those Compensating Swaps (SOFR);

(c) for each Auction Winner, calculate the CAP Amount (which shall also be an "Interest Rate Change Payment" as defined in Clearing Rule 10A07) payable by OTC Clear to the relevant Clearing Member or by that Auction Winner to OTC Clear in respect of the Winning Account; and

(d) for each Cash Only Position Account, calculate the Adjusted CAP Amount(s), if any (which shall also be an "Interest Rate Change Payment" as defined in Clearing Rule 10A07) payable by OTC Clear to the relevant Clearing Member or by that Clearing Member to OTC Clear in respect of the relevant Cash Only Position Account (as applicable).

3 Opt-in / Opt-out Elections

3.1 Subject to Paragraphs 3.2 and 3.3 of this Supplement, with respect to all Affected Rates Derivative Contracts in each of its Position Accounts registered with OTC Clear as of the Transition Date (SOFR), a Clearing Member shall be entitled to elect to opt in or opt out of the portfolio of Pre-Assigned SOFR Compensating Swaps identified in respect of such Position Account to be registered and entered into between OTC Clear and such Clearing Member by delivering a duly completed Swap Election Notice in respect of each such Position Account to OTC Clear at any time up to, and including, the Swap Election Cut-Off Date. All Swap Election Notices must be delivered to OTC Clear via email and shall be irrevocable following its delivery to OTC Clear (unless otherwise agreed by OTC Clear in writing).

3.2 A Clearing Member shall be entitled to deliver one Swap Election Notice in respect of each of its Position Accounts, provided that:

(a) a Clearing Member shall only be entitled to deliver a Swap Election Opt-in Notice in respect of one or more of its Client Position Accounts if the Clearing Member has also delivered a duly completed Swap Election Opt-in Notice in respect of its House Position Account, and if a Clearing Member delivers a Swap Election Opt-out Notice in respect of its House Position Account, all of its Position Accounts (including its Client Position Accounts) will be automatically deemed to be Cash Only Position Accounts; and

(b) subject to Paragraph 3.2(a) of this Supplement, in relation to a Client Clearing Category 2 Position Account, a Clearing Member shall only be entitled to deliver a Swap Election Opt-in Notice if it is indicated in the Swap Election Opt-in Notice that all Clients sharing such account have opted in for the relevant portfolio of Pre-Assigned SOFR Compensating Swaps identified in respect of such Position Account to be recorded/booked to such Client.

3.3 OTC Clear reserves the right at its absolute discretion to accept or reject any Swap Election Notice received by OTC Clear after the Swap Election Cut-Off Date. In the event that OTC Clear exercises its discretion to accept a Swap Election Notice received after the Swap Election Cut-off Date pursuant to this Paragraph 3.3, the Clearing Member shall be deemed to have validly delivered such Swap Election Notice in accordance with Paragraph 3.1 of this Supplement, notwithstanding that such Swap Election Notice may have been received by OTC Clear after the Swap Election Cut-off Date.

3.4 Subject to Paragraph 3.2 of this Supplement, if in respect of any Position Account:

(a) a Clearing Member delivers (or is deemed to have delivered) a duly completed Swap Election Opt-in Notice in respect of a Position Account in accordance with Paragraph 3.1 of this Supplement, then that shall be deemed, as of the end of day on the Swap Election Cut-Off Date to be an irrevocable instruction of that Clearing Member to OTC Clear to:

(i) determine the Cash Compensation Amount payable to or by that Clearing Member in respect of such Position Account and to record/book and register such amount in the relevant Swap Opt-in Position Account in accordance with this Supplement;

(ii) determine, allocate, record/book and/or register the portfolio of Pre-assigned SOFR Compensating Swaps identified in respect of such Position Account, the Net Auction Swap, the Assigned Net Auction Swaps, the Assigned Net Auction Swaps (Clients) and/or the Final Compensating Swaps (SOFR), as applicable, in accordance with this Supplement in the relevant Swap Opt-in Position Account; and

(iii) where applicable, determine the CAP Amount(s) payable to or by that Clearing Member in respect of the relevant Swap Opt-in Position Account and to record/book and register such amount in the relevant Swap Opt-in Position Account in accordance with this Supplement; or

(b) a Clearing Member delivers (or is deemed to have delivered) a duly completed Swap Election Opt-out Notice, or fails to deliver a duly completed Swap Election Notice, in accordance with Paragraph 3.1 of this Supplement, then that shall be deemed, as of the end of day on the Swap Election Cut-Off Date, to be an irrevocable instruction of that Clearing Member to OTC Clear to:

(i) determine the Cash Compensation Amount payable to or by that Clearing Member in respect of such Position Account and to record/book and register such amount in the relevant Cash Only Position Account in accordance with this Supplement; and

(ii) where applicable, determine the Adjusted CAP Amount(s) payable to or by that Clearing Member in respect of the relevant Cash Only Position Account in accordance with this Supplement and to record/book and register such amount in the relevant Cash Only Position Account in accordance with this Supplement.

4 Portfolio of Compensating Swaps (SOFR)

4.1 At the end of day on the Swap Portfolio Calculation Date, OTC Clear shall, in respect of the Affected Derivatives Contracts described in Paragraph 4.3 below, determine a portfolio of Compensating Swaps (SOFR) for each Maturity Bucket which is designated to, in OTC Clear's sole and absolute discretion and to the extent practicable, replicate the Fed Funds Rate discounting risk profile in relation to such Contracts. For the avoidance of doubt, the determination by OTC Clear pursuant to this Paragraph 4 may be different from a Clearing Member's models or methodologies.

4.2 Each Compensating Swap (SOFR) will:

(a) have a maturity of two years, five years, ten years or fifteen years from the date of registration;

(b) when registered, be deemed to comprise a Standard Rate Derivatives Contract whereby OTC Clear or the Clearing Member ("**Party X**") will receive SOFR plus or minus a spread which shall be equal to the relevant Mid-Price determined pursuant to this Supplement and pay to the other party ("**Party Y**") the Fed Funds Rate with no spread;

(c) have a notional amount in USD that is determined by OTC Clear, in its sole and absolute discretion, where such notional amount shall be rounded to the nearest multiple of USD500,000 (regardless of the Maturity Bucket); and

(d) have such other specifications as set out in Appendix 4 to this Supplement.

4.3 The portfolio of Compensating Swaps (SOFR) as described in Paragraph 4.1 of this Supplement shall be determined as of the Swap Portfolio Calculation Date in relation to each of the following:

(a) the Affected Derivatives Contracts then registered in each Clearing Member's House Position Account as of the Swap Portfolio Calculation Date;

(b) the Affected Derivatives Contracts then registered in each Clearing Members' Client Clearing Category 1 Position Account as of the Swap Portfolio Calculation Date;

(c) the Affected Derivatives Contracts then registered in respect of each Client sharing each Client Member's Client Clearing Category 2 Position Account as of the Swap Portfolio Calculation Date (with the determination taking place on the basis of Contracts being recorded/booked on a gross basis in respect of such account).

4.4 OTC Clear shall promptly notify each Clearing Member of the portfolio of Compensating Swaps (SOFR) it has determined pursuant to this Paragraph 4 in respect of each Position Account held by such Clearing Member (each such Compensating Swap, a "**Pre-Assigned SOFR Compensating Swap**").

5 SOFR Discounting Auction

5.1 On the Transition Date (SOFR), unless OTC Clear has received a duly completed Swap Election Opt-in Notice in respect of less than three Position Accounts by the Swap Election Cut-off Date, whether delivered or deemed to be delivered in accordance with Paragraph 3.1 of this Supplement, OTC Clear shall conduct one or more auctions (each, a "**SOFR Discounting Auction**") in accordance with this Supplement.

5.2 Each Clearing Member shall be required to participate in the SOFR Discounting Auction in respect of each of its Swap Opt-in Position Accounts in accordance with this Supplement.

5.3 All Final Compensating Swaps (SOFR) registered pursuant to Paragraph 11.1 of this Supplement shall, when registered, constitute Contracts between OTC Clear and the relevant Clearing Member.

6 Auctioned Portfolios

6.1 To conduct a SOFR Discounting Auction, OTC Clear shall determine a Net Auction Swap separately for each Maturity Bucket as follows:

(a) first, OTC Clear shall determine the portfolio of Pre-Assigned SOFR Compensating Swaps identified for each Maturity Bucket pursuant to Paragraph 4 of this Supplement in respect of each Cash Only Position Account; and

(b) second, OTC Clear shall aggregate all of the above Pre-Assigned SOFR Compensating Swaps for each Maturity Bucket to determine a single Compensating Swap (SOFR) for each Maturity Bucket, and each such single Compensating Swap (SOFR) shall be the "**Net Auction Swap**" for that Maturity Bucket. For the

avoidance of doubt, each Net Auction Swap shall be a Compensating Swap (SOFR).

6.2 In respect of each Maturity Bucket, the Net Auction Swap shall comprise a Compensating Swap (SOFR) pursuant to which, OTC Clear or Clearing Member ("**Party X**") will receive SOFR plus or minus a spread which shall be equal to the relevant Mid-Price and pay to the other ("**Party Y**") the Fed Funds Rate with no spread.

6.3 For the avoidance of doubt, the above determinations are made solely for the purposes of determining the Net Auction Swaps that shall be subject to the SOFR Discounting Auction.

7 Price Submissions

7.1 All Auction Participants must submit two-way (bid and ask) price quotes for the Net Auction Swap of each Maturity Bucket for each of the items listed below:

(a) its House Position Account which is a Swap Opt-in Position Account;

(b) each of its Client Clearing Category 1 Accounts which is a Swap Opt-in Position Account; and

(c) each of the Clients sharing each of its Client Clearing Category 2 Accounts which is a Swap Opt-in Position Account.

7.2 OTC Clear will also impose auction criteria, including but not limited to, bidding format and maximum bid-ask spread based on historical market data, as will be separately notified to the Clearing Member by way of notice.

7.3 Each time an Auction Participant submits price quotes, it shall indicate the relevant House Position Account, Client Clearing Category 1 Position Account, Client Clearing Category 2 Position Account and/or Client of Client Clearing Category 2 Position Account (as applicable) in respect of which it is submitting such price quotes.

7.4 Each time an Auction Participant submits price quotes, it shall be deemed to represent and warrant that it has all necessary approvals, authority and risk permissions in place to submit such price quotes, pay any amounts and be bound to the Net Auction Swap registered in the relevant Position Account in connection with the SOFR Discounting Auction.

7.5 Each price quote submitted by an Auction Participant constitutes an offer to OTC Clear to enter into the relevant Net Auction Swap and shall be treated for all purposes as an irrevocable firm, executable price.

7.6 OTC Clear will oversee the bidding process and ensure that prices represent the fair value of the relevant Net Auction Swaps on the basis of such factors as OTC Clear considers appropriate. OTC Clear may, but is not obliged to, consult with the Risk Management Committee prior to identifying any Auction Winner (including the Winning Account), but OTC Clear will notify the Risk Management Committee regarding the outcome of the auction.

8 Determining the Mid-Price and Constructing the SOFR Discounting Curve

8.1 For the purposes of determining the Mid-Price in relation to each Maturity Bucket through the SOFR Discounting Auction, OTC Clear shall take the following steps separately in relation to all bids and asks submitted for each Maturity Bucket:

(a) firstly, it shall order the bid prices, starting from the highest, in descending order (the highest bid price being referred to as the "**Highest Bid**");

(b) secondly, it shall order the ask prices, starting from the lowest, in ascending order (the lowest ask price being referred to as the "**Lowest Ask**");

(c) thirdly, it shall remove any pair of crossing bid price and ask price (i.e. if any ranked, ordered, individual bid price exceeds any ranked, ordered, individual ask price, both such bid and ask price shall be removed);

(d) fourthly, it should determine the average of the remaining bid prices (the "**Average Bid**") and the average of the remaining ask prices (the "**Average Ask**") after removing any pair of crossing bid price and ask price in Paragraph 8.1(c); and

(e) finally, it shall determine the average of the Average Bid and the Average Ask, which shall be the "**Auction Mid-Price**" of the relevant Maturity Bucket.

8.2 On the determination of the Auction Mid-Price as described above, OTC Clear shall construct a SOFR pricing curve as of end of day on the Transition Date (SOFR) on the basis of such Auction Mid-Price by:

(a) in relation to tenors for which there is a corresponding Maturity Bucket, adding the relevant Auction Mid-Price to the regular Fed Funds Rate curve as of the Transition Date (SOFR); and

(b) in relation to tenors for which there is no corresponding Maturity Bucket, using the observable market data points and applying linear interpolation as determined by OTC Clear in its sole and absolute discretion.

8.3 In the event that OTC Clear determines (in its sole and absolute discretion) that less than three valid bid and ask prices have been received in relation to any Maturity Bucket by the end of the relevant bidding window as prescribed by OTC Clear, or OTC Clear otherwise determines, in its sole and absolute discretion, that it would be appropriate to do so, OTC Clear may hold one or more further SOFR Discounting Auctions on the Transition Date (SOFR) (each a "**Subsequent Auction").**

9 Successful Auction and Auction-related Payments

9.1 Immediately following the conclusion of the SOFR Discounting Auction or a Subsequent Auction where more than three valid bid and ask prices have been received in relation to the Net Auction Swap of each Maturity Bucket (each, a "**Successful Auction**"), on the Transition Date (SOFR), OTC Clear shall:

(a) notify the Auction Winner of each Net Auction Swap and the Swap Opt-in Position Account which is a Winning Account (and in the case the Winning Account is a Client Clearing Category 2 Account, the Client sharing such account and in respect of whom the Net Auction Swap shall be recorded/booked against) and the related CAP Amount that is payable to or by that Auction Winner to OTC Clear in respect of such Net Auction Swap;

(b) with respect to each Net Auction Swap, notify the relevant Clearing Members of the Adjusted CAP Amounts (if any) that are payable to or by that Clearing Member to OTC Clear in respect of each of their Cash Only Position Accounts in relation to such Net Auction Swap; and

(c) notify each Auction Participant who has submitted a two-way (bid and ask) price quotes but who is not an Auction Winner that it has not been successful in the SOFR Discounting Auction.

9.2 On the conclusion of a Successful Auction:

(a) on the SOFR Discounting Effective Date, each CAP Amount and each Adjusted CAP Amount shall be registered, recorded/booked as an amount which is payable to or by the relevant Clearing Member to OTC Clear in the relevant Position Account; and

(b) on the Interest Rate Change Payment Date (SOFR):

(i) in relation to the Net Auction Swap of each Maturity Bucket, OTC Clear shall pay to the Auction Winner (in respect of its Winning Account), or the Auction Winner (in respect of its Winning Account) shall pay to OTC Clear the relevant CAP Amount, as applicable; and

(ii) in relation to the Net Auction Swap of each Maturity Bucket and with respect to each Cash Only Position Account, OTC Clear shall pay to the Clearing Member or the Clearing Member shall pay to OTC Clear the corresponding Adjusted CAP Amount, as applicable.

10 Unsuccessful Auction or No Auction

10.1 In the event that (i) OTC Clear has not received a duly completed Swap Election Opt-in Notice for three or more Position Accounts (whether delivered or deemed to be delivered in accordance with Paragraph 3.1 of this Supplement) by the Swap Election Cut-off Date such that no SOFR Discounting Auction is held or (ii) OTC Clear determines (in its sole and absolute discretion) that less than three valid bid and ask prices have been received in relation to one or more of the Maturity Buckets in any Subsequent Auction and that no further SOFR Discounting Auctions shall take place (each "**No Auction Event**"), on the Transition Date (SOFR), OTC Clear shall:

(a) (in its sole and absolute discretion) determine the mid-price in respect of each Maturity Bucket using observable market data as at 4 p.m. (Hong Kong time) on the Transition Date (SOFR) (such mid-price being a "**OTC Clear Mid-Price**");

(b) construct a SOFR pricing curve as of the end of day on the Transition Date (SOFR) as described in Paragraph 8.2 above on the basis of the OTC Clear Mid-Price instead of the Auction Mid-Price; and

(c) in relation to each Maturity Bucket, determine the Net Auction Swap (if any) to be allocated the Swap Opt-in Position Accounts on a pro rata basis such that (i) the relevant Assigned Net Auction Swap shall be allocated to each Swap Opt-in Position Account (other than a Client Clearing Category 2 Position Account), and (ii) in the case of a Swap Opt-in Position Account which is a Client Clearing Category 2 Position Account, each relevant Assigned Net Auction Swap (Client) shall be allocated to such account and be recorded/booked in respect of the relevant Client sharing such account.

11 Registration of Final Compensating Swaps (SOFR)

11.1 On the Transition Date (SOFR) and whether on the conclusion of a Successful Auction or otherwise, OTC Clear shall make the following determinations:

(a) in the case of each of the Swap Opt-in Position Accounts which is a House Position Account or a Client Clearing Category 1 Position Account and in respect of each Maturity Bucket, the aggregate of:

(i) the portfolio of Pre-assigned SOFR Compensating Swaps in respect of such Swap Opt-in Position Account determined by OTC Clear as of the Swap Portfolio Calculation Date pursuant to Paragraph 4.1 of this Supplement; and

(ii) the Net Auction Swap in respect of which such Swap Opt-in Position Account is a Winning Account (in the event there is a Successful Auction), or the Assigned Net Auction Swap in respect of such Swap Opt-in Position Account (in the event there is a No Auction Event), as applicable; and

(b) in the case of each of the Swap Opt-in Position Accounts which is a Client Clearing Category 2 Position Account, in respect of each Maturity Bucket and each Client sharing such account, the aggregate of:

(i) the portfolio of Pre-assigned SOFR Compensating Swaps in respect of such Client sharing such account determined by OTC Clear as of the Swap Portfolio Calculation Date pursuant to Paragraph 4.1 of this Supplement; and

(ii) the Net Auction Swap in respect of which such Swap Opt-in Position Account is a Winning Account and which is to be recorded/booked against such Client sharing such account (in the event there is a Successful Auction), or the Assigned Net Auction Swap (Client) which is to be recorded/booked against such Client sharing such account (in the event there is a No Auction Event), as applicable.

11.2 Each single Compensating Swap (SOFR) determined pursuant to Paragraph 11.1 above shall be referred to as a "**Final Compensating Swap (SOFR)**". For the avoidance of doubt, in the case of a Swap Opt-in Position Account which is a House Position Account or Client Clearing Category 1 Position Account, there will be a Final Compensating Swap (SOFR) for each Maturity Bucket and in the case of a Swap Opt-in Position Account which is a Client Clearing Category 2 Position Account, there will be a Final Compensating Swap (SOFR) for each Client sharing such account for each Maturity Bucket.

11.3 On the SOFR Discounting Effective Date, OTC Clear shall:

(a) in respect of each Swap Opt-in Position Account which is a House Position Account or a Client Clearing Category 1 Position Account, register and record/book the relevant Final Compensating Swaps (SOFR) to such account, whereupon the relevant Clearing Member and OTC Clear shall become party to such Final Compensating Swaps (SOFR); and

(b) in respect of each Swap Opt-in Position Account which is a Client Clearing Category 2 Position Account, register and record/book the relevant Final Compensating Swaps (SOFR) to such account and each relevant Client sharing

such account, whereupon the relevant Clearing Member and OTC Clear shall become party to such Final Compensating Swaps (SOFR).

12 Cash Compensation Amounts

12.1 Subject to Paragraph 12.2 below, as soon as reasonably practicable following the conclusion of the SOFR Discounting Auction (or determination by OTC Clear that no further SOFR Discounting Auction shall be conducted) on the Transition Date (SOFR), OTC Clear shall calculate the Cash Compensation Amount in respect of each Position Account as of the Transition Date (SOFR) as follows:

(a) OTC Clear shall calculate the aggregate Fed Funds Discounted Value and the aggregate SOFR Discounted Value in relation to each Affected Derivatives Contracts registered in each Position Account;

(b) if the aggregate SOFR Discounted Value in relation to all Affected Derivatives Contracts registered in a Position Account exceeds the aggregate Fed Funds Discounted Value in relation to all such Affected Derivatives Contracts then an amount equal to the excess shall be payable in USD by the Clearing Member in whose name such Position Account is held to OTC Clear; and

(c) if the aggregate SOFR Discounted Value in relation to all Affected Derivatives Contracts registered in a Position Account is less than the aggregate Fed Funds Discounted Value in relation to all such Affected Derivatives Contracts then an amount equal to the absolute value of the difference shall be payable in USD by OTC Clear to the Clearing Member in whose name such Position Account is held.

12.2 In the case of Affected Derivatives Contracts that are Non Deliverable Rates Derivatives Contracts, FX Derivatives and Standard Cross-currency Rates Derivatives Contracts, for the purposes of determining a Cash Compensation Amount, the value of the constant future cash flows not denominated in USD shall be first converted into USD by applying the relevant rate of exchange as determined by OTC Clear in accordance with its usual procedures and the Cash Compensation Amount in relation to such Contracts shall be payable in USD.

12.3 With respect to the Cash Compensation Amounts determined under this Paragraph 12:

(a) each Cash Compensation Amount shall be registered and recorded/booked in the relevant Position Account by OTC Clear on the SOFR Discounting Effective Date as an amount that is payable by OTC Clear or the Clearing Member, as applicable; and

(b) each Cash Compensation Amount shall be payable by OTC Clear or the Clearing Member, as applicable, on the Interest Rate Change Payment Date (SOFR).

13 Determinations Binding

Subject to Paragraph 16 of this Supplement, all determinations and calculations made by OTC Clear pursuant to this Supplement and the Appendices shall be final, conclusive and binding, and may not be called into question by any person in any circumstances.

14 Clearing Member Obligations

14.1 Each Clearing Member:

(a) agrees that it is obliged to pay to OTC Clear, or entitled to receive from OTC Clear, the amounts determined under this Supplement, including but not limited to the Adjusted CAP Amounts, CAP Amounts and Cash Compensation Amounts;

(b) agrees that it shall be bound by the terms of any Compensating Swaps (SOFR) (including without limitation the Final Compensating Swaps (SOFR)) and all payment obligations registered in its name pursuant to this Supplement;

(c) acknowledges that the Cash Compensation Amounts, the CAP Amounts, the Adjusted CAP Amounts and the spread on the SOFR leg of the Compensating Swaps (SOFR) shall be determined by reference to the Auction Mid-Price determined through the SOFR Discounting Auction (and, in the case of a No Auction Event, the Cash Compensation Amounts and the spread on the SOFR leg of the Compensating Swaps (SOFR) shall be determined by reference to the OTC Clear Mid-Price determined by OTC Clear in accordance with Paragraph 10.1(a) of this Supplement), and agrees to be bound by the results of such SOFR Discounting Auction (or such determination by OTC Clear) and the terms of this Supplement;

(d) that has delivered (or is deemed to have delivered) a Swap Election Opt-out Notice in respect of its House Position Account or has failed to deliver a Swap Election Notice in respect of its House Position Account, in accordance with Paragraph 3.1 of this Supplement, undertakes to notify the relevant Client(s) that the Client Position Account(s) would automatically be deemed to be Cash Only Position Account(s) and to explain the consequences thereof pursuant to the terms of this Supplement;

(e) that has delivered (or is deemed to have delivered) a Swap Election Opt-in Notice in respect of its House Position Account in accordance with Paragraph 3.1 of this Supplement, undertakes to provide its Clients with the option to opt in or opt out of the portfolio of Pre-Assigned SOFR Compensating Swaps pursuant to the Swap Election Notice, and to explain the consequences thereof pursuant to the terms of this Supplement;

(f) agrees to perform all obligations and exercise all rights under this Supplement in accordance with applicable laws; and

(g) agrees to use all reasonable endeavors to fully inform its Clients of the terms of this Supplement and to provide to its Clients any information which it has received from, or is made available by, OTC Clear in connection with this Supplement in OTC Clear's sole and absolute discretion, including the SOFR Discounting Switch Notice as amended and published by OTC Clear on its website from time to time.

14.2 Regardless of whether a Clearing Member delivers (or is deemed to have delivered) a Swap Election Notice, or fails to deliver a Swap Election Notice, in accordance with Paragraph 3.1 of this Supplement, each Clearing Member shall be deemed to represent and warrant to OTC Clear as of the Swap Election Cut-off Date that:

(a) by either delivering (or being deemed to have delivered) a Swap Election Opt-out Notice or failing to deliver a Swap Election Notice in accordance with Paragraph 3.1 of this Supplement, it has agreed that the relevant Position Account shall be a Cash Only Position Account under this Supplement and in respect of each such Position Account, it shall be obliged to pay or entitled to receive the Cash Compensation Amounts and/or Adjusted CAP Amounts, as applicable;

(b) subject to Paragraph 3.2 of this Supplement, by delivering (or being deemed to have delivered) a Swap Election Opt-in Notice in accordance with Paragraph 3.1 of this Supplement, it has agreed that the relevant Position Account shall be a Swap Opt-in Position Account under this Supplement, and the Compensating Swaps (SOFR) (including Final Compensating Swaps (SOFR)) will be recorded to each of such Position Accounts, and it shall be obliged to pay or entitled to receive the applicable Cash Compensation Amount and CAP Amount;

(c) with respect to each Client Clearing Category 1 Position Account:

(i) each relevant Client in respect of which it has delivered a Swap Election Opt-in Election has instructed the Clearing Member to deliver the Swap Election Opt-in Election on its behalf in respect of such Client Position Account, and has expressly agreed that by electing for such Position Account to be a Swap Opt-in Position Account under this Supplement, the Compensating Swaps (SOFR) (including Final Compensating Swaps (SOFR)), and the applicable Cash Compensation Amount and CAP Amount will be recorded to such Position Account; and

(ii) each relevant Client in respect of which it has delivered a Swap Election Opt-out Election has instructed the Clearing Member to deliver the Swap Election Opt-out Election on its behalf in respect of such Client Position Account, and has expressly agreed that by electing for such Position Account to be a Cash Only Position Account, there shall be no Compensating Swaps (SOFR) (including Final Compensating Swaps (SOFR)) recorded to such Position Account, and instead the applicable Cash Compensation Amount and Adjusted CAP Amount(s) will be recorded to such Position Account;

(d) with respect to each Client Clearing Category 2 Position Account:

(i) where the Clearing Member has delivered a Swap Election Opt-in Notice in respect of such Client Position Account, the Clearing Member has also delivered a Swap Election Opt-in Notice in respect of the House Position Account in accordance with Paragraph 3.1 of the Supplement, and each relevant Client sharing the same account has instructed the Clearing Member to deliver the Swap Election Opt-in Notice on its behalf in respect of such Position Account, and has expressly agreed that by electing for such Position Account to be a Swap Opt-in Position Account, Compensating Swaps (SOFR) (including Final Compensating Swaps (SOFR), and the applicable Cash Compensation Amount and CAP Amount will be recorded to such Position Account; and

(ii) where the Clearing Member has delivered a Swap Election Opt-out Notice in respect of such Client Position Account, each relevant Client sharing the same account has instructed the Clearing Member to deliver the Swap Election Opt-out Notice on its behalf in respect of such Position Account, and has expressly agreed that by electing for such Position Account to be a Cash Only Position Account, there shall be no Compensating Swaps (SOFR) (including Final Compensating Swaps (SOFR) recorded to such Position Account, and instead the applicable Cash Compensation Amount and Adjusted CAP Amount(s) will be recorded to such Position Account; and

(e) represents and warrants on the date it delivers a Swap Election Notice that it has the full power and authority to deliver the Swap Election Notice on behalf of the relevant Client.

15 OTC Clear Obligations

15.1 The obligations of OTC Clear to each Clearing Member shall be to perform its obligations as principal to such Clearing Member in accordance with the Clearing Rules, but subject to the restrictions on OTC Clear's obligations and liabilities contained in the Clearing Rules and Paragraph 16 of this Supplement.

15.2 The terms of this Supplement are without prejudice to OTC Clear's rights under the Clearing Procedures to change the rate used for the purposes of (i) calculating PAI, and (ii) Section 5.1.4 of the Clearing Procedures from time to time, and such terms shall not be relevant or binding on OTC Clear in respect of any such changes.

15.3 The performance by OTC Clear of its obligations hereunder shall always be subject to the provisions of the Clearing Rules. A person who is not OTC Clear or a Clearing Member has no right under the Contracts (Rights of Third Parties) Ordinance (Cap. 623) to enforce or to enjoy the benefit of any term of this Supplement.

15.4 OTC Clear shall update its books and records to reflect the Compensating Swaps (SOFR), Cash Compensation Amounts, CAP Amounts and Adjusted CAP Amounts resulting from the operation of this Supplement. The obligation to pay, or the right to receive, any amounts determined under this Supplement may be reflected in the books and records of OTC Clear in such manner as OTC Clear determines is necessary to meet its operational requirements.

16 Limitation of Liability

16.1 Without prejudice to the generality of Clearing Rule 203, each Clearing Member agrees:

(a) that OTC Clear, its Affiliates, a recognized exchange controller which is the controller of OTC Clear, or any of their respective Representatives shall not be liable to any Clearing Member or to any other Person in respect of anything done or omitted to be done by it in good faith in connection with this Supplement, including but not limited to any civil liability, whether arising in contract, tort, defamation, equity or otherwise for any Damage suffered or incurred directly or indirectly by a Clearing Member or any other Person (including any Client) as a result of or in connection with OTC Clear**;**

(b) to waive any claim against OTC Clear, its Affiliates, a recognized exchange controller which is the controller of OTC Clear, or any of their respective Representatives arising or that may arise in connection with:

(i) any determination, calculation, notification, registration, publication, exercise of discretion, or decision, taken or not taken by OTC Clear, its Affiliates, a recognized exchange controller which is the controller of OTC Clear, or any of their respective Representatives in connection with this Supplement; or

(ii) the determination or publication of any price, curve, data, quote or other information arising from, or in connection with, this Supplement,

except in the case of fraud or wilful misconduct on the part of OTC Clear, its Affiliates, a recognized exchange controller which is the controller of OTC Clear or any of their respective Representatives.

16.2 Without prejudice to the generality of Clearing Rule 203 and Paragraph 16.1 of this Supplement, each Clearing Member further agrees:

(a) that OTC Clear, its Affiliates, a recognized exchange controller which is the controller of OTC Clear, or any of their respective Representatives shall not be liable to any Clearing Member or any other Person (including any Client) in tort (including, without limitation, negligence), trust, as a fiduciary or under any other non-contractual cause of action, or under any implied contractual term, and whether in respect of any damages, loss or gain, cost or expense (whether direct, indirect, general, special, consequential, punitive or otherwise); and

(b) to waive any non-contractual claim or claim under any implied contractual term against OTC Clear, its Affiliates, a recognized exchange controller which is the controller of OTC Clear, or any of their respective Representatives, arising or that may arise in connection with OTC Clear's performance of its contractual duties or obligations under this Supplement, except in the case of fraud or wilful misconduct on the part of OTC Clear, its Affiliates, a recognized exchange controller which is the controller of OTC Clear, or any of their respective Representatives.

16.3 Each Clearing Member agrees that OTC Clear, its Affiliates, a recognized exchange controller which is the controller of OTC Clear, or any of their respective Representatives do not:

(a) owe any duty of care to any person in connection with the performance of OTC Clear's duties or obligations or exercise of its rights under this Supplement, save for the express contractual duties set forth in this Supplement;

(b) have any obligation to research, investigate, supplement, or verify the veracity of, any price, data, quote or other information received from a Clearing Member in connection with this Supplement;

(c) act as a fiduciary for, or as an advisor to, any Clearing Member or Client in connection with this Supplement or any Contract registered as a result of the matters specified in this Supplement;

(d) have any requirement to consult with, or individually notify (other than as expressly set out in this Supplement), a Clearing Member in connection with making its determinations, exercising its discretions or performing its duties or obligations or exercising its rights, each under this Supplement; or

(e) make any representation, express or implied, in relation to this Supplement, and each Clearing Member acknowledges that it has not relied on any representations made by OTC Clear, its Affiliates, a recognized exchange controller which is the controller of OTC Clear, or any of their respective Representatives in relation to this Supplement.

16.4 For the avoidance of doubt, OTC Clear, its Affiliates, a recognized exchange controller which is the controller of OTC Clear, or any of their respective Representatives shall not be liable for any obligations of, or to any person who is not, a Clearing Member.

17 Definitions

For the purposes of this Supplement:

"**Adjusted CAP Amount**" means, with respect to the Net Auction Swap of each Maturity Bucket and in relation to each Cash Only Position Account, an amount in USD determined by OTC Clear in accordance with Appendix 2 to this Supplement.

"**Affected Derivatives Contracts**" means Contracts relating to the types of Standard Rates Derivatives, Non-deliverable Rates Derivatives, FX Derivatives and Standard Cross-currency Rates Derivatives which are specified to be in-scope for SOFR Discounting Switch in the SOFR Discounting Switch Notice.

"**Appendices**" means each appendix and such other document as may be identified by OTC Clear to the Clearing Member which supplements and forms part of this Supplement.

"**Assigned Net Auction Swap**" means the Compensating Swap (SOFR) in respect of the relevant Swap Opt-in Position Account, as determined by OTC Clear in accordance with Appendix 3 of this Supplement.

"**Assigned Net Auction Swap (Client)**" means the Compensating Swap (SOFR) in respect of each Client sharing the same Client Clearing Category 2 Position Account which is a Swap Opt-in Position Account, as determined by OTC Clear in accordance with Appendix 3 of this Supplement.

"**Auction Mid-Price**" has the meaning given to it in Paragraph 8.1(e) of this Supplement.

"**Auction Participants**" means the Clearing Members in respect of all the Swap Opt-in Position Accounts.

"**Auction Winner**" means, with respect to the Net Auction Swap of each Maturity Bucket, the Auction Participant that has submitted the winning price for such Net Auction Swap and in respect its Winning Account, as determined by OTC Clear in accordance with Appendix 1 to this Supplement.

"**Average Ask**" has the meaning given to it in Paragraph 8.1(d) of this Supplement.

"**Average Bid**" has the meaning given to it in Paragraph 8.1(d) of this Supplement.

"**Business Day**" has the meaning given to it in the Clearing Rules, save that in respect of all payments in USD, it shall refer to a Business Day in New York.

"**CAP Amount**" means, with respect to the Net Auction Swap of each Maturity Bucket and an Auction Winner, an amount in USD determined by OTC Clear in accordance with Appendix 2 to this Supplement.

"**Cash Compensation Amount**" means each amount in USD determined in accordance with Paragraph 12 of this Supplement.

"**Cash Only Position Account**" means each Position Account in respect of which: (i) a duly completed Swap Election Opt-out Notice has been delivered (or has been deemed to be delivered) in accordance with Paragraph 3.1 of this Supplement; or (ii) a duly completed Swap Election Notice was not delivered by the Swap Election Cut-Off Date.

"**Compensating Swaps (SOFR)**" means the Contracts determined, identified and notified by OTC Clear in accordance with this Supplement and/or entered into and registered between OTC Clear and a Clearing Member pursuant to Chapter 10A of the Clearing Rules, as applicable, including the Pre-Assigned SOFR Compensating Swaps, Net Auction Swaps, the Assigned Net Auction Swaps, the Assigned Net Auction Swaps (Client) and the Final Compensating Swaps (SOFR).

"**Fed Funds Discounted Value**" means, in relation to an Affected Derivatives Contract, the net present value, as of the end of day on the Transition Date (SOFR), of all future cash flows under that Affected Derivatives Contract using the Fed Funds Rate as the discounting rate for the purposes of such calculation.

"**Fed Funds Rate**" is the target interest rate set by the Federal Market Open Committee (FOMC) at which commercial banks borrow and lend their excess reserves to each other overnight.

"**Final Compensating Swap (SOFR)**" has the meaning given to it in Paragraph 11.2 of this Supplement.

"**Highest Bid**" has the meaning given to it in Paragraph 8.18.1 of this Supplement.

"**Interest Rate Change Payment Date (SOFR)**" means the date falling 2 Business Days after the Transition Date (SOFR), being the day on which the Cash Compensation Amount, CAP Amount and/or Adjusted CAP Amount (as applicable) shall be payable by OTC Clear to the Clearing Member, or by the Clearing Member to OTC Clear in accordance with this Supplement.

"**Lowest Ask**" has the meaning given to it in Paragraph 8.1(b) of this Supplement.

"**Maturity Bucket**" means, in relation to the Compensating Swaps (SOFR), the Net Auction Swaps the Assigned Net Auction Swaps and the Assigned Net Auction Swaps (Clients), a group of contracts all of which have the same maturity, being either two years, five years or ten years from the date of registration.

"**Mid-Price**" means, in relation to a Maturity Bucket, the Auction Mid-Price or the OTC Clear Mid-Price, as applicable.

"**Net Auction Swap**" has the meaning given to it in Paragraph 6.1(b) of this Supplement.

"**No Auction Event**" has the meaning given to it in Paragraph 10.1 of this Supplement.

"**OTC Clear Mid-Price**" has the meaning given to it in Paragraph 10.1(a) of this Supplement.

"**Pre-Assigned SOFR Compensating Swap**" has the meaning given to it in Paragraph 4.4 of this Supplement.

"**SOFR**" has the meaning given to it in Paragraph 1.1 of this Supplement.

"**SOFR Discounted Value**" means, in relation to an Affected Derivatives Contract, the net present value, as of the end of day on the Transition Date (SOFR), of all future cash flows under that Affected Derivatives Contract using the SOFR Discounting Curve for the purposes of such calculation (with the future cash flows calculated in the same manner as for the determination of the Fed Funds Discounted Value).

"**SOFR Discounting Auction**" means the auction as described in Paragraph 5.1 of this Supplement.

"**SOFR Discounting Curve**" means the SOFR pricing curve constructed by OTC Clear using the Auction Mid-Price in accordance with Paragraph 8 of this Supplement or using the OTC Clear Mid-Price in accordance with Paragraph 10 of this Supplement.

"**SOFR Discounting Effective Date**" means the Discounting Switch Effective Date as identified in the SOFR Discounting Switch Notice which is an OTC Clear Business Day and the date on which the SOFR Discounting Switch shall take effect.

"**SOFR Discounting Switch**" has the meaning given to it in Paragraph 1.1 of this Supplement.

"**SOFR Discounting Switch Notice**" means a Discounting Switch Notice delivered by OTC Clear to its Clearing Members setting out the details of the SOFR Discounting Switch.

"**SOFR Discounting Switch Supplement**" has the meaning given to it in Paragraph 1.1 of this Supplement.

"**Subsequent Auction**" has the meaning given to it in Paragraph 8.3 of this Supplement.

"**Successful Auction**" has the meaning given to it in Paragraph 9.1 of this Supplement.

"**Swap Election Cut-Off Date**" refers to 23:59 Hong Kong time on the date that falls three calendar weeks before the Transition Date (SOFR) (or such other date as may be notified by OTC Clear).

"**Swap Election Notice**" means a written notice substantially in the form set out in Appendix 5 to this Supplement, or in such other form as notified to the Clearing Member from time to time, and delivered by a Clearing Member to OTC Clear in respect of each of its Position Accounts in accordance with this Supplement.

"**Swap Election Opt-in Notice**", in respect of a Position Account, means a Swap Election Notice where the Clearing Member has opted in for the portfolio of Pre-Assigned SOFR Compensating Swaps to be registered and/or recorded/booked, as applicable, in respect of such Position Account in accordance with this Supplement on the SOFR Discounting Effective Date.

"**Swap Election Opt-out Notice**", in respect of a Position Account, means a Swap Election Notice where the Clearing Member has opted out for the portfolio of Pre-Assigned SOFR Compensating Swaps to be registered and/or recorded/booked, as applicable, in respect of such Position Account in accordance with this Supplement on the SOFR Discounting Effecting Date.

"**Swap Opt-in Position Account**" means each Position Account in respect of which a Swap Election Opt-in Notice has, or has deemed to have, been duly completed and delivered pursuant to Paragraph 3.1 of this Supplement by the Swap Election Cut-off Time.

"**Swap Portfolio Calculation Date**" is the date specified as such by OTC Clear in the SOFR Discounting Switch Notice, being a day which is two OTC Clear Business Day before the Transition Date (SOFR) and the date on which OTC Clear shall pre-determine the portfolios of Compensating Swaps (SOFR) in relation to all Affected Derivatives Contracts registered with OTC Clear as of the Transition Date (SOFR).

"**Transition Date (SOFR)**" means the Discounting Switch Transition Date specified as such by OTC Clear in the SOFR Discounting Switch Notice (or such other later date as may be notified to the Clearing Member by OTC Clear) being a date which is an OTC Clear Business

Day and the date on which the SOFR Discounting Auction shall be held and certain amounts payable hereunder are calculated.

"**Winning Account**" means, in relation to an Auction Winner, the relevant House Position Account, Client Clearing Category 1 Position Account or Client Clearing Category 2 Position Account in respect of which the winning price was submitted.

Appendix 1
Auction Winner

The Auction Winner in respect of the Net Auction Swap for each Maturity Bucket shall be determined by OTC Clear on the following basis:

1 Subject to paragraph 3 below, for a Net Auction Swap in respect of which OTC Clear will receive SOFR plus or minus a spread which shall be equal to the relevant Mid-Price, the Auction Winner will be the Auction Participant that has submitted the highest bid and in respect of the Winning Account.

2 Subject to paragraph 3 below, for a Net Auction Swap in respect of which OTC Clear will pay SOFR plus or minus a spread which shall be equal to the relevant Mid-Price, the Auction Winner will be the Auction Participant that has submitted the lowest ask and in respect of its Winning Account.

3 In the event there is more than one submission of the highest bid or highest ask as described above, the Auction Winner will be the Auction Participant that has submitted the highest bid or lowest ask (as applicable) in respect of its Winning Account, which is earliest in time.

Appendix 2
CAP Amount and Adjusted CAP Amount

1 CAP Amount

1.1 The CAP Amount with respect to the Net Auction Swap for each Maturity Bucket and an Auction Winner where OTC Clear will receive SOFR plus or minus a spread (which shall be equal to the relevant Mid-Price) shall be a USD amount determined as follows:

CAP Amount = (Highest Bid – Auction Mid-Price) x |SOFR Par Delta|

Where:

"**Highest Bid**" has the meaning given to it in Paragraph 8.18.1 of this Supplement;

"**Auction Mid-Price**" has the meaning given to it in Paragraph 8.1(e) of this Supplement; and

"**SOFR Par Delta**" means the SOFR delta risk sensitivity of such Net Auction Swap, as determined by OTC Clear in its sole and absolute discretion.

1.2 The CAP Amount with respect to the Net Auction Swap for each Maturity Bucket and an Auction Winner where OTC Clear will pay SOFR plus or minus a spread (which shall be equal to the relevant Mid-Price) shall be a USD amount determined as follows:

CAP Amount = (Auction Mid-Price – Lowest Ask) x |SOFR Par Delta|

Where:

"**Lowest Ask**" has the meaning given to it in Paragraph 8.1(b) of this Supplement;

"**Auction Mid-Price**" has the meaning given to it in Paragraph 8.1(e) of this Supplement; and

"**SOFR Par Delta**" means the SOFR delta risk sensitivity of such Net Auction Swap, as determined by OTC Clear in its sole and absolute discretion.

1.3 In the event the CAP Amount as determined in accordance with this Appendix 2 is a positive number, the CAP Amount shall be payable by the Auction Winner in respect of its Winning Account to OTC Clear, and in the event the CAP Amount is a negative number, the absolute amount of the CAP Amount shall be payable by OTC Clear to the Auction Winner in respect of its Winning Account.

2 Adjusted CAP Amount

2.1 With respect to the Net Auction Swap of each Maturity Bucket, the Adjusted CAP Amount for each Cash Only Position Account shall be a USD amount equal to the following:

$$Adjusted\ CAP\ Amount_i = CAP\ Amount\ x\ \frac{|\ OptOut\ Position\ Account_i\ Delta\ |}{\varepsilon\ |\ OptOut\ Position\ Account\ Delta\ |}$$

Where:

"***i***" refers to the relevant Cash Only Position Account;

"**OptOut Position Account*i* Delta**" means, in relation to the relevant Cash Only Position Account, ***i***, the SOFR delta risk sensitivity of its portfolio of Pre-Assigned SOFR Compensating Swaps.

2.2 In the event the Adjusted CAP Amount is a positive number, the Adjusted CAP Amount shall be payable by OTC Clear to the relevant Clearing Member in respect of the relevant Cash Only Position Account, and in the event the Adjusted CAP Amount is a negative number, the absolute amount of the relevant Adjusted CAP Amount shall be payable by the relevant Clearing Member in respect of the relevant Cash Only Position Account to OTC Clear.

Appendix 3
Assigned Net Auction Swap and Assigned Net Auction Swap (Client)

1 Assigned Net Auction Swap

1.1 With respect to each Swap Opt-in Position Account, the Assigned Net Auction Swap shall be determined as follows:

$$Assigned\ Net\ Auction\ Swap_i = Net\ Auction\ Swap \times \frac{|OptIn\ Position\ Account_i\ Delta|}{\Sigma|OptIn\ Position\ Account\ Delta|}$$

Where:

"***i***" refers to the relevant Swap Opt-in Position Account; and

"**OptIn Position Account*i* Delta**" means, in relation to the relevant Swap Opt-in Position Account, ***i,*** the SOFR delta risk sensitivity of its portfolio of Pre-Assigned SOFR Compensating Swap.

2 Assigned Net Auction Swap (Client)

2.1 With respect to each Client sharing a Client Clearing Category 2 Position Account which is a Swap Opt-in Position Account, the Assigned Net Auction Swap (Client) shall be determined as follows:

$$Assigned\ Net\ Auction\ Swap\ (Client)_c = Assigned\ Net\ Auction\ Swap_{CAT2} \times \frac{|OptIn\ Cient_c\ Delta|}{\Sigma|OptIn\ Client\ Delta|}$$

Where:

"**c**" refers to the relevant Client sharing such Client Clearing Category 2 Position Account;

"**Assigned Net Auction Swap$_{CAT2}$**" refers to the Assigned Net Auction Swap of the relevant Client Clearing Category 2 Position Account; and

"**OptIn CM*c* Delta**" means, in relation to the relevant Client, ***c,*** the SOFR delta risk sensitivity of the portfolio of Pre-Assigned SOFR Compensating Swap with respect to such Client sharing the relevant Client Clearing Category 2 Position Account.

Appendix 4
Compensating Swap (SOFR) Specifications

	USD Basis Swap
	SOFR vs. FedFund (Float vs. Float)
Tenor	2-year, 5-year, 10-year and 15-year
Currency	USD
Floating Leg Option	• USD-SOFR-COMPOUND • USD-Federal Funds-H.15-OIS-COMPOUND
Floating Leg Day Count Fraction	Actual/360
Business Day Convention	Modified Following
Payment Lag	2 Days
Payment Frequency	Annual

Appendix 5
Swap Election Notice

Date: [●]

To: OTC Clearing Hong Kong Limited ("**OTC Clear**")

[Email address]

This Notice is provided by [*Name of Clearing Member*] in respect of its following accounts held with OTC Clear:

[*Account Numbers to be provided*] (the "**Position Account**")

We, the undersigned, have read the SOFR Discounting Switch Supplement (the "**Supplement**") and the SOFR Discounting Switch Notice dated [ ], and we acknowledge and understand fully the contents of the Supplement and the SOFR Discounting Switch Notice. Capitalised terms used but not defined in this Notice shall have the meanings given to them in the Supplement.

We hereby agree to opt in / opt out* of the Pre-Assigned SOFR Compensating Swaps to be identified and registered in respect of the Position Account on the Transition Date (SOFR) in accordance with the Supplement.

[To the extent the Position Account is a Client Clearing Category 1 Position Account, we hereby represent and warrant that the Client with respect to the relevant Position Account has opted in / opted out* of the relevant Pre-Assigned SOFR Compensating Swap to be identified and booked/recorded to such Client pursuant to the Supplement.]*

[To the extent the Position Account is a Client Clearing Category 2 Position Account, we hereby represent and warrant that all the Clients with respect to the relevant Position Account have opted in / opted out* of the relevant Pre-Assigned SOFR Compensating Swaps to be identified and booked/recorded to such Clients pursuant to the Supplement.]*

* Please delete as applicable

_____

[Name of Clearing Member]

Date:

Media Releases

Published Date: 02 May 2018

MAS Requires OTC Derivatives to be Centrally Cleared to Mitigate Systemic Risk

Singapore, 2 May 2018... The Monetary Authority of Singapore (MAS) will introduce regulations to require over-the-counter (OTC) derivatives to be cleared on central counterparties (CCPs)[1], with effect from 1 October 2018. Central clearing will make the trading of OTC derivatives in Singapore safer as it mitigates counterparty credit risks inherent in these trades.

2 The mandatory clearing requirement will apply to Singapore-Dollar and US-Dollar fixed-floating interest rate swaps as these are the most widely traded interest rate derivatives in Singapore. Banks whose gross notional outstanding OTC derivatives exceed $20 billion will be required to clear their trades through CCPs that are regulated by MAS. These banks account for over 90% of OTC derivatives contracts (in terms of outstanding notional amount) in Singapore.

3 Mr Lee Boon Ngiap, Assistant Managing Director, Capital Markets, MAS, said, “The central clearing requirements complements the existing margin requirements for non-centrally cleared OTC derivatives. Both requirements work together to reduce systemic risk in Singapore’s OTC derivatives markets, in line with the G20’s and Financial Stability Board’s set of reforms on OTC derivatives. ”

4 The central clearing requirements will be effected through the Securities and Futures (Clearing of Derivatives Contracts) Regulations. MAS previously consulted on the Regulations and the response to the consultation can be found here (821.3 KB).

*****

Additional Information

In 2009, the G20 and Financial Stability Board (FSB) agreed to implement a set of reforms to improve transparency, mitigate systemic risk, and protect against market abuse in the OTC derivatives markets. MAS has since progressively implemented reforms in the areas of trade reporting, risk mitigation and margining of non-centrally cleared OTC derivatives, and mandatory clearing of OTC derivatives.

[1] *A central counterparty is an entity that imposes itself between counterparties to contracts traded in one or more financial markets, becoming the buyer to every seller and the seller to every buyer and thereby ensuring the performance of open contracts.*

© 2022, Government of Singapore.

Securities and Futures Act 2001

Table of Contents

SECURITIES AND FUTURES ACT 2001

2020 REVISED EDITION

This revised edition incorporates all amendments up to and including 1 December 2021 and comes into operation on 31 December 2021

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

[34/2012; 4/2017]

[1 January 2002: Parts I, VIII, IX, X and XV (except sections 314 and 342(1) and (3)), First Schedule, Second Schedule and items (4)(*o*) and (*q*) and (7)(*c*) of the Fourth Schedule ;

1 July 2002: Parts XIII and XIV, and items (1)(*a*), (3)(*a*), (4)(*a*)(i), (iii) to (ix), (*b*), (*c*), (*f*), (*g*), (*h*), (*i*), (*l*), (*m*), (*t*) and (*u*), (7)(*b*), (12) and (13) of the Fourth Schedule ;

1 October 2002: Parts II to VII, XI and XII, sections 314 and 342(1) and (3), Third Schedule and items (1)(*b*), (2), (3)(*b*), (4)(*a*)(ii), (*d*), (*e*), (*j*), (*k*), (*n*), (*p*), (*r*), (*s*) and (*v*), (5), (6), (7)(*a*) and (*d*) and (8) to (11) of the Fourth Schedule]

PART 1

PRELIMINARY

Short title

1. This Act is the Securities and Futures Act 2001.

Interpretation

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

"administering a designated benchmark" means —

(*a*) controlling the development of the definition of a designated benchmark for the purpose of determining a designated benchmark;

(*b*) controlling the development of the methodology of determining a designated benchmark;

(*c*) controlling the review of the definition of a designated benchmark for the purpose of determining a designated benchmark;

(*d*) controlling the review of the methodology of determining a designated benchmark;

(*e*) managing any arrangements, processes or mechanisms for the purpose of determining a designated benchmark;

(*f*) collecting, analysing or processing any information or expression of opinion for the purpose of determining a designated benchmark;

(*g*) applying a formula or other methods of calculation to information or expressions of opinion in order to determine a designated benchmark; or

(*h*) monitoring and conducting surveillance of any information or expressions of opinion provided for the purpose of determining a designated benchmark,

but does not include providing information in relation to a designated benchmark or any act that is necessary or incidental to providing such information;

"administering a financial benchmark" means —

(*a*) controlling the development of the definition of a financial benchmark for the purpose of determining a financial benchmark;

(*b*) controlling the development of the methodology of determining a financial benchmark;

(*c*) controlling the review of the definition of a financial benchmark for the purpose of determining a financial benchmark;

(*d*) controlling the review of the methodology of determining a financial benchmark;

(*e*) managing any arrangements, processes or mechanisms for the purpose of determining a financial benchmark;

(*f*) collecting, analysing or processing any information or expression of opinion for the purpose of determining a financial benchmark;

(*g*) applying a formula or other methods of calculation to information or expressions of opinion in order to determine a financial benchmark; or

(*h*) monitoring and conducting surveillance of any information or expressions of opinion provided for the purpose of determining a financial benchmark,

but does not include providing information in relation to a financial benchmark or any act that is necessary or incidental to providing such information;

"advising on corporate finance" has the meaning given in the Second Schedule;

"advocate and solicitor" means an advocate and solicitor of the Supreme Court or a foreign lawyer as defined in section 2(1) of the Legal Profession Act 1966;

"appointed representative", in respect of a type of regulated activity, has the meaning given by section 99D, and "appointed representative" means an appointed representative in respect of any type of regulated activity;

"approved clearing house" means a corporation that is approved by the Authority under section 51(1)(*a*) as an approved clearing house;

"approved exchange" means a corporation that is approved by the Authority under section 9(1)(*a*) as an approved exchange;

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

"auditor" means a public accountant who is registered or deemed to be registered under the Accountants Act 2004 and, in Division 1 of Part 13, when used in relation to an entity not being a company, includes —

(*a*) a person who is duly registered, licensed, approved or otherwise authorised to practise as an auditor (such practice to include the issue

of any opinion, report or other document on the audit of any financial statement) —

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

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

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

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

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

"authorised benchmark administrator" means a corporation that is authorised by the Authority under section 123F(1) as an authorised benchmark administrator;

"authorised benchmark submitter" means a corporation that is authorised by the Authority under section 123ZE(1) as an authorised benchmark submitter;

"Authority" means the Monetary Authority of Singapore established under the Monetary Authority of Singapore Act 1970;

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

"business rules", in relation to an approved holding company, an approved exchange, a recognised market operator, a licensed trade repository, a licensed foreign trade repository, an approved clearing house or a recognised clearing house, means the rules, regulations, by-laws or such similar body of statements, by whatever name called, that govern the activities and conduct of —

(*a*) the approved holding company, approved exchange, recognised market operator, approved clearing house or recognised clearing house and its members, or the licensed trade repository or licensed foreign trade repository and its participants; and

(*b*) other persons in relation to it,

whether or not those rules, regulations, by-laws or similar body of statements are made by the approved holding company, approved exchange, recognised market operator, licensed trade repository, licensed foreign trade repository, approved clearing house or recognised clearing house or are contained in its constituent documents; but does not include the listing rules of an approved exchange or a recognised market operator (which is an overseas exchange);

"business trust" has the meaning given by section 2 of the Business Trusts Act 2004;

"capital markets products" means any securities, units in a collective investment scheme, derivatives contracts, spot foreign exchange contracts for the purposes of leveraged foreign exchange trading, and such other products as the Authority may prescribe as capital markets products;

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

"chairperson" means a chairperson of a board of directors;

"chief executive officer", in relation to an approved exchange, a recognised market operator, a licensed trade repository, a licensed foreign trade repository, an approved clearing house, a recognised clearing house, an approved holding company, the holder of a capital markets services licence, an authorised benchmark administrator, an authorised benchmark submitter, a designated benchmark submitter or any other corporation (called in this definition a relevant person) means any person, by whatever name called, who is —

(*a*) in the direct employment of, or acting for or by arrangement with, the relevant person; and

(*b*) principally responsible for the management and conduct of the business of the relevant person in Singapore;

"clearing facility" has the meaning given in Part 2 of the First Schedule;

"clearing or settlement" has the meaning given in Part 2 of the First Schedule;

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

(*a*) an arrangement mentioned in paragraph (*a*) of that definition —

(i) which is a trust;

(ii) which invests primarily in real estate and real estate-related assets specified by the Authority in the Code on Collective Investment Schemes; and

(iii) all or any units of which are listed for quotation on an approved exchange;

(*aa*) an arrangement mentioned in paragraph (*a*) of that definition which —

(i) has all of the following characteristics:

(A) the arrangement is constituted in the form of an entity, a sub-fund or as a trust on or after 1 July 2013;

(B) under the investment policy of the arrangement, investments are made for the purpose of giving participants in the arrangement the benefit of the results of the investments of the arrangement;

(C) the arrangement does not carry on any business other than investment business and does not carry on any activity other than any activity that is solely incidental to the investment business; and

(ii) has at least one of the following characteristics:

(A) the investment policy of the arrangement is clearly set out in a document that is provided to each participant in the arrangement before, or at the time, the participant first invests in the arrangement;

(B) the entity, sub-fund or trust of which the arrangement is constituted is contractually bound to every participant in the arrangement to comply with the investment policy of the arrangement, as may be amended from time to time;

(C) the investment policy of the arrangement sets out the types of property which the arrangement is authorised to invest in, and the investment

guidelines or restrictions that apply to the arrangement; or

(*b*) an arrangement referred to in paragraph (*a*) of that definition which is, or which belongs to a class or description of arrangements which is, specified by the Authority, by notification in the *Gazette*, to be an arrangement that is not a closed-end fund, or a class or description of arrangements that are not closed-end funds, as the case may be;

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

"collective investment scheme" means —

(*a*) an arrangement in respect of any property —

(i) under which the participants do not have day-to-day control over the management of the property, whether or not the participants have the right to be consulted or to give directions in respect of such management;

(ii) under which either or both of the following characteristics are present:

(A) the property is managed as a whole by or on behalf of a manager;

(B) the contributions of the participants, and the profits or income out of which payments are to be made to the participants, are pooled; and

(iii) under which either or both of the following characteristics are present:

(A) the effect of the arrangement is to enable the participants (whether by acquiring any right, interest, title or benefit in the property or any part of the property or otherwise) —

(AA) to participate in or receive profits, income, or other payments or returns arising from the acquisition, holding, management,

disposal, exercise, redemption or expiry of, any right, interest, title or benefit in the property or any part of the property; or

(AB) to receive sums paid out of such profits, income, or other payments or returns;

(B) the purpose, purported purpose or purported effect of the arrangement is to enable the participants (whether by acquiring any right, interest, title or benefit in the property or any part of the property or otherwise) —

(BA) to participate in or receive profits, income, or other payments or returns arising from the acquisition, holding, management, disposal, exercise, redemption or expiry of, any right, interest, title or benefit in the property or any part of the property; or

(BB) to receive sums paid out of such profits, income, or other payments or returns,

whether or not —

(BC) the arrangement provides for the participants to receive any benefit other than those set out in sub-paragraph (BA) or (BB) in the event that the purpose, purported purpose or purported effect is not realised; or

(BD) the purpose, purported purpose or purported effect is realised; or

(*b*) an arrangement which is an arrangement, or is of a class or description of arrangements, specified by the Authority as a collective investment scheme by notice in the *Gazette*,

but does not include —

(*c*) an arrangement operated by a person otherwise than by way of business;

(*d*) an arrangement under which each of the participants carries on a business other than investment business and enters into the arrangement solely incidental to that other business;

(*e*) an arrangement under which each of the participants is a related corporation of the manager;

(*f*) an arrangement made by or on behalf of an entity solely for the benefit of persons, each of whom is —

(i) a bona fide director or equivalent person, a former director or equivalent person, a consultant, an adviser, an employee or a former employee of that entity or, where that entity is a corporation, a related corporation of that entity; or

(ii) a spouse, widow or widower, or a child, adopted child or stepchild below 18 years of age, of such director or equivalent person, former director or equivalent person, employee or former employee;

(*g*) an arrangement made by or on behalf of 2 or more entities solely for the benefit of persons, each of whom is —

(i) a bona fide director or equivalent person, a former director or equivalent person, a consultant, an adviser, an employee or a former employee of any of those entities or, where any of those entities is a corporation, a related corporation of the entity which is a corporation; or

(ii) a spouse, widow or widower, or a child, adopted child or stepchild below 18 years of age, of such director or equivalent person, former director or equivalent person, employee or former employee;

(*h*) a franchise;

(*i*) an arrangement under which money received by an advocate and solicitor from his or her client, whether as a stakeholder or otherwise, acting in his or her professional capacity in the ordinary course of his or her practice, or under which money is received by a statutory body as a stakeholder in the carrying out of its statutory functions;

(*j*) an arrangement made by any co-operative society registered under the Co-operative Societies Act 1979 in accordance with the objects

thereof solely for the benefit of its members;

(*k*) an arrangement made for the purposes of any chit fund permitted to operate under the Chit Funds Act 1971;

(*l*) an arrangement arising out of a life policy within the meaning of the Insurance Act 1966;

(*m*) a closed-end fund constituted either as an entity, a sub-fund or a trust;

(*n*) an arrangement under which the whole amount of each participant's contribution is a deposit as defined in section 4B of the Banking Act 1970;

(*o*) an arrangement of which —

(i) the predominant purpose is to enable the participants to share in the use or enjoyment of the property or to make its use or enjoyment available gratuitously to others; and

(ii) the property does not consist of any of the following:

(A) any currency of any country or territory;

(B) any capital markets products;

(C) any policy as defined in the First Schedule to the Insurance Act 1966;

(D) any deposit as defined in section 4B of the Banking Act 1970;

(E) any credit facilities as defined in section 2(1) of the Banking Act 1970;

(*p*) an arrangement which is an arrangement, or is of a class or description of arrangements, specified by the Authority as not constituting a collective investment scheme by notice in the *Gazette*;

"commodity" means —

(*a*) any produce, item, goods or article;

(*b*) any index, right or interest in any produce, item, goods or article; or

(*c*) any index, right, interest, tangible property or intangible property of any nature that is, or belongs to a class of indices, rights, interests, tangible properties or intangible properties that is, prescribed for the

purposes of this definition,

but does not include —

(*d*) any produce, item, goods or article that is, or that belongs to a class of produce, items, goods or articles that is, prescribed not to be a commodity for the purposes of this definition; or

(*e*) any index, right or interest in any produce, item, goods or article that is, or that belongs to a class of indices, rights or interests that is, prescribed not to be a commodity for the purposes of this definition;

"company" has the meaning given by section 4(1) of the Companies Act 1967;

"connected person", in relation to —

(*a*) an individual, means —

(i) the individual's spouse, son, adopted son, stepson, daughter, adopted daughter, stepdaughter, father, stepfather, mother, stepmother, brother, stepbrother, sister or stepsister; and

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

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

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

"corporation" has the meaning given by section 4(1) of the Companies Act 1967;

"custodian", in relation to a collective investment scheme constituted as a VCC or sub-fund, means an entity to which the assets of the scheme are entrusted for safekeeping;

"customer" means —

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

(i) for the purposes of Parts 4, 6, 7 and 15, a person on whose behalf the holder carries on or will carry on any regulated activity; or

(ii) for the purposes of Part 5 —

(A) a person on whose behalf the holder carries on or will carry on any regulated activity; or

(B) any other person with whom the holder, as principal, enters or will enter into transactions for the sale or purchase of capital markets products,

but does not include such person or class of persons as may be prescribed for the purposes of this sub-paragraph; or

(*b*) for the purposes of Part 3 and the definition of "user", a person on whose behalf a member of an approved exchange, an approved clearing house, a recognised clearing house or a recognised market operator (as the case may be) carries on any activity regulated under this Act, but does not include —

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

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

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

"dealing in capital markets products" has the meaning given in the Second Schedule;

"debenture" includes —

(*a*) any debenture stock, bond, note and any other debt securities issued by or proposed to be issued by a corporation or any other entity, whether constituting a charge or not, on the assets of the issuer;

(*b*) any debenture stock, bond, note and any other debt securities issued

by or proposed to be issued by a trustee-manager of a business trust in its capacity as trustee-manager of the business trust, or a trustee of a real estate investment trust in its capacity as trustee of the real estate investment trust, whether constituting a charge or not, on the assets of the business trust or real estate investment trust; or

(*c*) such other product or class of products as the Authority may prescribe,

but does not include —

(*d*) a cheque, letter of credit, order for the payment of money or bill of exchange; or

(*e*) for the purposes of the application of this definition to a provision of this Act in respect of which any regulations made under that provision provide that the word "debenture" does not include a prescribed document or a document included in a prescribed class of documents, that document or a document included in that class of documents, as the case may be;

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

"derivative", in relation to a unit in a business trust, has the meaning given by section 2 of the Business Trusts Act 2004;

"derivatives contract" means —

(*a*) any contract or arrangement under which —

(i) a party to the contract or arrangement is required to, or may be required to, discharge all or any of its obligations under the contract or arrangement at some future time; and

(ii) the value of the contract or arrangement is determined (whether directly or indirectly, or whether wholly or in part) by reference to, is derived from, or varies by reference to, either of the following:

(A) the value or amount of one or more underlying things;

(B) fluctuations in the values or amounts of one or more underlying things; or

(*b*) any contract or arrangement that is, or that belongs to a class of

contracts or arrangements that is, prescribed to be a derivatives contract,

but does not include —

(*c*) securities;

(*d*) any unit in a collective investment scheme;

(*e*) a spot contract;

(*f*) a deposit as defined in section 4B of the Banking Act 1970, where the deposit is accepted by a bank or merchant bank licensed under that Act;

(*g*) a deposit as defined in section 2 of the Finance Companies Act 1967, where the deposit is accepted by a finance company as defined in that section of that Act;

(*h*) any contract of insurance in relation to any class of insurance business specified in section 3(1) of the Insurance Act 1966; or

(*i*) any contract or arrangement that is, or that belongs to a class of contracts or arrangements that is, prescribed not to be a derivatives contract;

"designated benchmark" means a financial benchmark that is designated by the Authority under section 123B to be a designated benchmark;

"designated benchmark submitter" means a corporation that is designated by the Authority under section 123ZI(1) to be a designated benchmark submitter;

"director" has the meaning given by section 4(1) of the Companies Act 1967;

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

"exchange-traded derivatives contract" means a derivatives contract —

(*a*) that is executed on an organised market and is or will be cleared or settled by a clearing facility under an arrangement, process, mechanism or service by which the parties to the derivatives contract substitute or will substitute, through novation or otherwise, the credit of the clearing facility for the credit of the parties to the derivatives contract; and

(*b*) the contractual terms (other than price) of which —

(i) are in the same form as the contractual terms of other derivatives contracts of the same type that are executed on the organised market on which the derivatives contract is executed; and

(ii) conform to a standard that is provided under the business rules or practices of the organised market on which the derivatives contract is executed,

but does not include —

(*c*) any contract under which every contractual term can be negotiated; or

(*d*) any derivatives contract that is, or that belongs to a class of derivatives contracts that is, prescribed not to be an exchange-traded derivatives contract;

"executive officer", in relation to an approved exchange, a recognised market operator, a licensed trade repository, a licensed foreign trade repository, an approved clearing house, a recognised clearing house, an approved holding company, the holder of a capital markets services licence, an authorised benchmark administrator, an authorised benchmark submitter, a designated benchmark submitter or any other corporation (called in this definition a relevant person), means any person, by whatever name called, who is —

(*a*) in the direct employment of, or acting for or by arrangement with, the relevant person; and

(*b*) concerned with or takes part in the management of the relevant person on a day-to-day basis;

"exempt benchmark administrator" means a person who is exempted under section 123K(1) from the requirement to be an authorised benchmark administrator;

"exempt benchmark submitter" means a person who is exempted under section 123ZH(1) from the requirement to be an authorised benchmark submitter;

"exempt person" means a person who is exempted under section 99;

"financial benchmark" means —

(*a*) any price, rate, index or value that is —

(i) determined periodically by the application (whether direct or indirect) of a formula or any other method of calculation to information or expressions of opinion concerning transactions in, or the state of, the market in respect of one or more underlying things;

(ii) made available to the public (whether free of charge or for payment); and

(iii) used for reference —

(A) to determine the interest payable or other sums due on deposits or credit facilities;

(B) to determine the price or value of any investment product as defined in section 2(1) of the Financial Advisers Act 2001; or

(C) to measure the performance of any product offered by a person who is, or who belongs to a class of persons which is, prescribed by regulations made under section 341; or

(*b*) such other price, rate, index or value as may be prescribed by regulations made under section 341 as a financial benchmark,

but does not include —

(*c*) a price, rate, index or value determined by, or on behalf of, the Government or a statutory body established under any Act, unless that price, rate, index or value is prescribed as a financial benchmark;

(*d*) a price, rate, index or value determined by a person which is intended to be for the person's exclusive use in transactions or agreements entered into, or to be entered into, by the person, unless that price, rate, index or value is prescribed as a financial benchmark;

(*e*) the price of a capital markets product; or

(*f*) such other price, rate, index or value as may be prescribed by regulations made under section 341 as not being a financial benchmark;

"financial instrument" includes any currency, currency index, interest rate, interest rate instrument, interest rate index, securities, securities index, a group or

groups of such financial instruments, and any other thing that is prescribed by the Authority by regulations made under section 341 for the purposes of this definition;

"financial year" has the meaning given by section 4(1) of the Companies Act 1967;

"firm" has the meaning given by section 2(1) of the Business Names Registration Act 2014;

"foreign company" has the meaning given by section 4(1) of the Companies Act 1967;

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

(*a*) a party (called in this definition the franchisor) to the agreement or arrangement authorises or permits another party (called in this definition the franchisee), or a person associated with the franchisee, to exercise the right to engage in the business of offering, selling or distributing goods or services in Singapore under a plan or system controlled by the franchisor or a person associated with the franchisor;

(*b*) the business carried on by the franchisee or the person associated with the franchisee (as the case may be) is capable of being identified by the public as being substantially associated with a trade or service mark, logo, symbol or name identifying, commonly connected with or controlled by the franchisor or a person associated with the franchisor;

(*c*) the franchisor exerts, or has authority to exert, a significant degree of control over the method or manner of operation of the franchisee's business;

(*d*) the franchisee or a person associated with the franchisee is required under the agreement or arrangement to make payment or give some other form of consideration to the franchisor or a person associated with the franchisor; and

(*e*) the franchisor agrees to communicate to the franchisee, or a person associated with the franchisee, knowledge, experience, expertise, know-how, trade secrets or other information whether or not it is proprietary or confidential;

"fund management" has the meaning given in the Second Schedule;

"futures contract" means —

(*a*) an exchange-traded derivatives contract under which —

(i) one party agrees to transfer title to an underlying thing, or a specified quantity of an underlying thing, to another party at a specified future time and at a specified price payable at that future time; or

(ii) the parties will discharge their obligations under the contract by settling the difference between the value of a specified quantity of an underlying thing agreed at the time of the making of the contract and at a specified future time; or

(*b*) an exchange-traded derivatives contract which is an option on an exchange-traded derivatives contract mentioned in paragraph (*a*);

"holding company" has the meaning given by section 5(4) of the Companies Act 1967;

"leveraged foreign exchange trading" has the meaning given in the Second Schedule;

"licensed foreign trade repository" means a corporation that has in force a foreign trade repository licence granted by the Authority under section 46E(2);

"licensed trade repository" means a corporation that has in force a trade repository licence granted by the Authority under section 46E(1);

"limited liability partnership" has the meaning given by section 2(1) of the Limited Liability Partnerships Act 2005;

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

(*a*) the admission to the official list of the corporation or overseas exchange, of corporations, governments, bodies unincorporate or other persons for the purpose of the quotation on the organised market of the corporation or overseas exchange of securities, securities-based derivatives contracts or units in a collective investment scheme issued, or made available by such corporations, governments, bodies unincorporate or other persons, or the removal

from that official list and for other purposes; or

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

whether those rules are made —

(*c*) by the corporation or overseas exchange, or are contained in any of the constituent documents of the corporation or overseas exchange; or

(*d*) by another person and adopted by the corporation or overseas exchange;

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

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

"newspaper" has the meaning given by section 2 of the Newspaper and Printing Presses Act 1974;

"office copy" has the meaning given by section 4(1) of the Companies Act 1967;

"officer" has the meaning given by section 4(1) of the Companies Act 1967;

"organised market" has the meaning given in the First Schedule;

"overseas exchange" means a person operating an organised market outside Singapore that is regulated by a financial services regulatory authority of a country or territory other than Singapore;

"participant" means —

(*a*) for the purposes of Part 2, a person who may participate in one or more of the services provided by an approved exchange or a recognised market operator, in its capacity as an approved exchange or a recognised market operator, as the case may be;

(*aa*) for the purposes of Part 2A, a person who may participate in one or more of the services provided by a licensed trade repository or

licensed foreign trade repository, in its capacity as a licensed trade repository or licensed foreign trade repository, as the case may be;

(*b*) for the purposes of Part 3, a person who, under the business rules of an approved clearing house or a recognised clearing house, may participate in one or more of the services provided by the approved clearing house or recognised clearing house, in its capacity as an approved clearing house or a recognised clearing house, as the case may be; or

(*c*) for the purposes of any other provision of this Act, a person who participates in a collective investment scheme by way of owning one or more units in a collective investment scheme;

"partner" and "manager", in relation to a limited liability partnership, have the respective meanings given by section 2(1) of the Limited Liability Partnerships Act 2005;

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

(*a*) Banking Act 1970;

(*b*) Finance Companies Act 1967;

(*c*) Financial Advisers Act 2001;

(*d*) Insurance Act 1966;

(*e*) Monetary Authority of Singapore Act 1970;

(*f*) Payment Services Act 2019;

(*g*) such other written law as the Authority may prescribe;

"principal", in relation to a representative, means a person whom the representative is in the direct employment of, is acting for or is acting by arrangement with, and on behalf of whom the representative carries or will carry out any regulated activity;

"product financing" has the meaning given in the Second Schedule;

"providing credit rating services" has the meaning given in the Second Schedule;

"providing custodial services" has the meaning given in the Second Schedule;

"providing information in relation to a designated benchmark" means providing any information or expression of opinion —

(*a*) to, or for the purpose of passing the information or expression of opinion on to, a person (*A*) administering a designated benchmark; and

(*b*) that enables *A* to determine that designated benchmark;

"providing information in relation to a financial benchmark" means providing any information or expression of opinion —

(*a*) to, or for the purpose of passing the information or expression of opinion on to, a person (*A*) administering a financial benchmark; and

(*b*) that enables *A* to determine that financial benchmark;

"provisional representative", in respect of a type of regulated activity, has the meaning given to that expression by section 99E, and "provisional representative" means a provisional representative in respect of any type of regulated activity;

"public company" has the meaning given by section 4(1) of the Companies Act 1967;

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

"quote" means to display or provide, on an organised market of an approved exchange or a recognised market operator, information concerning the particular prices or particular consideration at which offers or invitations to sell, purchase or exchange securities, securities-based derivatives contracts or units in a collective investment scheme are made on that organised market, being offers or invitations that are intended or may reasonably be expected, to result, directly or indirectly, in the making or acceptance of offers to sell, purchase or exchange securities, securities-based derivatives contracts or units in a collective investment scheme;

"real estate investment trust", except in Division 3 of Part 7, means a collective investment scheme —

(*a*) that is authorised under section 286 or recognised under section 287;

(*b*) that is a trust;

(*c*) that invests primarily in real estate and real estate-related assets specified by the Authority in the Code on Collective Investment Schemes; and

(*d*) all or any units of which are listed for quotation on an approved exchange;

"real estate investment trust management" has the meaning given in the Second Schedule;

"recognised business trust" means a business trust that is recognised by the Authority under section 239D(1);

"recognised clearing house" means a corporation that is recognised by the Authority under section 51(1)(*b*) or (2) as a recognised clearing house;

"recognised market operator" means a corporation that is recognised by the Authority under section 9(1)(*b*) or (2) as a recognised market operator;

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

"registered business trust" has the meaning given by section 2 of the Business Trusts Act 2004;

"regulated activity" means an activity specified in the Second Schedule;

"related corporation" has the meaning given by section 4(1) of the Companies Act 1967;

"representative" —

(*a*) in relation to a person (*A*) who carries on business in any regulated activity, except for the purposes of Part 13 and except as otherwise provided for in paragraphs (*b*) and (*c*) —

(i) means a person (*B*), by whatever name called, in the direct employment of, or acting for, or by arrangement with *A*, who carries out for *A* any regulated activity (other than work ordinarily performed by accountants, clerks or cashiers), whether or not *B* is remunerated, and whether *B*'s remuneration (if any) is by way of salary, wages, commission or otherwise; and

(ii) includes, where *A* is a corporation, any officer of *A* who performs for *A* any regulated activity, whether or not the officer is remunerated, and whether the officer's remuneration (if any) is by way of salary, wages,

commission or otherwise;

(*b*) in relation to a person (*C*) that is an authorised benchmark administrator or an exempt benchmark administrator —

(i) means a person (*D*), by whatever name called, in the direct employment of, or acting for, or by arrangement with *C*, who carries out the activity of administering a designated benchmark (other than work ordinarily performed by accountants, clerks or cashiers), whether or not *D* is remunerated, and whether *D*'s remuneration (if any) is by way of salary, wages, commission or otherwise; and

(ii) includes, where *C* is a corporation, any officer of *C* who performs for *C* the activity of administering a designated benchmark, whether or not the officer is remunerated, and whether the officer's remuneration (if any) is by way of salary, wages, commission or otherwise; and

(*c*) in relation to a person (*E*) that is an authorised benchmark submitter, an exempt benchmark submitter or a designated benchmark submitter —

(i) means a person (*F*), by whatever name called, in the direct employment of, or acting for, or by arrangement with *E*, who carries out the activity of providing information in relation to a designated benchmark (other than work ordinarily performed by accountants, clerks or cashiers), whether or not *F* is remunerated, and whether *F*'s remuneration (if any) is by way of salary, wages, commission or otherwise; and

(ii) includes, where *E* is a corporation, any officer of *E* who performs for *E* the activity of providing information in relation to a designated benchmark, whether or not the officer is remunerated, and whether the officer's remuneration (if any) is by way of salary, wages, commission or otherwise;

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

(*a*) in the case of a scheme that is constituted as a VCC or a sub-fund —

the VCC;

(*b*) in the case of a scheme that is constituted as a corporation other than a VCC — the corporation; or

(*c*) in the case of any other scheme — the manager for the scheme;

"securities" means —

(*a*) shares, units in a business trust or any instrument conferring or representing a legal or beneficial ownership interest in a corporation, partnership or limited liability partnership;

(*b*) debentures; or

(*c*) any other product or class of products as may be prescribed,

but does not include —

(*d*) any unit of a collective investment scheme;

(*e*) any bill of exchange;

(*f*) any certificate of deposit issued by a bank or finance company, whether situated in Singapore or elsewhere; or

(*g*) such other product or class of products as may be prescribed;

"securities-based derivatives contract" means any derivatives contract of which the underlying thing or any of the underlying things is a security or a securities index, but does not include any derivatives contract that is, or that belongs to a class of derivatives contracts that is, prescribed by regulations made under section 341;

"Securities Industry Council" means the Securities Industry Council referred to in section 138;

"share" has the meaning given by section 4(1) of the Companies Act 1967;

"specified products" means securities, specified securities-based derivatives contracts or units in a collective investment scheme;

"specified securities-based derivatives contract" means a securities-based derivatives contract that is not a futures contract;

"spot contract" means a contract or an arrangement for the sale or purchase of any underlying thing at the spot price, where it is intended for a party to the contract or arrangement to take delivery of the underlying thing immediately or within a

period which must not be longer than the period determined by the market convention for delivery of the underlying thing;

"spot foreign exchange contract" has the meaning given in the Second Schedule;

"sub-fund" has the meaning given by section 2(1) of the Variable Capital Companies Act 2018;

"subsidiary" has the meaning given by section 5 of the Companies Act 1967;

"substantial unitholder" —

(*a*) in relation to a collective investment scheme, means a participant who has an interest or interests in one or more voting units in the scheme, the total votes attached to that unit, or those units, being not less than 5% of the total votes attached to all the voting units in the scheme; or

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

"Take-over Code" means the Singapore Code on Take-overs and Mergers referred to in section 139 which is issued by the Authority under section 321(1);

"take-over offer" means —

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

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

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

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

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

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

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

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

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

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

(*b*) a proposed compromise or arrangement which —

(i) in the case of a public company, is referred to in section 210 of the Companies Act 1967; or

(ii) in the case of a corporation all or any of the shares of which

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

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

"temporary representative", in respect of a type of regulated activity, has the meaning given to that expression by section 99F, and "temporary representative" means a temporary representative in respect of any type of regulated activity;

"transaction information" means information relating to —

(*a*) offers or invitations to enter into, purchase, sell, or exchange capital markets products;

(*b*) executed transactions in capital markets products;

(*c*) transactions cleared or settled by an approved clearing house or a recognised clearing house; or

(*d*) transactions reported to a licensed trade repository or licensed foreign trade repository;

"treasury share" —

(*a*) in relation to a company, has the meaning given by section 4(1) of the Companies Act 1967; and

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

"trustee-manager" —

(*a*) in relation to a registered business trust, has the meaning given by section 2 of the Business Trusts Act 2004;

(*b*) in relation to a business trust for which an application for registration has been made under section 4(1) of the Business Trusts Act 2004, means the company proposed to be named as the trustee-manager in the application made under that section;

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

(*d*) in relation to a business trust for which an application for recognition has been made under section 239D(1), means the entity proposed to be managing and operating the trust, by whatever name called and whether incorporated or not;

"underlying thing" means —

(*a*) in relation to a derivatives contract or a spot contract —

(i) a unit in a collective investment scheme;

(ii) a commodity;

(iii) a financial instrument;

(iv) the credit of any person; or

(v) an arrangement, event, index, intangible property, tangible property or transaction that is, or that belongs to a class of arrangements, events, indices, intangible properties, tangible properties or transactions that is, prescribed by regulations made under section 341 to be an underlying thing in relation to a derivatives contract or a spot contract,

but does not include any arrangement, event, index, intangible property, tangible property or transaction that is, or that belongs to a class of arrangements, events, indices, intangible properties, tangible properties or transactions that is, prescribed by regulations made under section 341 not to be an underlying thing in relation to a derivatives contract or a spot contract; and

(*b*) in relation to a financial benchmark —

(i) an investment product as defined in section 2(1) of the Financial Advisers Act 2001;

(ii) a commodity;

(iii) a financial instrument;

(iv) any intangible property or class of intangible properties; or

(v) any arrangement, event or transaction that is, or that belongs to a class of arrangements, events or transactions that is, prescribed by regulations made under section 341 to be an underlying thing in relation to a financial benchmark,

but does not include any arrangement, event, intangible property or transaction that is, or that belongs to a class of arrangements, events, intangible properties or transactions that is, prescribed by regulations made under section 341 not to be an underlying thing in relation to a financial benchmark;

"unit" —

(*a*) in relation to a collective investment scheme, means a right or interest (however described) in a collective investment scheme (whether or not constituted as an entity), and includes an option to acquire any such right or interest in the collective investment scheme; and

(*b*) in relation to a business trust, has the meaning given by section 2 of the Business Trusts Act 2004;

"unitholder" —

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

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

"user" means —

(*a*) in relation to an approved exchange, a recognised market operator, an approved clearing house or a recognised clearing house, a person who is —

(i) a member of the approved exchange, recognised market operator, approved clearing house or recognised clearing house, as the case may be; or

(ii) a customer of a member of the approved exchange, recognised market operator, approved clearing house or recognised clearing house, as the case may be; or

(*b*) in relation to a licensed trade repository or a licensed foreign trade repository, a person who is —

(i) a participant of the licensed trade repository or licensed foreign trade repository; or

(ii) a client of a participant of the licensed trade repository or licensed foreign trade repository;

"user information" means transaction information that is referable to —

(*a*) a named user; or

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

"VCC" means a VCC or variable capital company as defined in section 2(1) of the Variable Capital Companies Act 2018;

"voting share" has the meaning given by section 4(1) of the Companies Act 1967;

"voting unit" —

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) upon a proposal to reduce the participants' funds of the scheme;

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

(D) upon a proposal to wind up the scheme;

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

(F) during the winding up of the scheme.

[2/2009; 34/2012; 29/2014; 4/2017; 44/2018; 2/2019; 1/2020; S 376/2008; S 20/2012]

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

(*a*) the promotion, formation, membership, control, business, trading, transactions and dealings (whether alone or jointly with another person or other persons and including transactions and dealings as agent, bailee or trustee), property (whether held alone or jointly with another person or other persons and including property held as agent, bailee or trustee), liabilities (including liabilities owned jointly with another person or other persons and liabilities as trustee), profits and other income, receipts, losses, outgoings and expenditure of the corporation;

(*b*) in the case of a corporation (not being a trustee corporation) that is a trustee (but without limiting paragraph (*a*)), matters concerned with the ascertainment of the identity of the persons who are beneficiaries under the trust, their rights under the trust and any payments that they have received, or are entitled to receive, under the terms of the trust;

(*c*) the internal management and proceeding of the corporation;

(*d*) any act or thing done (including any contract made and any transaction entered into) by or on behalf of the corporation, or to or in relation to the corporation or its business or property, at a time when —

(i) a receiver, or a receiver and manager, is in possession of, or has control over, property of the corporation;

(ii) the corporation is under judicial management;

(iii) a compromise or an arrangement referred to in section 210 of the Companies Act 1967 or section 71 of the Insolvency, Restructuring and Dissolution Act 2018 made between the corporation and another person or other persons is being administered; or

(iv) the corporation is being wound up,

and without limiting sub-paragraphs (i) to (iv), any conduct of such a receiver or such a receiver and manager, or such a judicial manager, or any person administering such a compromise or arrangement or of any liquidator or provisional liquidator of the corporation;

(*e*) the ownership of shares in, debentures of, units of shares in, units of debentures of, and units in a collective investment scheme issued by the corporation;

(*f*) the power of persons to exercise, or to control the exercise of, the rights to vote attached to shares in the corporation or to dispose of, or to exercise control over the disposal of, such shares;

(*g*) matters concerned with the ascertainment of the persons who are or have been financially interested in the success or failure, or apparent success or failure, of the corporation or are or have been able to control or materially to influence the policy of the corporation;

(*h*) the circumstances under which a person acquired or disposed of, or became entitled to acquire or dispose of, shares in, debentures of, units of shares in, units of debentures of, or units in a collective investment scheme issued by, the corporation;

(*i*) where the corporation has issued units in a collective investment scheme, any matters concerning the financial or business undertaking, scheme, common enterprise or investment contract to which the units in a collective investment scheme relate; or

(*j*) matters relating to or arising out of the audit of, or working papers or reports of an auditor concerning, any matters referred to in paragraphs (*a*) to (*i*).

[40/2018]

(3) Where the name of a corporation referred to in this Act is changed pursuant to the Companies Act 1967, the change of name does not affect the identity of that corporation or the application of the relevant provisions of this Act or any other written law to that corporation.

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

(*a*) the person has an interest or interests in one or more voting shares (excluding treasury shares) in the corporation; and

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

[2/2009]

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

(*a*) the person has an interest or interests in one or more voting shares (excluding treasury shares) in one of those classes; and

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

[2/2009]

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

[2/2009]

Associated person

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

(*a*) where the other person is a corporation —

(i) a director or secretary of the corporation;

(ii) a related corporation; or

(iii) a director or secretary of such a related corporation;

(*b*) where the matter to which the reference relates is the extent of a power to exercise, or to control the exercise of, the voting power attached to voting shares in a corporation, a person with whom the other person has, or proposes to enter into, an agreement, arrangement, understanding or undertaking, whether formal or informal, or express or implied —

(i) by reason of which either of those persons may exercise, directly or indirectly, control the exercise of, or substantially influence the exercise of, any voting power attached to a share in the corporation;

(ii) with a view to controlling or influencing the composition of the board of directors, or the conduct of affairs, of the corporation; or

(iii) under which either of those persons may acquire from the other of them shares in the corporation or may be required to dispose of such shares in accordance with the directions of the other of them,

except that, in relation to a matter relating to shares in a corporation, a person may be an associate of the corporation and the corporation may be an associate of a person;

(*c*) a person with whom the other person is acting, or proposes to act, in concert in relation to the matter to which the reference relates;

(*d*) where the matter to which the reference relates is a matter, other than the extent of a power to exercise, or to control the exercise of, the voting power attached to voting shares in a corporation —

(i) subject to subsection (2), a person who is a director of a corporation of which the other person is a director; or

(ii) a trustee of a trust in relation to which the other person benefits or is capable of benefiting otherwise than by reason of transactions entered into in the ordinary course of business in connection with the lending of money;

(*e*) a person with whom the other person is, according to any subsidiary legislation made under this Act, to be regarded as associated in respect of the matter to which the reference relates;

(*f*) a person with whom the other person is, or proposes to become, associated, whether formally or informally, in any other way in respect of the matter to which the reference relates; or

(*g*) where the other person has entered into, or proposes to enter into, a transaction, or has done, or proposes to do, any other act or thing, with a view to becoming associated with a person as referred to in paragraph (*a*), (*b*), (*c*), (*d*), (*e*) or (*f*), that last-mentioned person.

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

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

(*a*) that one of those persons (*B*) provides advice to, or acts on behalf of, *A* in the proper performance of the functions attaching to *B*'s professional capacity or to *B*'s business relationship with *A*;

(*b*) that one of those persons, a customer, gives specific instructions to *A*, whose ordinary business includes dealing in capital markets products, to acquire shares on the customer's behalf in the ordinary course of that business;

(*c*) that one of those persons has sent, or proposes to send, to *A* a take-over offer, or has made, or proposes to make, offers under a take-over announcement, within the meaning of the Take-over Code, in relation to shares held by *A*;

(*d*) that one of those persons has appointed *A*, otherwise than for valuable consideration given by *A* or by an associate of *A*, to vote as a proxy or representative at a meeting of members, or of a class of members, of a corporation.

[4/2017]

Interest in securities, securities-based derivatives contracts or units in collective investment scheme

4.—(1) Subject to this section, a person has an interest in securities, securities-based derivatives contracts or units in a collective investment scheme, if the person has authority (whether formal or informal, or express or implied) to dispose of, or to exercise

control over the disposal of, those securities, securities-based derivatives contracts or units in a collective investment scheme, as the case may be.

[4/2017]

(2) For the purposes of subsection (1), it is immaterial that the authority of a person to dispose of, or to exercise control over the disposal of, particular securities, securities-based derivatives contracts or units in a collective investment scheme (as the case may be) is, or is capable of being made, subject to restraint or restriction.

[4/2017]

(3) Where any property held in trust consists of or includes securities, securities-based derivatives contracts or units in a collective investment scheme, and a person knows, or has reasonable grounds for believing, that the person has an interest under the trust, the person is treated as having an interest in those securities, securities-based derivatives contracts or units in a collective investment scheme, as the case may be.

[4/2017]

(4) A person is treated as having an interest in a security, securities-based derivatives contract or unit in a collective investment scheme if a corporation has, or is by the provisions of this section (apart from this subsection) treated as having, an interest in that security, securities-based derivatives contract or unit in a collective investment scheme (as the case may be) and —

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

(*b*) the person has a controlling interest in the corporation.

[4/2017]

(5) A person is treated as having an interest in a security, securities-based derivatives contract or unit in a collective investment scheme if —

(*a*) a corporation has, or is by the provisions of this section (apart from this subsection) treated as having, an interest in that security, securities-based derivatives contract or unit in a collective investment scheme, as the case may be; and

(*b*) the person, the associates of the person, or the person and the person's associates are entitled to exercise or control the exercise of not less than 20% of the votes attached to the voting shares in the corporation.

[4/2017]

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

(*a*) a subsidiary of that other person;

(*b*) a person who is accustomed or is under an obligation whether formal or informal to act in accordance with the directions, instructions or wishes of that other person in relation to the security, securities-based derivatives contract or unit in a collective investment scheme (as the case may be) referred to in subsection (5); or

(*c*) a corporation that is, or a majority of the directors of which are, accustomed or under an obligation whether formal or informal to act in accordance with the directions, instructions or wishes of that other person in relation to that security, securities-based derivatives contract or unit in a collective investment scheme, as the case may be.

[35/2014; 4/2017]

(7) A person is treated as having an interest in a security, securities-based derivatives contract or unit in a collective investment scheme in any one or more of the following circumstances:

(*a*) where the person has entered into a contract to purchase the security, securities-based derivatives contract or unit in a collective investment scheme, as the case may be;

(*b*) where the person has a right, otherwise than by reason of having an interest under a trust, to have the security, securities-based derivatives contract or unit in a collective investment scheme (as the case may be), transferred to the person or to the person's order, whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not;

(*c*) where the person has the right to acquire any of the following under an option, whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not:

(i) the security, securities-based derivatives contract or unit in a collective investment scheme, as the case may be;

(ii) an interest in the security, securities-based derivatives contract or unit in a collective investment scheme, as the case may be;

(*d*) where the person is entitled, otherwise than by reason of the person having been appointed a proxy or representative to vote at a meeting of members of a corporation or of a class of its members, to exercise or control the exercise of a right attached to any of the following, as the case may be:

(i) the security, not being a security of which the person is a registered holder;

(ii) the securities-based derivatives contract, not being a contract to which the person is a party;

(iii) the unit in a collective investment scheme, not being a unit of which the person is a registered holder.

[4/2017]

(8) A person is treated as having an interest in a security, securities-based derivatives contract or unit in a collective investment scheme if that security, securities-based derivatives contract or unit in a collective investment scheme (as the case may be) is held jointly by the person with another person.

[4/2017]

(9) For the purpose of determining whether a person has an interest in a security, securities-based derivatives contract or unit in a collective investment scheme, it is immaterial that the interest cannot be related to a particular security, securities-based derivatives contract or unit in a collective investment scheme, as the case may be.

[4/2017]

(10) The following interests are to be disregarded:

(*a*) an interest in a security, securities-based derivatives contract or unit in a collective investment scheme if the interest is that of a person who holds the security, securities-based derivatives contract or unit in a collective investment scheme (as the case may be) as bare trustee;

(*b*) an interest in a security, securities-based derivatives contract or unit in a collective investment scheme if —

(i) the interest is that of a person whose ordinary business includes the lending of money; and

(ii) the person holds the interest only by way of security for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money;

(*c*) an interest of a person in a security, securities-based derivatives contract or unit in a collective investment scheme if that interest is an interest held by the person by reason of the person holding a prescribed office;

(*d*) an interest of a company in its own securities if that interest is purchased or otherwise acquired in accordance with sections 76B to 76G of the

Companies Act 1967;

(*e*) a prescribed interest in a security, securities-based derivatives contract or unit in a collective investment scheme being an interest of such person, or of the persons included in such class of persons, as may be prescribed;

(*f*) for the purposes of Part 7, an interest in a securities-based derivatives contract the obligations under which are to be discharged by one party to the other at some future time by cash settlement only.

[4/2017]

(11) An interest in a security, securities-based derivatives contract or unit in a collective investment scheme is not to be disregarded by reason only of —

(*a*) its remoteness;

(*b*) the manner in which it arose; or

(*c*) the fact that the exercise of a right conferred by the interest is, or is capable of being made subject to restraint or restriction.

[4/2017]

Specific classes of investors

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

(*a*) "accredited investor" means —

(i) an individual —

(A) whose net personal assets exceed in value $2 million (or its equivalent in a foreign currency) or such other amount as the Authority may prescribe in place of the first amount;

(B) whose financial assets (net of any related liabilities) exceed in value $1 million (or its equivalent in a foreign currency) or such other amount as the Authority may prescribe in place of the first amount, where "financial asset" means —

(BA) a deposit as defined in section 4B of the Banking Act 1970;

(BB) an investment product as defined in section 2(1) of the Financial Advisers Act 2001; or

(BC) any other asset as may be prescribed by regulations made under section 341; or

(C) whose income in the preceding 12 months is not less than $300,000 (or its equivalent in a foreign currency) or such other amount as the Authority may prescribe in place of the first amount;

(ii) a corporation with net assets exceeding $10 million in value (or its equivalent in a foreign currency) or such other amount as the Authority may prescribe, in place of the first amount, as determined by —

(A) the most recent audited balance sheet of the corporation; or

(B) where the corporation is not required to prepare audited accounts regularly, a balance sheet of the corporation certified by the corporation as giving a true and fair view of the state of affairs of the corporation as of the date of the balance sheet, which date must be within the preceding 12 months;

(iii) the trustee of such trust as the Authority may prescribe, when acting in that capacity; or

(iv) such other person as the Authority may prescribe;

(*b*) "expert investor" means —

(i) a person whose business involves the acquisition and disposal, or the holding, of capital markets products, whether as principal or agent;

(ii) the trustee of such trust as the Authority may prescribe, when acting in that capacity; or

(iii) such other person as the Authority may prescribe;

(*c*) "institutional investor" means —

(i) the Government;

(ii) a statutory board as may be prescribed by regulations made under section 341;

(iii) an entity that is wholly and beneficially owned, whether directly or indirectly, by a central government of a country and whose principal activity is —

(A) to manage its own funds;

(B) to manage the funds of the central government of that country (which may include the reserves of that central government and any pension or provident fund of that country); or

(C) to manage the funds (which may include the reserves of that central government and any pension or provident fund of that country) of another entity that is wholly and beneficially owned, whether directly or indirectly, by the central government of that country;

(iv) any entity —

(A) that is wholly and beneficially owned, whether directly or indirectly, by the central government of a country; and

(B) whose funds are managed by an entity mentioned in sub-paragraph (iii);

(v) a central bank in a jurisdiction other than Singapore;

(vi) a central government in a country other than Singapore;

(vii) an agency (of a central government in a country other than Singapore) that is incorporated or established in a country other than Singapore;

(viii) a multilateral agency, international organisation or supranational agency as may be prescribed by regulations made under section 341;

(ix) a bank that is licensed under the Banking Act 1970;

(x) a merchant bank that is licensed under the Banking Act 1970;

(xi) a finance company that is licensed under the Finance Companies Act 1967;

(xii) a company or co-operative society that is licensed under the Insurance Act 1966 to carry on insurance business in Singapore;

(xiii) a company licensed under the Trust Companies Act 2005;

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

(xv) an approved exchange;

(xvi) a recognised market operator;

(xvii) an approved clearing house;

(xviii) a recognised clearing house;

(xix) a licensed trade repository;

(xx) a licensed foreign trade repository;

(xxi) an approved holding company;

(xxii) a Depository as defined in section 81SF;

(xxiii) an entity or a trust formed or incorporated in a jurisdiction other than Singapore, which is regulated for the carrying on of any financial activity in that jurisdiction by a public authority of that jurisdiction that exercises a function that corresponds to a regulatory function of the Authority under this Act, the Banking Act 1970, the Finance Companies Act 1967, the Monetary Authority of Singapore Act 1970, the Insurance Act 1966, the Trust Companies Act 2005 or such other Act as may be prescribed by regulations made under section 341;

(xxiv) a pension fund, or collective investment scheme, whether constituted in Singapore or elsewhere;

(xxv) a person (other than an individual) who carries on the business of dealing in bonds with accredited investors or expert investors;

(xxvi) the trustee of such trust as the Authority may prescribe, when acting in that capacity; or

(xxvii) such other person as the Authority may prescribe.

[4/2017; 1/2020]

(1A) In determining the value of an individual's net personal assets for the purposes of subsection (1)(*a*)(i)(A), the value of the individual's primary residence —

(*a*) is to be calculated by deducting any outstanding amounts in respect of any credit facility that is secured by the residence from the estimated fair market value of the residence; and

(*b*) is taken to be the lower of the following:

(i) the value calculated under paragraph (*a*);

(ii) $1 million.

[4/2017]

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

Application

4B. This Act does not apply to a person in respect of whom a transitional approval or transitional licence mentioned in section 66 of the Commodity Trading Act 1992 is in force, to the extent that the activities carried out by the person are regulated under, and authorised by, that section.

[4/2017]

PART 2

ORGANISED MARKETS

Objectives of this Part

5. The objectives of this Part are —

(*a*) to promote fair, orderly and transparent markets;

(*b*) to facilitate efficient markets for the allocation of capital and the transfer of risks; and

(*c*) to reduce systemic risk.

[4/2017]

Interpretation of this Part

6. In this Part, unless the context otherwise requires —

"foreign corporation" means a corporation that is formed or incorporated outside Singapore;

"Singapore corporation" means a corporation that is formed or incorporated in Singapore.

[4/2017]

Division 1 — Establishment of Organised Markets

Requirement for approval or recognition

7.—(1) A person must not establish or operate an organised market, or hold itself out as operating an organised market, unless the person is —

(*a*) an approved exchange; or

(*b*) a recognised market operator.

[4/2017]

(2) A person must not hold itself out —

(*a*) as an approved exchange, unless the person is an approved exchange; or

(*b*) as a recognised market operator, unless the person is a recognised market operator.

[4/2017]

(3) Except with the written approval of the Authority, a person, other than an approved exchange or a recognised market operator, must not take or use, or have attached to or exhibited at any place —

(*a*) the title or description "securities exchange", "stock exchange", "futures exchange" or "derivatives exchange" in any language; or

(*b*) any title or description that resembles a title or description referred to in paragraph (*a*).

[4/2017]

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

[4/2017]

(5) Any person who contravenes subsection (2) shall be guilty of an offence and shall

be liable on conviction to a fine not exceeding $20,000 and, in the case of a continuing offence, to a further fine not exceeding $2,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(6) Despite section 337(1), the Authority may, by regulations made under section 44, exempt any corporation or class of corporations from subsection (1), subject to such conditions or restrictions as the Authority may prescribe in those regulations.

[4/2017]

(7) The Authority may, by written notice, exempt any corporation from subsection (1), subject to such conditions or restrictions as the Authority may specify by written notice, if the Authority is satisfied that the exemption will not detract from the objectives specified in section 5.

[4/2017]

(8) It is not necessary to publish any exemption granted under subsection (7) in the *Gazette*.

[4/2017]

(9) The Authority may, at any time, by written notice —

(*a*) add to the conditions or restrictions mentioned in subsection (7); or

(*b*) vary or revoke any condition or restriction mentioned in that subsection.

[4/2017]

(10) Every corporation that is exempted under subsection (6) must satisfy every condition or restriction imposed on it under that subsection.

[4/2017]

(11) Every corporation that is exempted under subsection (7) must, for the duration of the exemption, satisfy every condition or restriction imposed on it under that subsection and subsection (9).

[4/2017]

(12) Any corporation which contravenes subsection (10) or (11) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

Application for approval or recognition

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

(*a*) approved as an approved exchange; or

(*b*) recognised as a recognised market operator.

[4/2017]

(2) A foreign corporation may apply to the Authority to be recognised as a recognised market operator.

[4/2017]

(3) An application made under subsection (1) or (2) must be —

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

(*b*) accompanied by a non-refundable application fee of an amount prescribed by regulations made under section 44, which must be paid in the manner specified by the Authority.

[4/2017]

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

[4/2017]

Power of Authority to approve exchanges and recognise market operators

9.—(1) Where a Singapore corporation makes an application under section 8(1), the Authority may —

(*a*) in the case of an application to be approved as an approved exchange, approve the Singapore corporation as an approved exchange; or

(*b*) in the case of an application to be recognised as a recognised market operator, recognise the Singapore corporation as a recognised market operator.

[4/2017]

(2) Where a foreign corporation makes an application under section 8(2), the Authority may recognise the foreign corporation as a recognised market operator.

[4/2017]

(3) Despite subsection (1), the Authority may, with the consent of the applicant —

(*a*) treat an application under section 8(1)(*a*) as an application under section 8(1)(*b*) if the Authority is of the opinion that the applicant would be more appropriately regulated as a recognised market operator; or

(*b*) treat an application under section 8(1)(*b*) as an application under section 8(1)(*a*) if the Authority is of the opinion that the applicant would be more appropriately regulated as an approved exchange.

[4/2017]

(4) The Authority may approve a Singapore corporation as an approved exchange

under subsection (1)(*a*), recognise a Singapore corporation as a recognised market operator under subsection (1)(*b*), or recognise a foreign corporation as a recognised market operator under subsection (2), subject to such conditions or restrictions of a general or specific nature as the Authority may impose by written notice, including conditions or restrictions relating to —

(*a*) the activities that the corporation may undertake;

(*b*) the products that may be traded on any organised market established or operated by the corporation;

(*c*) the nature of the investors or participants who may use, invest in, or participate in any product traded on any organised market established or operated by the corporation; and

(*d*) the financial requirements to be imposed on the corporation.

[4/2017]

(5) The Authority may, at any time, by written notice to the corporation, vary any condition or restriction or impose further conditions or restrictions.

[4/2017]

(6) An approved exchange or a recognised market operator must, for the duration of the approval or recognition, satisfy every condition or restriction that may be imposed on it under subsections (4) and (5).

[4/2017]

(7) The Authority must not approve an applicant as an approved exchange, or recognise an applicant as a recognised market operator, unless the applicant meets such requirements, including minimum financial requirements, as the Authority may prescribe by regulations made under section 44, either generally or specifically.

[4/2017]

(8) The Authority may refuse to approve a Singapore corporation as an approved exchange, or recognise a Singapore corporation or foreign corporation (as the case may be) as a recognised market operator, if —

(*a*) the corporation has not provided the Authority with such information as the Authority may require, relating to —

(i) the corporation or any person employed by or associated with the corporation for the purposes of the corporation's business; or

(ii) any circumstances likely to affect the corporation's manner of conducting business or operations;

(*b*) any information or document provided by the corporation to the Authority

is false or misleading;

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

(*d*) an enforcement order against the corporation or a substantial shareholder of the corporation in respect of a judgment debt has been returned unsatisfied in whole or in part;

[Act 25 of 2021 wef 01/04/2022]

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

(*f*) the corporation or a substantial shareholder of the corporation has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with the creditors of the corporation or shareholder (as the case may be) being a compromise or scheme of arrangement that is still in operation;

(*g*) the corporation, a substantial shareholder of the corporation or any officer of the corporation —

(i) has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after 8 October 2018, involving fraud or dishonesty or the conviction for which involved a finding that the corporation, shareholder or officer (as the case may be) had acted fraudulently or dishonestly; or

(ii) has been convicted of an offence under this Act committed before, on or after 8 October 2018;

(*h*) the Authority is not satisfied as to the educational or other qualifications or experience of the officers or employees of the corporation, having regard to the nature of the duties they are to perform in connection with the establishment or operation of any organised market;

(*i*) the corporation fails to satisfy the Authority that the corporation is a fit and proper person or that all of its officers, employees and substantial shareholders are fit and proper persons;

(*j*) the Authority has reason to believe that the corporation may not be able to act in the best interests of investors or its members, participants or

customers, having regard to the reputation, character, financial integrity and reliability of the corporation or its officers, employees or substantial shareholders;

(*k*) the Authority is not satisfied as to —

(i) the financial standing of the corporation or any of its substantial shareholders; or

(ii) the manner in which the business of the corporation is to be conducted;

(*l*) the Authority is not satisfied as to the record of past performance or expertise of the corporation, having regard to the nature of the business or operations which the corporation may carry on or conduct in connection with the establishment or operation of any organised market;

(*m*) there are other circumstances that are likely to —

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

(ii) reflect discredit on the manner of conducting the business or operations of the corporation or any of its substantial shareholders;

(*n*) in the case of any organised market that the corporation operates, the Authority has reason to believe that the corporation, or any of its officers or employees, will not operate a fair, orderly and transparent organised market;

(*o*) the corporation does not satisfy the criteria prescribed under section 10 to be approved as an approved exchange or recognised as a recognised market operator, as the case may be; or

(*p*) the Authority is of the opinion that it would be contrary to the interests of the public to approve or recognise the corporation.

[4/2017]

(9) Subject to subsection (10), the Authority must not refuse to approve a Singapore corporation as an approved exchange, or recognise a Singapore corporation or foreign corporation (as the case may be) as a recognised market operator, under subsection (8), without giving the corporation an opportunity to be heard.

[4/2017]

(10) The Authority may refuse to approve a Singapore corporation as an approved exchange, or recognise a Singapore corporation or foreign corporation (as the case may be) as a recognised market operator, on any of the following grounds without giving the corporation an opportunity to be heard:

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

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

(*c*) the corporation has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after 8 October 2018, involving fraud or dishonesty or the conviction for which involved a finding that it had acted fraudulently or dishonestly.

[4/2017]

(11) The Authority must give notice in the *Gazette* of any corporation approved as an approved exchange under subsection (1)(*a*) or recognised as a recognised market operator under subsection (1)(*b*) or (2), and such notice may include all or any of the conditions and restrictions imposed by the Authority on the corporation under subsections (4) and (5).

[4/2017]

(12) Any applicant who is aggrieved by a refusal of the Authority to approve the applicant under subsection (1)(*a*) or a refusal of the Authority to recognise the applicant under subsection (1)(*b*) or (2) may, within 30 days after the applicant is notified of the refusal, appeal to the Minister whose decision is final.

[4/2017]

(13) Any approved exchange or recognised market operator which contravenes subsection (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

General criteria to be taken into account by Authority

10.—(1) The Authority may by regulations made under section 44 prescribe the criteria that the Authority may take into account for the purposes of deciding —

(*a*) whether a Singapore corporation mentioned in section 8(1) or 12(1) should be approved as an approved exchange or recognised as a recognised market operator;

(*b*) whether a foreign corporation mentioned in section 8(2) should be recognised as a recognised market operator; and

(*c*) whether an approved exchange or a recognised market operator that is subject to a review by the Authority under section 12(4) should be approved as an approved exchange or recognised as a recognised market operator.

[4/2017]

(2) Without affecting section 9 and subsection (1), the Authority may, for the purposes of deciding whether to recognise a foreign corporation as a recognised market operator under section 9(2), have regard, in addition to any requirements prescribed under section 9(7) and any criteria prescribed under subsection (1), to —

(*a*) whether adequate arrangements exist for cooperation between the Authority and the primary financial services regulatory authority responsible for the supervision of the foreign corporation in the country or territory in which the head office or principal place of business of the foreign corporation is situated; and

(*b*) whether the foreign corporation is, in the country or territory in which the head office or principal place of business of the foreign corporation is situated, subject to requirements and supervision comparable, in the degree to which the objectives specified in section 5 are achieved, to the requirements and supervision to which approved exchanges and recognised market operators are subject under this Act.

[4/2017]

(3) In considering whether a foreign corporation has met the requirements mentioned in subsection (2)(*b*), the Authority may have regard to —

(*a*) the relevant laws and practices of the country or territory in which the head office or principal place of business of the foreign corporation is situated; and

(*b*) the rules and practices of the foreign corporation.

[4/2017]

Annual fees payable by approved exchange and recognised market operator

11.—(1) Every approved exchange and every recognised market operator must pay to the Authority such annual fees as may be prescribed by regulations made under section 44 in such manner as the Authority may specify.

[4/2017]

(2) The Authority may, where it considers appropriate, refund or remit the whole or

any part of any annual fee paid or payable to it.

[4/2017]

Change in status

12.—(1) A Singapore corporation that is an approved exchange or a recognised market operator may apply to the Authority to change its status in the manner mentioned in subsection (5).

[4/2017]

(2) An application under subsection (1) must be —

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

(*b*) accompanied by a non-refundable application fee of an amount prescribed by regulations made under section 44, which must be paid in the manner specified by the Authority.

[4/2017]

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

[4/2017]

(4) The Authority may, on its own initiative, review the status of a Singapore corporation that is an approved exchange or a recognised market operator to determine whether the Singapore corporation continues to meet the requirements prescribed under section 9(7) and the criteria prescribed under section 10(1).

[4/2017]

(5) Where an application is made by a Singapore corporation under subsection (1), or where a review of the status of a Singapore corporation is conducted by the Authority under subsection (4), the Authority may —

(*a*) if the Singapore corporation is an approved exchange, withdraw the approval as such and recognise the Singapore corporation as a recognised market operator under section 9(1)(*b*);

(*b*) if the Singapore corporation is a recognised market operator, withdraw the recognition as such and approve the Singapore corporation as an approved exchange under section 9(1)(*a*); or

(*c*) make no change to the status of the Singapore corporation as an approved exchange or a recognised market operator, as the case may be.

[4/2017]

(6) Where an application is made under subsection (1), the Authority must not exercise its power under subsection (5)(*c*) without giving the Singapore corporation an

opportunity to be heard.

[4/2017]

(7) Where a review of the status of a Singapore corporation is conducted by the Authority on its own initiative under subsection (4), the Authority must not exercise its powers under subsection (5)(*a*) or (*b*) without giving the Singapore corporation an opportunity to be heard.

[4/2017]

(8) Any Singapore corporation that is aggrieved by a decision of the Authority made in relation to the Singapore corporation after a review under subsection (4) may, within 30 days after the Singapore corporation is notified of the decision, appeal to the Minister whose decision is final.

[4/2017]

Cancellation of approval or recognition

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

[4/2017]

(2) An application under subsection (1) must be made in such form and manner, and not later than such time, as the Authority may specify.

[4/2017]

(3) The Authority may cancel the approval of an approved exchange, or the recognition of a recognised market operator, on the application mentioned in subsection (1) if the Authority is satisfied that —

(*a*) the approved exchange or recognised market operator mentioned in subsection (1) has ceased operating its organised market or all of its organised markets, as the case may be; and

(*b*) the cancellation of the approval or recognition (as the case may be) will not detract from the objectives specified in section 5.

[4/2017]

Power of Authority to revoke approval and recognition

14.—(1) The Authority may revoke any approval of a Singapore corporation as an approved exchange under section 9(1)(*a*), any recognition of a Singapore corporation as a recognised market operator under section 9(1)(*b*), or any recognition of a foreign corporation as a recognised market operator under section 9(2), if —

(*a*) there exists at any time a ground under section 9(7) or (8) on which the

Authority may refuse an application;

(*b*) the corporation does not commence operating its organised market or, where it operates more than one organised market, all of its organised markets, within 12 months starting on the date on which it was approved under section 9(1)(*a*) or was recognised under section 9(1)(*b*) or (2), as the case may be;

(*c*) the corporation ceases to operate its organised market or, where it operates more than one organised market, all of its organised markets;

(*d*) the corporation contravenes —

(i) any condition or restriction applicable in respect of its approval or recognition, as the case may be;

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

(iii) any provision of this Act;

(*e*) upon the Authority exercising any power under section 46AAB(2) or the Minister exercising any power under Division 2, 3, 4 or 4A of Part 4B of the Monetary Authority of Singapore Act 1970 in relation to the corporation, the Authority considers that it is in the public interest to revoke the approval or recognition, as the case may be;

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

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

[4/2017; 31/2017]

(2) Subject to subsection (3), the Authority must not revoke under subsection (1) any approval under section 9(1)(*a*), or recognition under section 9(1)(*b*) or (2), that was granted to a corporation without giving the corporation an opportunity to be heard.

[4/2017]

(3) The Authority may revoke an approval under section 9(1)(*a*), or a recognition under section 9(1)(*b*) or (2), that was granted to a corporation on any of the following grounds without giving the corporation an opportunity to be heard:

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

(*b*) a receiver, a receiver and manager or a person in an equivalent capacity has been appointed, whether in Singapore or elsewhere, in relation to, or in

respect of, any property of the corporation;

(*c*) the corporation has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after 8 October 2018, involving fraud or dishonesty or the conviction for which involved a finding that it had acted fraudulently or dishonestly.

[4/2017]

(4) For the purposes of subsection (1)(*c*), a corporation is to be treated to have ceased to operate its organised market if —

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

(*b*) it has ceased to operate the organised market under a direction issued by the Authority under section 45.

[4/2017]

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

[4/2017]

(6) Despite the lodging of an appeal under subsection (5), any action taken by the Authority under this section continues to have effect pending the Minister's decision.

[4/2017]

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

[4/2017]

(8) Any revocation under subsection (1) or (3) of the approval or recognition of a corporation under section 9(1) or (2) does not operate so as to —

(*a*) avoid or affect any agreement, transaction or arrangement entered into in connection with the use of an organised market operated by the corporation, whether the agreement, transaction or arrangement was entered into before, on or after the revocation of the approval or recognition; or

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

[4/2017]

(9) The Authority must give notice in the *Gazette* of any revocation under

subsection (1) or (3) of any approval or recognition of a corporation under section 9(1) or (2).

[4/2017]

Division 2 — Regulation of Approved Exchanges

Subdivision (1) — Obligations of approved exchanges

General obligations

15.—(1) An approved exchange must —

(*a*) as far as is reasonably practicable, ensure that every organised market it operates is a fair, orderly and transparent organised market;

(*b*) manage any risks associated with its business and operations prudently;

(*c*) in discharging its obligations under this Act, not act contrary to the interests of the public, having particular regard to the interests of the investing public;

(*d*) ensure that access for participation in its facilities is subject to criteria that —

(i) are fair and objective; and

(ii) are designed to ensure the orderly functioning of the organised market that it operates and to protect the interests of the investing public;

(*e*) maintain business rules and, where appropriate, listing rules that make satisfactory provision for —

(i) the organised market to be operated in a fair, orderly and transparent manner; and

(ii) the proper regulation and supervision of its members;

(*f*) enforce compliance with its business rules and, where appropriate, its listing rules;

(*g*) have sufficient financial, human and system resources —

(i) to operate a fair, orderly and transparent organised market;

(ii) to meet contingencies or disasters; and

(iii) to provide adequate security arrangements;

(*h*) maintain governance arrangements that are adequate for its organised market to be operated in a fair, orderly and transparent manner; and

(*i*) ensure that it appoints or employs fit and proper persons as its chairperson, chief executive officer, directors and key management officers.

[4/2017]

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

[4/2017]

Obligation to notify Authority of certain matters

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

(*a*) any material change to the information provided by the approved exchange in its application under section 8(1) or 12(1);

(*b*) any change to the type or number of organised markets it operates;

(*c*) the carrying on of any business (called in this section a proscribed business) by the approved exchange other than such business or such class of businesses prescribed by regulations made under section 44;

(*d*) the acquisition by the approved exchange of a substantial shareholding in a corporation (called in this section a proscribed corporation) that carries on any business other than such business or such class of businesses prescribed by regulations made under section 44;

(*e*) the approved exchange becoming aware of any financial irregularity or other matter which in its opinion —

(i) may affect its ability to discharge its financial obligations; or

(ii) may affect the ability of a member of the approved exchange to meet its financial obligations to the approved exchange;

(*f*) the approved exchange reprimanding, fining, suspending, expelling or otherwise taking disciplinary action against a member of the approved exchange;

(*g*) any other matter that the Authority may —

(i) prescribe by regulations made under section 44 for the purposes of this subsection; or

(ii) specify by written notice to the approved exchange in any particular case.

[4/2017]

(2) Without limiting section 45(1), the Authority may, at any time after receiving a notice mentioned in subsection (1), issue directions to the approved exchange —

(*a*) where the notice relates to a matter mentioned in subsection (1)(*c*) —

(i) requiring it to cease carrying on the proscribed business; or

(ii) permitting it to carry on the proscribed business subject to such conditions or restrictions as the Authority may impose, if the Authority is of the opinion that the carrying on of the proscribed business subject to those conditions or restrictions is necessary for any purpose mentioned in section 45(1)(*a*) to (*d*); or

(*b*) where the notice relates to a matter mentioned in subsection (1)(*d*) —

(i) requiring it to dispose of all or any part of its shareholding in the proscribed corporation within such time and subject to such conditions as specified in the directions; or

(ii) requiring it to exercise its rights relating to such shareholding, or to not exercise such rights, subject to such conditions or restrictions as the Authority may impose, if the Authority is of the opinion that such exercise or non-exercise of rights subject to those conditions or restrictions is necessary for any purpose mentioned in section 45(1)(*a*) to (*d*).

[4/2017]

(3) An approved exchange must comply with every direction issued to it under subsection (2) despite anything to the contrary in the Companies Act 1967 or any other law.

[4/2017]

(4) An approved exchange must notify the Authority of any matter that the Authority may prescribe by regulations made under section 44 for the purposes of this subsection, no later than such time as the Authority may prescribe by those regulations.

[4/2017]

(5) An approved exchange must notify the Authority of any matter that the Authority

may specify by written notice to the approved exchange, no later than such time as the Authority may specify in that notice.

[4/2017]

Obligation to manage risks prudently

17.—(1) Without limiting section 15(1)(*b*), an approved exchange must ensure that the systems and controls concerning the assessment and management of risks to every organised market that the approved exchange operates are adequate and appropriate for the scale and nature of its operations.

[4/2017]

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

[4/2017]

Obligation to maintain proper records

18.—(1) An approved exchange must maintain a record of all transactions effected through its organised market in accordance with regulations mentioned in subsection (2).

[4/2017]

(2) The Authority may prescribe by regulations made under section 44 —

(*a*) the form and manner in which the record mentioned in subsection (1) is to be maintained;

(*b*) the extent to which the record includes details of each transaction; and

(*c*) the period of time that the record is to be maintained.

[4/2017]

Obligation to submit periodic reports

19. An approved exchange must submit to the Authority such reports in such form and manner, and at such frequency, as the Authority may prescribe by regulations made under section 44.

[4/2017]

Obligation to assist Authority

20. An approved exchange must provide such assistance to the Authority as the Authority may require for the performance of the Authority's functions and duties, including —

(*a*) the furnishing of such returns as the Authority may require for the proper administration of this Act; and

(*b*) the provision of —

(i) such books and information as the Authority may require for the proper administration of this Act, being books and information —

(A) relating to the business of the approved exchange;

(B) in respect of any transaction or class of transactions, whether completed or uncompleted, effected through the organised market of the approved exchange; or

(C) in respect of any product or class of products traded on the organised market of the approved exchange; and

(ii) such other information as the Authority may require for the proper administration of this Act.

[4/2017]

Obligation to maintain confidentiality

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

(*a*) comes to the knowledge of the approved exchange or any of its officers or employees; or

(*b*) is in the possession of the approved exchange or any of its officers or employees.

[4/2017]

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

(*a*) the disclosure of user information for such purposes, or in such circumstances, as the Authority may prescribe by regulations made under section 44;

(*b*) any disclosure of user information which is authorised by the Authority to be disclosed or provided; or

(*c*) the disclosure of user information pursuant to any requirement imposed under any written law or order of court in Singapore.

[4/2017]

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

[4/2017]

Penalties under this Subdivision

22. Any approved exchange which contravenes section 15(1), 16(1) or (3), 18(1), 19, 20 or 21(1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $200,000 and, in the case of a continuing offence, to a further fine not exceeding $20,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

Subdivision (2) — Rules of approved exchanges

Business rules and listing rules of approved exchanges

23.—(1) Without limiting sections 15 and 44 —

(*a*) the Authority may by regulations made under section 44 prescribe the matters that an approved exchange must provide for in the business rules or listing rules of the approved exchange; and

(*b*) the approved exchange must provide for those matters in its business rules or listing rules, as the case may be.

[4/2017]

(2) An approved exchange must not make any amendment to its business rules or listing rules unless it complies with such requirements as the Authority may prescribe by regulations made under section 44.

[4/2017]

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

[4/2017]

(4) Any approved exchange which contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

Business rules of approved exchanges have effect as contract

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

(*a*) between the approved exchange and each member; and

(*b*) between each member and every other member.

[4/2017]

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

[4/2017]

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

25.—(1) Where any person (*A*) which is under an obligation to comply with, observe, enforce or give effect to the business rules or listing rules of an approved exchange fails to do so, the General Division of the High Court may, on the application of the Authority, an approved exchange or a person aggrieved by the failure (*B*), and after giving *A* an opportunity to be heard, make an order directing *A* to comply with, observe, enforce or give effect to those business rules or listing rules.

[4/2017; 40/2019]

(2) This section is in addition to, and not in derogation of, any other remedy available to *B*.

[4/2017]

(3) Any person which, without reasonable excuse, contravenes an order made under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 2 years or to both.

[4/2017]

(4) Subject to subsection (5), subsection (3) does not affect the powers of the court in relation to the punishment of contempt of the court.

[4/2017]

(5) Where a person is convicted of an offence under subsection (3) in respect of any contravention of an order made under subsection (1), such contravention is not punishable as a contempt of court.

[4/2017]

(6) A person must not be convicted of an offence under subsection (3) in respect of any contravention of an order made under subsection (1) that has been punished as a

contempt of court.

[4/2017]

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

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

(*a*) this Act;

(*b*) its business rules; or

(*c*) where applicable, its listing rules,

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

[4/2017]

Subdivision (3) — Matters requiring approval of Authority

Control of substantial shareholding in approved exchange

27.—(1) A person must not enter into any agreement to acquire shares in an approved exchange by virtue of which the person would, if the agreement had been carried out, become a substantial shareholder of the approved exchange without first obtaining the approval of the Authority to enter into the agreement.

[4/2017]

(2) A person must not become —

(*a*) a 12% controller; or

(*b*) a 20% controller,

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

[4/2017]

(3) In subsection (2) —

"12% controller" means a person, not being a 20% controller, who alone or together with the person's associates —

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

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

"20% controller" means a person who, alone or together with the person's associates —

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

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

[4/2017]

(4) In this section —

(*a*) a person holds a share if —

(i) the person is deemed to have an interest in that share under section 7(6) to (10) of the Companies Act 1967; or

(ii) the person otherwise has a legal or an equitable interest in that share, except such interest as is to be disregarded under section 7(6) to (10) of the Companies Act 1967;

(*b*) a reference to the control of a percentage of the votes in an approved exchange is to be construed as a reference to the control, whether direct or indirect, of that percentage of the total number of votes that might be cast in a general meeting of the approved exchange; and

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

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

(ii) *A* is a body corporate that is, or a majority of the directors of which are, accustomed or under an obligation whether formal or informal to act in accordance with the directions, instructions or wishes of *B*;

(iii) *A* is a person who is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of *B*;

(iv) *A* is a subsidiary of *B*;

(v) *A* is a body corporate in which *B*, whether alone or together with other associates of *B* as described in sub-paragraphs (ii), (iii) and (iv), is in a position to control not less than 20% of the votes in

A; or

(vi) *A* is a person with whom *B* has an agreement or arrangement, whether oral or in writing and whether express or implied, to act together with respect to the acquisition, holding or disposal of shares or other interests in, or with respect to the exercise of their votes in relation to, the approved exchange.

[4/2017]

(5) The Authority may grant its approval mentioned in subsection (1) or (2) subject to conditions or restrictions.

[4/2017]

(6) Without affecting subsection (13), the Authority may, for the purposes of securing compliance with subsection (1) or (2), or any condition or restriction imposed under subsection (5), by written notice, direct the transfer or disposal of all or any of the shares of an approved exchange in which a substantial shareholder, 12% controller or 20% controller of the approved exchange has an interest.

[4/2017]

(7) Until a person to whom a direction has been issued under subsection (6) transfers or disposes of the shares that are the subject of the direction, and despite anything to the contrary in the Companies Act 1967 or the constitution or other constituent document or documents of the approved exchange —

(*a*) no voting rights are exercisable in respect of the shares that are the subject of the direction;

(*b*) the approved exchange must not offer or issue any shares (whether by way of rights, bonus, share dividend or otherwise) in respect of the shares that are the subject of the direction; and

(*c*) except in a liquidation of the approved exchange, the approved exchange must not make any payment (whether by way of cash dividend, dividend in kind or otherwise) in respect of the shares that are the subject of the direction.

[4/2017]

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

[4/2017]

(9) Any payment made by an approved exchange in contravention of subsection (7)(*c*) is treated as void, and a person to whom a direction has been issued under subsection (6) must immediately return the payment the person has received to the approved exchange.

[4/2017]

(10) The Authority may, by regulations made under section 44, exempt —

(*a*) any person or class of persons; or

(*b*) any class or description of shares or interests in shares,

from the requirement under subsection (1) or (2), subject to such conditions or restrictions as may be prescribed in those regulations.

[4/2017]

(11) The Authority may, by written notice, exempt any person, shares or interests in shares from subsection (1) or (2), subject to such conditions or restrictions as the Authority may specify by written notice.

[4/2017]

(12) It is not necessary to publish any exemption granted under subsection (11) in the *Gazette*.

[4/2017]

(13) Any person who contravenes subsection (1) or (2), or any condition or restriction imposed by the Authority under subsection (5), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $200,000 and, in the case of a continuing offence, to a further fine not exceeding $20,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(14) Any person who contravenes subsection (7)(*b*) or (*c*), (8) or (9) or any direction issued by the Authority under subsection (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

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

28.—(1) An approved exchange must not appoint a person as its chairperson, chief executive officer or director unless the approved exchange has obtained the approval of the Authority.

[4/2017]

(2) The Authority may, by written notice, require an approved exchange to obtain the

approval of the Authority for the appointment of any person to any key management position or committee of the approved exchange and the approved exchange must comply with the notice.

[4/2017]

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

[4/2017]

(4) Without limiting section 44 and to any other matter that the Authority may consider relevant, the Authority may, in determining whether to grant its approval under subsection (1) or (2), have regard to such criteria as the Authority may prescribe by regulations made under section 44 or notify in writing to the approved exchange.

[4/2017]

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

[4/2017]

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

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

(*b*) the person has been convicted, whether in Singapore or elsewhere, of an offence, committed before, on or after 8 October 2018 —

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

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

[4/2017]

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

[4/2017]

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

[4/2017]

(9) The Authority may make regulations under section 44 relating to the composition and duties of the board of directors or any committee of an approved exchange.

[4/2017]

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

[4/2017]

(11) The Authority may, by regulations made under section 44, exempt any approved exchange or class of approved exchanges from complying with subsection (1) or (8), subject to such conditions or restrictions as may be prescribed in those regulations.

[4/2017]

(12) The Authority may, by written notice, exempt any approved exchange from complying with subsection (1) or (8), subject to such conditions or restrictions as the Authority may specify by written notice.

[4/2017]

(13) It is not necessary to publish any exemption granted under subsection (12) in the *Gazette*.

[4/2017]

(14) Any approved exchange which contravenes subsection (1), (2) or (8) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $200,000 and, in the case of a continuing offence, to a further fine not exceeding $20,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

Listing, de-listing or trading of certain instruments, contracts and transactions

29.—(1) An approved exchange must, in respect of any relevant product that is listed or permitted for trading on any organised market operated by the approved exchange, comply with requirements prescribed by regulations made under section 44 or specified in directions issued under section 45 relating to —

(*a*) the limits that the approved exchange must establish on the number of open positions that may be held by any participant in respect of the relevant product;

(*b*) the steps that the approved exchange must take to ensure compliance with the limits established under paragraph (*a*);

(*c*) the positions that the approved exchange must reckon for the purpose of determining if limits established under paragraph (*a*) have been exceeded;

(*d*) the settlement procedures that the approved exchange must establish in

respect of the relevant product;

(*e*) the limits that the approved exchange must establish on the price movements of the relevant product; and

(*f*) any other matter in respect of the relevant product that the Authority considers necessary or expedient for the furtherance of the objectives mentioned in section 5.

[4/2017]

(2) An approved exchange must, within such time and in such form and manner as the Authority may specify, notify the Authority that it has taken measures to comply with the requirements mentioned in subsection (1) —

(*a*) before listing or de-listing, or permitting the trading of, any relevant product on any organised market operated by the approved exchange; and

(*b*) after listing or permitting the trading of any relevant product on any organised market operated by the approved exchange.

[4/2017]

(3) An approved exchange which is required under subsection (2) to notify the Authority must use due care to ensure that the notification is not false or misleading in any material particular.

[4/2017]

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

[4/2017]

(5) Any approved exchange which contravenes subsection (2)(*a*) or (*b*) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(6) Any approved exchange which contravenes subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000.

[4/2017]

(7) Any participant who wilfully exceeds any limit established by an approved exchange in accordance with the requirements imposed under subsection (1)(*a*) on the number of open positions that may be held by any participant in respect of any relevant product shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000.

[4/2017]

(8) In this section, "relevant product" means any instrument, contract or transaction on any organised market operated by the approved exchange, but does not include —

(*a*) securities;

(*b*) any unit in a collective investment scheme;

(*c*) a spot contract;

(*d*) a deposit as defined in section 4B of the Banking Act 1970, where the deposit is accepted by a bank or merchant bank licensed under that Act;

(*e*) a deposit as defined in section 2 of the Finance Companies Act 1967, where the deposit is accepted by a finance company as defined in that section of that Act;

(*f*) any contract of insurance in relation to any class of insurance business specified in section 3(1) of the Insurance Act 1966; or

(*g*) any contract or arrangement that is, or that belongs to a class of contracts or arrangements that is, prescribed not to be a derivatives contract.

[4/2017; 1/2020]

Listing of approved exchange on organised market

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

(*a*) for dealing with possible conflicts of interest that may arise from such listing; and

(*b*) for the purpose of ensuring the integrity of the trading of the securities or securities-based derivatives contracts (as the case may be) of the approved exchange on the organised market.

[4/2017]

(2) Where the securities or securities-based derivatives contracts of an approved exchange are listed for quotation on an organised market operated by the approved exchange or any of its related corporations, the Authority may act in place of the operator of the organised market in making decisions and taking action, or require the operator of the organised market to make decisions and to take action on behalf of the Authority, on —

(*a*) the admission of the approved exchange to, or the removal of the approved exchange from, the official list of the organised market; and

(*b*) the granting of approval for the securities or securities-based derivatives contracts (as the case may be) of the approved exchange to be, or the stopping or suspending of the securities or securities-based derivatives contracts (as the case may be) of the approved exchange from being, listed for quotation or quoted on the organised market.

[4/2017]

(3) The Authority may, by written notice to the operator of the organised market —

(*a*) modify the listing rules of the organised market for the purpose of their application to the listing for quotation or trading of the securities or securities-based derivatives contracts of the approved exchange; or

(*b*) waive the application of any listing rule of the organised market to the approved exchange.

[4/2017]

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

[4/2017]

Additional powers of Authority in respect of auditors

31.—(1) If an auditor of an approved exchange, in the course of the performance of the auditor's duties, becomes aware of any matter or irregularity mentioned in the following paragraphs, the auditor must immediately send to the Authority a written report of that matter or irregularity:

(*a*) any matter that, in the auditor's opinion, adversely affects or may adversely affect the financial position of the approved exchange to a material extent;

(*b*) any matter that, in the auditor's opinion, constitutes or may constitute a breach of any provision of this Act or an offence involving fraud or dishonesty;

(*c*) any irregularity that has or may have a material effect upon the accounts of the approved exchange, including any irregularity that affects or jeopardises, or may affect or jeopardise, the funds or property of investors.

[4/2017]

(2) An auditor of an approved exchange is not, in the absence of malice on the

auditor's part, liable to any action for defamation at the suit of any person in respect of any statement made in the auditor's report under subsection (1).

[4/2017]

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

[4/2017]

(4) The Authority may impose all or any of the following duties on an auditor of an approved exchange and the auditor must carry out the duties so imposed:

(*a*) a duty to submit such additional information and reports in relation to the audit as the Authority considers necessary;

(*b*) a duty to enlarge, extend or alter the scope of the audit of the business and affairs of the approved exchange;

(*c*) a duty to carry out any other examination or establish any procedure in any particular case;

(*d*) a duty to submit a report on any matter arising out of the audit, examination or establishment of procedure mentioned in paragraph (*b*) or (*c*).

[4/2017]

(5) The approved exchange must remunerate the auditor in respect of the discharge by the auditor of all or any of the duties mentioned in subsection (4).

[4/2017]

Subdivision (4) — Immunity

Immunity from criminal or civil liability

32.—(1) No criminal or civil liability is incurred by —

(*a*) an approved exchange; or

(*b*) any person acting on behalf of an approved exchange,

for any thing done (including any statement made) or omitted to be done with reasonable care and in good faith in the course of, or in connection with, the discharge or purported discharge of the obligations of the approved exchange under this Act or under the business rules or, where appropriate, listing rules of the approved exchange.

[4/2017]

(2) For the purposes of subsection (1), the reference to a person acting on behalf of an

approved exchange includes —

(*a*) any director of an approved exchange; or

(*b*) any member of any committee established by an approved exchange.

[4/2017]

Division 3 — Regulation of Recognised Market Operators

General obligations

33.—(1) A recognised market operator must —

(*a*) as far as is reasonably practicable, ensure that every organised market it operates is a fair, orderly and transparent organised market;

(*b*) manage any risks associated with its business and operations prudently;

(*c*) in discharging its obligations under this Act, not act contrary to the interests of the public, having particular regard to the interests of the investing public;

(*d*) ensure that access for participation in its facilities is subject to criteria that are —

(i) fair and objective; and

(ii) designed to ensure the orderly functioning of its organised market and to protect the interests of the investing public;

(*e*) maintain business rules and, where appropriate, listing rules that make satisfactory provision for —

(i) the organised market to be operated in a fair, orderly and transparent manner; and

(ii) the proper regulation and supervision of its members;

(*f*) enforce compliance with its business rules and, where appropriate, its listing rules;

(*g*) have sufficient financial, human and system resources —

(i) to operate a fair, orderly and transparent organised market;

(ii) to meet contingencies or disasters; and

(iii) to provide adequate security arrangements;

(*h*) maintain governance arrangements that are adequate for its organised market to be operated in a fair, orderly and transparent manner; and

(*i*) ensure that it appoints or employs fit and proper persons as its chairperson, chief executive officer, directors and key management officers.

[4/2017]

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

[4/2017]

Obligation to notify Authority of certain matters

34.—(1) A recognised market operator must, as soon as practicable after the occurrence of any of the following circumstances, notify the Authority of the circumstance:

(*a*) any material change to the information provided by the recognised market operator in its application under section 8(1) or (2) or 12(1);

(*b*) the recognised market operator becoming aware of any financial irregularity or other matter which in its opinion —

(i) may affect its ability to discharge its financial obligations; or

(ii) may affect the ability of a participant of the recognised market operator to meet its financial obligations to the recognised market operator;

(*c*) any other matter that the Authority may —

(i) prescribe by regulations made under section 44 for the purposes of this paragraph; or

(ii) specify by written notice to the recognised market operator in any particular case.

[4/2017]

(2) A recognised market operator must notify the Authority of any matter that the Authority may prescribe by regulations made under section 44 for the purposes of this subsection, no later than such time as the Authority may prescribe by those regulations.

[4/2017]

(3) A recognised market operator must notify the Authority of any matter that the

Authority may specify by written notice to the recognised market operator, no later than such time as the Authority may specify in that notice.

[4/2017]

Obligation to manage risks prudently

35.—(1) Without limiting section 33(1)(*b*), a recognised market operator must ensure that the systems and controls concerning the assessment and management of risks to every organised market that the recognised market operator operates are adequate and appropriate for the scale and nature of its operations.

[4/2017]

(2) Any recognised market operator which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

Obligation to maintain proper records

36.—(1) A recognised market operator must maintain a record of all transactions effected through its organised market in accordance with regulations mentioned in subsection (2).

[4/2017]

(2) The Authority may by regulations made under section 44 prescribe —

(*a*) the form and manner in which the record mentioned in subsection (1) is to be maintained;

(*b*) the extent to which the record includes details of each transaction; and

(*c*) the period of time that the record is to be maintained.

[4/2017]

Obligation to submit periodic reports

37. A recognised market operator must submit to the Authority such reports in such form and manner, and at such frequency, as the Authority may prescribe by regulations made under section 44.

[4/2017]

Obligation to assist Authority

38. A recognised market operator must provide such assistance to the Authority as the Authority may require for the performance of the functions and duties of the Authority, including —

(*a*) the furnishing of such returns as the Authority may require for the proper administration of this Act; and

(*b*) the provision of —

(i) such books and information as the Authority may require for the proper administration of this Act, being books and information —

(A) relating to the business of the recognised market operator;

(B) in respect of any transaction or class of transactions, whether completed or uncompleted, effected through the organised market of the recognised market operator; or

(C) in respect of any product or class of products traded on the organised market of the recognised market operator; and

(ii) such other information as the Authority may require for the proper administration of this Act.

[4/2017]

Obligation to maintain confidentiality

39.—(1) Subject to subsection (2), a recognised market operator and its officers and employees must maintain, and aid in maintaining, the confidentiality of all user information that —

(*a*) comes to the knowledge of the recognised market operator or any of its officers or employees; or

(*b*) is in the possession of the recognised market operator or any of its officers or employees.

[4/2017]

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

(*a*) the disclosure of user information for such purposes, or in such circumstances, as the Authority may prescribe by regulations made under section 44;

(*b*) any disclosure of user information which is authorised by the Authority to be disclosed or provided; or

(*c*) the disclosure of user information pursuant to any requirement imposed under any written law or order of court in Singapore.

[4/2017]

(3) To avoid doubt, nothing in this section is to be construed as preventing a recognised market operator from entering into a written agreement with a user that obliges the recognised market operator to maintain a higher degree of confidentiality than that specified in this section.

[4/2017]

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

40. Any failure by a recognised market operator to comply with —

(*a*) this Act;

(*b*) its business rules; or

(*c*) where applicable, its listing rules,

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

[4/2017]

Listing, de-listing or trading of certain instruments, contracts and transactions

41.—(1) A recognised market operator must, in respect of any relevant product that is listed or permitted for trading on any organised market operated by the recognised market operator, comply with requirements prescribed by regulations made under section 44 or specified in directions issued under section 45 relating to —

(*a*) the limits that the recognised market operator must establish on the number of open positions that may be held by any participant in respect of the relevant product;

(*b*) the steps that the recognised market operator must take to ensure compliance with the limits established under paragraph (*a*);

(*c*) the positions that the recognised market operator must reckon for the purpose of determining if limits established under paragraph (*a*) have been exceeded;

(*d*) the settlement procedures that the recognised market operator must

establish in respect of the relevant product;

(*e*) the limits that the recognised market operator must establish on the price movements of the relevant product; and

(*f*) any other matter in respect of the relevant product that the Authority considers necessary or expedient for the furtherance of the objectives mentioned in section 5.

[4/2017]

(2) A recognised market operator must, within such time and in such form and manner as the Authority may specify, notify the Authority that it has taken measures to comply with the requirements mentioned in subsection (1) —

(*a*) before listing or de-listing, or permitting the trading of, any relevant product on any organised market operated by the recognised market operator; and

(*b*) after listing or permitting the trading of any relevant product on any organised market operated by the recognised market operator.

[4/2017]

(3) A recognised market operator which is required under subsection (2) to notify the Authority must use due care to ensure that the notification is not false or misleading in any material particular.

[4/2017]

(4) Any recognised market operator which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(5) Any recognised market operator which contravenes subsection (2)(*a*) or (*b*) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(6) Any recognised market operator which contravenes subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000.

[4/2017]

(7) Any participant who wilfully exceeds any limit established by a recognised market operator in accordance with the requirements imposed under subsection (1)(*a*) on the number of open positions that may be held by any participant in respect of any relevant product shall be guilty of an offence and shall be liable on conviction to a fine

not exceeding $150,000.

[4/2017]

(8) In this section, "relevant product" means any instrument, contract or transaction on any organised market operated by the recognised market operator, but does not include —

(*a*) securities;

(*b*) any unit in a collective investment scheme;

(*c*) a spot contract;

(*d*) a deposit as defined in section 4B of the Banking Act 1970, where the deposit is accepted by a bank or merchant bank licensed under that Act;

(*e*) a deposit as defined in section 2 of the Finance Companies Act 1967, where the deposit is accepted by a finance company as defined in that section of that Act;

(*f*) any contract of insurance in relation to any class of insurance business specified in section 3(1) of the Insurance Act 1966; or

(*g*) any contract or arrangement that is, or that belongs to a class of contracts or arrangements that is, prescribed not to be a derivatives contract.

[4/2017; 1/2020]

Penalties under this Division

42. Any recognised market operator which contravenes section 33(1), 34, 36(1), 37, 38 or 39(1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

Division 4 — General Powers of Authority

Power of Authority to remove officers

43.—(1) Subsection (2) applies if the Authority is satisfied that an officer of an approved exchange or a recognised market operator (such approved exchange or recognised market operator being a Singapore corporation) —

(*a*) has wilfully contravened, or wilfully caused the approved exchange or recognised market operator to contravene —

(i) this Act;

(ii) where applicable, the business rules of the approved exchange or recognised market operator; or

(iii) where applicable, the listing rules of the approved exchange or recognised market operator;

(*b*) has, without reasonable excuse, failed to ensure compliance with this Act, or with the business rules, or, where applicable, the listing rules of the approved exchange or recognised market operator, by the approved exchange or recognised market operator, by a participant of the approved exchange or recognised market operator, or by a person associated with that participant;

(*c*) has failed to discharge the duties or functions of the officer's office or employment;

(*d*) is an undischarged bankrupt, whether in Singapore or elsewhere;

(*e*) has had an enforcement order against him or her in respect of a judgment debt returned unsatisfied in whole or in part;

[Act 25 of 2021 wef 01/04/2022]

(*f*) has, whether in Singapore or elsewhere, made a compromise or scheme of arrangement with the officer's creditors, being a compromise or scheme of arrangement that is still in operation; or

(*g*) has been convicted, whether in Singapore or elsewhere, of an offence, committed before, on or after 8 October 2018, involving fraud or dishonesty or the conviction for which involved a finding that the officer had acted fraudulently or dishonestly.

[4/2017]

(2) In any case mentioned in subsection (1), the Authority may, if it thinks it necessary in the interests of the public or a section of the public or for the protection of investors, by written notice direct the approved exchange or recognised market operator to remove the officer from the officer's office or employment, and the approved exchange or recognised market operator must comply with such notice, despite the provisions of section 152 of the Companies Act 1967 or anything in any other law or in the constitution or other constituent document or documents of the approved exchange or recognised market operator.

[4/2017]

(3) Without affecting any other matter that the Authority may consider relevant, the

Authority may, in determining whether an officer of an approved exchange or a recognised market operator has failed to discharge the duties or functions of the officer's office or employment for the purposes of subsection (1)(*c*), have regard to such criteria as the Authority may prescribe by regulations made under section 44 or notify in writing to the approved exchange or recognised market operator, as the case may be.

[4/2017]

(4) Subject to subsection (5), the Authority must not direct an approved exchange or a recognised market operator to remove an officer from the officer's office or employment without giving the approved exchange or recognised market operator an opportunity to be heard.

[4/2017]

(5) The Authority may direct an approved exchange or a recognised market operator to remove an officer from the officer's office or employment under subsection (2) on any of the following grounds without giving the approved exchange or recognised market operator an opportunity to be heard:

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

(*b*) the officer has been convicted, whether in Singapore or elsewhere, of an offence, committed before, on or after 8 October 2018 —

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

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

[4/2017]

(6) Where the Authority directs an approved exchange or a recognised market operator to remove an officer from the officer's office or employment under subsection (2), the Authority need not give that officer an opportunity to be heard.

[4/2017]

(7) Any approved exchange or recognised market operator that is aggrieved by a direction of the Authority made in relation to the approved exchange or recognised market operator (as the case may be) under subsection (2) may, within 30 days after the approved exchange or recognised market operator (as the case may be) is notified of the direction, appeal to the Minister whose decision is final.

[4/2017]

(8) Despite the lodging of an appeal under subsection (7), any action taken by the Authority under this section continues to have effect pending the Minister's decision.

[4/2017]

(9) The Minister may, when deciding an appeal under subsection (7), make such modification as the Minister considers necessary to any action taken by the Authority under this section, and such modified action has effect starting on the date of the Minister's decision.

[4/2017]

(10) Subject to subsection (11), no criminal or civil liability is incurred by an approved exchange or a recognised market operator in respect of any thing done or omitted to be done with reasonable care and in good faith in the discharge or purported discharge of its obligations under this section.

[4/2017]

(11) Any approved exchange or recognised market operator that, without reasonable excuse, contravenes a notice issued under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

Power of Authority to make regulations

44.—(1) Without affecting section 341, the Authority may make regulations for the purposes of this Part, including regulations —

(*a*) relating to the approval of approved exchanges and the recognition of recognised market operators;

(*b*) relating to the requirements applicable to any person who establishes, operates or assists in establishing or operating an organised market, whether or not the person is approved as an approved exchange under section 9(1)(*a*) or recognised as a recognised market operator under section 9(1)(*b*) or (2); and

(*c*) specifying measures to manage any risks assumed by an approved exchange or a recognised market operator.

[4/2017]

(2) Regulations made under this section may provide —

(*a*) that a contravention of any specified provision of the regulations made under this section shall be an offence; and

(*b*) for a penalty not exceeding a fine of $150,000 or imprisonment for a term not exceeding 12 months or both for each offence and, in the case of a continuing offence, a further penalty not exceeding a fine of 10% of the maximum fine prescribed for that offence for every day or part of a day

during which the offence continues after conviction.

[4/2017]

Power of Authority to issue directions

45.—(1) The Authority may issue directions, whether of a general or specific nature, by written notice, to an approved exchange or a recognised market operator, if the Authority thinks it necessary or expedient —

(*a*) for ensuring the fair, orderly and transparent operation of any organised market operated by the approved exchange or recognised market operator, or of organised markets operated by approved exchanges or recognised market operators in general;

(*b*) for ensuring the integrity and stability of the capital markets or the financial system;

(*c*) in the interests of the public or a section of the public or for the protection of investors;

(*d*) for the effective administration of this Act; or

(*e*) for ensuring compliance with any condition or restriction that the Authority may impose under section 9(4) or (5), 16(2), 27(5), (10) or (11), 28(11) or (12) or 46AAG(1) or (2), or such other obligations or requirements under this Act or as may be prescribed by regulations made under section 44.

[4/2017]

(2) An approved exchange or a recognised market operator must comply with every direction issued to it under subsection (1).

[4/2017]

(3) Any approved exchange or recognised market operator that, without reasonable excuse, contravenes a direction issued to it under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(4) It is not necessary to publish any direction issued under subsection (1) in the *Gazette*.

[4/2017]

Power of Authority in organised market

46.—(1) Without limiting section 45, where the Authority is of the opinion that it is

necessary to prohibit trading in —

(*a*) particular securities of, or made available by, an entity;

(*b*) particular securities-based derivatives contracts of, or made available by, an entity; or

(*c*) particular units in a collective investment scheme,

on an organised market of an approved exchange or a recognised market operator —

(*d*) in order to protect persons buying or selling the securities, securities-based derivatives contracts or units in a collective investment scheme, as the case may be; or

(*e*) in the interests of the public,

the Authority may give written notice to the approved exchange or recognised market operator stating that it is of that opinion and setting out the reasons for its opinion.

[4/2017]

(2) If, after the receipt of the notice given under subsection (1), the approved exchange or recognised market operator fails to take any action in relation to the particular securities, securities-based derivatives contracts or units in a collective investment scheme (as the case may be) on that organised market and the Authority continues to be of the opinion that it is necessary to prohibit trading in the particular securities, securities-based derivatives contracts or units in a collective investment scheme (as the case may be) on that organised market so as to achieve the objectives under subsection (1)(*d*) or (*e*), the Authority may, by written notice to the approved exchange or recognised market operator —

(*a*) prohibit trading in the particular securities, securities-based derivatives contracts or units in a collective investment scheme (as the case may be) on that organised market for such period not exceeding 14 days, as specified in the notice; and

(*b*) impose conditions or restrictions on the approved exchange or recognised market operator, as specified in the notice.

[4/2017]

(3) The Authority may, at any time, by written notice, add to, vary or revoke any condition or restriction mentioned in subsection (2)(*b*).

[4/2017]

(4) An approved exchange or a recognised market operator on which a condition or restriction is imposed under subsection (2)(*b*) or (3) must satisfy that condition or restriction.

[4/2017]

(5) Where the Authority gives a notice to an approved exchange or a recognised market operator under subsection (2), the Authority must —

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

(i) in the case of securities, the entity;

(ii) in the case of securities-based derivatives contracts, the entity; or

(iii) in the case of units in a collective investment scheme, the responsible person of the collective investment scheme,

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

(*b*) as soon as practicable, submit to the Minister a written report setting out the reasons for the giving of the notice and send a copy of the report to the approved exchange or recognised market operator.

[4/2017]

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

[4/2017]

(7) Despite the lodging of an appeal under subsection (6), any action taken by the Authority, an approved exchange or a recognised market operator under this section continues to have effect pending the Minister's decision.

[4/2017]

(8) The Minister may, when deciding an appeal under subsection (6), make such modification as the Minister considers necessary to any action taken by the Authority, an approved exchange or a recognised market operator under this section, and such modified action has effect starting on the date of the Minister's decision.

[4/2017]

(9) Any approved exchange or recognised market operator which permits trading in securities, securities-based derivatives contracts or units in a collective investment scheme, on the organised market of the approved exchange or recognised market operator in contravention of a notice given under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 and, in the case of a continuing offence, to a further fine not exceeding $10,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

Emergency powers of Authority

46AA.—(1) Where the Authority has reason to believe that an emergency exists, or thinks that it is necessary or expedient in the interests of the public or a section of the public or for the protection of investors, the Authority may by written notice direct an approved exchange or a recognised market operator (as the case may be) to take such action as the Authority considers necessary to maintain or restore the fair, orderly and transparent operation of the organised markets operated by the approved exchange or recognised market operator, as the case may be.

[4/2017]

(2) Without affecting subsection (1), the actions which the Authority may direct an approved exchange or a recognised market operator (as the case may be) to take include —

(*a*) terminating or suspending trading on the organised market operated by the approved exchange or recognised market operator;

(*b*) confining trading to liquidation of positions in capital markets products;

(*c*) ordering the liquidation of any position or all positions or the reduction in any position or all positions;

(*d*) limiting trading to a specific price range;

(*e*) modifying trading days or hours;

(*f*) altering conditions of delivery;

(*g*) fixing the settlement price at which positions are to be liquidated;

(*h*) requiring any person to act in a specified manner in relation to trading in capital markets products or any class of capital markets products;

(*i*) requiring margins or additional margins for any capital markets products; and

(*j*) modifying or suspending any of the business rules, or listing rules (as the case may be) of the approved exchange or recognised market operator, as the case may be.

[4/2017]

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

(*a*) set margin levels in any capital markets products or class of capital markets products to cater for the emergency;

(*b*) set limits that may apply to positions acquired in good faith by any person prior to the date of the notice issued by the Authority; or

(*c*) take such other action to maintain or restore the fair, orderly and transparent operation of the organised markets operated by the approved exchange or recognised market operator, as the case may be.

[4/2017]

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

(*a*) any act of any government affecting any commodity or financial instrument;

(*b*) any major market disturbance that prevents an organised market from accurately reflecting the forces of supply and demand for any commodity or financial instrument; or

(*c*) any undesirable situation or practice that, in the opinion of the Authority, constitutes an emergency.

[4/2017]

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

[4/2017]

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

[4/2017]

(7) Despite the lodging of an appeal under subsection (6), any action taken under this section by the Authority, an approved exchange or a recognised market operator, continues to have effect pending the Minister's decision.

[4/2017]

(8) The Minister may, when deciding an appeal under subsection (6), make such modification as the Minister considers necessary to any action taken under this section by the Authority, an approved exchange or a recognised market operator, and such modified action has effect starting on the date of the Minister's decision.

[4/2017]

(9) Any approved exchange or recognised market operator which fails to comply with a direction issued under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

Interpretation of sections 46AAA to 46AAF

46AAA. In this section and sections 46AAB to 46AAF, unless the context otherwise requires —

"business" includes affairs and property;

"office holder", in relation to an approved exchange or a recognised market operator, means any person acting as the liquidator, the provisional liquidator, the receiver or the receiver and manager of the approved exchange or recognised market operator (as the case may be), or acting in an equivalent capacity in relation to the approved exchange or recognised market operator (as the case may be);

"relevant business" means any business of an approved exchange or a recognised market operator —

(*a*) that the Authority has assumed control of under section 46AAB; or

(*b*) in relation to which a statutory adviser or a statutory manager has been appointed under section 46AAB;

"statutory adviser" means a statutory adviser appointed under section 46AAB;

"statutory manager" means a statutory manager appointed under section 46AAB.

[4/2017]

Action by Authority if approved exchange or recognised market operator unable to meet obligations, etc.

46AAB.—(1) The Authority may exercise any one or more of the powers specified in subsection (2) as appears to it to be necessary, where —

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

(*b*) an approved exchange or a recognised market operator becomes unable to meet its obligations, or is insolvent, or suspends payments;

(*c*) the Authority is of the opinion that an approved exchange or a recognised market operator —

(i) is carrying on its business in a manner likely to be detrimental to the interests of the public or a section of the public or to the protection of investors, or to the objectives specified in

section 5;

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

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

(iv) has failed to comply with any condition or restriction imposed on it under section 9(4) or (5); or

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

[4/2017]

(2) Subject to subsections (1) and (3), the Authority may —

(*a*) require the approved exchange or recognised market operator (as the case may be) immediately to take any action or to do or not to do any act or thing whatsoever in relation to its business as the Authority may consider necessary;

(*b*) appoint one or more persons as statutory adviser, on such terms and conditions as the Authority may specify, to advise the approved exchange or recognised market operator (as the case may be) on the proper management of such of the business of the approved exchange or recognised market operator (as the case may be) as the Authority may determine; or

(*c*) assume control of and manage such of the business of the approved exchange or recognised market operator (as the case may be) as the Authority may determine, or appoint one or more persons as statutory manager to do so on such terms and conditions as the Authority may specify.

[4/2017]

(3) In the case of a recognised market operator that is incorporated outside Singapore, any appointment of a statutory adviser or statutory manager or any assumption of control by the Authority of any business of the recognised market operator (as the case may be) under subsection (2) is only in relation to —

(*a*) the business or affairs of the recognised market operator carried on in, or managed in or from, Singapore; or

(*b*) the property of the recognised market operator located in Singapore, or reflected in the books of the recognised market operator in Singapore (as the case may be) in relation to its operations in Singapore.

[4/2017]

(4) Where the Authority appoints 2 or more persons as the statutory manager of an approved exchange or a recognised market operator, the Authority must specify, in the terms and conditions of the appointment, which of the duties, functions and powers of the statutory manager —

(*a*) may be discharged or exercised by such persons jointly and severally;

(*b*) must be discharged or exercised by such persons jointly; and

(*c*) must be discharged or exercised by a specified person or such persons.

[4/2017]

(5) Where the Authority has exercised any power under subsection (2), the Authority may, at any time and without affecting its power under section 14(1)(*e*), do one or more of the following:

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

(*b*) further exercise any of the powers under subsection (2);

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

[4/2017]

(6) No liability is incurred by a statutory manager or a statutory adviser for anything done (including any statement made) or omitted to be done with reasonable care and in good faith in the course of or in connection with —

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

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

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

[4/2017]

(7) Any approved exchange or recognised market operator that fails to comply with a requirement imposed by the Authority under subsection (2)(*a*) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

Effect of assumption of control under section 46AAB

46AAC.—(1) Upon assuming control of the relevant business of an approved exchange or a recognised market operator, the Authority or statutory manager (as the case may be) must take custody or control of the relevant business.

[4/2017]

(2) During the period when the Authority or statutory manager is in control of the relevant business of an approved exchange or a recognised market operator, the Authority or statutory manager —

(*a*) must manage the relevant business of the approved exchange or recognised market operator (as the case may be) in the name of and on behalf of the approved exchange or recognised market operator, as the case may be; and

(*b*) is to be treated to be an agent of the approved exchange or recognised market operator, as the case may be.

[4/2017]

(3) In managing the relevant business of an approved exchange or a recognised market operator, the Authority or statutory manager —

(*a*) must consider the interests of the public or the section of the public mentioned in section 46AAB(1)(*c*)(i), and the need to protect investors; and

(*b*) has all the duties, powers and functions of the members of the board of directors of the approved exchange or recognised market operator (as the case may be) (collectively and individually) under this Act, the Companies Act 1967 and the constitution of the approved exchange or recognised market operator (as the case may be), including powers of delegation, in relation to the relevant business of the approved exchange or recognised market operator (as the case may be); but nothing in this paragraph requires the Authority or statutory manager to call any meeting of the approved exchange or recognised market operator (as the case may be) under the Companies Act 1967 or the constitution of the approved exchange or recognised market operator (as the case may be).

[4/2017]

(4) Upon the assumption of control of the relevant business of an approved exchange or a recognised market operator by the Authority or statutory manager, any appointment of a person as the chief executive officer or a director of the approved exchange or recognised market operator (as the case may be), which was in force immediately before the assumption of control, is treated to be revoked unless the Authority gives its approval, by written notice to the person and the approved exchange or recognised market operator (as the case may be), for the person to remain in the appointment.

[4/2017]

(5) During the period when the Authority or statutory manager is in control of the relevant business of an approved exchange or a recognised market operator, a person must not, except with the approval of the Authority, be appointed as the chief executive officer or a director of the approved exchange or recognised market operator, as the case may be.

[4/2017]

(6) Where the Authority has given its approval under subsection (4) or (5) for a person to remain in the appointment of, or to be appointed as, the chief executive officer or a director of an approved exchange or a recognised market operator, the Authority may at any time, by written notice to the person, and the approved exchange or recognised market operator (as the case may be), revoke that approval, and the appointment is treated to be revoked on the date specified in the notice.

[4/2017]

(7) If any person, whose appointment as the chief executive officer or a director of an approved exchange or a recognised market operator is revoked under subsection (4) or (6), acts or purports to act after the revocation as the chief executive officer or a director of the approved exchange or recognised market operator (as the case may be) during the period when the Authority or statutory manager is in control of the relevant business of the approved exchange or recognised market operator (as the case may be) —

(*a*) the act or purported act of the person is invalid and of no effect; and

(*b*) the person shall be guilty of an offence.

[4/2017]

(8) If any person who is appointed as the chief executive officer or a director of an approved exchange or a recognised market operator in contravention of subsection (5) acts or purports to act as the chief executive officer or a director of the approved exchange or recognised market operator (as the case may be) during the period when the Authority or statutory manager is in control of the relevant business of the approved exchange or recognised market operator (as the case may be) —

(*a*) the act or purported act of the person is invalid and of no effect; and

(*b*) the person shall be guilty of an offence.

[4/2017]

(9) During the period when the Authority or statutory manager is in control of the relevant business of an approved exchange or a recognised market operator —

(*a*) if there is any conflict or inconsistency between —

(i) a direction or decision given by the Authority or statutory manager (including a direction or decision given to a person or

body of persons mentioned in sub-paragraph (ii)); and

(ii) a direction or decision given by any chief executive officer, director, member, executive officer, employee, agent or office holder, or the board of directors, of the approved exchange or recognised market operator (as the case may be),

the direction or decision mentioned in sub-paragraph (i), to the extent of the conflict or inconsistency, prevails over the direction or decision mentioned in sub-paragraph (ii); and

(*b*) a person must not exercise any voting or other right attached to any share in the approved exchange or recognised market operator (as the case may be) in any manner that may defeat or interfere with any duty, function or power of the Authority or statutory manager, and any such act or purported act is invalid and of no effect.

[4/2017]

(10) Any person who is guilty of an offence under subsection (7) or (8) shall be liable on conviction to a fine not exceeding $150,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(11) Subsections (4), (5), (7) and (8) have effect despite any written law or rule of law to the contrary.

[4/2017]

Duration of control

46AAD.—(1) The Authority must cease control of the relevant business of an approved exchange or a recognised market operator if the Authority is satisfied that —

(*a*) the reasons for the Authority's assumption of control have ceased to exist; or

(*b*) the Authority's assumption of control is no longer necessary in the interests of the public or the section of the public mentioned in section 46AAB(1)(*c*)(i), or for the protection of investors.

[4/2017]

(2) A statutory manager is treated to have assumed control of the relevant business of an approved exchange or a recognised market operator on the date of appointment as a statutory manager.

[4/2017]

(3) The appointment of a statutory manager in relation to the relevant business of an approved exchange or a recognised market operator may be revoked by the Authority at any time —

(*a*) if the Authority is satisfied that —

(i) the reasons for the appointment have ceased to exist; or

(ii) the appointment is no longer necessary in the interests of the public or the section of the public mentioned in section 46AAB(1)(*c*)(i), or for the protection of investors; or

(*b*) on any other ground,

and upon such revocation, the statutory manager must cease control of the relevant business of the approved exchange or recognised market operator, as the case may be.

[4/2017]

(4) The Authority must, as soon as practicable, publish in the *Gazette* the date, and such other particulars as the Authority thinks fit, of —

(*a*) the Authority's assumption of control of the relevant business of an approved exchange or a recognised market operator;

(*b*) the cessation of the Authority's control of the relevant business of an approved exchange or a recognised market operator;

(*c*) the appointment of a statutory manager in relation to the relevant business of an approved exchange or a recognised market operator; and

(*d*) the revocation of a statutory manager's appointment in relation to the relevant business of an approved exchange or a recognised market operator.

[4/2017]

Responsibilities of officers, member, etc., of approved exchange or recognised market operator

46AAE.—(1) During the period when the Authority or statutory manager is in control of the relevant business of an approved exchange or a recognised market operator —

(*a*) the General Division of the High Court may, on an application by the Authority or statutory manager, direct any person who ceased to be or still is a chief executive officer, director, member, executive officer, employee, agent, banker, auditor or office holder of, or trustee for, the approved

exchange or recognised market operator (as the case may be) to pay, deliver, convey, surrender or transfer to the Authority or statutory manager, within such period as the General Division of the High Court may specify, any property or book of the approved exchange or recognised market operator (as the case may be) which is comprised in, forms part of or relates to the relevant business of the approved exchange or recognised market operator (as the case may be), and which is in the person's possession or control; and

(*b*) any person who ceased to be or still is a chief executive officer, director, member, executive officer, employee, agent, banker, auditor or office holder of, or trustee for, the approved exchange or recognised market operator (as the case may be) must give to the Authority or statutory manager such information as the Authority or statutory manager may require for the discharge of the Authority's or statutory manager's duties or functions, or the exercise of the Authority's or statutory manager's powers, in relation to the approved exchange or recognised market operator (as the case may be), within such time and in such manner as the Authority or statutory manager may specify.

[4/2017; 40/2019]

(2) Any person who —

(*a*) without reasonable excuse, fails to comply with subsection (1)(*b*); or

(*b*) in purported compliance with subsection (1)(*b*), knowingly or recklessly provides any information or document that is false or misleading in a material particular,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

Remuneration and expenses of Authority and others in certain cases

46AAF.—(1) The Authority may at any time fix the remuneration and expenses to be paid by an approved exchange or a recognised market operator —

(*a*) to a statutory manager or statutory adviser appointed in relation to the approved exchange or recognised market operator (as the case may be), whether or not the appointment has been revoked; and

(*b*) where the Authority has assumed control of the relevant business of the

approved exchange or recognised market operator (as the case may be), to the Authority and any person appointed by the Authority under section 320 in relation to the Authority's assumption of control of the relevant business, whether or not the Authority has ceased to be in control of the relevant business.

[4/2017]

(2) The approved exchange or recognised market operator (as the case may be) must reimburse the Authority any remuneration and expenses payable by the approved exchange or recognised market operator (as the case may be) to a statutory manager or statutory adviser.

[4/2017]

Power of Authority to exempt approved exchange or recognised market operator from provisions of this Part

46AAG.—(1) The Authority may, by regulations made under section 44, exempt —

(*a*) any approved exchange or recognised market operator; or

(*b*) any class of approved exchanges or class of recognised market operators,

from any provision of this Part, subject to such conditions or restrictions as the Authority may prescribe in those regulations.

[4/2017]

(2) The Authority may, by written notice, exempt any approved exchange or recognised market operator from any provision of this Part, subject to such conditions or restrictions as the Authority may specify by written notice, if the Authority is satisfied that such exemption will not detract from the objectives specified in section 5.

[4/2017]

(3) The Authority may, at any time, by written notice, add to, vary or revoke the conditions or restrictions mentioned in subsection (2).

[4/2017]

(4) An approved exchange or a recognised market operator that is exempted under subsection (1) must satisfy every condition or restriction imposed on it under that subsection.

[4/2017]

(5) An approved exchange or a recognised market operator that is exempted under subsection (2) must, for the duration of the exemption, satisfy every condition or restriction imposed on it under that subsection and subsection (3).

[4/2017]

(6) It is not necessary to publish any exemption granted under subsection (2) in the

Gazette.

[4/2017]

Division 5 — Voluntary Transfer of Business of Approved Exchange or Recognised Market Operator

Interpretation of this Division

46AAH. In this Division, unless the context otherwise requires —

"business" includes affairs, property, right, obligation and liability;

"Court" means the General Division of the High Court;

"debenture" has the meaning given by section 4(1) of the Companies Act 1967;

"property" includes property, right and power of every description;

"Registrar of Companies" means the Registrar of Companies appointed under the Companies Act 1967 and includes any Deputy or Assistant Registrar of Companies appointed under that Act;

"transferee" means an approved exchange or a recognised market operator, or a corporation which has applied or will be applying for approval or recognition to carry on in Singapore the usual business of an approved exchange or a recognised market operator, to which the whole or any part of a transferor's business is, is to be or is proposed to be transferred under this Division;

"transferor" means an approved exchange or a recognised market operator the whole or any part of the business of which is, is to be, or is proposed to be transferred under this Division.

[4/2017; 40/2019]

Voluntary transfer of business

46AAI.—(1) A transferor may transfer the whole or any part of its business (including any business that is not the usual business of an approved exchange or a recognised market operator) to a transferee, if —

(*a*) the Authority has consented to the transfer;

(*b*) the transfer involves the whole or any part of the business of the transferor that is the usual business of an approved exchange or a recognised market operator; and

(*c*) the Court has approved the transfer.

[4/2017]

(2) Subsection (1) does not affect the right of an approved exchange or a recognised market operator to transfer the whole or any part of its business under any law.

[4/2017]

(3) The Authority may consent to a transfer under subsection (1)(*a*) if the Authority is satisfied that —

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

(*b*) the transferee will conduct the business of the transferor prudently and comply with the provisions of this Act.

[4/2017]

(4) The Authority may at any time appoint one or more persons to perform an independent assessment of, and provide a report on, the proposed transfer of a transferor's business (or any part of a transferor's business) under this Division.

[4/2017]

(5) The remuneration and expenses of any person appointed under subsection (4) must be paid by the transferor and the transferee jointly and severally.

[4/2017]

(6) The Authority must serve a copy of any report provided under subsection (4) on the transferor and the transferee.

[4/2017]

(7) The Authority may require a person to provide, within the period and in the manner specified by the Authority, any information or document that the Authority may reasonably require for the discharge of its duties or functions, or the exercise of its powers, under this Division.

[4/2017]

(8) Any person who —

(*a*) without reasonable excuse, fails to comply with any requirement under subsection (7); or

(*b*) in purported compliance with any requirement under subsection (7), knowingly or recklessly provides any information or document that is false or misleading in a material particular,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $200,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding $20,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(9) Where a person claims, before providing the Authority with any information or document that the person is required to provide under subsection (7), that the information or document might tend to incriminate the person, the information or document is not admissible in evidence against the person in criminal proceedings other than proceedings under subsection (8).

[4/2017]

Approval of transfer

46AAJ.—(1) A transferor must apply to the Court for its approval of the transfer of the whole or any part of the business of the transferor to the transferee under this Division.

[4/2017]

(2) Before making an application under subsection (1) —

(*a*) the transferor must lodge with the Authority a report setting out such details of the transfer and provide such supporting documents as the Authority may specify;

(*b*) the transferor must obtain the consent of the Authority under section 46AAI(1)(*a*);

(*c*) the transferor and the transferee must, if they intend to serve on their respective participants a summary of the transfer, obtain the Authority's approval of the summary;

(*d*) the transferor must, at least 15 days before the application is made but not earlier than one month after the report mentioned in paragraph (*a*) is lodged with the Authority, publish in the *Gazette* and in such newspaper or newspapers as the Authority may determine a notice of the transferor's intention to make the application and containing such other particulars as may be prescribed by regulations made under section 44;

(*e*) the transferor and the transferee must keep at their respective offices in Singapore, for inspection by any person who may be affected by the transfer, a copy of the report mentioned in paragraph (*a*) for a period of 15 days after the notice referred to in paragraph (*d*) is published in the *Gazette*; and

(*f*) unless the Court directs otherwise, the transferor and the transferee must serve on their respective participants who are affected by the transfer, at least 15 days before the application is made, a copy of the report mentioned in paragraph (*a*) or a summary of the transfer approved by the Authority under paragraph (*c*).

[4/2017]

(3) The Authority and any person who, in the opinion of the Court, is likely to be affected by the transfer —

(*a*) have the right to appear before and be heard by the Court in any proceedings relating to the transfer; and

(*b*) may make any application to the Court in relation to the transfer.

[4/2017]

(4) The Court must not approve the transfer if the Authority has not consented under section 46AAI(1)(*a*) to the transfer.

[4/2017]

(5) The Court may, after considering the views (if any) of the Authority on the transfer —

(*a*) approve the transfer without modification or subject to any modification agreed to by the transferor and the transferee; or

(*b*) refuse to approve the transfer.

[4/2017]

(6) If the transferee is not approved as an approved exchange or recognised as a recognised market operator by the Authority, the Court may approve the transfer on terms that the transfer takes effect only in the event of the transferee being approved as an approved exchange or recognised as a recognised market operator by the Authority.

[4/2017]

(7) The Court may by the order approving the transfer or by any subsequent order provide for all or any of the following matters:

(*a*) the transfer to the transferee of the whole or any part of the business of the transferor;

(*b*) the allotment or appropriation by the transferee of any share, debenture, policy or other interest in the transferee which under the transfer is to be allotted or appropriated by the transferee to or for any person;

(*c*) the continuation by (or against) the transferee of any legal proceedings pending by (or against) the transferor;

(*d*) the dissolution, without winding up, of the transferor;

(*e*) the provisions to be made for persons who are affected by the transfer;

(*f*) such incidental, consequential and supplementary matters as are, in the opinion of the Court, necessary to secure that the transfer is fully effective.

[4/2017]

(8) Any order under subsection (7) may —

(*a*) provide for the transfer of any business, whether or not the transferor otherwise has the capacity to effect the transfer in question;

(*b*) make provision in relation to any property which is held by the transferor as trustee; and

(*c*) make provision as to any future or contingent right or liability of the transferor, including provision as to the construction of any instrument under which any such right or liability may arise.

[4/2017]

(9) Subject to subsection (10), where an order made under subsection (7) provides for the transfer to the transferee of the whole or any part of the transferor's business, then by virtue of the order the business (or part of the business) of the transferor specified in the order is transferred to and vests in the transferee, free in the case of any particular property (if the order so directs) from any charge which by virtue of the transfer is to cease to have effect.

[4/2017]

(10) No order under subsection (7) has any effect or operation in transferring or otherwise vesting land in Singapore until the appropriate entries are made with respect to the transfer or vesting of that land by the appropriate authority.

[4/2017]

(11) If any business specified in an order under subsection (7) is governed by the law of any foreign country or territory, the Court may order the transferor to take all necessary steps for securing that the transfer of the business to the transferee is fully effective under the law of that country or territory.

[4/2017]

(12) Where an order is made under this section, the transferor and the transferee must each lodge within 7 days after the order is made —

(*a*) a copy of the order with the Registrar of Companies and with the Authority; and

(*b*) where the order relates to land in Singapore, an office copy of the order with the appropriate authority concerned with the registration or recording of dealings in that land.

[4/2017]

(13) A transferor or transferee which contravenes subsection (12), and every officer of the transferor or transferee (as the case may be) who fails to take all reasonable steps

to secure compliance by the transferor or transferee (as the case may be) with that subsection, shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding $2,000 and, in the case of a continuing offence, to a further fine not exceeding $200 for every day or part of a day during which the offence continues after conviction.

[4/2017]

PART 2A

TRADE REPOSITORIES

[34/2012]

Objectives of this Part

46A. The objectives of this Part are —

(*a*) to promote safe and efficient trade repositories;

(*b*) to promote transparent markets through timely and reliable access to information on transactions; and

(*c*) to reduce systemic risks.

[34/2012]

Interpretation of this Part

46B. In this Part, unless the context otherwise requires —

"foreign trade repository" means a trade repository which is incorporated or formed outside Singapore;

"foreign trade repository licence" means a licence that is granted by the Authority to a foreign trade repository under section 46E(2);

"Singapore trade repository" means a trade repository which is incorporated in Singapore;

"trade repository" means a corporation that collects and maintains information on any transactions relating to any capital markets products, or any other transactions or class of transactions that the Authority may prescribe by regulations made under section 341 for the purposes of this definition;

"trade repository licence" means a licence that is granted by the Authority to a Singapore trade repository under section 46E(1).

[34/2012; 4/2017]

Holding out as licensed trade repository or licensed foreign trade repository

46C.—(1) A person must not hold out that the person is —

(*a*) a licensed trade repository, unless the person has in force a trade repository licence granted by the Authority under section 46E(1); or

(*b*) a licensed foreign trade repository, unless the person has in force a foreign trade repository licence granted by the Authority under section 46E(2).

[34/2012]

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

[34/2012]

Application for licence

46D.—(1) A corporation that is, or intends to be, a Singapore trade repository may apply to the Authority for the grant of a trade repository licence.

[34/2012]

(2) A corporation that is, or intends to be, a foreign trade repository may apply to the Authority for the grant of a foreign trade repository licence.

[34/2012]

(3) An application under subsection (1) or (2) must be —

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

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

[34/2012]

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

[34/2012]

Power of Authority to grant trade repository licence or foreign trade repository licence

46E.—(1) Where a corporation referred to in section 46D(1) has made an application under that provision, the Authority may grant the corporation a trade repository licence.

[34/2012]

(2) Where a corporation referred to in section 46D(2) has made an application under that provision, the Authority may grant the corporation a foreign trade repository licence.

[34/2012]

(3) The Authority may grant a corporation a trade repository licence under subsection (1) or a foreign trade repository licence under subsection (2) subject to such conditions or restrictions as the Authority thinks fit to impose by written notice, including conditions or restrictions, either of a general or specific nature, relating to —

(*a*) the activities that the corporation may undertake;

(*b*) the transactions that may be reported to the corporation in its capacity as a trade repository; and

(*c*) the nature of the investors or participants who may use or have an interest in the corporation as a trade repository.

[34/2012]

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

[34/2012]

(5) A licensed trade repository or licensed foreign trade repository must, for the duration of the licence, satisfy every condition or restriction that may be imposed on it under subsection (3) or (4).

[34/2012]

(6) The Authority must not grant an applicant a trade repository licence or foreign trade repository licence, unless the applicant meets such requirements, including minimum financial requirements, as the Authority may prescribe, either generally or specifically.

[34/2012]

(7) Without affecting subsections (3), (4) and (6), the Authority may, for the purposes of granting a foreign trade repository licence under subsection (2), have regard, in addition to any requirements prescribed under subsection (6), to —

(*a*) whether adequate arrangements exist for co-operation between the Authority and the primary financial services regulatory authority responsible for the supervision of the foreign trade repository in the country or territory in which the head office or principal place of business of the foreign trade repository is situated; and

(*b*) whether the foreign trade repository is, in the country or territory in which the head office or principal place of business is situated, subject to

requirements and supervision comparable, in the degree to which the objectives specified in section 46A are achieved, to the requirements and supervision to which licensed trade repositories are subject under this Act.

[34/2012]

(8) In considering whether a foreign trade repository has satisfied the requirements specified in subsection (7)(*b*), the Authority may have regard to —

(*a*) the relevant laws and practices of the country or territory in which the head office or principal place of business of the foreign trade repository is situated; and

(*b*) the rules and practices of the foreign trade repository acting in its capacity as a trade repository.

[34/2012]

(9) The Authority may refuse to grant a corporation a trade repository licence or foreign trade repository licence, if —

(*a*) the corporation has not provided the Authority with such information as the Authority may require, relating to —

(i) the corporation or any person employed by or associated with the corporation for the purposes of the corporation's business or operations; or

(ii) any circumstances likely to affect the corporation's manner of conducting business or operations;

(*b*) any information or document provided by the corporation to the Authority is false or misleading;

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

(*d*) an enforcement order against the corporation or a substantial shareholder of the corporation in respect of a judgment debt has been returned unsatisfied in whole or in part;

[Act 25 of 2021 wef 01/04/2022]

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

(*f*) the corporation or a substantial shareholder of the corporation has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with the creditors of the corporation or shareholder (as the case may be), being a compromise or scheme of arrangement that is still in operation;

(*g*) the corporation, a substantial shareholder of the corporation or any officer of the corporation —

(i) has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after 1 August 2013, involving fraud or dishonesty or the conviction for which involved a finding that the corporation, shareholder or officer (as the case may be) had acted fraudulently or dishonestly; or

(ii) has been convicted of an offence under this Act committed before, on or after 1 August 2013;

(*h*) the Authority is not satisfied as to the educational or other qualifications or experience of the officers or employees of the corporation, having regard to the nature of the duties they are to perform in connection with the establishment or operation of any licensed trade repository or licensed foreign trade repository;

(*i*) the corporation fails to satisfy the Authority that the corporation is a fit and proper person or that all of its officers, employees and substantial shareholders are fit and proper persons;

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

(*k*) the Authority is not satisfied as to —

(i) the financial standing of the corporation or any of its substantial shareholders; or

(ii) the manner in which the business of the corporation is to be conducted, or the operations of the corporation are to be conducted;

(*l*) the Authority is not satisfied as to the record of past performance or expertise of the corporation, having regard to the nature of the business or

operations which the corporation may carry on or conduct in connection with the establishment or operation of any licensed trade repository or licensed foreign trade repository;

(*m*) there are other circumstances which are likely to —

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

(ii) reflect discredit on the manner of conducting the business or operations of the corporation or any of its substantial shareholders;

(*n*) the Authority has reason to believe that the corporation, or any of its officers or employees, will not operate a safe and efficient trade repository; or

(*o*) the Authority is of the opinion that it would be contrary to the interests of the public to grant the corporation a trade repository licence or foreign trade repository licence.

[34/2012]

(10) Subject to subsection (11), the Authority must not refuse to grant a corporation a trade repository licence or foreign trade repository licence under subsection (9) without giving the corporation an opportunity to be heard.

[34/2012]

(11) The Authority may refuse to grant a corporation a trade repository licence or foreign trade repository licence on any of the following grounds without giving the corporation an opportunity to be heard:

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

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

(*c*) the corporation has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after 1 August 2013, involving fraud or dishonesty or the conviction for which involved a finding that it had acted fraudulently or dishonestly.

[34/2012]

(12) The Authority must give notice in the *Gazette* of any corporation granted a trade

repository licence under subsection (1) or a foreign trade repository licence under subsection (2), and such notice may include all or any of the conditions or restrictions imposed by the Authority on the corporation under subsections (3) and (4).

[34/2012]

(13) Any applicant which is aggrieved by a refusal of the Authority under subsection (6), (9) or (11) to grant to the applicant a trade repository licence or foreign trade repository licence may, within 30 days after the applicant is notified of the refusal, appeal to the Minister, whose decision is final.

[34/2012]

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

[34/2012]

Annual fees payable by licensed trade repository or licensed foreign trade repository

46F.—(1) Every licensed trade repository and every licensed foreign trade repository must pay to the Authority such annual fees as may be prescribed in such manner as the Authority may specify.

[34/2012]

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

[34/2012]

Cancellation of trade repository licence or foreign trade repository licence

46G.—(1) A corporation which intends to cease operating as a licensed trade repository or licensed foreign trade repository may apply to the Authority to cancel its trade repository licence or foreign trade repository licence, as the case may be.

[34/2012]

(2) An application under subsection (1) must be made in such form and manner, and not later than such time, as the Authority may prescribe.

[34/2012]

(3) The Authority may cancel the trade repository licence or foreign trade repository licence on such application if the Authority is satisfied that the cancellation of the trade repository licence or foreign trade repository licence (as the case may be) will not detract from the objectives specified in section 46A.

[34/2012]

Power of Authority to revoke trade repository licence or foreign trade repository licence

46H.—(1) The Authority may revoke a trade repository licence or foreign trade repository licence granted to a corporation, if —

(*a*) there exists at any time a ground under section 46E(6) or (9) on which the Authority may refuse an application;

(*b*) the corporation does not commence operating as a licensed trade repository or licensed foreign trade repository (as the case may be) within 12 months after the date on which it was granted the trade repository licence or foreign trade repository licence, as the case may be;

(*c*) the corporation ceases to operate as a trade repository;

(*d*) the corporation contravenes —

(i) any condition or restriction applicable in respect of its trade repository licence or foreign trade repository licence, as the case may be;

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

(iii) any provision in this Act;

(*da*) upon the Authority exercising any power under section 46ZIB(2) or the Minister exercising any power under Division 2, 3, 4 or 4A of Part 4B of the Monetary Authority of Singapore Act 1970 in relation to the corporation, the Authority considers that it is in the public interest to revoke the trade repository licence or foreign trade repository licence, as the case may be;

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

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

[34/2012; 10/2013; 31/2017]

(2) Subject to subsection (3), the Authority must not revoke under subsection (1) a trade repository licence or foreign trade repository licence that was granted to a corporation without giving the corporation an opportunity to be heard.

[34/2012]

(3) The Authority may revoke a trade repository licence or foreign trade repository licence that was granted to a corporation on any of the following grounds without giving

the corporation an opportunity to be heard:

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

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

(*c*) the corporation has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after 1 August 2013, involving fraud or dishonesty or the conviction for which involved a finding that it had acted fraudulently or dishonestly.

[34/2012]

(4) For the purposes of subsection (1)(*c*), a corporation is deemed to have ceased to operate as a trade repository if —

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

(*b*) it has ceased to operate as a trade repository under a direction issued by the Authority under section 46ZK.

[34/2012]

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

[34/2012]

(6) Despite the lodging of an appeal under subsection (5), any action taken by the Authority under this section continues to have effect pending the Minister's decision.

[34/2012]

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

[34/2012]

(8) Any revocation under subsection (1) or (3) of a trade repository licence or foreign trade repository licence granted to a corporation does not operate as to affect any report to the corporation made under Part 6A, or any obligation under Part 6A that was satisfied by making a report to the corporation, while the corporation was a licensed trade repository or licensed foreign trade repository, as the case may be.

[34/2012]

(9) The Authority must give notice in the *Gazette* of any revocation under subsection (1) or (3) of a trade repository licence or foreign trade repository licence.

Division 2 — Regulation of Licensed Trade Repositories

Subdivision (1) — Obligations of licensed trade repositories

General obligations

46I.—(1) A licensed trade repository —

(*a*) must operate in a safe and efficient manner in its capacity as a trade repository;

(*b*) must manage any risks associated with its business and operations prudently;

(*c*) in discharging its obligations under this Act, must not act contrary to the interests of the public, having particular regard to the interests of the investing public;

(*d*) must ensure that access for participation in the licensed trade repository is subject to criteria that are fair and objective, and that are designed to ensure the safe and efficient functioning of the licensed trade repository and to protect the interests of the investing public;

(*e*) must maintain business rules that make satisfactory provision for the licensed trade repository to be operated in a safe and efficient manner;

(*f*) must enforce compliance by its participants with its business rules;

(*g*) must have sufficient financial, human and system resources —

(i) to operate in a safe and efficient manner in its capacity as a trade repository;

(ii) to meet contingencies or disasters; and

(iii) to provide adequate security arrangements;

(*h*) must ensure that the Authority is provided with access to all information on transactions reported to the licensed trade repository;

(*i*) must maintain governance arrangements that are adequate for the licensed

trade repository to be operated in a safe and efficient manner; and

(*j*) must ensure that it appoints or employs fit and proper persons as its chairperson, chief executive officer, directors and key management officers.

[34/2012]

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

[34/2012]

Obligation to manage risks prudently

46J. Without limiting section 46I(1)(*b*), a licensed trade repository must —

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

(*b*) have adequate arrangements, processes, mechanisms or services to collect and maintain information on transactions reported to the licensed trade repository.

[34/2012]

Obligation to notify Authority of certain matters

46K.—(1) A licensed trade repository must, as soon as practicable after the occurrence of any of the following circumstances, give the Authority notice of the circumstance:

(*a*) any material change to the information provided by the licensed trade repository in its application under section 46D(1);

(*b*) the carrying on by the licensed trade repository of any business (called in this section a proscribed business) other than such business or such class of businesses prescribed by regulations made under section 46ZJ;

(*c*) the acquisition by the licensed trade repository of a substantial shareholding in any corporation (called in this section a proscribed corporation) that carries on any business other than such business or such class of businesses prescribed by regulations made under section 46ZJ;

(*d*) the licensed trade repository becoming aware of any financial irregularity or other matter which in its opinion may affect its ability to discharge its financial obligations;

(*e*) the licensed trade repository reprimanding, fining, suspending, expelling or

otherwise taking disciplinary action against a participant of the licensed trade repository;

(*f*) any other matter that the Authority may —

(i) prescribe by regulations made under section 46ZJ for the purposes of this paragraph; or

(ii) specify by written notice to the licensed trade repository in any particular case.

[34/2012; 4/2017]

(2) Without limiting section 46ZK(1), the Authority may, at any time after receiving a notice referred to in subsection (1), issue directions to the licensed trade repository —

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

(i) to cease carrying on the proscribed business; or

(ii) to carry on the proscribed business subject to such conditions or restrictions as the Authority may impose, if the Authority is of the opinion that this is necessary for any purpose referred to in section 46ZK(1); or

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

(i) to dispose of all or any part of its shareholding in the proscribed corporation within such time and subject to such conditions as the Authority considers appropriate; or

(ii) to exercise its rights relating to such shareholding, or to not exercise such rights, subject to such conditions or restrictions as the Authority may impose, if the Authority is of the opinion that this is necessary for any purpose referred to in section 46ZK(1).

[34/2012]

(3) A licensed trade repository must comply with every direction issued to it under subsection (2), despite anything to the contrary in the Companies Act 1967 or any other law.

[34/2012]

Obligation to maintain proper records

46L.—(1) A licensed trade repository must maintain a record of all transactions reported to the licensed trade repository.

[34/2012]

(2) The Authority may prescribe by regulations made under section 46ZJ —

(*a*) the form and manner in which the record referred to in subsection (1) must be maintained;

(*b*) the information and details relating to each transaction that are to be maintained in the record; and

(*c*) the period of time that the record is to be maintained.

[34/2012]

Obligation to submit periodic reports

46M. A licensed trade repository must submit to the Authority such reports in such form and manner, and at such frequency, as the Authority may prescribe.

[34/2012]

Obligation to assist Authority

46N. A licensed trade repository must provide such assistance to the Authority as the Authority may require for the performance of the functions and duties of the Authority, including —

(*a*) the furnishing of such returns as the Authority may require for the proper administration of this Act; and

(*b*) the provision of —

(i) such books and information as the Authority may require for the proper administration of this Act, being books and information —

(A) relating to the business or operations of the licensed trade repository; or

(B) in respect of any transaction or class of transactions reported to the licensed trade repository; and

(ii) such other information as the Authority may require for the proper administration of this Act.

[34/2012]

Obligation to maintain confidentiality

46O.—(1) Subject to subsection (2), a licensed trade repository and its officers and employees must maintain, and aid in maintaining, the confidentiality of all user information and transaction information that —

(*a*) comes to the knowledge of the licensed trade repository or any of its officers or employees; or

(*b*) is in the possession of the licensed trade repository or any of its officers or employees.

[34/2012]

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

(*a*) the disclosure of user information or transaction information for such purposes, or in such circumstances, as the Authority may prescribe;

(*b*) any disclosure of user information or transaction information which is authorised by the Authority to be disclosed or provided; or

(*c*) the disclosure of user information or transaction information pursuant to any requirement imposed under any written law or order of court in Singapore.

[34/2012]

(3) To avoid doubt, nothing in this section is to be construed as preventing a licensed trade repository from entering into a written agreement with a participant which obliges the licensed trade repository to maintain a higher degree of confidentiality than that specified in this section.

[34/2012]

(4) A licensed trade repository must comply with such other requirements relating to confidentiality as the Authority may prescribe.

[34/2012]

Penalties under this Subdivision

46P. Any licensed trade repository which contravenes section 46I(1), 46J, 46K(1) or (3), 46L(1), 46M, 46N or 46O(1) or (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $200,000 and, in the case of a continuing offence, to a further fine not exceeding $20,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

Subdivision (2) — Rules of licensed trade repositories

Business rules of licensed trade repositories

46Q.—(1) Without limiting sections 46I and 46ZJ —

(*a*) the Authority may prescribe the matters that a licensed trade repository

must provide for in the business rules of the licensed trade repository; and

(*b*) the licensed trade repository must provide for those matters in its business rules.

[34/2012]

(2) A licensed trade repository must not make any amendments to its business rules unless it complies with such requirements as the Authority may prescribe.

[34/2012]

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

[34/2012]

(4) Any licensed trade repository which contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

Business rules of licensed trade repositories have effect as contract

46R.—(1) The business rules of a licensed trade repository are deemed to be, and operate as, a binding contract between the licensed trade repository and each participant.

[34/2012]

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

[34/2012]

Power of court to order observance or enforcement of business rules

46S.—(1) Where any person who is under an obligation to comply with, observe, enforce or give effect to the business rules of a licensed trade repository fails to do so, the General Division of the High Court may, on the application of the Authority, the licensed trade repository or a person aggrieved by the failure, and after giving the firstmentioned person an opportunity to be heard, make an order directing the firstmentioned person to comply with, observe, enforce or give effect to those business rules.

[34/2012; 40/2019]

(2) In this section, "person" includes a licensed trade repository.

[34/2012]

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

[34/2012]

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

46T. Any failure by a licensed trade repository to comply with this Act or its business rules in relation to a matter does not prevent the matter from being treated, for the purposes of this Act, as done in accordance with the business rules, so long as the failure does not substantially affect the rights of any person entitled to require compliance with the business rules.

[34/2012]

Subdivision (3) — Matters requiring approval of Authority

Control of substantial shareholding in licensed trade repository

46U.—(1) A person must not enter into any agreement to acquire shares in a licensed trade repository, being an agreement by virtue of which the person would, if the agreement had been carried out, become a substantial shareholder of the licensed trade repository, without first obtaining the approval of the Authority to enter into the agreement.

[34/2012]

(2) A person must not become either of the following without first obtaining the approval of the Authority:

(*a*) a 12% controller of a licensed trade repository;

(*b*) a 20% controller of a licensed trade repository.

[34/2012]

(3) In subsection (2) —

"12% controller", in relation to a licensed trade repository, means a person, not being a 20% controller, who alone or together with the person's associates —

(*a*) holds not less than 12% of the shares in the licensed trade repository; or

(*b*) is in a position to control not less than 12% of the votes in the licensed trade repository;

"20% controller", in relation to a licensed trade repository, means a person who,

alone or together with the person's associates —

(*a*) holds not less than 20% of the shares in the licensed trade repository; or

(*b*) is in a position to control not less than 20% of the votes in the licensed trade repository.

[34/2012]

(4) In this section —

(*a*) a person holds a share if —

(i) the person is deemed to have an interest in that share under section 7(6) to (10) of the Companies Act 1967; or

(ii) the person otherwise has a legal or an equitable interest in that share, except such interest as is to be disregarded under section 7(6) to (10) of the Companies Act 1967;

(*b*) a reference to the control of a percentage of the votes in a licensed trade repository is to be construed as a reference to the control, whether direct or indirect, of that percentage of the total number of votes that might be cast in a general meeting of the licensed trade repository; and

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

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

(ii) *A* is a body corporate that is, or a majority of the directors of which are, accustomed or under an obligation whether formal or informal to act in accordance with the directions, instructions or wishes of *B*;

(iii) [*Deleted by Act 35 of 2014*]

(iv) *A* is a person who is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of *B*;

(v) *A* is a subsidiary of *B*;

(vi) [*Deleted by Act 35 of 2014*]

(vii) *A* is a body corporate in which *B*, whether alone or together with other associates of *B* as described in sub-paragraphs (ii), (iv) and (v), is in a position to control not less than 20% of the votes in *A*; or

(viii) [*Deleted by Act 35 of 2014*]

(ix) *A* is a person with whom *B* has an agreement or arrangement, whether oral or in writing and whether express or implied, to act together with respect to the acquisition, holding or disposal of shares or other interests in, or with respect to the exercise of their votes in relation to, the licensed trade repository.

[34/2012; 35/2014]

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

[34/2012]

(6) Without affecting subsection (13), the Authority may, for the purposes of securing compliance with subsection (1) or (2) or any condition or restriction imposed under subsection (5), by written notice, direct the transfer or disposal of all or any of the shares of a licensed trade repository in which a substantial shareholder, 12% controller or 20% controller of the licensed trade repository has an interest.

[34/2012]

(7) Until a person to whom a direction has been issued under subsection (6) transfers or disposes of the shares which are the subject of the direction, and despite anything to the contrary in the Companies Act 1967 or the memorandum or articles of association or other constituent document or documents of the licensed trade repository —

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

(*b*) the licensed trade repository must not offer or issue any shares (whether by way of rights, bonus, share dividend or otherwise) in respect of the shares which are the subject of the direction; and

(*c*) except in a liquidation of the licensed trade repository, the licensed trade repository must not make any payment (whether by way of cash dividend, dividend in kind or otherwise) in respect of the shares which are the subject of the direction.

[34/2012]

(8) Any issue of shares by a licensed trade repository in contravention of

subsection (7)(*b*) is deemed to be void, and a person to whom a direction has been issued under subsection (6) must immediately return those shares to the licensed trade repository, upon which the licensed trade repository must return to the person any payment received from the person in respect of those shares.

[34/2012]

(9) Any payment made by a licensed trade repository in contravention of subsection (7)(*c*) is deemed to be void, and a person to whom a direction has been issued under subsection (6) must immediately return the payment the person has received to the licensed trade repository.

[34/2012]

(10) Without affecting sections 46ZL(1) and 337(1), the Authority may, by regulations made under section 46ZJ, exempt all or any of the following from subsection (1) or (2), subject to such conditions or restrictions as the Authority may prescribe in those regulations:

(*a*) any person or class of persons;

(*b*) any class or description of shares or interests in shares.

[34/2012]

(11) Without affecting sections 46ZL(2) and 337(3) and (4), the Authority may, by written notice, exempt any person, shares or interests in shares from subsection (1) or (2), subject to such conditions or restrictions as the Authority may specify by written notice.

[34/2012]

(12) It is not necessary to publish any exemption granted under subsection (11) in the *Gazette*.

[34/2012]

(13) Any person who contravenes subsection (1) or (2), or any condition or restriction imposed by the Authority under subsection (5), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $200,000 and, in the case of a continuing offence, to a further fine not exceeding $20,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

(14) Any person who contravenes subsection (7)(*b*) or (*c*), (8) or (9) or any direction issued by the Authority under subsection (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

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

46V.—(1) A licensed trade repository must not appoint a person as its chairperson, chief executive officer or director unless the licensed trade repository has obtained the approval of the Authority.

[34/2012]

(2) The Authority may, by written notice, require a licensed trade repository to obtain the approval of the Authority for the appointment of any person to any key management position or committee of the licensed trade repository, and the licensed trade repository must comply with the notice.

[34/2012]

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

[34/2012]

(4) Without limiting section 46ZJ and to any other matter that the Authority may consider relevant, the Authority may, in determining whether to grant its approval under subsection (1) or (2), have regard to such criteria as the Authority may prescribe or specify in directions issued by written notice.

[34/2012]

(5) Subject to subsection (6), the Authority must not refuse an application for approval under this section without giving the licensed trade repository an opportunity to be heard.

[34/2012]

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

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

(*b*) the person has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after 1 August 2013 —

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

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

[34/2012]

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

[34/2012]

(8) A licensed trade repository must, as soon as practicable, give written notice to the Authority of the resignation or removal of its chairperson, chief executive officer or director or of any person referred to in the notice issued by the Authority under subsection (2).

[34/2012]

(9) The Authority may make regulations under section 46ZJ relating to the composition and duties of the board of directors or any committee of a licensed trade repository.

[34/2012]

(10) In this section, "committee" includes any committee of directors, disciplinary committee or appeals committee of a licensed trade repository, and any body responsible for disciplinary action against a participant of a licensed trade repository.

[34/2012]

(11) Without affecting sections 46ZL(1) and 337(1), the Authority may, by regulations made under section 46ZJ, exempt any licensed trade repository or class of licensed trade repositories from complying with subsection (1) or (8), subject to such conditions or restrictions as the Authority may prescribe in those regulations.

[34/2012]

(12) Without affecting sections 46ZL(2) and 337(3) and (4), the Authority may, by written notice, exempt any licensed trade repository from complying with subsection (1) or (8), subject to such conditions or restrictions as the Authority may specify by written notice.

[34/2012]

(13) It is not necessary to publish any exemption granted under subsection (12) in the *Gazette*.

[34/2012]

(14) Subject to subsections (11) and (12), any licensed trade repository which contravenes subsection (1), (2) or (8) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $200,000 and, in the case of a continuing offence, to a further fine not exceeding $20,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

Subdivision (4) — Powers of Authority

46W. [*Repealed by Act 10 of 2013*]

Additional powers of Authority in respect of auditors

46X.—(1) If an auditor of a licensed trade repository, in the course of the performance of his or her duties, becomes aware of any matter or irregularity referred to in the following paragraphs, he or she must immediately send to the Authority a written report of that matter or irregularity:

(*a*) any matter which, in his or her opinion, adversely affects or may adversely affect the financial position of the licensed trade repository to a material extent;

(*b*) any matter which, in his or her opinion, constitutes or may constitute a breach of any provision of this Act or an offence involving fraud or dishonesty;

(*c*) any irregularity that has or may have a material effect upon the accounts of the licensed trade repository, including any irregularity that affects or jeopardises, or may affect or jeopardise, the funds or property of investors.

[34/2012]

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

[34/2012]

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

[34/2012]

(4) The Authority may impose all or any of the following duties on an auditor of a licensed trade repository, and the auditor must carry out the duties so imposed:

(*a*) a duty to submit such additional information and reports in relation to his or her audit as the Authority considers necessary;

(*b*) a duty to enlarge, extend or alter the scope of his or her audit of the business and affairs of the licensed trade repository;

(*c*) a duty to carry out any other examination or establish any procedure in any particular case;

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

[34/2012]

(5) The licensed trade repository must remunerate the auditor in respect of the discharge by him or her of all or any of the duties referred to in subsection (4).

[34/2012]

Emergency powers of Authority

46Y.—(1) Where the Authority has reason to believe that an emergency exists, or thinks that it is necessary or expedient in the interests of the public or a section of the public or for the protection of investors, the Authority may direct by written notice a licensed trade repository to take such action as the Authority considers necessary to maintain or restore the safe and efficient operation of the licensed trade repository.

[34/2012]

(2) Where a licensed trade repository fails to comply with any direction of the Authority under subsection (1) within such time as is specified by the Authority, the Authority may take such action as the Authority thinks fit to maintain or restore the safe and efficient operation of the licensed trade repository.

[34/2012]

(3) In this section, "emergency" includes —

(*a*) any threatened or actual market manipulation;

(*b*) any act of any government affecting any commodity or financial instrument;

(*c*) any major market disturbance which prevents a market from accurately reflecting the forces of supply and demand for such commodity or financial instrument; or

(*d*) any undesirable situation or practice which, in the opinion of the Authority, constitutes an emergency.

[34/2012; 4/2017]

(4) The Authority may modify any action taken by a licensed trade repository under subsection (1), including the setting aside of that action.

[34/2012]

(5) Any person who is aggrieved by any action taken by the Authority, or by a licensed trade repository, under this section may, within 30 days after the person is notified of the action, appeal to the Minister, whose decision is final.

[34/2012]

(6) Despite the lodging of an appeal under subsection (5), any action taken by the Authority, or by a licensed trade repository, under this section continues to have effect pending the Minister's decision.

[34/2012]

(7) The Minister may, when deciding an appeal under subsection (5), make such modification as he or she considers necessary to any action taken by the Authority, or by a licensed trade repository, under this section, and any such modified action has effect from the date of the Minister's decision.

[34/2012]

(8) Any licensed trade repository which fails to comply with a direction issued under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

Power of Authority to remove officers of licensed trade repository

46Z.—(1) Where the Authority is satisfied that any of the following applies to an officer of a licensed trade repository, the Authority may, if it thinks it necessary in the interests of the public or a section of the public or for the protection of investors, by written notice direct the licensed trade repository to remove the officer from his or her office or employment, and the licensed trade repository must comply with such notice, despite the provisions of section 152 of the Companies Act 1967 or anything in any other law or in the memorandum or articles of association or other constituent document or documents of the licensed trade repository:

(*a*) the officer has wilfully contravened, or wilfully caused the licensed trade repository to contravene, this Act or the business rules of the licensed trade repository;

(*b*) the officer has, without reasonable excuse, failed to ensure compliance with this Act, or with the business rules of the licensed trade repository, by the licensed trade repository, by a participant of the licensed trade repository or by a person associated with that participant;

(*c*) the officer has failed to discharge the duties or functions of his or her office or employment;

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

(*e*) the officer has had an enforcement order against him or her in respect of a judgment debt returned unsatisfied in whole or in part;

[Act 25 of 2021 wef 01/04/2022]

(*f*) the officer has, whether in Singapore or elsewhere, made a compromise or scheme of arrangement with his or her creditors, being a compromise or scheme of arrangement that is still in operation;

(*g*) the officer has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after 1 August 2013, involving fraud or dishonesty or the conviction for which involved a finding that he or she

had acted fraudulently or dishonestly.

[34/2012]

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

[34/2012]

(3) Subject to subsection (4), the Authority must not direct a licensed trade repository to remove an officer from his or her office or employment without giving the licensed trade repository an opportunity to be heard.

[34/2012]

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

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

(*b*) the officer has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after 1 August 2013 —

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

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

[34/2012]

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

[34/2012]

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

[34/2012]

(7) Despite the lodging of an appeal under subsection (6), any action taken by the Authority under this section continues to have effect pending the Minister's decision.

[34/2012]

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

[34/2012]

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

[34/2012]

(10) Any licensed trade repository which, without reasonable excuse, contravenes a written notice issued under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

Subdivision (5) — Immunity

Immunity from criminal or civil liability

46ZA.—(1) No criminal or civil liability shall be incurred by a licensed trade repository, or by any person specified in subsection (2), for any thing done (including any statement made) or omitted to be done with reasonable care and in good faith in the course of, or in connection with, the discharge or purported discharge of the obligations of the licensed trade repository under this Act or under the business rules of the licensed trade repository.

[34/2012]

(2) For the purposes of subsection (1), the specified person is any person acting on behalf of the licensed trade repository, including —

(*a*) any director of the licensed trade repository; or

(*b*) any member of any committee established by the licensed trade repository.

[34/2012]

Division 3 — Regulation of Licensed Foreign Trade Repositories

General obligations

46ZB.—(1) A licensed foreign trade repository —

(*a*) must operate in a safe and efficient manner in its capacity as a trade repository;

(*b*) must manage any risks associated with its business and operations prudently;

(*c*) in discharging its obligations under this Act, must not act contrary to the interests of the public, having particular regard to the interests of the investing public;

(*d*) must ensure that access for participation in the licensed foreign trade repository is subject to criteria that are fair and objective, and that are designed to ensure the safe and efficient functioning of the licensed foreign trade repository and to protect the interests of the investing public;

(*e*) must maintain business rules that make satisfactory provision for the licensed foreign trade repository to be operated in a safe and efficient manner;

(*f*) must enforce compliance by its participants with its business rules;

(*g*) must have sufficient financial, human and system resources —

(i) to operate in a safe and efficient manner in its capacity as a trade repository;

(ii) to meet contingencies or disasters; and

(iii) to provide adequate security arrangements;

(*h*) must ensure that the Authority is provided with access to all information on transactions reported to the licensed foreign trade repository;

(*i*) must maintain governance arrangements that are adequate for the licensed foreign trade repository to be operated in a safe and efficient manner; and

(*j*) must ensure that it appoints or employs fit and proper persons as its chairperson, chief executive officer, directors and key management officers.

[34/2012]

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

[34/2012]

Obligation to manage risks prudently

46ZC. Without limiting section 46ZB(1)(*b*), a licensed foreign trade repository must —

(*a*) ensure that the systems and controls concerning the assessment and management of risks to the licensed foreign trade repository are adequate and appropriate for the scale and nature of its operations; and

(*b*) have adequate arrangements, processes, mechanisms or services to collect and maintain information on transactions reported to the licensed foreign trade repository.

[34/2012]

Obligation to notify Authority of certain matters

46ZD. A licensed foreign trade repository must, as soon as practicable after the occurrence of any of the following circumstances, give the Authority notice of the circumstance:

(*a*) any material change to the information provided by the licensed foreign trade repository in its application under section 46D(2);

(*b*) the licensed foreign trade repository becoming aware of any financial irregularity or other matter which in its opinion may affect its ability to discharge its financial obligations;

(*c*) any other matter that the Authority may —

(i) prescribe by regulations made under section 46ZJ for the purposes of this paragraph; or

(ii) specify by written notice to the licensed foreign trade repository in any particular case.

[34/2012]

Obligation to maintain proper records

46ZE.—(1) A licensed foreign trade repository must maintain a record of all transactions reported to the licensed foreign trade repository.

[34/2012]

(2) The Authority may prescribe by regulations made under section 46ZJ —

(*a*) the form and manner in which the record referred to in subsection (1) must be maintained;

(*b*) the information and details relating to each transaction that are to be maintained in the record; and

(*c*) the period of time that the record is to be maintained.

[34/2012]

Obligation to submit periodic reports

46ZF. A licensed foreign trade repository must submit to the Authority such reports in such form and manner, and at such frequency, as the Authority may prescribe.

[34/2012]

Obligation to assist Authority

46ZG. A licensed foreign trade repository must provide such assistance to the Authority as the Authority may require for the performance of the functions and duties of the Authority, including —

(*a*) the furnishing of such returns as the Authority may require for the proper administration of this Act; and

(*b*) the provision of —

(i) such books and information as the Authority may require for the proper administration of this Act, being books and information —

(A) relating to the business or operations of the licensed foreign trade repository; or

(B) in respect of any transaction or class of transactions reported to the licensed foreign trade repository; and

(ii) such other information as the Authority may require for the proper administration of this Act.

[34/2012]

Obligation to maintain confidentiality

46ZH.—(1) Subject to subsection (2), a licensed foreign trade repository and its officers and employees must maintain, and aid in maintaining, the confidentiality of all user information or transaction information that —

(*a*) comes to the knowledge of the licensed foreign trade repository or any of its officers or employees; or

(*b*) is in the possession of the licensed foreign trade repository or any of its officers or employees.

[34/2012]

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

(*a*) the disclosure of user information or transaction information for such purposes, or in such circumstances, as the Authority may prescribe;

(*b*) any disclosure of user information or transaction information which is authorised by the Authority to be disclosed or provided; or

(*c*) the disclosure of user information or transaction information pursuant to any requirement imposed under any written law or order of court in Singapore.

[34/2012]

(3) To avoid doubt, nothing in this section is to be construed as preventing a licensed foreign trade repository from entering into a written agreement with a participant which obliges the licensed foreign trade repository to maintain a higher degree of confidentiality than that specified in this section.

[34/2012]

(4) A licensed foreign trade repository must comply with such other requirements relating to confidentiality as the Authority may prescribe.

[34/2012]

Penalties under this Division

46ZI. Any licensed foreign trade repository which contravenes section 46ZB(1), 46ZC, 46ZD, 46ZE(1), 46ZF, 46ZG or 46ZH(1) or (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

Division 4 — General Powers of Authority

Interpretation of sections 46ZIA to 46ZIF

46ZIA. In this section and sections 46ZIB to 46ZIF, unless the context otherwise requires —

"business" includes affairs and property;

"office holder", in relation to a licensed trade repository or licensed foreign trade repository, means any person acting as the liquidator, the provisional liquidator, the receiver or the receiver and manager of the licensed trade repository or licensed foreign trade repository (as the case may be), or acting in an equivalent

capacity in relation to the licensed trade repository or licensed foreign trade repository, as the case may be;

"relevant business" means any business of a licensed trade repository or licensed foreign trade repository —

(*a*) which the Authority has assumed control of under section 46ZIB; or

(*b*) in relation to which a statutory adviser or a statutory manager has been appointed under section 46ZIB;

"statutory adviser" means a statutory adviser appointed under section 46ZIB;

"statutory manager" means a statutory manager appointed under section 46ZIB.

[10/2013]

Action by Authority if licensed trade repository unable to meet obligations, etc.

46ZIB.—(1) The Authority may exercise any one or more of the powers specified in subsection (2) as appears to it to be necessary, where —

(*a*) a licensed trade repository or licensed foreign trade repository informs the Authority that it is or is likely to become insolvent, or that it is or is likely to become unable to meet its obligations, or that it has suspended or is about to suspend payments;

(*b*) a licensed trade repository or licensed foreign trade repository becomes unable to meet its obligations, or is insolvent, or suspends payments;

(*c*) the Authority is of the opinion that a licensed trade repository or licensed foreign trade repository —

(i) is carrying on its business in a manner likely to be detrimental to the interests of the public or a section of the public or the protection of investors, or to the objectives specified in section 46A;

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

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

(iv) has failed to comply with any condition or restriction imposed on it under section 46E(3) or (4); or

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

[10/2013]

(2) Subject to subsections (1) and (3), the Authority may —

(*a*) require the licensed trade repository or licensed foreign trade repository (as the case may be) immediately to take any action or to do or not to do any act or thing whatsoever in relation to its business as the Authority may consider necessary;

(*b*) appoint one or more persons as statutory adviser, on such terms and conditions as the Authority may specify, to advise the licensed trade repository or licensed foreign trade repository (as the case may be) on the proper management of such of the business of the licensed trade repository or licensed foreign trade repository (as the case may be) as the Authority may determine; or

(*c*) assume control of and manage such of the business of the licensed trade repository or licensed foreign trade repository (as the case may be) as the Authority may determine, or appoint one or more persons as statutory manager to do so on such terms and conditions as the Authority may specify.

[10/2013]

(3) In the case of a licensed foreign trade repository, any appointment of a statutory adviser or statutory manager or any assumption of control by the Authority of any business of the licensed foreign trade repository under subsection (2) is only in relation to —

(*a*) the business or affairs of the licensed foreign trade repository carried on in, or managed in or from, Singapore; or

(*b*) the property of the licensed foreign trade repository located in Singapore or reflected in the books of the licensed foreign trade repository in Singapore (as the case may be) in relation to its operations in Singapore.

[10/2013]

(4) Where the Authority appoints 2 or more persons as the statutory manager of a licensed trade repository or licensed foreign trade repository, the Authority must specify, in the terms and conditions of the appointment, which of the duties, functions and powers of the statutory manager —

(*a*) may be discharged or exercised by such persons jointly and severally;

(*b*) must be discharged or exercised by such persons jointly; and

(*c*) must be discharged or exercised by a specified person or such persons.

[10/2013]

(5) Where the Authority has exercised any power under subsection (2), it may, at any

time and without affecting its power under section 46H(1)(*da*), do one or more of the following:

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

(*b*) further exercise any of the powers under subsection (2);

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

[10/2013]

(6) No liability shall be incurred by a statutory manager or a statutory adviser for anything done (including any statement made) or omitted to be done with reasonable care and in good faith in the course of or in connection with —

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

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

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

[10/2013]

(7) Any licensed trade repository or licensed foreign trade repository that fails to comply with a requirement imposed by the Authority under subsection (2)(*a*) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[10/2013]

Effect of assumption of control under section 46ZIB

46ZIC.—(1) Upon assuming control of the relevant business of a licensed trade repository or licensed foreign trade repository, the Authority or statutory manager (as the case may be) must take custody or control of the relevant business.

[10/2013]

(2) During the period when the Authority or statutory manager is in control of the relevant business of a licensed trade repository or licensed foreign trade repository, the Authority or statutory manager —

(*a*) must manage the relevant business of the licensed trade repository or licensed foreign trade repository (as the case may be) in the name of and on behalf of the licensed trade repository or licensed foreign trade repository, as the case may be; and

(*b*) is deemed to be an agent of the licensed trade repository or licensed foreign trade repository, as the case may be.

[10/2013]

(3) In managing the relevant business of a licensed trade repository or licensed foreign trade repository, the Authority or statutory manager —

(*a*) must consider the interests of the public or the section of the public referred to in section 46ZIB(1)(*c*)(i), and the need to protect investors; and

(*b*) has all the duties, powers and functions of the members of the board of directors of the licensed trade repository or licensed foreign trade repository (as the case may be) (collectively and individually) under this Act, the Companies Act 1967 and the constitution of the licensed trade repository or licensed foreign trade repository (as the case may be), including powers of delegation, in relation to the relevant business of the licensed trade repository or licensed foreign trade repository (as the case may be); but nothing in this paragraph requires the Authority or statutory manager to call any meeting of the licensed trade repository or licensed foreign trade repository (as the case may be) under the Companies Act 1967 or the constitution of the licensed trade repository or licensed foreign trade repository (as the case may be).

[10/2013]

(4) Despite any written law or rule of law, upon the assumption of control of the relevant business of a licensed trade repository or licensed foreign trade repository by the Authority or statutory manager, any appointment of a person as the chief executive officer or a director of the licensed trade repository or licensed foreign trade repository (as the case may be), which was in force immediately before the assumption of control, is deemed to be revoked, unless the Authority gives its approval, by written notice to the person and the licensed trade repository or licensed foreign trade repository (as the case may be), for the person to remain in the appointment.

[10/2013]

(5) Despite any written law or rule of law, during the period when the Authority or statutory manager is in control of the relevant business of a licensed trade repository or licensed foreign trade repository, except with the approval of the Authority, no person may be appointed as the chief executive officer or a director of the licensed trade repository or licensed foreign trade repository, as the case may be.

[10/2013]

(6) Where the Authority has given its approval under subsection (4) or (5) to a person to remain in the appointment of, or to be appointed as, the chief executive officer or a director of a licensed trade repository or licensed foreign trade repository, the Authority

may at any time, by written notice to the person and the licensed trade repository or licensed foreign trade repository (as the case may be), revoke that approval, and the appointment is deemed to be revoked on the date specified in the notice.

[10/2013]

(7) Despite any written law or rule of law, if any person, whose appointment as the chief executive officer or a director of a licensed trade repository or licensed foreign trade repository is revoked under subsection (4) or (6), acts or purports to act after the revocation as the chief executive officer or a director of the licensed trade repository or licensed foreign trade repository (as the case may be) during the period when the Authority or statutory manager is in control of the relevant business of the licensed trade repository or licensed foreign trade repository (as the case may be) —

(*a*) the act or purported act of the person is invalid and of no effect; and

(*b*) the person shall be guilty of an offence.

[10/2013]

(8) Despite any written law or rule of law, if any person who is appointed as the chief executive officer or a director of a licensed trade repository or licensed foreign trade repository in contravention of subsection (5) acts or purports to act as the chief executive officer or a director of the licensed trade repository or licensed foreign trade repository (as the case may be) during the period when the Authority or statutory manager is in control of the relevant business of the licensed trade repository or licensed foreign trade repository (as the case may be) —

(*a*) the act or purported act of the person is invalid and of no effect; and

(*b*) the person shall be guilty of an offence.

[10/2013]

(9) During the period when the Authority or statutory manager is in control of the relevant business of a licensed trade repository or licensed foreign trade repository —

(*a*) if there is any conflict or inconsistency between —

(i) a direction or decision given by the Authority or statutory manager (including a direction or decision to a person or body of persons referred to in sub-paragraph (ii)); and

(ii) a direction or decision given by any chief executive officer, director, member, executive officer, employee, agent or office holder, or the board of directors, of the licensed trade repository or licensed foreign trade repository, as the case may be,

the direction or decision referred to in sub-paragraph (i), to the extent of the conflict or inconsistency, prevails over the direction or decision

referred to in sub-paragraph (ii); and

(*b*) no person may exercise any voting or other right attached to any share in the licensed trade repository or licensed foreign trade repository (as the case may be) in any manner that may defeat or interfere with any duty, function or power of the Authority or statutory manager, and any such act or purported act is invalid and of no effect.

[10/2013]

(10) Any person who is guilty of an offence under subsection (7) or (8) shall be liable on conviction to a fine not exceeding $150,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[10/2013]

Duration of control

46ZID.—(1) The Authority must cease to be in control of the relevant business of a licensed trade repository or licensed foreign trade repository when the Authority is satisfied that —

(*a*) the reasons for the Authority's assumption of control of the relevant business have ceased to exist; or

(*b*) it is no longer necessary in the interests of the public or the section of the public referred to in section 46ZIB(1)(*c*)(i) or for the protection of investors.

[10/2013]

(2) A statutory manager is deemed to have assumed control of the relevant business of a licensed trade repository or licensed foreign trade repository on the date of the statutory manager's appointment as such.

[10/2013]

(3) The appointment of a statutory manager in relation to the relevant business of a licensed trade repository or licensed foreign trade repository may be revoked by the Authority at any time —

(*a*) if the Authority is satisfied that —

(i) the reasons for the appointment have ceased to exist; or

(ii) it is no longer necessary in the interests of the public or the section of the public referred to in section 46ZIB(1)(*c*)(i) or for the protection of investors; or

(*b*) on any other ground,

and upon such revocation, the statutory manager ceases to be in control of the relevant business of the licensed trade repository or licensed foreign trade repository, as the case may be.

[10/2013]

(4) The Authority must, as soon as practicable, publish in the *Gazette* the date, and such other particulars as the Authority thinks fit, of —

(*a*) the Authority's assumption of control of the relevant business of a licensed trade repository or licensed foreign trade repository;

(*b*) the cessation of the Authority's control of the relevant business of a licensed trade repository or licensed foreign trade repository;

(*c*) the appointment of a statutory manager in relation to the relevant business of a licensed trade repository or licensed foreign trade repository; and

(*d*) the revocation of a statutory manager's appointment in relation to the relevant business of a licensed trade repository or licensed foreign trade repository.

[10/2013]

Responsibilities of officers, member, etc., of licensed trade repository

46ZIE.—(1) During the period when the Authority or statutory manager is in control of the relevant business of a licensed trade repository or licensed foreign trade repository —

(*a*) the General Division of the High Court may, on an application by the Authority or statutory manager, direct any person who has ceased to be or who is still any chief executive officer, director, member, executive officer, employee, agent, banker, auditor or office holder of, or trustee for, the licensed trade repository or licensed foreign trade repository (as the case may be) to pay, deliver, convey, surrender or transfer to the Authority or statutory manager, within such period as the General Division of the High Court may specify, any property or book of the licensed trade repository or licensed foreign trade repository (as the case may be) which is comprised in, forms part of or relates to the relevant business of the licensed trade repository or licensed foreign trade repository (as the case may be), and which is in the person's possession or control; and

(*b*) any person who has ceased to be or who is still any chief executive officer, director, member, executive officer, employee, agent, banker, auditor or

office holder of, or trustee for, the licensed trade repository or licensed foreign trade repository (as the case may be) must give to the Authority or statutory manager such information as the Authority or statutory manager may require for the discharge of the Authority's or statutory manager's duties or functions, or the exercise of the Authority's or statutory manager's powers, in relation to the licensed trade repository or licensed foreign trade repository (as the case may be), within such time and in such manner as the Authority or statutory manager may specify.

[10/2013; 40/2019]

(2) Any person who —

(*a*) without reasonable excuse, fails to comply with subsection (1)(*b*); or

(*b*) in purported compliance with subsection (1)(*b*), knowingly or recklessly provides any information or document that is false or misleading in a material particular,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[10/2013]

Remuneration and expenses of Authority and others in certain cases

46ZIF.—(1) The Authority may at any time fix the remuneration and expenses to be paid by a licensed trade repository or licensed foreign trade repository —

(*a*) to a statutory manager or statutory adviser appointed in relation to the licensed trade repository or licensed foreign trade repository (as the case may be), whether or not the appointment has been revoked; and

(*b*) where the Authority has assumed control of the relevant business of the licensed trade repository or licensed foreign trade repository (as the case may be), to the Authority and any person appointed by the Authority under section 320 in relation to the Authority's assumption of control of the relevant business, whether or not the Authority has ceased to be in control of the relevant business.

[10/2013]

(2) The licensed trade repository or licensed foreign trade repository (as the case may be) must reimburse the Authority any remuneration and expenses payable by the licensed trade repository or licensed foreign trade repository (as the case may be) to a statutory manager or statutory adviser.

[10/2013]

Power of Authority to make regulations

46ZJ.—(1) Without affecting section 341, the Authority may make regulations for the purposes of this Part, including regulations relating to —

(*a*) the grant of a trade repository licence or foreign trade repository licence;

(*b*) the requirements applicable to a licensed trade repository or licensed foreign trade repository;

(*c*) the measures that a licensed trade repository or licensed foreign trade repository must adopt for the purposes of managing or mitigating risks;

(*d*) the maintenance of records of transactions reported to a licensed trade repository or licensed foreign trade repository; and

(*e*) the submission of reports by a licensed trade repository or licensed foreign trade repository.

[34/2012]

(2) Regulations made under this section may provide —

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

(*b*) for a penalty not exceeding a fine of $150,000 or imprisonment for a term not exceeding 12 months or both for each offence and, in the case of a continuing offence, for a further penalty not exceeding a fine of 10% of the maximum fine prescribed for that offence for every day or part of a day during which the offence continues after conviction.

[34/2012]

Power of Authority to issue directions

46ZK.—(1) The Authority may issue directions, whether of a general or specific nature, by written notice, to a licensed trade repository or licensed foreign trade repository, if the Authority thinks it necessary or expedient —

(*a*) for ensuring the safe and efficient operation of the licensed trade repository or licensed foreign trade repository, or of licensed trade repositories or licensed foreign trade repositories in general;

(*b*) for ensuring the integrity and stability of the capital markets or the financial system;

(*c*) in the interests of the public or a section of the public or for the protection of investors;

(*d*) for the effective administration of this Act; or

(*e*) for ensuring compliance with any condition or restriction that the Authority may impose under section 46E(3) or (4), 46K(2), 46U(5) or (10), 46V(11) or (12) or 46ZL(1) or (2), or such other obligations or requirements under this Act or as the Authority may prescribe.

[34/2012]

(2) Without limiting subsection (1), the Authority may issue directions, by written notice, to a licensed trade repository or licensed foreign trade repository —

(*a*) with respect to the publication of any information relating to any transaction reported to the licensed trade repository or licensed foreign trade repository, as the case may be; or

(*b*) for ensuring that the Authority and such other entities as the Authority may specify are provided with access to any information on any transaction reported to the licensed trade repository or licensed foreign trade repository.

[34/2012]

(3) A licensed trade repository or licensed foreign trade repository must comply with every direction issued to it under subsection (1) or (2).

[34/2012]

(4) Any licensed trade repository or licensed foreign trade repository which, without reasonable excuse, contravenes a direction issued to it under subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

(5) It is not necessary to publish any direction issued under subsection (1) or (2) in the *Gazette*.

[34/2012]

Power of Authority to exempt licensed trade repository or licensed foreign trade repository from provisions of this Part

46ZL.—(1) Without affecting section 337(1), the Authority may, by regulations made under section 46ZJ, exempt any licensed trade repository, licensed foreign trade repository, or class of licensed trade repositories or licensed foreign trade repositories from any provision of this Part, subject to such conditions or restrictions as the Authority may prescribe in those regulations.

[34/2012]

(2) Without affecting section 337(3) and (4), the Authority may, by written notice,

exempt any licensed trade repository or licensed foreign trade repository from any provision of this Part, subject to such conditions or restrictions as the Authority may specify by written notice, if the Authority is satisfied that the non-compliance by that licensed trade repository or licensed foreign trade repository with that provision will not detract from the objectives specified in section 46A.

[34/2012]

(2A) The Authority may, at any time, by written notice, add to, vary or revoke the conditions or restrictions mentioned in subsection (2).

[4/2017]

(2B) A licensed trade repository or licensed foreign trade repository, or any class of licensed trade repositories or class of licensed foreign trade repositories, that is exempted under subsection (1) must satisfy every condition or restriction imposed on it under that subsection.

[4/2017]

(2C) A licensed trade repository or licensed foreign trade repository, or any class of licensed trade repositories or class of licensed foreign trade repositories, that is exempted under subsection (2) must, for the duration of the exemption, satisfy every condition or restriction imposed on it under that subsection and subsection (2A).

[4/2017]

(3) It is not necessary to publish any exemption granted under subsection (2) in the *Gazette*.

[34/2012]

Division 5 — Voluntary Transfer of Business of Licensed Trade Repository or Licensed Foreign Trade Repository

Interpretation of this Division

46ZM. In this Division, unless the context otherwise requires —

"business" includes affairs, property, right, obligation and liability;

"Court" means the General Division of the High Court;

"debenture" has the meaning given by section 4(1) of the Companies Act 1967;

"property" includes property, right and power of every description;

"Registrar of Companies" means the Registrar of Companies appointed under the Companies Act 1967 and includes any Deputy or Assistant Registrar of Companies appointed under that Act;

"transferee" means a licensed trade repository or licensed foreign trade repository, or a corporation which has applied or will be applying for a trade repository licence or foreign trade repository licence, to which the whole or any part of a transferor's business is, is to be or is proposed to be transferred under this Division;

"transferor" means a licensed trade repository or licensed foreign trade repository the whole or any part of the business of which is, is to be, or is proposed to be transferred under this Division.

[10/2013; 40/2019]

Voluntary transfer of business

46ZN.—(1) A transferor may transfer the whole or any part of its business (including any business that is not the usual business of a licensed trade repository or licensed foreign trade repository) to a transferee, if —

(*a*) the Authority has consented to the transfer;

(*b*) the transfer involves the whole or any part of the business of the transferor that is the usual business of a licensed trade repository or licensed foreign trade repository; and

(*c*) the Court has approved the transfer.

[10/2013]

(2) Subsection (1) does not affect the right of a licensed trade repository or licensed foreign trade repository to transfer the whole or any part of its business under any law.

[10/2013]

(3) The Authority may consent to a transfer under subsection (1)(*a*) if the Authority is satisfied that —

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

(*b*) the transferee will conduct the business of the transferor prudently and comply with the provisions of this Act.

[10/2013]

(4) The Authority may at any time appoint one or more persons to perform an independent assessment of, and provide a report on, the proposed transfer of a transferor's business (or any part thereof) under this Division.

[10/2013]

(5) The remuneration and expenses of any person appointed under subsection (4) must be paid by the transferor and the transferee jointly and severally.

[10/2013]

(6) The Authority must serve a copy of any report provided under subsection (4) on the transferor and the transferee.

[10/2013]

(7) The Authority may require a person to provide, within the period and in the manner specified by the Authority, any information or document that the Authority may reasonably require for the discharge of its duties or functions, or the exercise of its powers, under this Division.

[10/2013]

(8) Any person who —

(*a*) without reasonable excuse, fails to comply with any requirement under subsection (7); or

(*b*) in purported compliance with any requirement under subsection (7), knowingly or recklessly provides any information or document that is false or misleading in a material particular,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $200,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding $20,000 for every day or part of a day during which the offence continues after conviction.

[10/2013]

(9) Where a person claims, before providing the Authority with any information or document that the person is required to provide under subsection (7), that the information or document might tend to incriminate the person, the information or document is not admissible in evidence against the person in criminal proceedings other than proceedings under subsection (8).

[10/2013]

Approval of transfer

46ZO.—(1) A transferor must apply to the Court for its approval of the transfer of the whole or any part of the business of the transferor to the transferee under this Division.

[10/2013]

(2) Before making an application under subsection (1) —

(*a*) the transferor must lodge with the Authority a report setting out such details of the transfer and provide such supporting documents as the Authority may specify;

(*b*) the transferor must obtain the consent of the Authority under section 46ZN(1)(*a*);

(*c*) the transferor and the transferee must, if they intend to serve on their respective participants a summary of the transfer, obtain the Authority's approval of the summary;

(*d*) the transferor must, at least 15 days before the application is made but not earlier than one month after the report referred to in paragraph (*a*) is lodged with the Authority, publish in the *Gazette* and in such newspaper or newspapers as the Authority may determine a notice of the transferor's intention to make the application and containing such other particulars as may be prescribed;

(*e*) the transferor and the transferee must keep at their respective offices in Singapore, for inspection by any person who may be affected by the transfer, a copy of the report referred to in paragraph (*a*) for a period of 15 days after the publication of the notice referred to in paragraph (*d*) in the *Gazette*; and

(*f*) unless the Court directs otherwise, the transferor and the transferee must serve on their respective participants affected by the transfer, at least 15 days before the application is made, a copy of the report referred to in paragraph (*a*) or a summary of the transfer approved by the Authority under paragraph (*c*).

[10/2013]

(3) The Authority and any person who, in the opinion of the Court, is likely to be affected by the transfer —

(*a*) have the right to appear before and be heard by the Court in any proceedings relating to the transfer; and

(*b*) may make any application to the Court in relation to the transfer.

[10/2013]

(4) The Court is not to approve the transfer if the Authority has not consented under section 46ZN(1)(*a*) to the transfer.

[10/2013]

(5) The Court may, after taking into consideration the views (if any) of the Authority on the transfer —

(*a*) approve the transfer without modification or subject to any modification agreed to by the transferor and the transferee; or

(*b*) refuse to approve the transfer.

[10/2013]

(6) If the transferee is not granted a trade repository licence or foreign trade

repository licence by the Authority, the Court may approve the transfer on terms that the transfer takes effect only in the event of the transferee being granted a trade repository licence or foreign trade repository licence by the Authority.

[10/2013]

(7) The Court may by the order approving the transfer or by any subsequent order provide for all or any of the following matters:

(*a*) the transfer to the transferee of the whole or any part of the business of the transferor;

(*b*) the allotment or appropriation by the transferee of any share, debenture, policy or other interest in the transferee which under the transfer is to be allotted or appropriated by the transferee to or for any person;

(*c*) the continuation by (or against) the transferee of any legal proceedings pending by (or against) the transferor;

(*d*) the dissolution, without winding up, of the transferor;

(*e*) the provisions to be made for persons who are affected by the transfer;

(*f*) such incidental, consequential and supplementary matters as are, in the opinion of the Court, necessary to secure that the transfer is fully effective.

[10/2013]

(8) Any order under subsection (7) may —

(*a*) provide for the transfer of any business, whether or not the transferor otherwise has the capacity to effect the transfer in question;

(*b*) make provision in relation to any property which is held by the transferor as trustee; and

(*c*) make provision as to any future or contingent right or liability of the transferor, including provision as to the construction of any instrument under which any such right or liability may arise.

[10/2013]

(9) Subject to subsection (10), where an order made under subsection (7) provides for the transfer to the transferee of the whole or any part of the transferor's business, then by virtue of the order the business (or part thereof) of the transferor specified in the order is transferred to and vests in the transferee, free in the case of any particular property (if the order so directs) from any charge which by virtue of the transfer is to cease to have effect.

[10/2013]

(10) No order under subsection (7) has any effect or operation in transferring or

otherwise vesting land in Singapore until the appropriate entries are made with respect to the transfer or vesting of that land by the appropriate authority.

[10/2013]

(11) If any business specified in an order under subsection (7) is governed by the law of any foreign country or territory, the Court may order the transferor to take all necessary steps for securing that the transfer of the business to the transferee is fully effective under the law of that country or territory.

[10/2013]

(12) Where an order is made under this section, the transferor and the transferee must each lodge within 7 days after the order is made —

(*a*) a copy of the order with the Registrar of Companies and with the Authority; and

(*b*) where the order relates to land in Singapore, an office copy of the order with the appropriate authority concerned with the registration or recording of dealings in that land.

[10/2013]

(13) A transferor or transferee which contravenes subsection (12), and every officer of the transferor or transferee (as the case may be) who fails to take all reasonable steps to secure compliance by the transferor or transferee (as the case may be) with that subsection, shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding $2,000 and, in the case of a continuing offence, to a further fine not exceeding $200 for every day or part of a day during which the offence continues after conviction.

[10/2013]

PART 3

CLEARING FACILITIES

[34/2012]

Objectives of this Part

47. The objectives of this Part are —

(*a*) to promote safe and efficient clearing facilities; and

(*b*) to reduce systemic risk.

[34/2012]

Interpretation of this Part

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

"default proceedings" means any proceedings or other action taken by an approved clearing house or a recognised clearing house under its default rules;

"default rules", in relation to an approved clearing house or a recognised clearing house, means the business rules of the approved clearing house or recognised clearing house which provide for the taking of proceedings or other action if a participant has failed, or appears to be unable or to be likely to become unable, to meet the participant's obligations for any unsettled or open market contract to which the participant is a party;

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

"foreign corporation" means a corporation which is incorporated or formed outside Singapore;

"market charge" means a security interest, whether fixed or floating, granted in favour of an approved clearing house, or a recognised clearing house, over market collateral;

"market collateral" means any property held by or deposited with an approved clearing house or a recognised clearing house, for the purpose of securing any liability arising directly in connection with the ensuring of the performance of market contracts by the approved clearing house or recognised clearing house;

"market contract" means —

(*a*) a contract subject to the business rules of an approved clearing house or a recognised clearing house, that is entered into between the approved clearing house or recognised clearing house and a participant pursuant to a novation (however described), whether before or after default proceedings have commenced, which is in accordance with those business rules and for the purposes of the clearing or settlement of transactions using the clearing facility of the approved clearing house or recognised clearing house; or

(*b*) a transaction which is being cleared or settled using the clearing facility of an approved clearing house or a recognised clearing house, and in accordance with the business rules of the approved clearing house or recognised clearing house, whether or not a novation referred to in paragraph (*a*) is to take place;

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

(*a*) any money, letter of credit, banker's draft, certified cheque, guarantee or other similar instrument;

(*b*) any securities;

(*c*) any unit in a collective investment scheme;

(*d*) any derivatives contract; or

(*e*) any other asset of value acceptable to an approved clearing house or a recognised clearing house;

"relevant office holder" means —

(*a*) the Official Assignee exercising his or her powers under the Insolvency, Restructuring and Dissolution Act 2018;

(*b*) a person acting in relation to a corporation as the liquidator, the provisional liquidator, the receiver, the receiver and manager or the judicial manager of the corporation, or acting in an equivalent capacity in relation to a corporation; or

(*c*) a person acting in relation to an individual as the trustee in bankruptcy, or the interim receiver of the property, of the individual, or acting in an equivalent capacity in relation to an individual;

"settlement", in relation to a market contract, includes partial settlement;

"Singapore corporation" means a corporation which is incorporated in Singapore.

[34/2012; 4/2017; 40/2018]

(2) Where a charge is granted partly for the purpose specified in the definition of "market charge" in subsection (1) and partly for any other purpose or purposes, the charge is treated as a market charge under this Part insofar as it has effect for that specified purpose.

[34/2012]

(3) Where any collateral is granted partly for the purpose specified in the definition of "market collateral" in subsection (1) and partly for any other purpose or purposes, the collateral is treated as market collateral under this Part insofar as it has been provided for that specified purpose.

[34/2012]

(4) Any references in this Part to the law of insolvency is a reference to —

(*a*) the Insolvency, Restructuring and Dissolution Act 2018; and

(*b*) [*Deleted by Act 40 of 2018*]

(*c*) any other written law, whether in Singapore or elsewhere, which is concerned with, or in any way related to, the bankruptcy or insolvency of a

person, other than the Banking Act 1970.

[34/2012; 40/2018]

(5) Any reference in this Part to a settlement, in relation to a market contract, is a reference to the discharge of the rights and liabilities of the parties to the market contract, whether by performance, compromise or otherwise.

[34/2012]

Division 1 — Establishment of Clearing Facilities

Requirement for approval or recognition

49.—(1) A person must not establish or operate a clearing facility, or hold out that the person is operating a clearing facility, unless the person is —

(*a*) an approved clearing house; or

(*b*) a recognised clearing house.

[34/2012]

(2) A person must not hold out that the person is —

(*a*) an approved clearing house, unless the person is an approved clearing house; or

(*b*) a recognised clearing house, unless the person is a recognised clearing house.

[34/2012]

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

(*a*) the title or description "securities clearing house" or "futures clearing house" in any language; or

(*b*) any title or description which resembles a title or description referred to in paragraph (*a*).

[34/2012]

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

[34/2012]

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

[34/2012]

(6) Without affecting section 337(1), the Authority may, by regulations made under section 81Q, exempt any corporation or class of corporations from subsection (1), subject to such conditions or restrictions as the Authority may prescribe in those regulations.

[34/2012]

(7) Without affecting section 337(3) and (4), the Authority may, by written notice, exempt any corporation from subsection (1), subject to such conditions or restrictions as the Authority may specify by written notice, if the Authority is satisfied that the exemption will not detract from the objectives specified in section 47.

[34/2012]

(8) It is not necessary to publish any exemption granted under subsection (7) in the *Gazette*.

[34/2012]

(9) The Authority may, at any time, by written notice —

(*a*) add to the conditions and restrictions referred to in subsection (7); or

(*b*) vary or revoke any condition or restriction referred to in that subsection.

[34/2012]

(10) Every corporation that is granted an exemption under subsection (6) must satisfy every condition or restriction imposed on it under that subsection.

[34/2012]

(11) Every corporation that is granted an exemption under subsection (7) must, for the duration of the exemption, satisfy every condition or restriction imposed on it under that subsection or subsection (9).

[34/2012]

(12) Any corporation which contravenes subsection (10) or (11) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

Application for approval or recognition

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

(*a*) approved as an approved clearing house; or

(*b*) recognised as a recognised clearing house.

[34/2012]

(2) A foreign corporation may apply to the Authority to be recognised as a recognised clearing house.

[34/2012]

(3) An application under subsection (1) or (2) must be —

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

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

[34/2012]

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

[34/2012]

Power of Authority to approve or recognise clearing house

51.—(1) Where a Singapore corporation has made an application under section 50(1), the Authority may —

(*a*) in the case of an application to be approved as an approved clearing house, approve the Singapore corporation as an approved clearing house; or

(*b*) in the case of an application to be recognised as a recognised clearing house, recognise the Singapore corporation as a recognised clearing house.

[34/2012]

(2) Where a foreign corporation has made an application under section 50(2), the Authority may recognise the corporation as a recognised clearing house.

[34/2012]

(3) Despite subsection (1), the Authority may, with the consent of the applicant —

(*a*) treat an application under section 50(1)(*a*) as an application under section 50(1)(*b*), if the Authority is of the opinion that the applicant would be more appropriately regulated as a recognised clearing house; or

(*b*) treat an application under section 50(1)(*b*) as an application under section 50(1)(*a*), if the Authority is of the opinion that the applicant would be more appropriately regulated as an approved clearing house.

[34/2012]

(4) The Authority may approve a Singapore corporation as an approved clearing house under subsection (1)(*a*), recognise a Singapore corporation as a recognised

clearing house under subsection (1)(*b*) or recognise a foreign corporation as a recognised clearing house under subsection (2), subject to such conditions or restrictions as the Authority thinks fit to impose by written notice, including conditions or restrictions, either of a general or specific nature, relating to —

(*a*) the activities that the corporation may undertake;

(*b*) the products that may be cleared or settled by any clearing facility established or operated by the corporation; and

(*c*) the nature of the investors or participants who may use or have an interest in any clearing facility established or operated by the corporation.

[34/2012]

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

[34/2012]

(6) An approved clearing house or a recognised clearing house must, for the duration of the approval or recognition, satisfy every condition or restriction that may be imposed on it under subsection (4) or (5).

[34/2012]

(7) The Authority must not approve an applicant as an approved clearing house, or recognise an applicant as a recognised clearing house, unless the applicant meets such requirements, including minimum financial requirements, as the Authority may prescribe, either generally or specifically.

[34/2012]

(8) The Authority may refuse to approve a Singapore corporation as an approved clearing house, or recognise a Singapore corporation or foreign corporation as a recognised clearing house, if —

(*a*) the corporation has not provided the Authority with such information as the Authority may require, relating to —

(i) the corporation or any person employed by or associated with the corporation for the purposes of the corporation's business; or

(ii) any circumstances likely to affect the corporation's manner of conducting business;

(*b*) any information or document provided by the corporation to the Authority is false or misleading;

(*c*) the corporation or a substantial shareholder of the corporation is in the

course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;

(*d*) an enforcement order against the corporation or a substantial shareholder of the corporation in respect of a judgment debt has been returned unsatisfied in whole or in part;

[Act 25 of 2021 wef 01/04/2022]

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

(*f*) the corporation or a substantial shareholder of the corporation has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with the creditors of the corporation or shareholder (as the case may be) being a compromise or scheme of arrangement that is still in operation;

(*g*) the corporation, a substantial shareholder of the corporation or any officer of the corporation —

(i) has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after 1 August 2013, involving fraud or dishonesty or the conviction for which involved a finding that the corporation, shareholder or officer (as the case may be) had acted fraudulently or dishonestly; or

(ii) has been convicted of an offence under this Act committed before, on or after 1 August 2013;

(*h*) the Authority is not satisfied as to the educational or other qualifications or experience of the officers or employees of the corporation, having regard to the nature of the duties they are to perform in connection with the establishment or operation of any clearing facility;

(*i*) the corporation fails to satisfy the Authority that the corporation is a fit and proper person or that all of its officers, employees and substantial shareholders are fit and proper persons;

(*j*) the Authority has reason to believe that the corporation may not be able to act in the best interests of investors or its members, participants or customers, having regard to the reputation, character, financial integrity and reliability of the corporation or its officers, employees or substantial

shareholders;

(*k*) the Authority is not satisfied as to —

(i) the financial standing of the corporation or any of its substantial shareholders; or

(ii) the manner in which the business of the corporation is to be conducted;

(*l*) the Authority is not satisfied as to the record of past performance or expertise of the corporation, having regard to the nature of the business which the corporation may carry on in connection with the establishment or operation of any clearing facility;

(*m*) there are other circumstances which are likely to —

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

(ii) reflect discredit on the manner of conducting the business of the corporation or any of its substantial shareholders;

(*n*) in the case of any clearing facility that the corporation operates, the Authority has reason to believe that the corporation, or any of its officers or employees, will not operate a safe and efficient clearing facility;

(*o*) the corporation does not satisfy the criteria prescribed under section 52 to be approved as an approved clearing house or recognised as a recognised clearing house, as the case may be; or

(*p*) the Authority is of the opinion that it would be contrary to the interests of the public to approve or recognise the corporation.

[34/2012]

(9) Subject to subsection (10), the Authority must not refuse to approve a Singapore corporation as an approved clearing house, or recognise a Singapore corporation or foreign corporation as a recognised clearing house, under subsection (8) without giving the corporation an opportunity to be heard.

[34/2012]

(10) The Authority may refuse to approve a Singapore corporation as an approved clearing house, or recognise a Singapore corporation or foreign corporation as a recognised clearing house, on any of the following grounds without giving the corporation an opportunity to be heard:

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

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

(*c*) the corporation has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after 1 August 2013, involving fraud or dishonesty or the conviction for which involved a finding that it had acted fraudulently or dishonestly.

[34/2012]

(11) The Authority must give notice in the *Gazette* of any corporation approved as an approved clearing house under subsection (1)(*a*) or recognised as a recognised clearing house under subsection (1)(*b*) or (2), and such notice may include all or any of the conditions and restrictions imposed by the Authority on the corporation under subsections (4) and (5).

[34/2012]

(12) Any applicant which is aggrieved by a refusal of the Authority to grant to the applicant an approval under subsection (1)(*a*) or a refusal of the Authority to recognise the applicant under subsection (1)(*b*) or (2) may, within 30 days after the applicant is notified of the refusal, appeal to the Minister, whose decision is final.

[34/2012]

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

[34/2012]

General criteria to be taken into account by Authority

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

(*a*) whether a Singapore corporation referred to in section 50(1) or 54(1) should be approved as an approved clearing house or recognised as a recognised clearing house;

(*b*) whether a foreign corporation referred to in section 50(2) should be recognised as a recognised clearing house; and

(*c*) whether an approved clearing house or a recognised clearing house that is

subject to a review by the Authority under section 54(4) should be approved as an approved clearing house or recognised as a recognised clearing house.

[34/2012]

(2) Without affecting section 51 and subsection (1), the Authority may, for the purposes of deciding whether to recognise a foreign corporation as a recognised clearing house under section 51(2), have regard, in addition to any requirements prescribed under section 51(7) and any criteria prescribed under subsection (1), to —

(*a*) whether adequate arrangements exist for co-operation between the Authority and the primary financial services regulatory authority responsible for the supervision of the foreign corporation in the country or territory in which the head office or principal place of business of the foreign corporation is situated; and

(*b*) whether the foreign corporation is, in the country or territory in which the head office or principal place of business of the foreign corporation is situated, subject to requirements and supervision comparable, in the degree to which the objectives specified in section 47 are achieved, to the requirements and supervision to which approved clearing houses and recognised clearing houses are subject under this Act.

[34/2012]

(3) In considering whether a foreign corporation has met the requirements mentioned in subsection (2)(*b*), the Authority may have regard to —

(*a*) the relevant laws and practices of the country or territory in which the head office or principal place of business of the foreign corporation is situated; and

(*b*) the rules and practices of the foreign corporation.

[34/2012]

Annual fees payable by approved clearing house or recognised clearing house

53.—(1) Every approved clearing house and every recognised clearing house must pay to the Authority such annual fees as may be prescribed in such manner as the Authority may specify.

[34/2012]

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

[34/2012]

Change in status

54.—(1) A Singapore corporation which is an approved clearing house or a recognised clearing house may apply to the Authority to change its status in the manner referred to in subsection (5).

[34/2012]

(2) An application under subsection (1) must be —

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

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

[34/2012]

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

[34/2012]

(4) The Authority may, on its own initiative, review the status of a Singapore corporation that is an approved clearing house or a recognised clearing house in accordance with the requirements prescribed under section 51(7) and the criteria prescribed under section 52(1).

[34/2012]

(5) Where an application is made by a Singapore corporation under subsection (1), or where a review of the status of a Singapore corporation is conducted by the Authority under subsection (4), the Authority may —

(*a*) if the corporation is an approved clearing house, withdraw the approval as such and recognise the corporation as a recognised clearing house under section 51(1)(*b*);

(*b*) if the corporation is a recognised clearing house, withdraw the recognition as such and approve the corporation as an approved clearing house under section 51(1)(*a*); or

(*c*) make no change to the status of the corporation as an approved clearing house or a recognised clearing house.

[34/2012]

(6) Where an application is made under subsection (1), the Authority must not exercise its power under subsection (5)(*c*) without giving the Singapore corporation an opportunity to be heard.

[34/2012]

(7) Where a review of the status of a Singapore corporation is conducted by the Authority on its own initiative under subsection (4), the Authority must not exercise its powers under subsection (5)(*a*) or (*b*) without giving the corporation an opportunity to be

heard.

[34/2012]

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

[34/2012]

Cancellation of approval or recognition

55.—(1) An approved clearing house or a recognised clearing house which intends to cease operating its clearing facility or, where it operates more than one clearing facility, all of its clearing facilities, may apply to the Authority to cancel its approval as an approved clearing house or recognition as a recognised clearing house, as the case may be.

[34/2012]

(2) An application under subsection (1) must be made in such form and manner, and not later than such time, as the Authority may prescribe.

[34/2012]

(3) The Authority may cancel the approval of an approved clearing house, or the recognition of a recognised clearing house, on such application if the Authority is satisfied that —

(*a*) the approved clearing house or recognised clearing house has ceased operating its clearing facility or all of its clearing facilities, as the case may be; and

(*b*) the cancellation of the approval or recognition (as the case may be) will not detract from the objectives specified in section 47.

[34/2012]

Power of Authority to revoke approval and recognition

56.—(1) The Authority may revoke any approval of a Singapore corporation as an approved clearing house under section 51(1)(*a*), any recognition of a Singapore corporation as a recognised clearing house under section 51(1)(*b*) or any recognition of a foreign corporation as a recognised clearing house under section 51(2), if —

(*a*) there exists at any time a ground under section 51(7) or (8) on which the Authority may refuse an application;

(*b*) the corporation does not commence operating its clearing facility, or, where it operates more than one clearing facility, all of its clearing

facilities, within 12 months starting on the date on which it was granted the approval under section 51(1)(*a*) or was recognised under section 51(1)(*b*) or (2), as the case may be;

(*c*) the corporation ceases to operate its clearing facility or, where it operates more than one clearing facility, all of its clearing facilities;

(*d*) the corporation contravenes —

(i) any condition or restriction applicable in respect of its approval or recognition, as the case may be;

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

(iii) any provision in this Act;

(*da*) upon the Authority exercising any power under section 81SAA(2) or the Minister exercising any power under Division 2, 3, 4 or 4A of Part 4B of the Monetary Authority of Singapore Act 1970 in relation to the corporation, the Authority considers that it is in the public interest to revoke the approval or recognition, as the case may be;

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

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

[34/2012; 10/2013; 4/2017; 31/2017]

(2) Subject to subsection (3), the Authority must not revoke under subsection (1) any approval under section 51(1)(*a*) or recognition under section 51(1)(*b*) or (2) that was granted to a corporation without giving the corporation an opportunity to be heard.

[34/2012]

(3) The Authority may revoke an approval under section 51(1)(*a*), or a recognition under section 51(1)(*b*) or (2), that was granted to a corporation on any of the following grounds without giving the corporation an opportunity to be heard:

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

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

(*c*) the corporation has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after 1 August 2013, involving fraud or

dishonesty or the conviction for which involved a finding that it had acted fraudulently or dishonestly.

[34/2012]

(4) For the purposes of subsection (1)(*c*), a corporation is deemed to have ceased to operate its clearing facility if —

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

(*b*) it has ceased to operate the clearing facility under a direction issued by the Authority under section 81R.

[34/2012]

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

[34/2012]

(6) Despite the lodging of an appeal under subsection (5), any action taken by the Authority under this section continues to have effect pending the Minister's decision.

[34/2012]

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

[34/2012]

(8) Any revocation under subsection (1) or (3) of the approval or recognition of a corporation under section 51(1) or (2) does not operate so as to —

(*a*) avoid or affect any agreement, transaction or arrangement entered into in connection with the use of a clearing facility operated by the corporation, whether the agreement, transaction or arrangement was entered into before, on or after the revocation of the approval or recognition; or

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

[34/2012]

(9) The Authority must give notice in the *Gazette* of any revocation under subsection (1) or (3) of any approval or recognition of a corporation under section 51(1) or (2).

[34/2012]

Division 2 — Regulation of Approved Clearing Houses

Subdivision (1) — Obligations of approved clearing houses

General obligations

57.—(1) An approved clearing house —

(*a*) must operate a safe and efficient clearing facility;

(*b*) must manage any risks associated with its business and operations prudently;

(*c*) in discharging its obligations under this Act, must not act contrary to the interests of the public, having particular regard to the interests of the investing public;

(*d*) must ensure that access for participation in its clearing facility is subject to criteria that are fair and objective, and that are designed to ensure the safe and efficient functioning of its facility and to protect the interests of the investing public;

(*e*) must maintain business rules that make satisfactory provision for —

(i) the clearing facility to be operated in a safe and efficient manner; and

(ii) the proper regulation and supervision of its members;

(*f*) must enforce compliance by its members with its business rules;

(*g*) must have sufficient financial, human and system resources —

(i) to operate a safe and efficient clearing facility;

(ii) to meet contingencies or disasters; and

(iii) to provide adequate security arrangements;

(*h*) must maintain governance arrangements that are adequate for the clearing facility to be operated in a safe and efficient manner; and

(*i*) must ensure that it appoints or employs fit and proper persons as its chairperson, chief executive officer, directors and key management officers.

[34/2012]

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

[34/2012]

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

[34/2012]

(4) It is not necessary to publish any exemption granted under subsection (3) in the *Gazette*.

[34/2012]

(5) In subsection (1)(*g*), "contingencies or disasters" includes technical disruptions occurring within automated systems.

[34/2012]

Obligation to notify Authority of certain matters

58.—(1) An approved clearing house must, as soon as practicable after the occurrence of any of the following circumstances, give the Authority notice of the circumstance:

(*a*) any material change to the information provided by the approved clearing house in its application under section 50(1) or 54(1);

(*b*) the carrying on of any business (called in this section a proscribed business) by the approved clearing house other than such business or such class of businesses prescribed by regulations made under section 81Q;

(*c*) the acquisition by the approved clearing house of a substantial shareholding in any corporation (called in this section a proscribed corporation) that carries on any business other than such business or such class of businesses prescribed by regulations made under section 81Q;

(*d*) the approved clearing house becoming aware of any financial irregularity or other matter which in its opinion —

(i) may affect its ability to discharge its financial obligations; or

(ii) may affect the ability of a member of the approved clearing house to meet its financial obligations to the approved clearing house;

(*e*) the approved clearing house reprimanding, fining, suspending, expelling or otherwise taking disciplinary action against a member of the approved clearing house;

(*f*) any other matter that the Authority may —

(i) prescribe by regulations made under section 81Q for the purposes of this paragraph; or

(ii) specify by written notice to the approved clearing house in any particular case.

[34/2012; 4/2017]

(2) Without limiting section 81R(1), the Authority may, at any time after receiving a notice referred to in subsection (1), issue directions to the approved clearing house —

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

(i) to cease carrying on the proscribed business; or

(ii) to carry on the proscribed business subject to such conditions or restrictions as the Authority may impose, if the Authority is of the opinion that this is necessary for any purpose referred to in section 81R(1); or

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

(i) to dispose of all or any part of its shareholding in the proscribed corporation within such time and subject to such conditions as the Authority considers appropriate; or

(ii) to exercise its rights relating to such shareholding, or to not exercise such rights, subject to such conditions or restrictions as the Authority may impose, if the Authority is of the opinion that this is necessary for any purpose referred to in section 81R(1).

[34/2012]

(3) An approved clearing house must comply with every direction issued to it under subsection (2) despite anything to the contrary in the Companies Act 1967 or any other law.

[34/2012]

(4) An approved clearing house must notify the Authority of any matter that the Authority may prescribe by regulations made under section 81Q for the purposes of this subsection, no later than such time as the Authority may prescribe by those regulations.

[34/2012]

(5) An approved clearing house must notify the Authority of any matter that the Authority may specify by written notice to the approved clearing house, no later than such time as the Authority may specify in that notice.

[34/2012; 4/2017]

Obligation to manage risks prudently, etc.

59. Without limiting section 57(1)(*b*), an approved clearing house must ensure that the systems and controls concerning the assessment and management of risks of the clearing facility that the approved clearing house operates are adequate and appropriate for the scale and nature of its operations.

[4/2017]

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

60.—(1) Without affecting sections 81Q and 341, the Authority may make regulations —

(*a*) relating to how any money or assets deposited with or paid to an approved clearing house by its members, for or in relation to any contracts of the customers of those members, are to be held by the approved clearing house and, in particular, requiring any such money or assets to be deposited in trust accounts or custody accounts;

(*b*) relating to the circumstances under which, and the purposes for which, the money or assets referred to in paragraph (*a*) may be used by the approved clearing house;

(*c*) relating to how the approved clearing house may invest the money or assets referred to in paragraph (*a*); and

(*d*) for any other purpose relating to the handling of the money and assets referred to in paragraph (*a*).

[34/2012]

(2) Regulations made under this section may provide —

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

(*b*) for a penalty not exceeding a fine of $200,000 and, in the case of a continuing offence, for a further penalty not exceeding $20,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

Obligation to maintain proper records

61.—(1) An approved clearing house must maintain a record of all transactions effected through its clearing facility.

[34/2012]

(2) The Authority may prescribe by regulations made under section 81Q —

(*a*) the form and manner in which the record referred to in subsection (1) must be maintained;

(*b*) the extent to which the record includes details of each transaction; and

(*c*) the period of time that the record is to be maintained.

[34/2012]

Obligation to submit periodic reports

62. An approved clearing house must submit to the Authority such reports in such form and manner, and at such frequency, as the Authority may prescribe.

[34/2012]

Obligation to assist Authority

63. An approved clearing house must provide such assistance to the Authority as the Authority may require for the performance of the functions and duties of the Authority, including —

(*a*) the furnishing of such returns as the Authority may require for the proper administration of this Act; and

(*b*) the provision of —

(i) such books and information as the Authority may require for the proper administration of this Act, being books and information —

(A) relating to the business of the approved clearing house; or

(B) in respect of any transaction or class of transactions cleared or settled by the approved clearing house; and

(ii) such other information as the Authority may require for the proper administration of this Act.

[34/2012]

Obligation to maintain confidentiality

64.—(1) Subject to subsection (2), an approved clearing house and its officers and employees must maintain, and aid in maintaining, confidentiality of all user information that —

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

(*b*) is in the possession of the approved clearing house or any of its officers or employees.

[34/2012]

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

(*a*) the disclosure of user information for such purposes, or in such circumstances, as the Authority may prescribe;

(*b*) any disclosure of user information which is authorised by the Authority to be disclosed or provided; or

(*c*) the disclosure of user information pursuant to any requirement imposed under any written law or order of court in Singapore.

[34/2012]

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

[34/2012]

Penalties under this Subdivision

65. Any approved clearing house which contravenes section 57(1), 58(1) or (3), 59, 61(1), 62, 63 or 64(1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $200,000 and, in the case of a continuing offence, to a further fine not exceeding $20,000 for every day or part of a day during which the offence continues after conviction.

[34/2012; 4/2017]

Subdivision (2) — Rules of approved clearing houses

Business rules of approved clearing houses

66.—(1) Without limiting sections 57 and 81Q —

(*a*) the Authority may prescribe the matters that an approved clearing house must provide for in the business rules of the approved clearing house; and

(*b*) the approved clearing house must provide for those matters in its business rules.

[34/2012]

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

[34/2012]

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

[34/2012]

(4) Any approved clearing house which contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

Business rules of approved clearing houses have effect as contract

67.—(1) The business rules of an approved clearing house are treated as, and are to operate as, a binding contract —

(*a*) between the approved clearing house and each issuer;

(*b*) between the approved clearing house and each participant;

(*c*) between each issuer and each participant; and

(*d*) between each participant and every other participant.

[4/2017]

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

[4/2017]

(3) In this section, "issuer" means a person who issued or made available, or proposes to issue or make available, securities, securities-based derivatives contracts or units in a collective investment scheme that are cleared or settled by the approved clearing house.

[4/2017]

Power of court to order observance or enforcement of business rules

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

[34/2012; 40/2019]

(2) In this section, "person" includes an approved clearing house.

[34/2012]

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

[34/2012]

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

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

[34/2012]

Subdivision (3) — Matters requiring approval of Authority

Control of substantial shareholding in approved clearing house

70.—(1) A person must not enter into any agreement to acquire shares in an approved clearing house, being an agreement by virtue of which the person would, if the agreement had been carried out, become a substantial shareholder of the approved clearing house, without first obtaining the approval of the Authority to enter into the agreement.

[34/2012]

(2) A person must not become either of the following without first obtaining the approval of the Authority:

(*a*) a 12% controller of an approved clearing house;

(*b*) a 20% controller of an approved clearing house.

[34/2012]

(3) In subsection (2) —

"12% controller", in relation to an approved clearing house, means a person, not being a 20% controller, who alone or together with the person's associates —

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

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

"20% controller", in relation to an approved clearing house, means a person who, alone or together with the person's associates —

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

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

[34/2012]

(4) In this section —

(*a*) a person holds a share if —

(i) the person is deemed to have an interest in that share under section 7(6) to (10) of the Companies Act 1967; or

(ii) the person otherwise has a legal or an equitable interest in that share, except such interest as is to be disregarded under section 7(6) to (10) of the Companies Act 1967;

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

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

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

(ii) *A* is a body corporate that is, or a majority of the directors of which are, accustomed or under an obligation whether formal or informal to act in accordance with the directions, instructions or wishes of *B*;

(iii) [*Deleted by Act 35 of 2014*]

(iv) *A* is a person who is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of *B*;

(v) *A* is a subsidiary of *B*;

(vi) [*Deleted by Act 35 of 2014*]

(vii) *A* is a body corporate in which *B*, whether alone or together with other associates of *B* as described in sub-paragraphs (ii), (iv) and (v), is in a position to control not less than 20% of the votes in *A*; or

(viii) [*Deleted by Act 35 of 2014*]

(ix) *A* is a person with whom *B* has an agreement or arrangement, whether oral or in writing and whether express or implied, to act together with respect to the acquisition, holding or disposal of shares or other interests in, or with respect to the exercise of their votes in relation to, the approved clearing house.

[34/2012; 35/2014]

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

[34/2012]

(6) Without affecting subsection (13), the Authority may, for the purposes of securing compliance with subsection (1) or (2) or any condition or restriction imposed under subsection (5), by written notice, direct the transfer or disposal of all or any of the shares of an approved clearing house in which a substantial shareholder, 12% controller or 20% controller of the approved clearing house has an interest.

[34/2012]

(7) Until a person to whom a direction has been issued under subsection (6) transfers or disposes of the shares which are the subject of the direction, and despite anything to the contrary in the Companies Act 1967 or the memorandum or articles of association or other constituent document or documents of the approved clearing house —

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

(*b*) the approved clearing house must not offer or issue any shares (whether by

way of rights, bonus, share dividend or otherwise) in respect of the shares which are the subject of the direction; and

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

[34/2012]

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

[34/2012]

(9) Any payment made by an approved clearing house in contravention of subsection (7)(*c*) is deemed to be void, and a person to whom a direction has been issued under subsection (6) must immediately return the payment that the person has received to the approved clearing house.

[34/2012]

(10) Without affecting sections 81SB(1) and 337(1), the Authority may, by regulations made under section 81Q, exempt all or any of the following from subsection (1) or (2), subject to such conditions or restrictions as the Authority may prescribe in those regulations:

(*a*) any person or class of persons;

(*b*) any class or description of shares or interests in shares.

[34/2012]

(11) Without affecting sections 81SB(2) and 337(3) and (4), the Authority may, by written notice, exempt any person, shares or interests in shares from subsection (1) or (2), subject to such conditions or restrictions as the Authority may specify by written notice.

[34/2012]

(12) It is not necessary to publish any exemption granted under subsection (11) in the *Gazette*.

[34/2012]

(13) Any person who contravenes subsection (1) or (2), or any condition or restriction imposed by the Authority under subsection (5), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $200,000 and, in the case of a continuing offence, to a further fine not exceeding $20,000 for every day or part of a day during

which the offence continues after conviction.

[34/2012]

(14) Any person who contravenes subsection (7)(*b*) or (*c*), (8) or (9) or any direction issued by the Authority under subsection (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

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

71.—(1) An approved clearing house must not appoint a person as its chairperson, chief executive officer or director unless the approved clearing house has obtained the approval of the Authority.

[34/2012]

(2) The Authority may, by written notice, require an approved clearing house to obtain the approval of the Authority for the appointment of any person to any key management position or committee of the approved clearing house, and the approved clearing house must comply with the notice.

[34/2012]

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

[34/2012]

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

[34/2012]

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

[34/2012]

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

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

(*b*) the person has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after 1 August 2013 —

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

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

[34/2012]

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

[34/2012]

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

[34/2012]

(9) The Authority may make regulations under section 81Q relating to the composition and duties of the board of directors or any committee of an approved clearing house.

[34/2012]

(10) In this section, "committee" includes any committee of directors, disciplinary committee or appeals committee of an approved clearing house, and any body responsible for disciplinary action against a member of an approved clearing house.

[34/2012]

(11) Without affecting sections 81SB(1) and 337(1), the Authority may, by regulations made under section 81Q, exempt any approved clearing house or class of approved clearing houses from complying with subsection (1) or (8), subject to such conditions or restrictions as the Authority may prescribe in those regulations.

[34/2012]

(12) Without affecting sections 81SB(2) and 337(3) and (4), the Authority may, by written notice, exempt any approved clearing house from complying with subsection (1) or (8), subject to such conditions or restrictions as the Authority may specify by written notice.

[34/2012]

(13) It is not necessary to publish any exemption granted under subsection (12) in the *Gazette*.

[34/2012]

(14) Any approved clearing house which contravenes subsection (1), (2) or (8) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $200,000

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

[34/2012; 4/2017]

Listing of approved clearing houses on organised market

72.—(1) The securities or securities-based derivatives contracts of an approved clearing house must not be listed for quotation on an organised market that is operated by any of its related corporations, unless the approved clearing house and the operator of the organised market have entered into such arrangements as the Authority may require —

(*a*) for dealing with possible conflicts of interest that may arise from such listing; and

(*b*) for the purpose of ensuring the integrity of the trading of the securities or securities-based derivatives contracts (as the case may be) of the approved clearing house.

[4/2017]

(2) Where the securities or securities-based derivatives contracts of an approved clearing house are listed for quotation on an organised market operated by any of its related corporations, the Authority may act in place of the operator of the organised market in making decisions and taking action, or require the operator of the organised market to make decisions and to take action on behalf of the Authority, on —

(*a*) the admission of the approved clearing house to, or the removal of the approved clearing house from, the official list of the organised market; and

(*b*) the granting of approval for the securities or securities-based derivatives contracts (as the case may be) of the approved clearing house to be, or the stopping or suspending of the securities or securities-based derivatives contracts (as the case may be) of the approved clearing house from being, listed for quotation or quoted on the organised market.

[4/2017]

(3) The Authority may, by written notice to the operator of the organised market —

(*a*) modify the listing rules of the organised market for the purpose of their application to the listing for quotation or trading of the securities or securities-based derivatives contracts of the approved clearing house; or

(*b*) waive the application of any listing rule of the organised market to the approved clearing house.

[4/2017]

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

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

[34/2012]

Additional powers of Authority in respect of auditors

73.—(1) If an auditor of an approved clearing house, in the course of the performance of his or her duties, becomes aware of any matter or irregularity referred to in the following paragraphs, he or she must immediately send to the Authority a written report of that matter or irregularity:

(*a*) any matter which, in his or her opinion, adversely affects or may adversely affect the financial position of the approved clearing house to a material extent;

(*b*) any matter which, in his or her opinion, constitutes or may constitute a breach of any provision of this Act or an offence involving fraud or dishonesty;

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

[34/2012]

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

[34/2012]

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

[34/2012]

(4) The Authority may impose all or any of the following duties on an auditor of an approved clearing house, and the auditor must carry out the duties so imposed:

(*a*) a duty to submit such additional information and reports in relation to his or her audit as the Authority considers necessary;

(*b*) a duty to enlarge, extend or alter the scope of his or her audit of the business and affairs of the approved clearing house;

(*c*) a duty to carry out any other examination or establish any procedure in any particular case;

(*d*) a duty to submit a report on any matter arising out of his or her audit,

examination or establishment of procedure referred to in paragraph (*b*) or (*c*).

[34/2012]

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

[34/2012]

Subdivision (4) — Immunity

Immunity from criminal or civil liability

74.—(1) No criminal or civil liability shall be incurred by an approved clearing house, or by any person specified in subsection (2), for any thing done (including any statement made) or omitted to be done with reasonable care and in good faith in the course of, or in connection with, the discharge or purported discharge of the obligations of the approved clearing house under this Act or under the business rules of the approved clearing house (including the default rules of the approved clearing house).

[34/2012]

(2) For the purposes of subsection (1), the specified person is any person acting on behalf of the approved clearing house, including —

(*a*) any director of the approved clearing house; or

(*b*) any member of any committee established by the approved clearing house.

[34/2012]

Division 3 — Regulation of Recognised Clearing Houses

General obligations

75.—(1) A recognised clearing house —

(*a*) must operate a safe and efficient clearing facility;

(*b*) must manage any risks associated with its business and operations prudently;

(*c*) in discharging its obligations under this Act, must not act contrary to the interests of the public, having particular regard to the interests of the investing public;

(*d*) must ensure that access for participation in its clearing facility is subject to

criteria that are fair and objective, and that are designed to ensure the safe and efficient functioning of its facility and to protect the interests of the investing public;

(*e*) must maintain business rules that make satisfactory provision for —

(i) the clearing facility to be operated in a safe and efficient manner; and

(ii) the proper regulation and supervision of its members;

(*f*) must enforce compliance by its members with its business rules;

(*g*) must have sufficient financial, human and system resources —

(i) to operate a safe and efficient clearing facility;

(ii) to meet contingencies or disasters; and

(iii) to provide adequate security arrangements;

(*h*) must maintain governance arrangements that are adequate for the clearing facility to be operated in a safe and efficient manner; and

(*i*) must ensure that it appoints or employs fit and proper persons as its chairperson, chief executive officer, directors and key management officers.

[34/2012]

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

[34/2012]

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

[34/2012]

(4) It is not necessary to publish any exemption granted under subsection (3) in the *Gazette*.

[34/2012]

(5) In subsection (1)(*g*), "contingencies or disasters" includes technical disruptions occurring within automated systems.

[34/2012]

Obligation to notify Authority of certain matters

76.—(1) A recognised clearing house must, as soon as practicable after the occurrence of any of the following circumstances, give the Authority notice of the circumstance:

(*a*) any material change to the information provided by the recognised clearing house in its application under section 50(1) or (2) or 54(1);

(*b*) the recognised clearing house becoming aware of any financial irregularity or other matter which in its opinion —

(i) may affect its ability to discharge its financial obligations; or

(ii) may affect the ability of a member of the recognised clearing house to meet its financial obligations to the recognised clearing house;

(*c*) any other matter that the Authority may —

(i) prescribe by regulations made under section 81Q for the purposes of this paragraph; or

(ii) specify by written notice to the recognised clearing house in any particular case.

[34/2012]

(2) A recognised clearing house must notify the Authority of any matter that the Authority may prescribe by regulations made under section 81Q for the purposes of this subsection, no later than such time as the Authority may prescribe by those regulations.

[34/2012]

(3) A recognised clearing house must notify the Authority of any matter that the Authority may specify by written notice to the recognised clearing house, no later than such time as the Authority may specify in that notice.

[34/2012]

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

77.—(1) Without affecting sections 81Q and 341, the Authority may make regulations —

(*a*) relating to how any money or assets deposited with or paid to a recognised clearing house by its members, for or in relation to any contracts of the customers of those members, are to be held by the recognised clearing house and, in particular, requiring any such money or assets to be deposited in trust accounts or custody accounts;

(*b*) relating to the circumstances under which, and the purposes for which, the money or assets referred to in paragraph (*a*) may be used by the recognised clearing house;

(*c*) relating to how the recognised clearing house may invest the money or assets referred to in paragraph (*a*); and

(*d*) for any other purpose relating to the handling of the money or assets referred to in paragraph (*a*).

[34/2012]

(2) Regulations made under this section may provide —

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

(*b*) for a penalty not exceeding a fine of $150,000 and, in the case of a continuing offence, for a further penalty not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

Obligation to maintain proper records

78.—(1) A recognised clearing house must maintain a record of all transactions effected through its clearing facility.

[34/2012]

(2) The Authority may prescribe by regulations made under section 81Q —

(*a*) the form and manner in which the record referred to in subsection (1) must be maintained;

(*b*) the extent to which the record includes details of each transaction; and

(*c*) the period of time that the record is to be maintained.

[34/2012]

Obligation to submit periodic reports

79. A recognised clearing house must submit to the Authority such reports in such form and manner, and at such frequency, as the Authority may prescribe.

[34/2012]

Obligation to assist Authority

80. A recognised clearing house must provide such assistance to the Authority as the Authority may require for the performance of the functions and duties of the Authority, including —

(*a*) the furnishing of such returns as the Authority may require for the proper administration of this Act; and

(*b*) the provision of —

(i) such books and information as the Authority may require for the proper administration of this Act, being books and information —

(A) relating to the business of the recognised clearing house; or

(B) in respect of any transaction or class of transactions cleared or settled by the recognised clearing house; and

(ii) such other information as the Authority may require for the proper administration of this Act.

[34/2012]

Obligation to maintain confidentiality

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

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

(*b*) is in the possession of the recognised clearing house or any of its officers or employees.

[34/2012]

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

(*a*) the disclosure of user information for such purposes, or in such circumstances, as the Authority may prescribe;

(*b*) any disclosure of user information which is authorised by the Authority to be disclosed or provided; or

(*c*) the disclosure of user information pursuant to any requirement imposed under any written law or order of court in Singapore.

[34/2012]

(3) To avoid doubt, nothing in this section is to be construed as preventing a recognised clearing house from entering into a written agreement with a user which obliges the recognised clearing house to maintain a higher degree of confidentiality than

that specified in this section.

[34/2012]

Penalties under this Division

81A. Any recognised clearing house which contravenes section 75(1), 76, 78(1), 79, 80 or 81(1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

Division 4 — Insolvency

Application of this Division

81B. This Division applies to such transaction or class of transactions cleared or settled by any approved clearing house or recognised clearing house, or by any class of approved clearing houses or recognised clearing houses, and to such extent, as the Authority may prescribe.

[34/2012]

Proceedings of approved clearing house or recognised clearing house take precedence over law of insolvency

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

(*a*) a market contract;

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

(*c*) the provision of market collateral;

(*d*) a contract effected by an approved clearing house or a recognised clearing house for the purpose of realising property provided as market collateral, or any disposition of property pursuant to such a contract;

(*e*) a disposition of property in accordance with the business rules of an approved clearing house, or a recognised clearing house, relating to the application of property provided as market collateral;

(*f*) a disposition of property as a result of which the property becomes subject to a market charge, or any transaction pursuant to which that disposition is made;

(*g*) a disposition of property for the purpose of enforcing a market charge;

(*h*) a market charge;

(*i*) any default proceedings.

[34/2012]

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

(*a*) the settlement of a market contract in accordance with the business rules of an approved clearing house or a recognised clearing house, or any proceedings or other action taken under those business rules; or

(*b*) any default proceedings.

[34/2012]

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

[34/2012]

(4) Where a participant which is also a bank licensed under the Banking Act 1970 becomes insolvent, the liabilities of the bank accorded priority under sections 61 and 62 of that Act and the Payment and Settlement Systems (Finality and Netting) Act 2002 have priority over any unsecured liabilities of the bank arising from and after the settlement of market contracts.

[34/2012]

(4A) Where a participant that is also a merchant bank licensed under the Banking Act 1970 becomes insolvent, the liabilities of the merchant bank accorded priority under section 62B of that Act and the Payment and Settlement Systems (Finality and Netting) Act 2002 have priorities over any unsecured liabilities of the merchant bank arising from and after the settlement of market contracts.

[1/2020]

(5) To avoid doubt, subsection (4) does not affect the settlement of market contracts in accordance with the business rules of an approved clearing house or a recognised clearing house.

[34/2012]

Supplementary provisions as to default proceedings

81D.—(1) A court may, on the application of a relevant office holder, make an order

to alter, or to release the relevant office holder from complying with, the functions of his or her office that are affected by default proceedings, if default proceedings have been, could be, or could have been, taken.

[34/2012]

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

[34/2012]

(3) Section 210 of the Companies Act 1967 and sections 71, 129, 130(2), 133(1), 170(1), 187, 276, 325 and 327 of the Insolvency, Restructuring and Dissolution Act 2018 do not prevent, or interfere with, any default proceedings.

[40/2018]

Duty to report on completion of default proceedings

81E.—(1) An approved clearing house or a recognised clearing house —

(*a*) must, upon the conclusion of any default proceedings commenced by it, make a report on those proceedings stating (as the case may be) in respect of each defaulter who is a subject of those proceedings —

(i) the net sum (if any) certified by it to be payable by or to the defaulter; or

(ii) the fact that no sum is so payable; and

(*b*) may include in that report such other particulars in respect of those proceedings as it thinks fit.

[34/2012]

(2) An approved clearing house, or a recognised clearing house, which has made a report under subsection (1) must supply the report to —

(*a*) the Authority;

(*b*) any relevant office holder acting in relation to —

(i) the defaulter to whom the report relates; or

(ii) the estate of that defaulter; and

(*c*) where there is no relevant office holder referred to in paragraph (*b*), the defaulter to whom the report relates.

[34/2012]

(3) The approved clearing house or recognised clearing house must publish a notice of the fact that a report has been made under subsection (1) in such manner as it thinks

appropriate to bring that fact to the attention of the creditors of the defaulter to whom the report relates.

[34/2012]

(4) Where a relevant office holder or defaulter receives under subsection (2) a report made under subsection (1), the relevant office holder or defaulter must, at the request of a creditor of the defaulter to whom the report relates —

(*a*) make the report available for inspection by the creditor; and

(*b*) on payment of such reasonable fee as the relevant office holder or defaulter (as the case may be) determines, supply to the creditor the whole or any part of that report.

[34/2012]

(5) In subsections (2), (3) and (4), "report" includes a copy of a report.

[34/2012]

Net sum payable on completion of default proceedings

81F.—(1) This section applies to any net sum certified under section 81E(1)(*a*)(i) by an approved clearing house or a recognised clearing house, upon the completion by it of any default proceedings, to be payable by or to a defaulter.

[34/2012]

(2) Despite sections 218, 219, 345 and 346 of the Insolvency, Restructuring and Dissolution Act 2018, where, on or after 1 August 2013, a receiving order or winding up order has been made, or a resolution for voluntary winding up has been passed, any net sum as certified under section 81E(1)(*a*)(i) is —

(*a*) provable in the bankruptcy or winding up or payable to the relevant office holder, as the case may be; and

(*b*) to be taken into account, where appropriate, under section 219 or 346 of the Insolvency, Restructuring and Dissolution Act 2018.

[34/2012; 40/2018]

Disclaimer of onerous property, rescission of contracts, etc.

81G.—(1) Sections 230, 231, 373 and 374 of the Insolvency, Restructuring and Dissolution Act 2018 do not apply to —

(*a*) a market contract;

(*b*) a contract effected by an approved clearing house, or a recognised clearing house, for the purpose of realising property provided as market collateral;

(*c*) a market charge; or

(*d*) any default proceedings.

[34/2012; 40/2018]

(2) Sections 130(1), 170(1) and 328 of the Insolvency, Restructuring and Dissolution Act 2018 do not apply to any act, matter or thing which has been done under —

(*a*) a market contract;

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

(*c*) the provision of market collateral;

(*d*) a contract effected by an approved clearing house, or a recognised clearing house, for the purpose of realising property provided as market collateral, or any disposition of property pursuant to such a contract;

(*e*) a disposition of property in accordance with the business rules of an approved clearing house, or a recognised clearing house, relating to the application of property provided as market collateral;

(*f*) a disposition of property as a result of which the property becomes subject to a market charge, or any transaction pursuant to which that disposition is made;

(*g*) a disposition of property for the purpose of enforcing a market charge;

(*h*) a market charge; or

(*i*) any default proceedings.

[34/2012; 40/2018]

Adjustment of prior transactions

81H.—(1) No order may be made, on or after 1 August 2013, in relation to any matter to which this section applies, by a court under any of the following provisions in any proceedings, whether instituted before, on or after 1 August 2013:

section 224, 225, 228, 361, 362, 366 or 438 of the Insolvency, Restructuring and Dissolution Act 2018.

[34/2012; 40/2018]

(2) The matters to which this section applies are as follows:

(*a*) a market contract;

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

(*c*) the provision of market collateral;

(*d*) a contract effected by an approved clearing house, or a recognised clearing

house, for the purpose of realising property provided as market collateral;

(*e*) a disposition of property in accordance with the business rules of an approved clearing house, or a recognised clearing house, relating to the application of property provided as market collateral;

(*f*) a disposition of property as a result of which the property becomes subject to a market charge, or any transaction pursuant to which that disposition is made;

(*g*) a disposition of property for the purpose of enforcing a market charge;

(*h*) a market charge;

(*i*) any default proceedings.

[34/2012]

Right of relevant office holder to recover certain amounts arising from certain transactions

81I.—(1) Where a participant (called in this section the first participant) sells securities, securities-based derivatives contracts or units in a collective investment scheme at an over-value to, or purchases securities, securities-based derivatives contracts or units in a collective investment scheme at an under-value from, another participant (called in this section the second participant) in the circumstances referred to in subsection (3), and thereafter a relevant office holder acts for —

(*a*) the second participant;

(*b*) the principal of the second participant in the sale or purchase; or

(*c*) the estate of the second participant or person referred to in paragraph (*b*),

then, unless a court otherwise orders, the relevant office holder may recover from the first participant, or the principal of the first participant, an amount equal to the specified gain obtained under the sale or purchase by the first participant, or the principal of the first participant.

[34/2012; 4/2017]

(2) The amount equal to the specified gain is recoverable even if the sale or purchase may have been discharged according to the business rules of an approved clearing house, or a recognised clearing house, and replaced by a market contract.

[34/2012]

(3) The circumstances referred to in subsection (1) are that —

(*a*) a specified event has occurred in relation to the second participant, or the

principal of the second participant, within the period of 6 months immediately following the date on which the sale or purchase was entered into; and

(*b*) at the time the sale or purchase was entered into, the first participant, or the principal of the first participant, knew, or ought reasonably to have known, that a specified event was likely to occur in relation to the second participant, or the principal of the second participant.

[34/2012]

(4) In this section —

"specified event", in relation to the second participant or a person who is or was, in respect of a sale or purchase referred to in subsection (1), the principal of the second participant, means —

(*a*) the making of a bankruptcy order against the second participant or that person, as the case may be;

(*b*) the making of a statutory declaration in respect of the second participant or that person (as the case may be) under section 161(1) of the Insolvency, Restructuring and Dissolution Act 2018;

(*c*) the summoning of a meeting of creditors in relation to the second participant or that person (as the case may be) under section 166 of the Insolvency, Restructuring and Dissolution Act 2018;

(*d*) the making of an application for the winding up of the second participant or that person (as the case may be) before a court; or

(*e*) the appointment of a judicial manager under Part 7 of the Insolvency, Restructuring and Dissolution Act 2018 in respect of the second participant or that person, as the case may be;

"specified gain", in relation to a sale or purchase referred to in subsection (1), means the difference, as at the time the sale or purchase was entered into, between —

(*a*) the market value of the securities, securities-based derivatives contracts or units in a collective investment scheme which are the subject of the sale or purchase; and

(*b*) the value of the consideration for the sale or purchase.

[34/2012; 4/2017; 40/2018]

Application of market collateral not affected by certain other interest, etc.

81J.—(1) This section has effect with respect to the application by an approved clearing house, or a recognised clearing house, of property provided as market collateral (called in this section the property).

[34/2012]

(2) The property may be applied in accordance with the business rules or default rules of the approved clearing house or recognised clearing house, so far as it is necessary for it to be so applied, despite —

(*a*) any prior equitable interest or right, or any right or remedy arising from a breach of fiduciary duty, unless the approved clearing house or recognised clearing house had actual notice of the interest, right or breach of duty (other than any interest or right arising from the situation referred to in paragraph (*b*)) (as the case may be) at the time the property was provided as market collateral; or

(*b*) that the property is deposited by the approved clearing house or recognised clearing house in a trust account held for the benefit of a participant.

[34/2012]

(3) No right or remedy arising subsequent to the provision of the property as market collateral may be enforced to prevent, or interfere with, the application of the property by the approved clearing house or recognised clearing house in accordance with its business rules or default rules.

[34/2012]

(4) Where an approved clearing house, or a recognised clearing house, has power under this section to apply the property despite an interest, a right or a remedy, a person to whom the approved clearing house or recognised clearing house disposes of the property in accordance with its business rules or default rules takes free from that interest, right or remedy.

[34/2012]

Enforcement of judgments over property subject to market charge, etc.

81K.—(1) Where, whether before, on or after 1 August 2013, any property is subject to a market charge or has been provided as market collateral, no enforcement order or other legal process for the enforcement of any judgment or order may be commenced or continued, and no distress may be levied, against the property by a person not seeking to enforce any interest in, or security over, the property, except with the consent of the approved clearing house or recognised clearing house in favour of which the market charge was granted.

[34/2012]
[Act 25 of 2021 wef 01/04/2022]

(2) Where by virtue of this section a person would not be entitled to enforce a

judgment or an order against any property, any injunction or other remedy granted by any court with a view to facilitating the enforcement of any such judgment or order does not extend to that property.

[34/2012]

Law of insolvency in other jurisdictions

81L.—(1) Despite any other written law or rule of law, a court is not to recognise or give effect to —

(*a*) an order of a court exercising jurisdiction under the law of insolvency in any place outside Singapore; or

(*b*) an act of a person appointed in any place outside Singapore to perform a function under the law of insolvency in that place,

insofar as the making of the order by a court in Singapore, or the doing of the act by a relevant office holder, would be prohibited under this Act.

[34/2012]

(2) In this section, "law of insolvency", in relation to a place outside Singapore, means any law of that place which is similar to, or serves the same purposes as, any part of the law of insolvency in Singapore.

[34/2012]

Participant to be party to certain transactions as principal

81M.—(1) Where —

(*a*) a participant, in the participant's capacity as such, enters into any transaction (including a market contract) with an approved clearing house or a recognised clearing house; and

(*b*) but for this subsection or any provision in the business rules or default rules of the approved clearing house or recognised clearing house, the participant would be a party to that transaction as agent,

then, despite any other written law or rule of law, as between, and only as between, the approved clearing house or recognised clearing house and the participant or the person who is the participant's principal in respect of that transaction, the participant is, for all purposes (including any action, claim or demand, whether civil or criminal), deemed to be a party to that transaction as principal, and not as agent.

[34/2012]

(2) Where —

(*a*) 2 or more participants, in their capacities as such, enter into any

transaction; and

(*b*) but for this subsection, any of the participants would be a party to that transaction as agent,

then, despite any other written law or rule of law, except as between, and only as between, a participant to whom paragraph (*b*) applies and the person who is the participant's principal in respect of that transaction, the participant is, for all purposes (including any action, claim or demand, whether civil or criminal), deemed to be a party to that transaction as principal, and not as agent.

[34/2012]

Preservation of rights, etc.

81N. Except to the extent that it expressly provides, this Division does not operate to limit, restrict or otherwise affect —

(*a*) any right, title, interest, privilege, obligation or liability of a person; or

(*b*) any investigation, legal proceedings or remedy in respect of any such right, title, interest, privilege, obligation or liability.

[34/2012]

Immunity from criminal or civil liability

81O.—(1) No criminal or civil liability is incurred by —

(*a*) a person discharging, by virtue of a delegation under the default rules of an approved clearing house or a recognised clearing house, an obligation of the approved clearing house or recognised clearing house in connection with any default proceedings; or

(*b*) any person acting on behalf of a person referred to in paragraph (*a*), including —

(i) any member of the board of directors of the person referred to in paragraph (*a*); and

(ii) any member of any committee established by the person referred to in paragraph (*a*),

for any thing done (including any statement made) or omitted to be done with reasonable care and in good faith in the course of, or in connection with, the discharge or purported discharge of that obligation.

[34/2012]

(2) Where a relevant office holder takes action in relation to any property of a defaulter which is liable to be dealt with in accordance with the default rules of an approved clearing house or a recognised clearing house, and the relevant office holder reasonably believes or has reasonable grounds for believing that the relevant office holder is entitled to take that action, the relevant office holder shall not be liable to any person in respect of any loss or damage resulting from any action of the relevant office holder, except insofar as the loss or damage (as the case may be) is caused by the negligence of the relevant office holder.

[34/2012]

Division 5 — General Powers of Authority

Power of Authority to remove officers

81P.—(1) Where the Authority is satisfied that any of the following applies to an officer of an approved clearing house or a recognised clearing house (such approved clearing house or recognised clearing house being a Singapore corporation), the Authority may, if it thinks it necessary in the interests of the public or a section of the public or for the protection of investors, by written notice direct the approved clearing house or recognised clearing house to remove the officer from his or her office or employment, and the approved clearing house or recognised clearing house must comply with the notice, despite section 152 of the Companies Act 1967 or anything in any other law or in the memorandum or articles of association or other constituent document or documents of the approved clearing house or recognised clearing house:

(*a*) the officer has wilfully contravened, or wilfully caused the approved clearing house or recognised clearing house to contravene, this Act or the business rules of the approved clearing house or recognised clearing house;

(*b*) the officer has, without reasonable excuse, failed to ensure compliance with this Act, or with the business rules of the approved clearing house or recognised clearing house, by the approved clearing house or recognised clearing house, by a member of the approved clearing house or recognised clearing house or by a person associated with that member;

(*c*) the officer has failed to discharge the duties or functions of his or her office or employment;

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

(*e*) the officer has had an enforcement order against him or her in respect of a judgment debt returned unsatisfied in whole or in part;

[Act 25 of 2021 wef 01/04/2022]

(*f*) the officer has, whether in Singapore or elsewhere, made a compromise or scheme of arrangement with his or her creditors, being a compromise or scheme of arrangement that is still in operation;

(*g*) the officer has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after 1 August 2013, involving fraud or dishonesty or the conviction for which involved a finding that he or she had acted fraudulently or dishonestly.

[34/2012]

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

[34/2012]

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

[34/2012]

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

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

(*b*) the officer has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after 1 August 2013 —

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

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

[34/2012]

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

[34/2012]

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

[34/2012]

(7) Despite the lodging of an appeal under subsection (6), any action taken by the Authority under this section continues to have effect pending the Minister's decision.

[34/2012]

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

[34/2012]

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

[34/2012]

(10) Any approved clearing house or recognised clearing house which, without reasonable excuse, contravenes a written notice issued under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

Power of Authority to make regulations

81Q.—(1) Without affecting section 341, the Authority may make regulations for the purposes of this Part, including regulations —

(*a*) relating to the approval of approved clearing houses and the recognition of recognised clearing houses;

(*b*) relating to the requirements applicable to any person who establishes, operates or assists in establishing or operating a clearing facility, whether or not the person is approved as an approved clearing house under section 51(1)(*a*) or recognised as a recognised clearing house under section 51(1)(*b*) or (2); and

(*c*) for the purposes of section 59 and, in particular, specifying measures to manage any risks assumed by an approved clearing house.

[34/2012; 4/2017]

(2) Regulations made under this section may provide —

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

(*b*) for a penalty not exceeding a fine of $150,000 or imprisonment for a term not exceeding 12 months or both for each offence and, in the case of a continuing offence, for a further penalty not exceeding a fine of 10% of the maximum fine prescribed for that offence for every day or part of a day during which the offence continues after conviction.

[34/2012]

Power of Authority to issue directions

81R.—(1) The Authority may issue directions, whether of a general or specific nature, by written notice, to an approved clearing house or a recognised clearing house, if the Authority thinks it necessary or expedient —

(*a*) for ensuring the safe and efficient operation of any clearing facility operated by the approved clearing house or recognised clearing house, or of clearing facilities, operated by approved clearing houses or recognised clearing houses, in general;

(*b*) for ensuring the integrity and stability of the capital markets or the financial system;

(*c*) in the interests of the public or a section of the public or for the protection of investors;

(*d*) for the effective administration of this Act; or

(*e*) for ensuring compliance with any condition or restriction that the Authority may impose under section 58(2), 70(5) or (10), 71(11) or (12) or 81SB(1) or (2), or such other obligations or requirements under this Act or as the Authority may prescribe.

[34/2012]

(2) An approved clearing house or a recognised clearing house must comply with every direction issued to it under subsection (1).

[34/2012]

(3) Any approved clearing house or recognised clearing house which, without reasonable excuse, contravenes a direction issued to it under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

(4) It is not necessary to publish any direction issued under subsection (1) in the *Gazette*.

[34/2012]

Emergency powers of Authority

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

[34/2012]

(2) Without affecting subsection (1), the actions which the Authority may direct an approved clearing house or a recognised clearing house to take include —

(*a*) ordering the liquidation of all positions or any part thereof, or the reduction of such positions;

(*b*) altering the conditions of delivery of transactions cleared or settled, or to be cleared or settled, through the clearing facility;

(*c*) fixing the settlement price at which transactions are to be liquidated;

(*d*) requiring margins or additional margins for transactions cleared or settled, or to be cleared or settled, through the clearing facility; and

(*e*) modifying or suspending any of the business rules of the approved clearing house or recognised clearing house.

[34/2012]

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

(*a*) set margin levels for transactions cleared or settled, or to be cleared or settled, through the clearing facility to cater for the emergency;

(*b*) set limits that may apply to positions acquired in good faith prior to the date of the notice issued by the Authority; or

(*c*) take such other action as the Authority thinks fit to maintain or restore the safe and efficient operation of the clearing facilities operated by the approved clearing house or recognised clearing house.

[34/2012]

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

(*a*) any act of any government affecting any commodity or financial instrument;

(*b*) any major market disturbance which prevents a market from accurately reflecting the forces of supply and demand for any commodity or financial instrument; or

(*c*) any undesirable situation or practice which, in the opinion of the Authority, constitutes an emergency.

[34/2012; 4/2017]

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

[34/2012]

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

[34/2012]

(7) Despite the lodging of an appeal under subsection (6), any action taken by the Authority, or by an approved clearing house or recognised clearing house, under this section continues to have effect pending the Minister's decision.

[34/2012]

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

[34/2012]

(9) Any approved clearing house or recognised clearing house which fails to comply with a direction issued under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

Interpretation of sections 81SA to 81SAE

81SA. In this section and sections 81SAA to 81SAE, unless the context otherwise requires —

"business" includes affairs and property;

"office holder", in relation to an approved clearing house or a recognised clearing house, means any person acting as the liquidator, the provisional liquidator, the receiver or the receiver and manager of the approved clearing house or recognised clearing house (as the case may be), or acting in an equivalent capacity in relation to the approved clearing house or recognised clearing house (as the case may be);

"relevant business" means any business of an approved clearing house or a recognised clearing house —

(*a*) which the Authority has assumed control of under section 81SAA; or

(*b*) in relation to which a statutory adviser or a statutory manager has been appointed under section 81SAA;

"statutory adviser" means a statutory adviser appointed under section 81SAA;

"statutory manager" means a statutory manager appointed under section 81SAA.

[10/2013]

Action by Authority if approved clearing house or recognised clearing house unable to meet obligations, etc.

81SAA.—(1) The Authority may exercise any one or more of the powers specified in subsection (2) as appears to it to be necessary, where —

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

(*b*) an approved clearing house or a recognised clearing house becomes unable to meet its obligations, or is insolvent, or suspends payments;

(*c*) the Authority is of the opinion that an approved clearing house or a recognised clearing house —

(i) is carrying on its business in a manner likely to be detrimental to the interests of the public or a section of the public or the protection of investors, or to the objectives specified in section 47;

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

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

(iv) has failed to comply with any condition or restriction imposed on it under section 51(4) or (5); or

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

[10/2013]

(2) Subject to subsections (1) and (3), the Authority may —

(*a*) require the approved clearing house or recognised clearing house (as the case may be) immediately to take any action or to do or not to do any act or thing whatsoever in relation to its business as the Authority may consider necessary;

(*b*) appoint one or more persons as statutory adviser, on such terms and conditions as the Authority may specify, to advise the approved clearing house or recognised clearing house (as the case may be) on the proper management of such of the business of the approved clearing house or recognised clearing house (as the case may be) as the Authority may determine; or

(*c*) assume control of and manage such of the business of the approved clearing house or recognised clearing house (as the case may be) as the Authority may determine, or appoint one or more persons as statutory manager to do so on such terms and conditions as the Authority may specify.

[10/2013]

(3) In the case of a recognised clearing house which is incorporated outside Singapore, any appointment of a statutory adviser or statutory manager or any assumption of control by the Authority of any business of the recognised clearing house under subsection (2) is only in relation to —

(*a*) the business or affairs of the recognised clearing house carried on in, or managed in or from, Singapore; or

(*b*) the property of the recognised clearing house located in Singapore, or reflected in the books of the recognised clearing house in Singapore (as the case may be) in relation to its operations in Singapore.

[10/2013]

(4) Where the Authority appoints 2 or more persons as the statutory manager of an approved clearing house or a recognised clearing house, the Authority must specify, in the terms and conditions of the appointment, which of the duties, functions and powers

of the statutory manager —

(*a*) may be discharged or exercised by such persons jointly and severally;

(*b*) must be discharged or exercised by such persons jointly; and

(*c*) must be discharged or exercised by a specified person or such persons.

[10/2013]

(5) Where the Authority has exercised any power under subsection (2), it may, at any time and without affecting its power under section 56(1)(*da*), do one or more of the following:

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

(*b*) further exercise any of the powers under subsection (2);

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

[10/2013]

(6) No liability shall be incurred by a statutory manager or a statutory adviser for anything done (including any statement made) or omitted to be done with reasonable care and in good faith in the course of or in connection with —

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

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

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

[10/2013]

(7) Any approved clearing house or recognised clearing house that fails to comply with a requirement imposed by the Authority under subsection (2)(*a*) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[10/2013]

Effect of assumption of control under section 81SAA

81SAB.—(1) Upon assuming control of the relevant business of an approved clearing house or a recognised clearing house, the Authority or statutory manager (as the case may be) must take custody or control of the relevant business.

[10/2013]

(2) During the period when the Authority or statutory manager is in control of the relevant business of an approved clearing house or a recognised clearing house, the Authority or statutory manager —

(*a*) must manage the relevant business of the approved clearing house or recognised clearing house (as the case may be) in the name of and on behalf of the approved clearing house or recognised clearing house (as the case may be); and

(*b*) is deemed to be an agent of the approved clearing house or recognised clearing house (as the case may be).

[10/2013]

(3) In managing the relevant business of an approved clearing house or a recognised clearing house, the Authority or statutory manager —

(*a*) must consider the interests of the public or the section of the public referred to in section 81SAA(1)(*c*)(i), and the need to protect investors; and

(*b*) has all the duties, powers and functions of the members of the board of directors of the approved clearing house or recognised clearing house (as the case may be) (collectively and individually) under this Act, the Companies Act 1967 and the constitution of the approved clearing house or recognised clearing house (as the case may be), including powers of delegation, in relation to the relevant business of the approved clearing house or recognised clearing house (as the case may be); but nothing in this paragraph requires the Authority or statutory manager to call any meeting of the approved clearing house or recognised clearing house (as the case may be) under the Companies Act 1967 or the constitution of the approved clearing house or recognised clearing house (as the case may be).

[10/2013]

(4) Despite any written law or rule of law, upon the assumption of control of the relevant business of an approved clearing house or a recognised clearing house by the Authority or statutory manager, any appointment of a person as the chief executive officer or a director of the approved clearing house or recognised clearing house (as the case may be), which was in force immediately before the assumption of control, is deemed to be revoked, unless the Authority gives its approval, by written notice to the person and the approved clearing house or recognised clearing house (as the case may be), for the person to remain in the appointment.

[10/2013]

(5) Despite any written law or rule of law, during the period when the Authority or statutory manager is in control of the relevant business of an approved clearing house or a recognised clearing house, except with the approval of the Authority, no person may be

appointed as the chief executive officer or a director of the approved clearing house or recognised clearing house, as the case may be.

[10/2013]

(6) Where the Authority has given its approval under subsection (4) or (5) to a person to remain in the appointment of, or to be appointed as, the chief executive officer or a director of an approved clearing house or a recognised clearing house, the Authority may at any time, by written notice to the person and the approved clearing house or recognised clearing house (as the case may be), revoke that approval, and the appointment is deemed to be revoked on the date specified in the notice.

[10/2013]

(7) Despite any written law or rule of law, if any person, whose appointment as the chief executive officer or a director of an approved clearing house or a recognised clearing house is revoked under subsection (4) or (6), acts or purports to act after the revocation as the chief executive officer or a director of the approved clearing house or recognised clearing house (as the case may be) during the period when the Authority or statutory manager is in control of the relevant business of the approved clearing house or recognised clearing house (as the case may be) —

(*a*) the act or purported act of the person is invalid and of no effect; and

(*b*) the person shall be guilty of an offence.

[10/2013]

(8) Despite any written law or rule of law, if any person who is appointed as the chief executive officer or a director of an approved clearing house or a recognised clearing house in contravention of subsection (5) acts or purports to act as the chief executive officer or a director of the approved clearing house or recognised clearing house (as the case may be) during the period when the Authority or statutory manager is in control of the relevant business of the approved clearing house or recognised clearing house (as the case may be) —

(*a*) the act or purported act of the person is invalid and of no effect; and

(*b*) the person shall be guilty of an offence.

[10/2013]

(9) During the period when the Authority or statutory manager is in control of the relevant business of an approved clearing house or a recognised clearing house —

(*a*) if there is any conflict or inconsistency between —

(i) a direction or decision given by the Authority or statutory manager (including a direction or decision to a person or body of persons referred to in sub-paragraph (ii)); and

(ii) a direction or decision given by any chief executive officer, director, member, executive officer, employee, agent or office holder, or the board of directors, of the approved clearing house or recognised clearing house, as the case may be,

the direction or decision referred to in sub-paragraph (i), to the extent of the conflict or inconsistency, prevails over the direction or decision referred to in sub-paragraph (ii); and

(*b*) no person may exercise any voting or other right attached to any share in the approved clearing house or recognised clearing house (as the case may be) in any manner that may defeat or interfere with any duty, function or power of the Authority or statutory manager, and any such act or purported act is invalid and of no effect.

[10/2013]

(10) Any person who is guilty of an offence under subsection (7) or (8) shall be liable on conviction to a fine not exceeding $150,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[10/2013; 4/2017]

Duration of control

81SAC.—(1) The Authority must cease to be in control of the relevant business of an approved clearing house or a recognised clearing house when the Authority is satisfied that —

(*a*) the reasons for the Authority's assumption of control of the relevant business have ceased to exist; or

(*b*) it is no longer necessary in the interests of the public or the section of the public referred to in section 81SAA(1)(*c*)(i) or for the protection of investors.

[10/2013]

(2) A statutory manager is deemed to have assumed control of the relevant business of an approved clearing house or a recognised clearing house on the date of the statutory manager's appointment as such.

[10/2013]

(3) The appointment of a statutory manager in relation to the relevant business of an approved clearing house or a recognised clearing house may be revoked by the Authority at any time —

(*a*) if the Authority is satisfied that —

(i) the reasons for the appointment have ceased to exist; or

(ii) it is no longer necessary in the interests of the public or the section of the public referred to in section 81SAA(1)(*c*)(i) or for the protection of investors; or

(*b*) on any other ground,

and upon such revocation, the statutory manager ceases to be in control of the relevant business of the approved clearing house or recognised clearing house, as the case may be.

[10/2013]

(4) The Authority must, as soon as practicable, publish in the *Gazette* the date, and such other particulars as the Authority thinks fit, of —

(*a*) the Authority's assumption of control of the relevant business of an approved clearing house or a recognised clearing house;

(*b*) the cessation of the Authority's control of the relevant business of an approved clearing house or a recognised clearing house;

(*c*) the appointment of a statutory manager in relation to the relevant business of an approved clearing house or a recognised clearing house; and

(*d*) the revocation of a statutory manager's appointment in relation to the relevant business of an approved clearing house or a recognised clearing house.

[10/2013]

Responsibilities of officers, member, etc., of approved clearing house or recognised clearing house

81SAD.—(1) During the period when the Authority or statutory manager is in control of the relevant business of an approved clearing house or a recognised clearing house —

(*a*) the General Division of the High Court may, on an application by the Authority or statutory manager, direct any person who has ceased to be or who is still any chief executive officer, director, member, executive officer, employee, agent, banker, auditor or office holder of, or trustee for, the approved clearing house or recognised clearing house (as the case may be) to pay, deliver, convey, surrender or transfer to the Authority or statutory manager, within such period as the General Division of the High Court may specify, any property or book of the approved clearing house or

recognised clearing house (as the case may be) which is comprised in, forms part of or relates to the relevant business of the approved clearing house or recognised clearing house (as the case may be), and which is in the person's possession or control; and

(*b*) any person who has ceased to be or who is still any chief executive officer, director, member, executive officer, employee, agent, banker, auditor or office holder of, or trustee for, the approved clearing house or recognised clearing house (as the case may be) must give to the Authority or statutory manager such information as the Authority or statutory manager may require for the discharge of the Authority's or statutory manager's duties or functions, or the exercise of the Authority's or statutory manager's powers, in relation to the approved clearing house or recognised clearing house (as the case may be), within such time and in such manner as the Authority or statutory manager may specify.

[10/2013; 40/2019]

(2) Any person who —

(*a*) without reasonable excuse, fails to comply with subsection (1)(*b*); or

(*b*) in purported compliance with subsection (1)(*b*), knowingly or recklessly provides any information or document that is false or misleading in a material particular,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[10/2013]

Remuneration and expenses of Authority and others in certain cases

81SAE.—(1) The Authority may at any time fix the remuneration and expenses to be paid by an approved clearing house or a recognised clearing house —

(*a*) to a statutory manager or statutory adviser appointed in relation to the approved clearing house or recognised clearing house (as the case may be), whether or not the appointment has been revoked; and

(*b*) where the Authority has assumed control of the relevant business of the approved clearing house or recognised clearing house (as the case may be), to the Authority and any person appointed by the Authority under section 320 in relation to the Authority's assumption of control of the relevant business, whether or not the Authority has ceased to be in control

of the relevant business.

[10/2013]

(2) The approved clearing house or recognised clearing house (as the case may be) must reimburse the Authority any remuneration and expenses payable by the approved clearing house or recognised clearing house (as the case may be) to a statutory manager or statutory adviser.

[10/2013]

Power of Authority to exempt approved clearing house or recognised clearing house from provisions of this Part

81SB.—(1) Without affecting section 337(1), the Authority may, by regulations made under section 81Q, exempt any approved clearing house, recognised clearing house, or class of approved clearing houses or recognised clearing houses from any provision of this Part, subject to such conditions or restrictions as the Authority may prescribe in those regulations.

[34/2012]

(2) Without affecting section 337(3) and (4), the Authority may, by written notice, exempt any approved clearing house or recognised clearing house from any provision of this Part, subject to such conditions or restrictions as the Authority may specify by written notice, if the Authority is satisfied that the non-compliance by that approved clearing house or recognised clearing house with that provision will not detract from the objectives specified in section 47.

[34/2012]

(2A) The Authority may, at any time, by written notice, add to, vary or revoke the conditions or restrictions mentioned in subsection (2).

[4/2017]

(2B) An approved clearing house or a recognised clearing house, or any class of approved clearing houses or class of recognised clearing houses, that is exempted under subsection (1) must satisfy every condition or restriction imposed on it under that subsection.

[4/2017]

(2C) An approved clearing house or a recognised clearing house, or any class of approved clearing houses or class of recognised clearing houses, that is exempted under subsection (2) must, for the duration of the exemption, satisfy every condition or restriction imposed on it under that subsection and subsection (2A).

[4/2017]

(3) It is not necessary to publish any exemption granted under subsection (2) in the *Gazette*.

[34/2012]

Division 6 — Voluntary Transfer of Business of Approved Clearing House or Recognised Clearing House

Interpretation of this Division

81SC. In this Division, unless the context otherwise requires —

"business" includes affairs, property, right, obligation and liability;

"Court" means the General Division of the High Court;

"debenture" has the meaning given by section 4(1) of the Companies Act 1967;

"property" includes property, right and power of every description;

"Registrar of Companies" means the Registrar of Companies appointed under the Companies Act 1967 and includes any Deputy or Assistant Registrar of Companies appointed under that Act;

"transferee" means an approved clearing house or a recognised clearing house, or a corporation which has applied or will be applying for approval or recognition to carry on in Singapore the usual business of an approved clearing house or a recognised clearing house, to which the whole or any part of a transferor's business is, is to be or is proposed to be transferred under this Division;

"transferor" means an approved clearing house or a recognised clearing house the whole or any part of the business of which is, is to be, or is proposed to be transferred under this Division.

[10/2013; 40/2019]

Voluntary transfer of business

81SD.—(1) A transferor may transfer the whole or any part of its business (including any business that is not the usual business of an approved clearing house or a recognised clearing house) to a transferee, if —

(*a*) the Authority has consented to the transfer;

(*b*) the transfer involves the whole or any part of the business of the transferor that is the usual business of an approved clearing house or a recognised clearing house; and

(*c*) the Court has approved the transfer.

[10/2013]

(2) Subsection (1) does not affect the right of an approved clearing house or a recognised clearing house to transfer the whole or any part of its business under any law.

[10/2013]

(3) The Authority may consent to a transfer under subsection (1)(*a*) if the Authority is satisfied that —

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

(*b*) the transferee will conduct the business of the transferor prudently and comply with the provisions of this Act.

[10/2013]

(4) The Authority may at any time appoint one or more persons to perform an independent assessment of, and provide a report on, the proposed transfer of a transferor's business (or any part thereof) under this Division.

[10/2013]

(5) The remuneration and expenses of any person appointed under subsection (4) must be paid by the transferor and the transferee jointly and severally.

[10/2013]

(6) The Authority must serve a copy of any report provided under subsection (4) on the transferor and the transferee.

[10/2013]

(7) The Authority may require a person to provide, within the period and in the manner specified by the Authority, any information or document that the Authority may reasonably require for the discharge of its duties or functions, or the exercise of its powers, under this Division.

[10/2013]

(8) Any person who —

(*a*) without reasonable excuse, fails to comply with any requirement under subsection (7); or

(*b*) in purported compliance with any requirement under subsection (7), knowingly or recklessly provides any information or document that is false or misleading in a material particular,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $200,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding $20,000 for every day or part of a day during which the offence continues after conviction.

[10/2013]

(9) Where a person claims, before providing the Authority with any information or

document that the person is required to provide under subsection (7), that the information or document might tend to incriminate the person, the information or document is not admissible in evidence against the person in criminal proceedings other than proceedings under subsection (8).

[10/2013]

Approval of transfer

81SE.—(1) A transferor must apply to the Court for its approval of the transfer of the whole or any part of the business of the transferor to the transferee under this Division.

[10/2013]

(2) Before making an application under subsection (1) —

(*a*) the transferor must lodge with the Authority a report setting out such details of the transfer and provide such supporting documents as the Authority may specify;

(*b*) the transferor must obtain the consent of the Authority under section 81SD(1)(*a*);

(*c*) the transferor and the transferee must, if they intend to serve on their respective participants a summary of the transfer, obtain the Authority's approval of the summary;

(*d*) the transferor must, at least 15 days before the application is made but not earlier than one month after the report referred to in paragraph (*a*) is lodged with the Authority, publish in the *Gazette* and in such newspaper or newspapers as the Authority may determine a notice of the transferor's intention to make the application and containing such other particulars as may be prescribed;

(*e*) the transferor and the transferee must keep at their respective offices in Singapore, for inspection by any person who may be affected by the transfer, a copy of the report referred to in paragraph (*a*) for a period of 15 days after the publication of the notice referred to in paragraph (*d*) in the *Gazette*; and

(*f*) unless the Court directs otherwise, the transferor and the transferee must serve on their respective participants affected by the transfer, at least 15 days before the application is made, a copy of the report referred to in paragraph (*a*) or a summary of the transfer approved by the Authority under paragraph (*c*).

[10/2013]

(3) The Authority and any person who, in the opinion of the Court, is likely to be

affected by the transfer —

(*a*) have the right to appear before and be heard by the Court in any proceedings relating to the transfer; and

(*b*) may make any application to the Court in relation to the transfer.

[10/2013]

(4) The Court is not to approve the transfer if the Authority has not consented under section 81SD(1)(*a*) to the transfer.

[10/2013]

(5) The Court may, after taking into consideration the views (if any) of the Authority on the transfer —

(*a*) approve the transfer without modification or subject to any modification agreed to by the transferor and the transferee; or

(*b*) refuse to approve the transfer.

[10/2013]

(6) If the transferee is not approved as an approved clearing house or recognised as a recognised clearing house by the Authority, the Court may approve the transfer on terms that the transfer takes effect only in the event of the transferee being approved as an approved clearing house or recognised as a recognised clearing house by the Authority.

[10/2013]

(7) The Court may by the order approving the transfer or by any subsequent order provide for all or any of the following matters:

(*a*) the transfer to the transferee of the whole or any part of the business of the transferor;

(*b*) the allotment or appropriation by the transferee of any share, debenture, policy or other interest in the transferee which under the transfer is to be allotted or appropriated by the transferee to or for any person;

(*c*) the continuation by (or against) the transferee of any legal proceedings pending by (or against) the transferor;

(*d*) the dissolution, without winding up, of the transferor;

(*e*) the provisions to be made for persons who are affected by the transfer;

(*f*) such incidental, consequential and supplementary matters as are, in the opinion of the Court, necessary to secure that the transfer is fully effective.

[10/2013]

(8) Any order under subsection (7) may —

(*a*) provide for the transfer of any business, whether or not the transferor otherwise has the capacity to effect the transfer in question;

(*b*) make provision in relation to any property which is held by the transferor as trustee; and

(*c*) make provision as to any future or contingent right or liability of the transferor, including provision as to the construction of any instrument under which any such right or liability may arise.

[10/2013]

(9) Subject to subsection (10), where an order made under subsection (7) provides for the transfer to the transferee of the whole or any part of the transferor's business, then by virtue of the order the business (or part thereof) of the transferor specified in the order is transferred to and vests in the transferee, free in the case of any particular property (if the order so directs) from any charge which by virtue of the transfer is to cease to have effect.

[10/2013]

(10) No order under subsection (7) has any effect or operation in transferring or otherwise vesting land in Singapore until the appropriate entries are made with respect to the transfer or vesting of that land by the appropriate authority.

[10/2013]

(11) If any business specified in an order under subsection (7) is governed by the law of any foreign country or territory, the Court may order the transferor to take all necessary steps for securing that the transfer of the business to the transferee is fully effective under the law of that country or territory.

[10/2013]

(12) Where an order is made under this section, the transferor and the transferee must each lodge within 7 days after the order is made —

(*a*) a copy of the order with the Registrar of Companies and with the Authority; and

(*b*) where the order relates to land in Singapore, an office copy of the order with the appropriate authority concerned with the registration or recording of dealings in that land.

[10/2013]

(13) A transferor or transferee which contravenes subsection (12), and every officer of the transferor or transferee (as the case may be) who fails to take all reasonable steps to secure compliance by the transferor or transferee (as the case may be) with that subsection, shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding $2,000 and, in the case of a continuing offence, to a further fine not

exceeding $200 for every day or part of a day during which the offence continues after conviction.

[10/2013]

PART 3AA

CENTRAL DEPOSITORY SYSTEM

Interpretation of this Part

81SF. In this Part, unless the context otherwise requires —

"account holder" means a person who has an account directly with the Depository and not through a depository agent;

"bare trustee" means a trustee who has no beneficial interest in the subject matter of the trust;

"book-entry securities", in relation to the Depository, means securities —

(*a*) the documents evidencing title to which are deposited by a depositor with the Depository and are registered in the name of the Depository or its nominee; and

(*b*) which are transferable by way of book-entry in the Depository Register and not by way of an instrument of transfer;

"Central Depository System" means the Central Depository System referred to in section 81SH(1);

"constitution" means —

(*a*) the constitution;

(*b*) the memorandum of association, the articles of association, or both; or

(*c*) any other constitutive document,

of a corporation;

"Court" means the General Division of the High Court;

"debenture" has the meaning given by section 4(1) of the Companies Act 1967;

"depositor" means an account holder or a depository agent but does not include a sub-account holder;

"Depository" means The Central Depository (Pte) Limited or any other corporation approved by the Authority as a depository company or corporation for the purposes of this Act, which operates the Central Depository System for the holding and transfer of book-entry securities;

"depository agent" means a member of the SGX-ST, a trust company (licensed under the Trust Companies Act 2005), a bank licensed under the Banking Act 1970, any merchant bank licensed under the Banking Act 1970 or any other person or body approved by the Depository who or which —

(*a*) performs services as a depository agent for sub-account holders in accordance with the terms of a depository agent agreement entered into between the Depository and the depository agent;

(*b*) deposits book-entry securities with the Depository on behalf of the sub-account holders; and

(*c*) establishes an account in its name with the Depository;

"Depository Register" means a register maintained by the Depository in respect of book-entry securities;

"depository rules" means the rules made by the Depository in relation to the operation of the Central Depository System and includes the Central Depository Rules and Procedures made by the Depository pursuant to its constitution (as the same may be amended from time to time) and any rule made by the Depository with regard to payment of fees to the Depository;

"derivative instruments", in relation to debentures, stocks and shares, includes warrants, transferable subscription rights, options to subscribe for stocks or shares, convertibles, depository receipts and such other instruments as the Authority may prescribe by regulations for the purposes of the definition;

"documents evidencing title" means —

(*a*) in the case of stocks, shares, debentures or any derivative instruments related thereto of a company or debentures or any derivative instruments related thereto of the Government — the stock certificates, share certificates, debenture certificates or certificates representing the derivative instrument, as the case may be; and

(*b*) in the case of stocks, shares, debentures or any derivative instruments related thereto of a foreign company or debentures or any derivative instruments related thereto of a foreign government or

of an international body, or any other securities — such documents or other evidence of title thereto, as the Depository may require;

"instrument" includes a deed or any other instrument in writing;

"international body" means the Asian Development Bank, the International Bank for Reconstruction and Development, the International Monetary Fund, the European Bank for Reconstruction and Development and such other international bodies as the Authority may prescribe by regulations;

"securities" has the meaning given by section 2(1), but includes derivative instruments;

"SGX-ST" means the Singapore Exchange Securities Trading Limited;

"sub-account holder" means a holder of an account maintained with a depository agent.

[36/2014; 40/2019; 1/2020]

Application of this Part

81SG.—(1) This Part applies only to —

(*a*) book-entry securities; and

(*b*) designated securities, as if a reference to book-entry securities includes a reference to designated securities.

[36/2014]

(2) The application of this Part to designated securities under subsection (1)(*b*) is subject to such modifications as the Authority may prescribe by regulations, and different modifications may be prescribed for different classes of designated securities.

[36/2014]

(3) In this section, "designated securities" means such securities as may be accepted or designated by the Depository or its nominee for deposit, custody, clearing or book-entry settlement.

[36/2014]

Central Depository System

81SH.—(1) The Central Depository System established by the repealed section 130C of the Companies Act 1967 on 12 November 1993 continues on or after 3 January 2016 as if it had been established under this section.

[36/2014]

(2) The following must be carried out using the computerised Central Depository

System in accordance with the depository rules:

(*a*) the deposit of documents evidencing title in respect of securities (with where applicable, in the case of shares or registered debentures, proper instruments of transfer duly executed) with the Depository and registration of such documents in the name of the Depository or its nominee;

(*b*) maintenance of accounts by the Depository in the names of the depositors so as to reflect the title of the depositors to the book-entry securities;

(*c*) effecting transfers of the book-entry securities electronically, and not by any other means, by the Depository and making an appropriate entry in the Depository Register of the book-entry securities that have been transferred.

[36/2014]

Depository or nominee deemed to be bare trustee

81SI.—(1) The Depository or its nominee is deemed to hold the book-entry securities deposited with it as a bare trustee for the collective benefit of depositors.

[36/2014]

(2) Subject to subsections (3) and (4), a depositor does not have any right to specific book-entry securities deposited with the Depository or its nominee but is entitled to a pro rata share computed on the basis of the book-entry securities credited to one or more accounts in the depositor's name.

[36/2014]

(3) A depository agent is deemed to hold book-entry securities deposited in its name with the Depository or its nominee, on behalf of any sub-account holder, as a bare trustee.

[36/2014]

(4) A sub-account holder does not have any right to specific book-entry securities deposited with the Depository or its nominee but is entitled to a pro rata share computed on the basis of the book-entry securities credited to one or more accounts maintained by the sub-account holder with a depository agent.

[36/2014]

Depository not member of company and depositors deemed to be members

81SJ.—(1) Despite anything in the Companies Act 1967 or any other written law or rule of law or in any instrument or in the constitution of a corporation, where book-entry securities of the corporation are deposited with the Depository or its nominee —

(*a*) the Depository or its nominee (as the case may be) is deemed not to be a member of the corporation; and

(*b*) the persons named as the depositors in a Depository Register are, for such period as the book-entry securities are entered against their names in the Depository Register, deemed to be —

(i) members of the corporation in respect of the amount of book-entry securities (relating to the stocks or shares issued by the corporation) entered against their respective names in the Depository Register; or

(ii) holders of the amount of the book-entry securities (relating to the debentures or any derivative instrument) entered against their respective names in the Depository Register.

[36/2014]

(2) Despite anything in the Companies Act 1967 or any other written law or rule of law or in any instrument or in the constitution of a corporation, where book-entry securities relating to units in any collective investment scheme (whether or not constituted as a corporation) are deposited with the Depository or its nominee —

(*a*) the Depository or its nominee (as the case may be) is deemed not to be a holder of the book-entry securities; and

(*b*) the persons named as the depositors in a Depository Register are, for such period as the book-entry securities are entered against their names in the Depository Register, deemed to be holders of the amount of the book-entry securities entered against their respective names in the Depository Register.

[36/2014]

(3) Nothing in this Part is to be construed as affecting —

(*a*) the obligation of a public company to keep —

(i) a register of its members under section 190 of the Companies Act 1967 and allow inspection of the register under section 192 of the Companies Act 1967; and

(ii) a register of holders of debentures issued by the company under section 93 of the Companies Act 1967 and allow inspection of the register under that section,

except that the company is not obliged to enter in such registers the names and particulars of persons who are deemed members or holders of debentures under subsection (1)(*b*);

(*b*) the right of a depositor to withdraw the depositor's documents evidencing

title in respect of securities from the Depository at any time in accordance with the rules of the Depository and to register them in the depositor's or any other name; or

(*c*) the enjoyment of any right, power or privilege conferred by, or the imposition of any liability, duty or obligation under the Companies Act 1967, any rule of law or under any instrument or under the constitution of a corporation upon a depositor, as a member of a corporation or as a holder of debentures or any derivative instruments except to the extent provided for in this Part or prescribed by regulations made thereunder.

[36/2014]

(4) Despite any provision in the Companies Act 1967, a depositor is not regarded as a member of a company entitled to attend any general meeting of the company and to speak and vote thereat unless the depositor's name appears on the Depository Register 72 hours before the general meeting.

[36/2014]

(5) The payment by a corporation to the Depository of any dividend payable to a depositor, to the extent of the payment made, discharges the corporation from any liability in respect of that payment.

[36/2014]

Depository to certify names of depositors to corporation upon request

81SK. The Depository must certify the names of persons on the Depository Register to a corporation in accordance with the rules of the Depository upon a written request being made to it by the corporation.

[36/2014]

Maintenance of accounts

81SL. The Depository must maintain accounts of book-entry securities on behalf of depositors in accordance with the rules of the Depository.

[36/2014]

Transfers effected by Depository under book-entry clearing system

81SM.—(1) Subject to this Part, a transfer of book-entry securities between depositors must be effected, despite anything in the Companies Act 1967 or any other written law or rule of law or in any instrument or in a corporation's constitution to the contrary, by the Depository making an appropriate entry in its Depository Register.

[36/2014]

(2) A transfer of securities by the Depository by way of book-entry to a depositor

under this Part is valid and is not to be challenged in any court on the ground that the transfer is not accompanied by a proper instrument of transfer or that otherwise the transfer is not made in writing.

[36/2014; 40/2019]

Depository to be discharged from liability if acting on instructions

81SN.—(1) Subject to the regulations, the Depository, if acting in good faith and without negligence, shall not be liable for conversion or for any breach of trust or duty where the Depository has, in respect of book-entries in accounts maintained by it, made entries regarding the book-entry securities, or transferred or delivered the book-entry securities, according to the instructions of a depositor even though the depositor had no right to dispose of or take any other action in respect of the book-entry securities.

[36/2014]

(2) The Depository or a depository agent, if acting in good faith and without negligence, is fully discharged of its obligations to the account holder or sub-account holder by the transfer or delivery of book-entry securities upon the instructions of the account holder or sub-account holder, as the case may be.

[36/2014]

(3) The Depository, if acting in good faith and without negligence, is fully discharged of its obligations to a depository agent by the transfer or delivery of book-entry securities upon the instructions of the depository agent.

[36/2014]

(4) For the purposes of this section, the Depository or a depository agent is not to be treated as having been negligent by reason only of its failure to concern itself with whether or not the depositor or sub-account holder (as the case may be) has a right to dispose of or take any other action in respect of the book-entry securities or to issue the instructions.

[36/2014]

Confirmation of transaction

81SO. The Depository must, in accordance with the depository rules, issue to each account holder and to each sub-account holder through the sub-account holder's depository agent, following upon any transaction affecting book-entry securities maintained for such account holder by the Depository and maintained for such sub-account holder by the sub-account holder's depository agent under this Part, a confirmation note which must specify the amount and description of the book-entry securities and any other relevant transaction information.

[36/2014]

No rectification of Depository Register

81SP.—(1) Despite anything in the Companies Act 1967 or any written law or rule of law, no order may be made by the Court for rectification of the Depository Register; except that where the Court is satisfied that —

(*a*) a depositor did not consent to a transfer of the book-entry securities; or

(*b*) a depositor should not have been registered in the Depository Register as having title to the book-entry securities,

the Court may award damages to the firstmentioned depositor or to any person who would have been entitled to be registered in the Depository Register as having title to the book-entry securities (as the case may be) on such terms as the Court thinks to be equitable or make such other order as the Court thinks fit including an order for the transfer of book-entry securities to such depositor or person.

[36/2014]

(2) Where provisions exist in the constitution of a corporation that entitle a corporation to refuse registration of a transfer of book-entry securities, the corporation may in relation to any transfer to which it objects, notify the Depository in writing of its refusal before the transfer takes place and provide the Depository with the facts upon which such refusal is considered to be justified.

[36/2014]

(3) Where the Depository has had prior notice of the corporation's refusal under subsection (2) (but not otherwise), the Depository must refuse to effect the transfer and to enter the name of the transferee in the Depository Register and thereupon convey the facts upon which such refusal is considered to be justified to the transferee.

[36/2014]

(4) Section 130AB of the Companies Act 1967 does not apply to any refusal to register a transfer under subsections (2) and (3).

[36/2014]

Trustee, executor or administrator of deceased depositor named as depositor

81SQ.—(1) Any trustee, executor or administrator of the estate of a deceased depositor whose name was entered in the Depository Register as owner or as having an interest in book-entry securities may open an account with the Depository and have his, her or its name entered in the Depository Register so as to reflect the interest of the trustee, executor or administrator in the book-entry securities.

[36/2014]

(2) Subject to this section, no notice of any trust expressed, implied or constructive may be entered in the Depository Register and no liabilities are affected by anything done pursuant to subsection (1) or pursuant to the law of any other place which corresponds to this section and the Depository and the issuer of the book-entry securities

are not affected with notice of any trust by anything so done.

[36/2014]

Non-application of certain provisions in bankruptcy and company liquidation law

81SR. Where by virtue of the provisions of any written law in relation to bankruptcy or company liquidation it is provided that —

(*a*) any disposition of the property of a company after commencement of a winding up is void, unless the Court orders otherwise; or

(*b*) any disposition of the property of a person who is adjudged bankruptcy after the making of an application for a bankruptcy order and before vesting of the bankrupt's estate in a trustee is void unless done with the consent or ratification of the Court,

those provisions do not apply to any disposition of book-entry securities; but where a Court is satisfied that a party to the disposition, being a party other than the Depository, had notice that an application has been made for the winding up or bankruptcy of the other party to the disposition, it may award damages against that party on such terms as it thinks equitable or make such other order as the Court thinks fit, including an order for the transfer of book-entry securities by that party but not an order for the rectification of the Depository Register.

[36/2014]

Security interest

81SS.—(1) Except as provided in this section or any other written law or any regulations made under section 81SU, no security interest may be created in book-entry securities.

[36/2014]

(2) A security interest in book-entry securities to secure the payment of a debt or liability may be created in favour of any depositor in the following manner:

(*a*) by way of assignment, by an instrument of assignment in the prescribed form executed by the assignor;

(*b*) by way of charge, by an instrument of charge in the prescribed form executed by the chargor,

if no security interest in any book-entry securities subsequent to any assignment or charge thereof may be created by the assignor or the chargor (as the case may be) in favour of any other person and any such assignment or charge is void.

[36/2014]

(3) Upon receipt of the instrument of assignment, the Depository must immediately,

by way of an off-market transaction, transfer the book-entry securities to the assignee and thereafter notify the assignor and the assignee of the transfer in the prescribed manner.

[36/2014]

(4) Upon receipt of the instrument of charge, the Depository must immediately register the instrument in a register of charges maintained by the Depository and thereafter notify the chargor and the chargee in the prescribed manner.

[36/2014]

(5) The register of charges is not open to inspection to any person other than the chargor or the chargee or their authorised representatives and except for the purpose of the performance of its duties or the exercise of its functions or when required to do so by any court or under the provisions of any written law, the Depository must not disclose to any unauthorised person any information contained in the register of charges.

[36/2014]

(6) An assignment or a charge made in accordance with the provisions of this section, but not otherwise, has effect upon the Depository transferring the book-entry securities or endorsing the charge in the register of charges except that, where the instrument of assignment or charge specifies the number of book-entry securities to which the assignment or charge relates, the instrument of assignment or charge does not have any effect if on the date of receipt of such instrument, the number of book-entry securities in the account of the assignor or chargor is less than the number of book-entry securities specified in such instrument.

[36/2014; 4/2017]

(7) The provisions of section 81SJ(1), (2) and (3) apply to an assignment of book-entry securities made under this section.

[36/2014]

(8) An assignee or a registered chargee of book-entry securities has the following powers:

(*a*) a power, when the loan or liability has become due and payable, to sell the book-entry securities or any part thereof and in the case of a chargee, the chargee has the power to sell the book-entry securities or any part thereof in the name of and for and on behalf of the chargor;

(*b*) any other power which may be granted to the assignee or registered chargee in writing by the assignor or chargor in relation to the book-entry securities provided that the Depository is not concerned with or affected by the exercise of any such power.

[36/2014]

(9) Nothing in subsection (8) is to be construed as imposing on the Depository a duty

to ascertain whether the power of sale has become exercisable or has been lawfully exercised by the assignee or chargee.

[36/2014]

(10) No book-entry securities assigned by way of security or charged in accordance with the provisions of this section may be —

(*a*) transferred by way of an off-market transaction to the assignor except upon the production of a duly executed re-assignment in the prescribed form; or

(*b*) transferred by the chargor, by way of sale or otherwise, except —

(i) upon the production of a duly executed discharge of charge in the prescribed form; or

(ii) upon the return of such book-entry securities to the chargor's control with the approval in writing of the chargee.

[36/2014; 4/2017]

(10A) A charge on book-entry securities made in accordance with the provisions of this section is treated as discharged if such book-entry securities have been returned to the chargor's control with the approval in writing of the chargee.

[4/2017]

(11) Upon the sale by the assignee or the chargee in exercise of the assignee's or chargee's power of sale of any book-entry securities assigned or charged in accordance with the provisions of this section, the assignee or the chargee must immediately notify the Depository of the sale and the particulars of the book-entry securities sold by the assignee or chargee, and the Depository must —

(*a*) in the case of the sale by the assignee, notify the assignor of the sale; and

(*b*) in the case of the sale by the chargee, effect a transfer of the book-entry securities to the buyer in accordance with section 81SM and notify the chargor of the transfer,

and the provisions of sections 81SO, 81SP and 81SR apply, with the necessary modifications, to a transfer effected pursuant to this section.

[36/2014]

(12) Upon fulfilling the assignor's or the chargor's obligations under an assignment by way of security or a charge, the assignor or the chargor is entitled to obtain from the assignee or chargee a re-assignment or a discharge of charge (as the case may be) of the whole or part of the book-entry securities.

[36/2014]

(13) A re-assignment or discharge of charge is to be effected by the Depository by

transferring the book-entry securities to the assignor or cancelling the endorsement of charge in the register of charges and in the chargor's account, as the case may be.

[36/2014]

(14) Book-entry securities may be assigned by way of security by an assignee or charged in the prescribed form by a chargee to secure the payment of any debt or liability of the assignee or the chargee (as the case may be) in accordance with the provisions of this section provided that no book-entry security may be charged by a chargee subsequent to any sub-charge.

[36/2014]

(15) All acts, powers and rights which might previously have been done or exercised by the chargee thereunder in relation to the book-entry securities may thereafter be done or exercised by the sub-chargee, and, except with the consent of the sub-chargee, must not be done or exercised by the chargee thereunder during the currency of the sub-charge.

[36/2014]

(16) Upon the sale by the sub-chargee in exercise of the sub-chargee's power of sale of any book-entry securities in accordance with the provisions of this section, the provisions of subsection (11), in respect of a sale by a chargee, apply with the necessary modifications to the sale by the sub-chargee.

[36/2014]

(17) Nothing in subsection (14) affects the rights or liabilities of the original assignor or chargor of the book-entry securities under subsections (12) and (13) and the original assignor or chargor is entitled to a re-assignment or discharge of charge from the assignee or chargee free from all subsequent security interests created without the original assignor's or chargor's consent upon satisfying the original assignor's or chargor's indebtedness or liability to the assignee or the chargee.

[36/2014]

(18) The provisions of section 81SN apply to relieve the Depository and its servants or agents of any liability in respect of any act done or omission made under this section as if references to depositor include references to assignee, chargee or sub-chargee, as the case may be.

[36/2014]

(19) Nothing in this section affects the validity and operation of floating charges on book-entry securities created under the common law before or after 12 November 1993, but the Depository is not required to recognise, even when having notice thereof, any equitable interest in any book-entry securities under a floating charge except the power of the chargee, upon the crystallisation of the floating charge, to sell the book-entry securities in the name of the chargor in accordance with the provisions of this section.

[36/2014]

(20) Nothing in subsection (19) is to be construed as imposing on the Depository a duty to ascertain whether the power of sale pursuant to a floating charge has become exercisable or has been lawfully exercised.

[36/2014]

(21) A member of SGX-ST has a lien over the unpaid book-entry securities purchased for the account of its customer which is enforceable by sale in accordance with and subject to the provisions of this section as if the same had been charged to the member under this section, except that the member is not obliged to notify the Depository of the sale or the particulars of the book-entry securities sold by the member.

[36/2014]

(22) Any security interest on book-entry securities created before 12 November 1993 and subsisting or in force on that date continues to have effect as if the Companies (Amendment) Act 1993 had not been enacted.

[36/2014]

(23) In this section, "off-market transaction" means a transaction effected outside the SGX-ST.

[36/2014]

Depository rules to be regarded as rules of approved exchange that are subject to this Act

81ST.—(1) Depository rules in relation to the operation of the Central Depository System, including any amendments made thereto, are regarded as having the same force and effect as if made by an approved exchange and are likewise subject to the provisions of this Act.

[36/2014; 4/2017]

(2) Without limiting subsection (1), sections 23 and 25 apply to the depository rules under subsection (1) as they apply to rules made by an approved exchange.

[36/2014; 4/2017]

Power of Authority to make regulations

81SU.—(1) Without affecting section 341, the Authority may make regulations for the purposes of this Part, including regulations relating to —

(*a*) rights and obligations of persons in relation to securities dealt with under the Central Depository System;

(*b*) procedures for the deposit and custody of securities and the transfer of title to book-entry securities and the regulation of persons concerned in that operation;

(*c*) matters relating to security interest in book-entry securities;

(*d*) keeping of depositors' accounts by the Depository and sub-accounts by the depository agents;

(*e*) keeping of the Depository Register and of records generally;

(*f*) safeguards for depositors including the maintenance of insurance and the establishment and maintenance of compensation funds by the Depository for the purpose of settling claims by depositors;

(*g*) matters relating to linkages between the Depository and other securities depositories (by whatever name called) established and maintained outside Singapore;

(*h*) any requirement for fees charged by the Depository to be approved by the Authority;

(*i*) the modification or exclusion of any provision of any written law, rule of law, any instrument or constitution;

(*j*) the application, with such modifications as may be required, of the provisions of any written law, instrument or constitution; and

(*k*) such supplementary, incidental, saving or transitional provisions as may be necessary or expedient.

[36/2014]

(2) Regulations made under this section may provide —

(*a*) that the Authority may require the Depository to provide it with such information or documents as the Authority considers necessary for such approval; and

(*b*) that any contravention of any specified provision in the regulations shall be an offence punishable with a fine not exceeding $150,000 and, in the case of a continuing offence, with a further fine not exceeding 10% of the maximum fine prescribed for that offence for every day or part of a day during which the offence continues after conviction.

[36/2014]

Power of Authority to issue written directions

81SV.—(1) The Authority may, if it thinks it necessary or expedient in the public interest or for the protection of investors, issue written directions, either of a general or specific nature, to the Depository or the depository agent, to comply with such requirements as the Authority may specify in the written direction.

[36/2014]

(2) Without limiting subsection (1), any written direction may be issued with respect to the discharge of the duties or functions of the Depository or depository agent.

[36/2014]

(3) The Depository and the depository agent must comply with any direction made under subsection (1).

[36/2014]

(4) Before giving directions under subsection (1), the Authority may consult the Depository or the depository agent and afford it an opportunity to make representations.

[36/2014]

(5) It is not necessary to publish any direction given under subsection (1) in the *Gazette*.

[36/2014]

PART 3A

APPROVED HOLDING COMPANIES

Objectives of this Part

81T. The objectives of this Part are —

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

(i) approved exchanges;

(i*a*) licensed trade repositories;

(ii) approved clearing houses; and

(iii) corporations that are approved holding companies,

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

(*b*) to reduce systemic risk.

[34/2012]

Division 1 — Establishment of Approved Holding Companies

Requirement for approval

81U.—(1) No corporation may be the holding company of any approved exchange,

licensed trade repository, approved clearing house or corporation which is an approved holding company, unless the firstmentioned corporation is an approved holding company.

[34/2012]

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

(3) Without affecting section 337(1), the Authority may, by regulations made under section 81ZK, exempt any corporation or class of corporations from subsection (1), subject to such conditions or restrictions as the Authority may prescribe in those regulations.

[34/2012]

(4) Without affecting section 337(3) and (4), the Authority may, by written notice, exempt any corporation from subsection (1), subject to such conditions or restrictions as the Authority may specify by written notice, if the Authority is satisfied that the exemption will not detract from the objectives specified in section 81T.

[34/2012]

(5) It is not necessary to publish any exemption granted under subsection (4) in the *Gazette*.

[34/2012]

(6) The Authority may, at any time, by written notice —

(*a*) add to the conditions and restrictions referred to in subsection (4); or

(*b*) vary or revoke any condition or restriction referred to in that subsection.

[34/2012]

(7) Every corporation that is granted an exemption under subsection (3) must satisfy every condition or restriction imposed on it under that subsection.

[34/2012]

(8) Every corporation that is granted an exemption under subsection (4) must satisfy every condition or restriction imposed on it under that subsection or subsection (6).

[34/2012]

(9) Any corporation which contravenes subsection (7) or (8) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

Application for approval

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

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

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

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

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

Power of Authority to approve holding companies

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

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

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

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

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

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

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

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

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

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

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

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

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

Annual fees payable by approved holding company

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

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

Cancellation of approval

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

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

Power of Authority to revoke approval

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

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

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

(*c*) the corporation contravenes —

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

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

(iii) any provision in this Act;

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

(*da*) upon the Authority exercising any power under section 81ZGC(2) or the Minister exercising any power under Division 2, 3, 4 or 4A of Part 4B of the Monetary Authority of Singapore Act 1970 in relation to the corporation, the Authority considers that it is in the public interest to revoke the approval;

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

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

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

[34/2012; 10/2013; 31/2017]

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

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

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

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

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

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

(5) Despite the lodging of an appeal under subsection (4), any action taken by the Authority under this section continues to have effect pending the Minister's decision.

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

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

Division 2 — Regulation of Approved Holding Companies

Obligation to notify Authority of certain matters

81ZA.—(1) An approved holding company must, as soon as practicable after the occurrence of any of the following circumstances, notify the Authority of the circumstance:

(*a*) any material change to the information provided by the approved holding company in its application under section 81V(1);

(*b*) the carrying on of any activity by the approved holding company other than such activity or such class of activities prescribed by regulations made under section 81ZK;

(*c*) the acquisition by the approved holding company of a substantial shareholding in a corporation, which carries on any activity other than such activity or such class of activities prescribed by regulations made under section 81ZK;

(*d*) any other matter that the Authority may prescribe by regulations made under section 81ZK for the purposes of this paragraph or specify by written notice to the approved holding company.

[34/2012; 4/2017]

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

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

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

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

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

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

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

and the approved holding company must comply with such directions.

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

Obligation to submit periodic reports

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

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

Obligation to assist Authority

81ZC.—(1) An approved holding company must provide such assistance to the Authority as the Authority may require for the performance of the functions and duties of the Authority, including the furnishing of such returns and the provision of —

(*a*) such books and other information relating to the activities of the approved holding company; and

(*b*) such other information,

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

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

Obligation to maintain confidentiality

81ZD.—(1) Subject to subsection (2), an approved holding company and its officers and employees must maintain, and aid in maintaining, the confidentiality of all user information that —

(*a*) comes to the knowledge of the approved holding company or any of its officers or employees; or

(*b*) is in the possession of the approved holding company or any of its officers or employees.

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

(*a*) the disclosure of user information for such purposes, or in such circumstances, as the Authority may prescribe;

(*b*) any disclosure of user information which is authorised by the Authority to be disclosed or provided; or

(*c*) the disclosure of user information pursuant to any requirement imposed under any written law or order of court in Singapore.

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

(4) To avoid doubt, nothing in this section is to be construed as preventing an approved holding company from entering into a written agreement with a user which obliges the approved holding company to maintain a higher degree of confidentiality than that specified in this section.

Control of substantial shareholding in approved holding companies

81ZE.—(1) A person must not enter into any agreement to acquire shares in an approved holding company by virtue of which the person would, if the agreement had been carried out, become a substantial shareholder of the approved holding company without first obtaining the approval of the Authority to enter into the agreement.

(2) A person must not become —

(*a*) a 12% controller; or

(*b*) a 20% controller,

of an approved holding company without first obtaining the approval of the Authority.

(3) In subsection (2) —

"12% controller" means a person, not being a 20% controller, who alone or together with the person's associates —

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

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

"20% controller" means a person who, alone or together with the person's associates —

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

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

(4) In this section —

(*a*) a person holds a share if —

(i) the person is deemed to have an interest in that share under section 7(6) to (10) of the Companies Act 1967; or

(ii) the person otherwise has a legal or an equitable interest in that share, except such interest as is to be disregarded under section 7(6) to (10) of the Companies Act 1967;

(*b*) a reference to the control of a percentage of the votes in an approved holding company is to be construed as a reference to the control, whether direct or indirect, of that percentage of the total number of votes that might be cast in a general meeting of the approved holding company; and

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

(i) *A* is the spouse, a parent, remoter lineal ancestor or step-parent, a son, daughter, remoter issue, stepson or stepdaughter or a

brother or sister of *B*;

(ii) *A* is a body corporate that is, or a majority of the directors of which are, accustomed or under an obligation whether formal or informal to act in accordance with the directions, instructions or wishes of *B*;

(iii) [*Deleted by Act 35 of 2014*]

(iv) *A* is a person who is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of *B*;

(v) *A* is a subsidiary of *B*;

(vi) [*Deleted by Act 35 of 2014*]

(vii) *A* is a body corporate in which *B*, alone or together with other associates of *B* as described in sub-paragraphs (ii), (iv) and (v), is in a position to control not less than 20% of the votes in *A*; or

(viii) [*Deleted by Act 35 of 2014*]

(ix) *A* is a person with whom *B* has an agreement or arrangement, whether oral or in writing and whether express or implied, to act together with respect to the acquisition, holding or disposal of shares or other interests in, or with respect to the exercise of their votes in relation to, the approved holding company.

[35/2014]

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

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

(7) Until a person to whom a direction has been issued under subsection (6) transfers or disposes of the shares which are the subject of the direction, and despite anything to the contrary in the Companies Act 1967 or the memorandum or articles of association or other constituent document or documents of the approved holding company —

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

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

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

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

(9) Any payment made by an approved holding company in contravention of subsection (7)(*c*) is deemed to be void, and a person to whom a direction has been issued under subsection (6) must immediately return the payment the person has received to the approved holding company.

(10) The Authority may exempt —

(*a*) any person or class or persons; or

(*b*) any class or description of shares or interests in shares,

from the requirement under subsection (1) or (2), subject to such conditions or restrictions as the Authority may impose.

(11) Any person who contravenes subsection (1) or (2), or any condition or restriction imposed by the Authority under subsection (5), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $200,000 and, in the case of a continuing offence, to a further fine not exceeding $20,000 for every day or part of a day during which the offence continues after conviction.

(12) Any person who contravenes subsection (7)(*b*) or (*c*), (8) or (9) or any direction issued by the Authority under subsection (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

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

81ZF.—(1) An approved holding company must ensure that it appoints or employs fit and proper persons as its chairperson, chief executive officer, directors and key management officers.

(2) An approved holding company must not appoint a person as its chairperson, chief executive officer or director unless the approved holding company has obtained the approval of the Authority.

(3) The Authority may, by written notice, require an approved holding company to obtain the approval of the Authority for the appointment of any person to any key management position or committee of the approved holding company and the approved holding company must comply with the notice.

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

(5) Without limiting section 81ZK and to any other matter that the Authority may consider relevant, the Authority may, in determining whether to grant its approval under subsection (2) or (3), have regard to such criteria as the Authority may prescribe or specify in directions issued by written notice.

(6) Subject to subsection (7), the Authority must not refuse an application for approval under this section without giving the approved holding company an opportunity to be heard.

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

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

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

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

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

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

(9) An approved holding company must, as soon as practicable, give written notice to the Authority of the resignation or removal of its chairperson, chief executive officer,

director or person referred to in the notice issued by the Authority under subsection (3).

(10) The Authority may make regulations under section 81ZK relating to the composition and duties of the board of directors or any committee of an approved holding company.

[34/2012]

(11) In this section, "committee" includes any committee of directors, disciplinary committee, appeals committee or any body responsible for disciplinary action against a member of an approved exchange or approved clearing house, or a participant of a licensed trade repository, of which an approved holding company is the holding company.

[34/2012]

(12) The Authority may exempt an approved holding company or a class of approved holding companies from the requirement under subsection (1), (2) or (9), subject to such conditions or restrictions as the Authority may impose.

(13) Any approved holding company which contravenes subsection (1), (2), (3) or (9) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $200,000 and, in the case of a continuing offence, to a further fine not exceeding $20,000 for every day or part of a day during which the offence continues after conviction.

Listing of approved holding companies on organised market

81ZG.—(1) The securities or securities-based derivatives contracts of an approved holding company must not be listed for quotation on an organised market that is operated by any of its related corporations, unless the approved holding company and the operator of the organised market have entered into such arrangements as the Authority may require —

(*a*) for dealing with possible conflicts of interest that may arise from such listing; and

(*b*) for the purpose of ensuring the integrity of the trading of the securities or securities-based derivatives contracts (as the case may be) of the approved holding company.

[4/2017]

(2) Where the securities or securities-based derivatives contracts of an approved holding company are listed for quotation on an organised market operated by any of its related corporations, the Authority may act in place of the operator of the organised market in making decisions and taking action, or require the operator of the organised market to make decisions and to take action on behalf of the Authority, on —

(*a*) the admission of the approved holding company to, or the removal of the

approved holding company from, the official list of the organised market; and

(*b*) the granting of approval for the securities or securities-based derivatives contracts (as the case may be) of the approved holding company to be, or the stopping or suspending of the securities or securities-based derivatives contracts (as the case may be) of the approved holding company from being, listed for quotation or quoted on the organised market.

[4/2017]

(3) The Authority may, by written notice to the operator of the organised market —

(*a*) modify the listing rules of the organised market for the purpose of their application to the listing of the securities or securities-based derivatives contracts of the approved holding company for quotation or trading; or

(*b*) waive the application of any listing rule of the organised market to the approved holding company.

[4/2017]

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

Information of insolvency, etc.

81ZGA.—(1) Any approved holding company which is or is likely to become insolvent, which is or is likely to become unable to meet its obligations, or which has suspended or is about to suspend payments, must immediately inform the Authority of that fact.

[10/2013]

(2) Any approved holding company which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[10/2013]

Interpretation of sections 81ZGB to 81ZGG

81ZGB. In this section and sections 81ZGC to 81ZGG, unless the context otherwise requires —

"business" includes affairs and property;

"office holder", in relation to an approved holding company, means any person acting as the liquidator, the provisional liquidator, the receiver or the receiver and manager of the approved holding company, or acting in an equivalent capacity in relation to the approved holding company;

"relevant business" means any business of an approved holding company —

(*a*) which the Authority has assumed control of under section 81ZGC; or

(*b*) in relation to which a statutory adviser or a statutory manager has been appointed under section 81ZGC;

"statutory adviser" means a statutory adviser appointed under section 81ZGC;

"statutory manager" means a statutory manager appointed under section 81ZGC.

[10/2013]

Action by Authority if approved holding company unable to meet obligations, etc.

81ZGC.—(1) The Authority may exercise any one or more of the powers specified in subsection (2) as appears to it to be necessary, where —

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

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

(*c*) the Authority is of the opinion that an approved holding company —

(i) is carrying on its business in a manner likely to be detrimental to the interests of the public or a section of the public or the protection of investors, or to the objectives specified in section 81T;

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

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

(iv) has failed to comply with any condition or restriction imposed on it under section 81W(1) or (2); or

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

[10/2013]

(2) Subject to subsections (1) and (3), the Authority may —

(*a*) require the approved holding company immediately to take any action or to do or not to do any act or thing whatsoever in relation to its business as the Authority may consider necessary;

(*b*) appoint one or more persons as statutory adviser, on such terms and conditions as the Authority may specify, to advise the approved holding company on the proper management of such of the business of the approved holding company as the Authority may determine; or

(*c*) assume control of and manage such of the business of the approved holding company as the Authority may determine, or appoint one or more persons as statutory manager to do so on such terms and conditions as the Authority may specify.

[10/2013]

(3) In the case of an approved holding company incorporated outside Singapore, any appointment of a statutory adviser or statutory manager or any assumption of control by the Authority of any business of the approved holding company under subsection (2) is only in relation to —

(*a*) the business or affairs of the approved holding company carried on in, or managed in or from, Singapore; or

(*b*) the property of the approved holding company located in Singapore, or reflected in the books of the approved holding company in Singapore (as the case may be) in relation to its operations in Singapore.

[10/2013]

(4) Where the Authority appoints 2 or more persons as the statutory manager of an approved holding company, the Authority must specify, in the terms and conditions of the appointment, which of the duties, functions and powers of the statutory manager —

(*a*) may be discharged or exercised by such persons jointly and severally;

(*b*) must be discharged or exercised by such persons jointly; and

(*c*) must be discharged or exercised by a specified person or such persons.

[10/2013]

(5) Where the Authority has exercised any power under subsection (2), it may, at any time and without affecting its power under section 81Z(1)(*da*), do one or more of the following:

(*a*) vary or revoke any requirement of, any appointment made by or any action taken by the Authority in the exercise of such power, on such terms and

conditions as it may specify;

(*b*) further exercise any of the powers under subsection (2);

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

[10/2013]

(6) No liability shall be incurred by a statutory manager or a statutory adviser for anything done (including any statement made) or omitted to be done with reasonable care and in good faith in the course of or in connection with —

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

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

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

[10/2013]

(7) Any approved holding company that fails to comply with a requirement imposed by the Authority under subsection (2)(*a*) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[10/2013]

Effect of assumption of control under section 81ZGC

81ZGD.—(1) Upon assuming control of the relevant business of an approved holding company, the Authority or statutory manager (as the case may be) must take custody or control of the relevant business.

[10/2013]

(2) During the period when the Authority or statutory manager is in control of the relevant business of an approved holding company, the Authority or statutory manager —

(*a*) must manage the relevant business of the approved holding company in the name of and on behalf of the approved holding company; and

(*b*) is deemed to be an agent of the approved holding company.

[10/2013]

(3) In managing the relevant business of an approved holding company, the Authority or statutory manager —

(*a*) must take into consideration the interests of the public or the section of the

public referred to in section 81ZGC(1)(*c*)(i), and the need to protect investors; and

(*b*) has all the duties, powers and functions of the members of the board of directors of the approved holding company (collectively and individually) under this Act, the Companies Act 1967 and the constitution of the approved holding company, including powers of delegation, in relation to the relevant business of the approved holding company; but nothing in this paragraph requires the Authority or statutory manager to call any meeting of the approved holding company under the Companies Act 1967 or the constitution of the approved holding company.

[10/2013]

(4) Despite any written law or rule of law, upon the assumption of control of the relevant business of an approved holding company by the Authority or statutory manager, any appointment of a person as the chief executive officer or a director of the approved holding company, which was in force immediately before the assumption of control, is deemed to be revoked, unless the Authority gives its approval, by written notice to the person and the approved holding company, for the person to remain in the appointment.

[10/2013]

(5) Despite any written law or rule of law, during the period when the Authority or statutory manager is in control of the relevant business of an approved holding company, except with the approval of the Authority, no person may be appointed as the chief executive officer or a director of the approved holding company.

[10/2013]

(6) Where the Authority has given its approval under subsection (4) or (5) to a person to remain in the appointment of, or to be appointed as, the chief executive officer or a director of an approved holding company, the Authority may at any time, by written notice to the person and the approved holding company, revoke that approval, and the appointment is deemed to be revoked on the date specified in the notice.

[10/2013]

(7) Despite any written law or rule of law, if any person, whose appointment as the chief executive officer or a director of an approved holding company is revoked under subsection (4) or (6), acts or purports to act after the revocation as the chief executive officer or a director of the approved holding company during the period when the Authority or statutory manager is in control of the relevant business of the approved holding company —

(*a*) the act or purported act of the person is invalid and of no effect; and

(*b*) the person shall be guilty of an offence.

[10/2013]

(8) Despite any written law or rule of law, if any person who is appointed as the chief executive officer or a director of an approved holding company in contravention of subsection (5) acts or purports to act as the chief executive officer or a director of the approved holding company during the period when the Authority or statutory manager is in control of the relevant business of the approved holding company —

(*a*) the act or purported act of the person is invalid and of no effect; and

(*b*) the person shall be guilty of an offence.

[10/2013]

(9) During the period when the Authority or statutory manager is in control of the relevant business of an approved holding company —

(*a*) if there is any conflict or inconsistency between —

(i) a direction or decision given by the Authority or statutory manager (including a direction or decision to a person or body of persons referred to in sub-paragraph (ii)); and

(ii) a direction or decision given by any chief executive officer, director, member, executive officer, employee, agent or office holder, or the board of directors, of the approved holding company,

the direction or decision referred to in sub-paragraph (i), to the extent of the conflict or inconsistency, prevails over the direction or decision referred to in sub-paragraph (ii); and

(*b*) no person may exercise any voting or other right attached to any share in the approved holding company in any manner that may defeat or interfere with any duty, function or power of the Authority or statutory manager, and any such act or purported act is invalid and of no effect.

[10/2013]

(10) Any person who is guilty of an offence under subsection (7) or (8) shall be liable on conviction to a fine not exceeding $150,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[10/2013]

Duration of control

81ZGE.—(1) The Authority must cease to be in control of the relevant business of an

approved holding company when the Authority is satisfied that —

(*a*) the reasons for the Authority's assumption of control of the relevant business have ceased to exist; or

(*b*) it is no longer necessary in the interests of the public or the section of the public referred to in section 81ZGC(1)(*c*)(i) or for the protection of investors.

[10/2013]

(2) A statutory manager is deemed to have assumed control of the relevant business of an approved holding company on the date of the statutory manager's appointment as such.

[10/2013]

(3) The appointment of a statutory manager in relation to the relevant business of an approved holding company may be revoked by the Authority at any time —

(*a*) if the Authority is satisfied that —

(i) the reasons for the appointment have ceased to exist; or

(ii) it is no longer necessary in the interests of the public or the section of the public referred to in section 81ZGC(1)(*c*)(i) or for the protection of investors; or

(*b*) on any other ground,

and upon such revocation, the statutory manager ceases to be in control of the relevant business of the approved holding company.

[10/2013]

(4) The Authority must, as soon as practicable, publish in the *Gazette* the date, and such other particulars as the Authority thinks fit, of —

(*a*) the Authority's assumption of control of the relevant business of an approved holding company;

(*b*) the cessation of the Authority's control of the relevant business of an approved holding company;

(*c*) the appointment of a statutory manager in relation to the relevant business of an approved holding company; and

(*d*) the revocation of a statutory manager's appointment in relation to the relevant business of an approved holding company.

[10/2013]

Responsibilities of officers, member, etc., of approved holding company

81ZGF.—(1) During the period when the Authority or statutory manager is in control of the relevant business of an approved holding company —

(*a*) the General Division of the High Court may, on an application by the Authority or statutory manager, direct any person who has ceased to be or who is still any chief executive officer, director, member, executive officer, employee, agent, banker, auditor or office holder of, or trustee for, the approved holding company to pay, deliver, convey, surrender or transfer to the Authority or statutory manager, within such period as the General Division of the High Court may specify, any property or book of the approved holding company which is comprised in, forms part of or relates to the relevant business of the approved holding company, and which is in the person's possession or control; and

(*b*) any person who has ceased to be or who is still any chief executive officer, director, member, executive officer, employee, agent, banker, auditor or office holder of, or trustee for, the approved holding company must give to the Authority or statutory manager such information as the Authority or statutory manager may require for the discharge of the Authority's or statutory manager's duties or functions, or the exercise of the Authority's or statutory manager's powers, in relation to the approved holding company, within such time and in such manner as the Authority or statutory manager may specify.

[10/2013; 40/2019]

(2) Any person who —

(*a*) without reasonable excuse, fails to comply with subsection (1)(*b*); or

(*b*) in purported compliance with subsection (1)(*b*), knowingly or recklessly provides any information or document that is false or misleading in a material particular,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[10/2013]

Remuneration and expenses of Authority and others in certain cases

81ZGG.—(1) The Authority may at any time fix the remuneration and expenses to be paid by an approved holding company —

(*a*) to a statutory manager or statutory adviser appointed in relation to the approved holding company, whether or not the appointment has been

revoked; and

(*b*) where the Authority has assumed control of the relevant business of the approved holding company, to the Authority and any person appointed by the Authority under section 320 in relation to the Authority's assumption of control of the relevant business, whether or not the Authority has ceased to be in control of the relevant business.

[10/2013]

(2) The approved holding company must reimburse the Authority any remuneration and expenses payable by the approved holding company to a statutory manager or statutory adviser.

[10/2013]

Additional powers of Authority in respect of auditors

81ZH.—(1) If an auditor of an approved holding company, in the course of the performance of his or her duties, becomes aware of —

(*a*) any matter which, in his or her opinion, adversely affects or may adversely affect the financial position of the approved holding company to a material extent;

(*b*) any matter which, in his or her opinion, constitutes or may constitute a breach of any provision of this Act or an offence involving fraud or dishonesty; or

(*c*) any irregularity that has or may have a material effect upon the accounts of the approved holding company, including any irregularity that affects or jeopardises, or may affect or jeopardise, the funds or property of investors,

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

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

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

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

(*a*) a duty to submit such additional information and reports in relation to his or her audit as the Authority considers necessary;

(*b*) a duty to enlarge, extend or alter the scope of his or her audit of the business and affairs of the approved holding company;

(*c*) a duty to carry out any other examination or establish any procedure in any particular case;

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

and the auditor must carry out such duties.

(5) The approved holding company must remunerate the auditor in respect of the discharge by him or her of all or any of the duties referred to in subsection (4).

Power of Authority to exempt approved holding company from provisions of this Part

81ZI.—(1) Without affecting section 337(1), the Authority may, by regulations made under section 81ZK, exempt any approved holding company or class of approved holding companies from any provision of this Part, subject to such conditions or restrictions as the Authority may prescribe in those regulations.

[34/2012]

(2) Without affecting section 337(3) and (4), the Authority may, by written notice, exempt any approved holding company from any provision of this Part, subject to such conditions or restrictions as the Authority may specify by written notice, if the Authority is satisfied that the non-compliance by that approved holding company with that provision will not detract from the objectives specified in section 81T.

[34/2012; 4/2017]

(2A) The Authority may, at any time, by written notice, add to, vary or revoke the conditions or restrictions mentioned in subsection (2).

[4/2017]

(2B) An approved holding company, or any class of approved holding companies, that is exempted under subsection (1) must satisfy every condition or restriction imposed on it under that subsection.

[4/2017]

(2C) An approved holding company, or any class of approved holding companies, that is exempted under subsection (2) must, for the duration of the exemption, satisfy every condition or restriction imposed on it under that subsection and subsection (2A).

[4/2017]

(3) It is not necessary to publish any exemption granted under subsection (2) in the

Gazette.

[34/2012]

Power of Authority to remove officers

81ZJ.—(1) Where the Authority is satisfied that an officer of an approved holding company —

(*a*) has wilfully contravened or wilfully caused that approved holding company to contravene this Act;

(*b*) has, without reasonable excuse, failed to ensure compliance with this Act by that approved holding company;

(*c*) has failed to discharge the duties or functions of his or her office or employment;

(*d*) is an undischarged bankrupt, whether in Singapore or elsewhere;

(*e*) has had an enforcement order against him or her in respect of a judgment debt returned unsatisfied in whole or in part;

[Act 25 of 2021 wef 01/04/2022]

(*f*) has, whether in Singapore or elsewhere, made a compromise or scheme of arrangement with his or her creditors, being a compromise or scheme of arrangement that is still in operation; or

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

the Authority may, if it thinks it necessary in the interests of the public or a section of the public or for the protection of investors, by written notice direct that approved holding company to remove the officer from his or her office or employment and that approved holding company must comply with such notice, despite section 152 of the Companies Act 1967.

(2) Without affecting any other matter that the Authority may consider relevant, the Authority may, in determining whether an officer of an approved holding company has failed to discharge the duties or functions of his or her office or employment for the purposes of subsection (1)(*c*), have regard to such criteria as the Authority may prescribe or specify in directions issued by written notice.

(3) Subject to subsection (4), the Authority must not direct an approved holding company to remove an officer from his or her office or employment without giving the approved holding company an opportunity to be heard.

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

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

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

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

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

(5) Where the Authority directs an approved holding company to remove an officer from his or her office or employment under subsection (1), the Authority need not give that officer an opportunity to be heard.

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

(7) Despite the lodging of an appeal under subsection (6), any action taken by the Authority under this section continues to have effect pending the Minister's decision.

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

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

(10) Any approved holding company which, without reasonable excuse, contravenes a written notice issued under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

Power of Authority to make regulations

81ZK.—(1) Without affecting section 341, the Authority may make regulations for the purposes of this Part, including regulations relating to the approval of, and the requirements applicable to, persons who establish, operate, or assist in establishing or operating approved holding companies.

[34/2012]

(2) Regulations made under this section may provide —

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

(*b*) for penalties not exceeding a fine of $150,000 or imprisonment for a term not exceeding 12 months or both for each offence and, in the case of a continuing offence, a further penalty not exceeding a fine of 10% of the maximum fine prescribed for that offence for every day or part of a day during which the offence continues after conviction.

Power of Authority to issue directions

81ZL.—(1) The Authority may, if it thinks it necessary or expedient —

(*a*) for ensuring fair, orderly and transparent markets;

(*aa*) for ensuring safe and efficient trade repositories;

(*b*) for ensuring safe and efficient clearing facilities;

(*c*) for ensuring the integrity and stability of the capital markets or the financial system;

(*d*) in the interests of the public or a section of the public or for the protection of investors;

(*e*) for the effective administration of this Act; or

(*f*) for ensuring compliance with any condition or restriction as the Authority may impose under section 81W(1) or (2), 81ZA(2), 81ZE(5) or (10), 81ZF(12) or 81ZI, or such other obligations or requirements under this Act or as the Authority may prescribe,

issue directions by written notice either of a general or specific nature to an approved holding company, and the approved holding company must comply with such directions.

[34/2012]

(2) Any approved holding company which, without reasonable excuse, contravenes a direction issued under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the

offence continues after conviction.

(3) It is not necessary to publish any direction issued under subsection (1) in the *Gazette*.

[34/2012]

Division 3 — Voluntary Transfer of Business of Approved Holding Company

Interpretation of this Division

81ZM. In this Division, unless the context otherwise requires —

"business" includes affairs, property, right, obligation and liability;

"Court" means the General Division of the High Court;

"debenture" has the meaning given by section 4(1) of the Companies Act 1967;

"property" includes property, right and power of every description;

"Registrar of Companies" means the Registrar of Companies appointed under the Companies Act 1967 and includes any Deputy or Assistant Registrar of Companies appointed under that Act;

"transferee" means an approved holding company, or a corporation which has applied or will be applying for approval or recognition to carry on in Singapore the usual business of an approved holding company, to which the whole or any part of a transferor's business is, is to be, or is proposed to be transferred under this Division;

"transferor" means an approved holding company the whole or any part of the business of which is, is to be, or is proposed to be transferred under this Division.

[10/2013; 40/2019]

Voluntary transfer of business

81ZN.—(1) A transferor may transfer the whole or any part of its business (including any business that is not the usual business of an approved holding company) to a transferee, if —

(*a*) the Authority has consented to the transfer;

(*b*) the transfer involves the whole or any part of the business of the transferor that is the usual business of an approved holding company; and

(*c*) the Court has approved the transfer.

[10/2013]

(2) Subsection (1) does not affect the right of an approved holding company to transfer the whole or any part of its business under any law.

[10/2013]

(3) The Authority may consent to a transfer under subsection (1)(*a*) if the Authority is satisfied that —

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

(*b*) the transferee will conduct the business of the transferor prudently and comply with the provisions of this Act.

[10/2013]

(4) The Authority may at any time appoint one or more persons to perform an independent assessment of, and provide a report on, the proposed transfer of a transferor's business (or any part thereof) under this Division.

[10/2013]

(5) The remuneration and expenses of any person appointed under subsection (4) must be paid by the transferor and the transferee jointly and severally.

[10/2013]

(6) The Authority must serve a copy of any report provided under subsection (4) on the transferor and the transferee.

[10/2013]

(7) The Authority may require a person to provide, within the period and in the manner specified by the Authority, any information or document that the Authority may reasonably require for the discharge of its duties or functions, or the exercise of its powers, under this Division.

[10/2013]

(8) Any person who —

(*a*) without reasonable excuse, fails to comply with any requirement under subsection (7); or

(*b*) in purported compliance with any requirement under subsection (7), knowingly or recklessly provides any information or document that is false or misleading in a material particular,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $200,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding $20,000 for every day or part of a day during which the offence continues after conviction.

[10/2013]

(9) Where a person claims, before providing the Authority with any information or document that the person is required to provide under subsection (7), that the information or document might tend to incriminate the person, the information or document is not admissible in evidence against the person in criminal proceedings other than proceedings under subsection (8).

[10/2013]

Approval of transfer

81ZO.—(1) A transferor must apply to the Court for its approval of the transfer of the whole or any part of the business of the transferor to the transferee under this Division.

[10/2013]

(2) Before making an application under subsection (1) —

(*a*) the transferor must lodge with the Authority a report setting out such details of the transfer and provide such supporting documents as the Authority may specify;

(*b*) the transferor must obtain the consent of the Authority under section 81ZN(1)(*a*);

(*c*) the transferor and the transferee must, if they intend to serve on their respective shareholders a summary of the transfer, obtain the Authority's approval of the summary;

(*d*) the transferor must, at least 15 days before the application is made but not earlier than one month after the report referred to in paragraph (*a*) is lodged with the Authority, publish in the *Gazette* and in such newspaper or newspapers as the Authority may determine a notice of the transferor's intention to make the application and containing such other particulars as may be prescribed;

(*e*) the transferor and the transferee must keep at their respective offices in Singapore, for inspection by any person who may be affected by the transfer, a copy of the report referred to in paragraph (*a*) for a period of 15 days after the publication of the notice referred to in paragraph (*d*) in the *Gazette*; and

(*f*) unless the Court directs otherwise, the transferor and the transferee must serve on their respective shareholders affected by the transfer, at least 15 days before the application is made, a copy of the report referred to in paragraph (*a*) or a summary of the transfer approved by the Authority under paragraph (*c*).

[10/2013]

(3) The Authority and any person who, in the opinion of the Court, is likely to be affected by the transfer —

(*a*) have the right to appear before and be heard by the Court in any proceedings relating to the transfer; and

(*b*) may make any application to the Court in relation to the transfer.

[10/2013]

(4) The Court is not to approve the transfer if the Authority has not consented under section 81ZN(1)(*a*) to the transfer.

[10/2013]

(5) The Court may, after taking into consideration the views (if any) of the Authority on the transfer —

(*a*) approve the transfer without modification or subject to any modification agreed to by the transferor and the transferee; or

(*b*) refuse to approve the transfer.

[10/2013]

(6) If the transferee is not approved as an approved holding company by the Authority, the Court may approve the transfer on terms that the transfer takes effect only in the event of the transferee being approved as an approved holding company by the Authority.

[10/2013]

(7) The Court may by the order approving the transfer or by any subsequent order provide for all or any of the following matters:

(*a*) the transfer to the transferee of the whole or any part of the business of the transferor;

(*b*) the allotment or appropriation by the transferee of any share, debenture, policy or other interest in the transferee which under the transfer is to be allotted or appropriated by the transferee to or for any person;

(*c*) the continuation by (or against) the transferee of any legal proceedings pending by (or against) the transferor;

(*d*) the dissolution, without winding up, of the transferor;

(*e*) the provisions to be made for persons who are affected by the transfer;

(*f*) such incidental, consequential and supplementary matters as are, in the opinion of the Court, necessary to secure that the transfer is fully effective.

[10/2013]

(8) Any order under subsection (7) may —

(*a*) provide for the transfer of any business, whether or not the transferor otherwise has the capacity to effect the transfer in question;

(*b*) make provision in relation to any property which is held by the transferor as trustee; and

(*c*) make provision as to any future or contingent right or liability of the transferor, including provision as to the construction of any instrument under which any such right or liability may arise.

[10/2013]

(9) Subject to subsection (10), where an order made under subsection (7) provides for the transfer to the transferee of the whole or any part of the transferor's business, then by virtue of the order the business (or part thereof) of the transferor specified in the order is transferred to and vests in the transferee, free in the case of any particular property (if the order so directs) from any charge which by virtue of the transfer is to cease to have effect.

[10/2013]

(10) No order under subsection (7) has any effect or operation in transferring or otherwise vesting land in Singapore until the appropriate entries are made with respect to the transfer or vesting of that land by the appropriate authority.

[10/2013]

(11) If any business specified in an order under subsection (7) is governed by the law of any foreign country or territory, the Court may order the transferor to take all necessary steps for securing that the transfer of the business to the transferee is fully effective under the law of that country or territory.

[10/2013]

(12) Where an order is made under this section, the transferor and the transferee must each lodge within 7 days after the order is made —

(*a*) a copy of the order with the Registrar of Companies and with the Authority; and

(*b*) where the order relates to land in Singapore, an office copy of the order with the appropriate authority concerned with the registration or recording of dealings in that land.

[10/2013]

(13) A transferor or transferee which contravenes subsection (12), and every officer of the transferor or transferee (as the case may be) who fails to take all reasonable steps to secure compliance by the transferor or transferee (as the case may be) with that subsection, shall each be guilty of an offence and shall each be liable on conviction to a

fine not exceeding $2,000 and, in the case of a continuing offence, to a further fine not exceeding $200 for every day or part of a day during which the offence continues after conviction.

[10/2013]

PART 4

HOLDERS OF CAPITAL MARKETS SERVICES LICENCE AND REPRESENTATIVES

Division 1 — Capital Markets Services Licence

[2/2009]

Need for capital markets services licence

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

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

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

83. [*Repealed by Act 2 of 2009*]

Application for grant of capital markets services licence

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

[2/2009; 4/2017]

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

(3) An application for the grant of a capital markets services licence must be accompanied by a non-refundable prescribed application fee which must be paid in the manner specified by the Authority.

[2/2009]

Licence fee

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

[2/2009]

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

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

(*b*) [*Deleted by Act 2 of 2009*]

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

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

[2/2009]

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

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

[2/2009]

Grant of capital markets services licence

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

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

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

[4/2017]

(4) Subject to regulations made under this Act, where an application is made for the

grant of a capital markets services licence, the Authority may refuse the application if —

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

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

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

(*c*) an enforcement order against the applicant or its substantial shareholder in respect of a judgment debt has been returned unsatisfied in whole or in part;

[Act 25 of 2021 wef 01/04/2022]

(*d*) a receiver, a receiver and manager, judicial manager or an equivalent person has been appointed whether in Singapore or elsewhere in relation to, or in respect of, any property of the applicant or its substantial shareholder;

(*e*) the applicant or its substantial shareholder has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation;

(*f*) the applicant or its substantial shareholder, or any officer of the applicant —

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

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

(*g*) the Authority is not satisfied as to the educational or other qualification or experience of the officers or employees of the applicant having regard to the nature of the duties they are to perform in connection with the holding of the licence;

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

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

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

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

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

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

(ii) reflect discredit on the manner of conducting the business of the applicant or its substantial shareholders;

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

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

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

[2/2009]

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

[2/2009]

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

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

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

any property of the applicant;

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

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

[2/2009]

87. [*Repealed by Act 2 of 2009*]

87A. [*Repealed by Act 2 of 2009*]

Power of Authority to impose conditions or restrictions

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

[2/2009]

(1A) Without limiting subsection (1), where the Authority grants a capital markets services licence to carry on a business of dealing in capital markets products, the Authority may impose conditions or restrictions under subsection (1) restricting the holder of the capital markets services licence to one or more types of capital markets products in respect of which the holder may carry on a business of dealing in capital markets products.

[4/2017]

(2) The Authority may, at any time, by written notice to a holder of a capital markets services licence, vary any condition or restriction or impose such further condition or restriction as it thinks fit.

[2/2009]

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

[2/2009]

89. [*Repealed by Act 2 of 2009*]

Variation of capital markets services licence

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

[2/2009]

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

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

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

[2/2009]

(3) The Authority may —

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

(*b*) refuse the application on any of the grounds set out in section 86(4).

[2/2009]

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

Deposit to be lodged in respect of capital markets services licence

91.—(1) The Authority may, in granting or varying a capital markets services licence, require the applicant to lodge with the Authority, at the time of its application and in such manner as the Authority may determine, a deposit of such amount as the Authority may prescribe by regulations made under section 100 in respect of that licence and in such form as the Authority may specify.

[2/2009; 4/2017]

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

False statements in relation to application for grant or variation of capital markets services licence

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

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

(*b*) without reasonable excuse, omits to state any matter or thing without which the application is misleading in a material respect,

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

[2/2009]

Notification of change of particulars

93.—(1) Where —

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

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

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

[2/2009]

(2) Where a holder of a capital markets services licence ceases to carry on business in all the regulated activities to which the licence relates, it must return the licence to the Authority within 14 days of the date of the cessation.

[2/2009]

Records of holders of capital markets services licence

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

(*a*) its name;

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

(*c*) the regulated activity or activities and the type or types of capital markets products to which its licence relates;

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

(*e*) such other information as may be prescribed.

[2/2009; 4/2017]

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

[2/2009]

Lapsing, revocation and suspension of capital markets services licence

95.—(1) A capital markets services licence lapses —

(*a*) if the holder is wound up or otherwise dissolved, whether in Singapore or elsewhere; or

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

[2/2009]

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

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

(*b*) the holder of the capital markets services licence fails or ceases to carry on business in all the regulated activities for which it was licensed;

(*ba*) the Authority has reason to believe that the holder has not acted in the best interests of the holder's subscribers or customers;

(*c*) the Authority has reason to believe that the holder, or any of its officers or employees, has not performed its or his or her duties efficiently, honestly or fairly;

(*d*) the holder has contravened any condition or restriction applicable in respect of its licence, any written direction issued to it by the Authority under this Act, or any provision in this Act;

(*da*) it appears to the Authority that the holder has failed to satisfy any of its obligations under or arising from —

(i) this Act; or

(ii) any written direction issued by the Authority under this Act;

(*e*) the Authority has reason to believe that the holder is carrying on business in any regulated activity for which it was licensed in a manner that is contrary to the interests of the public;

(*ea*) upon the Authority exercising any power under section 97E(2) or the Minister exercising any power under Division 2, 3, 4 or 4A of Part 4B of the Monetary Authority of Singapore Act 1970 in relation to the holder, the Authority considers that it is in the public interest to revoke the licence;

(*f*) the holder has provided any information or document to the Authority that is false or misleading;

(*g*) the holder fails to pay the licence fee referred to in section 85; or

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

[2/2009; 34/2012; 10/2013; 31/2017]

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

(*a*) suspend a capital markets services licence for a specific period instead of

revoking it under subsection (2); and

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

[2/2009]

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

[2/2009]

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

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

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

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

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

[2/2009]

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

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

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

[2/2009]

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

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

(*b*) contravenes subsection (6),

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

[2/2009]

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

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

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

[2/2009]

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

96.—(1) Subject to subsection (1B), a holder of a capital markets services licence must not —

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

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

unless it has obtained the approval of the Authority.

[2/2009]

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

[2/2009]

(1B) Subsection (1) does not apply to the appointment of a person as a director of a foreign company, or the change in the nature of the appointment of a person as a director of a foreign company if, at the time of the appointment or change, the person —

(*a*) does not reside in Singapore; and

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

[2/2009]

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

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

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

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

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

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

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

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

[2/2009]

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

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

[2/2009]

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

[2/2009]

Removal of officer of holder of capital markets services licence

97.—(1) Despite the provisions of any other written law —

(*a*) a holder of a capital markets services licence must not, without the prior written consent of the Authority, permit a person to act as its executive officer; and

(*b*) a holder of a capital markets services licence which is incorporated in Singapore must not, without the prior written consent of the Authority, permit a person to act as its director,

if the person —

(*c*) has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after 18 April 2013, being an offence —

(i) involving fraud or dishonesty;

(ii) the conviction for which involved a finding that he or she had acted fraudulently or dishonestly; or

(iii) that is specified in the Third Schedule to the Registration of Criminals Act 1949;

(*d*) is an undischarged bankrupt, whether in Singapore or elsewhere;

(*e*) has had an enforcement order against him or her in respect of a judgment debt returned unsatisfied in whole or in part;

[Act 25 of 2021 wef 01/04/2022]

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

(*g*) has had a prohibition order under section 68 of the Financial Advisers Act 2001, section 74 of the Insurance Act 1966 or section 101A or 123ZZC made against him or her that remains in force; or

(*h*) has been a director of, or directly concerned in the management of, a regulated financial institution, whether in Singapore or elsewhere —

(i) which is being or has been wound up by a court; or

(ii) the approval, authorisation, designation, recognition, registration or licence of which has been withdrawn, cancelled or revoked by the Authority or, in the case of a regulated financial institution in a foreign country or territory, by the regulatory authority in that foreign country or territory.

[10/2013; 4/2017]

(1A) Despite the provisions of any other written law, where the Authority is satisfied that a director of a holder of a capital markets services licence which is incorporated in Singapore, or an executive officer of a holder of a capital markets services licence —

(*a*) has wilfully contravened or wilfully caused the holder to contravene any provision of this Act;

(*b*) has, without reasonable excuse, failed to secure the compliance of the holder with this Act, the Monetary Authority of Singapore Act 1970 or any of the written laws set out in the Schedule to that Act; or

(*c*) has failed to discharge any of the duties of his or her office,

the Authority may, if it thinks it necessary in the interests of the public or a section of the public or for the protection of investors, by written notice to the holder, direct the holder to remove the director or executive officer (as the case may be) from his or her office or employment within such period as the Authority may specify in the notice, and the holder must comply with the notice.

[10/2013]

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

[10/2013]

(3) The Authority must not direct a holder of a capital markets services licence to remove a person from his or her office under subsection (1A) without giving the holder an opportunity to be heard.

[10/2013]

(4) [*Deleted by Act 10 of 2013*]

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

[10/2013]

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

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

(*b*) any person acting on behalf of the holder of a capital markets services licence,

in respect of anything done (including any statement made) or omitted to be done with reasonable care and in good faith in the discharge or purported discharge of its obligations under this section.

[10/2013]

(7) In this section, unless the context otherwise requires —

"regulated financial institution" means a person who carries on a business, the conduct of which is regulated or authorised by the Authority or, if it is carried on in Singapore, would be regulated or authorised by the Authority;

"regulatory authority", in relation to a foreign country or territory, means an authority of the foreign country or territory exercising any function that corresponds to a regulatory function of the Authority under this Act, the Monetary Authority of Singapore Act 1970 or any of the written laws set out in the Schedule to that Act.

[10/2013]

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

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

[2/2009]

(2) A person must not enter into any arrangement in relation to shares in the holder of a capital markets services licence that is a company by virtue of which the person would, if the arrangement is carried out, obtain effective control of the holder, unless the person has obtained the prior approval of the Authority to the person's entering into the arrangement.

[2/2009]

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

(*a*) the applicant is a fit and proper person to have effective control of the holder of the capital markets services licence;

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

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

[2/2009]

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

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

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

and the applicant must comply with such conditions.

[2/2009]

(5) Any condition imposed under subsection (4) has effect despite any provision of the Companies Act 1967 or anything contained in the constitution of the holder of a capital markets services licence.

[2/2009; 4/2017]

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

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

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

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

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

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

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

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

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

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

[2/2009]

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

[2/2009]

Objection to control of holder of capital markets services licence

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

(*a*) any person required to obtain the Authority's approval or who has obtained the approval under section 97A; or

(*b*) any person who, whether before, on or after 26 November 2010, either alone or together with any connected person, holds, directly or indirectly, 20% or more of the issued share capital of the holder of a capital markets services licence or controls, directly or indirectly, 20% or more of the voting power in the holder,

if the Authority is satisfied that —

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

(*d*) the person is not or ceases to be a fit and proper person to have effective control of the holder of the capital markets services licence;

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

(*f*) the person does not or ceases to satisfy such criteria as may be prescribed;

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

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

application for such approval.

[2/2009]

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

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

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

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

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

[2/2009]

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

(*a*) take such steps as are necessary to ensure that the person ceases to be a party to the arrangement described in section 97A(2) or ceases to have control of a holder of a capital markets services licence in the manner described in subsection (1)(*b*); or

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

[2/2009]

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

[2/2009]

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

[2/2009]

Information of insolvency, etc.

97C.—(1) Any holder of a capital markets services licence which is or is likely to become insolvent, which is or is likely to become unable to meet its obligations, or

which has suspended or is about to suspend payments, must immediately inform the Authority of that fact.

[10/2013]

(2) Any holder of a capital markets services licence which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[10/2013]

Interpretation of sections 97D to 97I

97D. In this section and sections 97E to 97I, unless the context otherwise requires —

"business" includes affairs and property;

"office holder", in relation to a holder of a capital markets services licence, means any person acting as the liquidator, the provisional liquidator, the receiver or the receiver and manager of the holder, or acting in an equivalent capacity in relation to the holder;

"relevant business" means any business of a holder of a capital markets services licence —

(*a*) which the Authority has assumed control of under section 97E; or

(*b*) in relation to which a statutory adviser or a statutory manager has been appointed under section 97E;

"statutory adviser" means a statutory adviser appointed under section 97E;

"statutory manager" means a statutory manager appointed under section 97E.

[10/2013]

Action by Authority if holder of capital markets services licence unable to meet obligations, etc.

97E.—(1) The Authority may exercise any one or more of the powers specified in subsection (2) as appears to it to be necessary, where —

(*a*) a holder of a capital markets services licence informs the Authority that it is or is likely to become insolvent, or that it is or is likely to become unable to meet its obligations, or that it has suspended or is about to suspend payments;

(*b*) a holder of a capital markets services licence becomes unable to meet its obligations, or is insolvent, or suspends payments;

(*c*) the Authority is of the opinion that a holder of a capital markets services licence —

(i) is carrying on its business in a manner likely to be detrimental to the interests of the public or a section of the public or the protection of investors;

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

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

(iv) has failed to comply with any condition or restriction in its licence (being a condition or restriction imposed under section 88(1) or (2)); or

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

[10/2013]

(2) Subject to subsections (1) and (3), the Authority may —

(*a*) require the holder of a capital markets services licence immediately to take any action or to do or not to do any act or thing whatsoever in relation to its business as the Authority may consider necessary;

(*b*) appoint one or more persons as statutory adviser, on such terms and conditions as the Authority may specify, to advise the holder of a capital markets services licence on the proper management of such of the business of the holder as the Authority may determine; or

(*c*) assume control of and manage such of the business of the holder of a capital markets services licence as the Authority may determine, or appoint one or more persons as statutory manager to do so on such terms and conditions as the Authority may specify.

[10/2013]

(3) In the case of a holder of a capital markets services licence incorporated outside Singapore, any appointment of a statutory adviser or statutory manager or any assumption of control by the Authority of any business of the holder under subsection (2) is only in relation to —

(*a*) the business or affairs of the holder carried on in, or managed in or from, Singapore; or

(*b*) the property of the holder located in Singapore, or reflected in the books of the holder in Singapore (as the case may be) in relation to its operations in

Singapore.

[10/2013]

(4) Where the Authority appoints 2 or more persons as the statutory manager of a holder of a capital markets services licence, the Authority must specify, in the terms and conditions of the appointment, which of the duties, functions and powers of the statutory manager —

(*a*) may be discharged or exercised by such persons jointly and severally;

(*b*) must be discharged or exercised by such persons jointly; and

(*c*) must be discharged or exercised by a specified person or such persons.

[10/2013]

(5) Where the Authority has exercised any power under subsection (2), it may, at any time and without affecting its power under section 95(2)(*ea*), do one or more of the following:

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

(*b*) further exercise any of the powers under subsection (2);

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

[10/2013]

(6) No liability shall be incurred by a statutory manager or a statutory adviser for anything done (including any statement made) or omitted to be done with reasonable care and in good faith in the course of or in connection with —

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

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

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

[10/2013]

(7) Any holder of a capital markets services licence that fails to comply with a requirement imposed by the Authority under subsection (2)(*a*) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[10/2013]

Effect of assumption of control under section 97E

97F.—(1) Upon assuming control of the relevant business of a holder of a capital markets services licence, the Authority or statutory manager (as the case may be) must take custody or control of the relevant business.

[10/2013]

(2) During the period when the Authority or statutory manager is in control of the relevant business of a holder of a capital markets services licence, the Authority or statutory manager —

(*a*) must manage the relevant business of the holder in the name of and on behalf of the holder; and

(*b*) is deemed to be an agent of the holder.

[10/2013]

(3) In managing the relevant business of a holder of a capital markets services licence, the Authority or statutory manager —

(*a*) must consider the interests of the public or the section of the public referred to in section 97E(1)(*c*)(i), and the need to protect investors; and

(*b*) has all the duties, powers and functions of the members of the board of directors of the holder (collectively and individually) under this Act, the Companies Act 1967 and the constitution of the holder, including powers of delegation, in relation to the relevant business of the holder; but nothing in this paragraph requires the Authority or statutory manager to call any meeting of the holder under the Companies Act 1967 or the constitution of the holder.

[10/2013]

(4) Despite any written law or rule of law, upon the assumption of control of the relevant business of a holder of a capital markets services licence by the Authority or statutory manager, any appointment of a person as the chief executive officer or a director of the holder, which was in force immediately before the assumption of control, is deemed to be revoked, unless the Authority gives its approval, by written notice to the person and the holder, for the person to remain in the appointment.

[10/2013]

(5) Despite any written law or rule of law, during the period when the Authority or statutory manager is in control of the relevant business of a holder of a capital markets services licence, except with the approval of the Authority, no person may be appointed as the chief executive officer or a director of the holder.

[10/2013]

(6) Where the Authority has given its approval under subsection (4) or (5) to a person

to remain in the appointment of, or to be appointed as, the chief executive officer or a director of a holder of a capital markets services licence, the Authority may at any time, by written notice to the person and the holder, revoke that approval, and the appointment is deemed to be revoked on the date specified in the notice.

[10/2013]

(7) Despite any written law or rule of law, if any person, whose appointment as the chief executive officer or a director of a holder of a capital markets services licence is revoked under subsection (4) or (6), acts or purports to act after the revocation as the chief executive officer or a director of the holder during the period when the Authority or statutory manager is in control of the relevant business of the holder —

(*a*) the act or purported act of the person is invalid and of no effect; and

(*b*) the person shall be guilty of an offence.

[10/2013]

(8) Despite any written law or rule of law, if any person who is appointed as the chief executive officer or a director of a holder of a capital markets services licence in contravention of subsection (5) acts or purports to act as the chief executive officer or a director of the holder during the period when the Authority or statutory manager is in control of the relevant business of the holder —

(*a*) the act or purported act of the person is invalid and of no effect; and

(*b*) the person shall be guilty of an offence.

[10/2013]

(9) During the period when the Authority or statutory manager is in control of the relevant business of a holder of a capital markets services licence —

(*a*) if there is any conflict or inconsistency between —

(i) a direction or decision given by the Authority or statutory manager (including a direction or decision to a person or body of persons referred to in sub-paragraph (ii)); and

(ii) a direction or decision given by any chief executive officer, director, member, executive officer, employee, agent or office holder, or the board of directors, of the holder,

the direction or decision referred to in sub-paragraph (i), to the extent of the conflict or inconsistency, prevails over the direction or decision referred to in sub-paragraph (ii); and

(*b*) no person may exercise any voting or other right attached to any share in the holder in any manner that may defeat or interfere with any duty,

function or power of the Authority or statutory manager, and any such act or purported act is invalid and of no effect.

[10/2013]

(10) Any person who is guilty of an offence under subsection (7) or (8) shall be liable on conviction to a fine not exceeding $150,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[10/2013]

Duration of control

97G.—(1) The Authority must cease to be in control of the relevant business of a holder of a capital markets services licence when the Authority is satisfied that —

(*a*) the reasons for the Authority's assumption of control of the relevant business have ceased to exist; or

(*b*) it is no longer necessary in the interests of the public or the section of the public referred to in section 97E(1)(*c*)(i) or for the protection of investors.

[10/2013]

(2) A statutory manager is deemed to have assumed control of the relevant business of a holder of a capital markets services licence on the date of the statutory manager's appointment as a statutory manager.

[10/2013]

(3) The appointment of a statutory manager in relation to the relevant business of a holder of a capital markets services licence may be revoked by the Authority at any time —

(*a*) if the Authority is satisfied that —

(i) the reasons for the appointment have ceased to exist; or

(ii) it is no longer necessary in the interests of the public or the section of the public referred to in section 97E(1)(*c*)(i) or for the protection of investors; or

(*b*) on any other ground,

and upon such revocation, the statutory manager ceases to be in control of the relevant business of the holder.

[10/2013]

(4) The Authority must, as soon as practicable, publish in the *Gazette* the date, and

such other particulars as the Authority thinks fit, of —

(*a*) the Authority's assumption of control of the relevant business of a holder of a capital markets services licence;

(*b*) the cessation of the Authority's control of the relevant business of a holder of a capital markets services licence;

(*c*) the appointment of a statutory manager in relation to the relevant business of a holder of a capital markets services licence; and

(*d*) the revocation of a statutory manager's appointment in relation to the relevant business of a holder of a capital markets services licence.

[10/2013]

Responsibilities of officers, member, etc., of holder of capital markets services licence

97H.—(1) During the period when the Authority or statutory manager is in control of the relevant business of a holder of a capital markets services licence —

(*a*) the General Division of the High Court may, on an application by the Authority or statutory manager, direct any person who has ceased to be or who is still any chief executive officer, director, member, executive officer, employee, agent, banker, auditor or office holder of, or trustee for, the holder to pay, deliver, convey, surrender or transfer to the Authority or statutory manager, within such period as the General Division of the High Court may specify, any property or book of the holder which is comprised in, forms part of or relates to the relevant business of the holder, and which is in the person's possession or control; and

(*b*) any person who has ceased to be or who is still any chief executive officer, director, member, executive officer, employee, agent, banker, auditor or office holder of, or trustee for, the holder must give to the Authority or statutory manager such information as the Authority or statutory manager may require for the discharge of the Authority's or statutory manager's duties or functions, or the exercise of the Authority's or statutory manager's powers, in relation to the holder, within such time and in such manner as the Authority or statutory manager may specify.

[10/2013; 40/2019]

(2) Any person who —

(*a*) without reasonable excuse, fails to comply with subsection (1)(*b*); or

(*b*) in purported compliance with subsection (1)(*b*), knowingly or recklessly

provides any information or document that is false or misleading in a material particular,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[10/2013]

Remuneration and expenses of Authority and others in certain cases

97I.—(1) The Authority may at any time fix the remuneration and expenses to be paid by a holder of a capital markets services licence —

(*a*) to a statutory manager or statutory adviser appointed in relation to the holder, whether or not the appointment has been revoked; and

(*b*) where the Authority has assumed control of the relevant business of the holder, to the Authority and any person appointed by the Authority under section 320 in relation to the Authority's assumption of control of the relevant business, whether or not the Authority has ceased to be in control of the relevant business.

[10/2013]

(2) The holder of a capital markets services licence must reimburse the Authority any remuneration and expenses payable by the holder to a statutory manager or statutory adviser.

[10/2013]

Appeals

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

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

(*b*) the revocation or suspension of a capital markets services licence by the Authority;

(*c*) [*Deleted by Act 2 of 2009*]

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

(*e*) the direction of the Authority to a holder of a capital markets services

licence to remove an officer from office or employment,

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

[2/2009]

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

Exemptions from requirement to hold capital markets services licence

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

(*a*) any bank licensed under the Banking Act 1970 in respect of any regulated activity;

(*b*) any merchant bank licensed under the Banking Act 1970 in respect of any regulated activity;

(*c*) any finance company licensed under the Finance Companies Act 1967 in respect of any regulated activity that is not prohibited by that Act or for which an exemption from section 25(2) of that Act has been granted;

(*d*) any company or co-operative society licensed under the Insurance Act 1966 in respect of fund management for the purpose of carrying out insurance business;

(*e*) [*Deleted by Act 1 of 2005*]

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

(*g*) any approved clearing house or recognised clearing house in respect of any regulated activity that is solely incidental to its operation of a clearing facility;

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

[34/2012; 11/2013; 4/2017; 1/2020]

(2) [*Deleted by Act 1 of 2005*]

(3) [*Deleted by Act 1 of 2005*]

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

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

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

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

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

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

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

[2/2009]

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

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

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

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

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

Annual fees payable by exempt person and certain representatives

99A.—(1) Every exempt person and every representative of a person exempted under

section 99(1)(*f*), (*g*) or (*h*) must pay to the Authority such annual fee in respect of each regulated activity as may be prescribed and in such manner and on such date as may be specified by the Authority.

[2/2009]

(2) Any annual fee paid by an exempt person or a representative of a person exempted under section 99(1)(*f*), (*g*) or (*h*) to the Authority in respect of any regulated activity must not be refunded or remitted if —

(*a*) in the case of the exempt person —

(i) its exemption is withdrawn;

(ii) it fails or ceases to carry on business in that regulated activity; or

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

during the period to which the annual fee relates; and

(*b*) in the case of a representative of a person exempted under section 99(1)(*f*), (*g*) or (*h*) —

(i) the exemption of the exempt person is withdrawn;

(i*a*) a prohibition order has been made against the representative under section 101A; or

(ii) the representative fails or ceases to act as a representative in respect of that regulated activity,

during the period to which the annual fee relates.

[2/2009]

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

(4) Where an exempt person or a representative of a person exempted under section 99(1)(*f*), (*g*) or (*h*) fails to pay the fee by the date on which such fee is due, the Authority may impose a late payment fee of a prescribed amount for every day or part of a day that the payment is late and both fees are recoverable by the Authority as a judgment debt.

[2/2009]

Division 1A — Voluntary Transfer of Business of Holder of Capital Markets Services Licence

Interpretation of this Division

99AA. In this Division, unless the context otherwise requires —

"business" includes affairs, property, right, obligation and liability;

"Court" means the General Division of the High Court;

"debenture" has the meaning given by section 4(1) of the Companies Act 1967;

"property" includes property, right and power of every description;

"Registrar of Companies" means the Registrar of Companies appointed under the Companies Act 1967 and includes any Deputy or Assistant Registrar of Companies appointed under that Act;

"transferee" means a holder of a capital markets services licence, or a corporation which has applied or will be applying for approval or recognition to carry on in Singapore the usual business of a holder of a capital markets services licence, to which the whole or any part of a transferor's business is, is to be or is proposed to be transferred under this Division;

"transferor" means a holder of a capital markets services licence the whole or any part of the business of which is, is to be, or is proposed to be transferred under this Division.

[10/2013; 40/2019]

Voluntary transfer of business

99AB.—(1) A transferor may transfer the whole or any part of its business (including any business that is not the usual business of a holder of a capital markets services licence) to a transferee, if —

(*a*) the Authority has consented to the transfer;

(*b*) the transfer involves the whole or any part of the business of the transferor that is the usual business of a holder of a capital markets services licence; and

(*c*) the Court has approved the transfer.

[10/2013]

(2) Subsection (1) does not affect the right of a holder of a capital markets services licence to transfer the whole or any part of its business under any law.

[10/2013]

(3) The Authority may consent to a transfer under subsection (1)(*a*) if the Authority is satisfied that —

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

(*b*) the transferee will conduct the business of the transferor prudently and comply with the provisions of this Act.

[10/2013]

(4) The Authority may at any time appoint one or more persons to perform an independent assessment of, and provide a report on, the proposed transfer of a transferor's business (or any part thereof) under this Division.

[10/2013]

(5) The remuneration and expenses of any person appointed under subsection (4) must be paid by the transferor and the transferee jointly and severally.

[10/2013]

(6) The Authority must serve a copy of any report provided under subsection (4) on the transferor and the transferee.

[10/2013]

(7) The Authority may require a person to provide, within the period and in the manner specified by the Authority, any information or document that the Authority may reasonably require for the discharge of its duties or functions, or the exercise of its powers, under this Division.

[10/2013]

(8) Any person who —

(*a*) without reasonable excuse, fails to comply with any requirement under subsection (7); or

(*b*) in purported compliance with any requirement under subsection (7), knowingly or recklessly furnishes any information or document that is false or misleading in a material particular,

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

[10/2013]

(9) Where a person claims, before providing the Authority with any information or document that the person is required to provide under subsection (7), that the information or document might tend to incriminate the person, the information or document is not admissible in evidence against the person in criminal proceedings other than proceedings under subsection (8).

[10/2013]

Approval of transfer

99AC.—(1) A transferor must apply to the Court for its approval of the transfer of the whole or any part of the business of the transferor to the transferee under this Division.

[10/2013]

(2) Before making an application under subsection (1) —

(*a*) the transferor must lodge with the Authority a report setting out such details of the transfer and provide such supporting documents as the Authority may specify;

(*b*) the transferor must obtain the consent of the Authority under section 99AB(1)(*a*);

(*c*) the transferor and the transferee must, if they intend to serve on their respective customers a summary of the transfer, obtain the Authority's approval of the summary;

(*d*) the transferor must, at least 15 days before the application is made but not earlier than one month after the report referred to in paragraph (*a*) is lodged with the Authority, publish in the *Gazette* and in such newspaper or newspapers as the Authority may determine a notice of the transferor's intention to make the application and containing such other particulars as may be prescribed;

(*e*) the transferor and the transferee must keep at their respective offices in Singapore, for inspection by any person who may be affected by the transfer, a copy of the report referred to in paragraph (*a*) for a period of 15 days after the publication of the notice referred to in paragraph (*d*) in the *Gazette*; and

(*f*) unless the Court directs otherwise, the transferor and the transferee must serve on their respective customers affected by the transfer, at least 15 days before the application is made, a copy of the report referred to in paragraph (*a*) or a summary of the transfer approved by the Authority under paragraph (*c*).

[10/2013]

(3) The Authority and any person who, in the opinion of the Court, is likely to be affected by the transfer —

(*a*) have the right to appear before and be heard by the Court in any proceedings relating to the transfer; and

(*b*) may make any application to the Court in relation to the transfer.

[10/2013]

(4) The Court is not to approve the transfer if the Authority has not consented under

section 99AB(1)(*a*) to the transfer.

[10/2013]

(5) The Court may, after taking into consideration the views (if any) of the Authority on the transfer —

(*a*) approve the transfer without modification or subject to any modification agreed to by the transferor and the transferee; or

(*b*) refuse to approve the transfer.

[10/2013]

(6) If the transferee is not granted a capital markets services licence by the Authority, the Court may approve the transfer on terms that the transfer takes effect only in the event of the transferee being granted a capital markets services licence by the Authority.

[10/2013]

(7) The Court may by the order approving the transfer or by any subsequent order provide for all or any of the following matters:

(*a*) the transfer to the transferee of the whole or any part of the business of the transferor;

(*b*) the allotment or appropriation by the transferee of any share, debenture, policy or other interest in the transferee which under the transfer is to be allotted or appropriated by the transferee to or for any person;

(*c*) the continuation by (or against) the transferee of any legal proceedings pending by (or against) the transferor;

(*d*) the dissolution, without winding up, of the transferor;

(*e*) the provisions to be made for persons who are affected by the transfer;

(*f*) such incidental, consequential and supplementary matters as are, in the opinion of the Court, necessary to secure that the transfer is fully effective.

[10/2013]

(8) Any order under subsection (7) may —

(*a*) provide for the transfer of any business, whether or not the transferor otherwise has the capacity to effect the transfer in question;

(*b*) make provision in relation to any property which is held by the transferor as trustee; and

(*c*) make provision as to any future or contingent right or liability of the transferor, including provision as to the construction of any instrument under which any such right or liability may arise.

[10/2013]

(9) Subject to subsection (10), where an order made under subsection (7) provides for the transfer to the transferee of the whole or any part of the transferor's business, then by virtue of the order the business (or part thereof) of the transferor specified in the order is transferred to and vests in the transferee, free in the case of any particular property (if the order so directs) from any charge which by virtue of the transfer is to cease to have effect.

[10/2013]

(10) No order under subsection (7) has any effect or operation in transferring or otherwise vesting land in Singapore until the appropriate entries are made with respect to the transfer or vesting of that land by the appropriate authority.

[10/2013]

(11) If any business specified in an order under subsection (7) is governed by the law of any foreign country or territory, the Court may order the transferor to take all necessary steps for securing that the transfer of the business to the transferee is fully effective under the law of that country or territory.

[10/2013]

(12) Where an order is made under this section, the transferor and the transferee must each lodge within 7 days after the order is made —

(*a*) a copy of the order with the Registrar of Companies and with the Authority; and

(*b*) where the order relates to land in Singapore, an office copy of the order with the appropriate authority concerned with the registration or recording of dealings in that land.

[10/2013]

(13) A transferor or transferee which contravenes subsection (12), and every officer of the transferor or transferee (as the case may be) who fails to take all reasonable steps to secure compliance by the transferor or transferee (as the case may be) with that subsection, shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding $2,000 and, in the case of a continuing offence, to a further fine not exceeding $200 for every day or part of a day during which the offence continues after conviction.

[10/2013]

Division 2 — Representatives

Acting as representative

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

(*a*) an appointed representative in respect of that type of regulated activity;

(*b*) a provisional representative in respect of that type of regulated activity;

(*c*) a temporary representative in respect of that type of regulated activity; or

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

(i) the type and scope of the regulated activity carried out by the firstmentioned person are within the type and scope of, or are the same as, that carried out by the exempt person (in the exempt person's capacity as such); and

(ii) the manner in which the firstmentioned person carries out that type of regulated activity is the same as the manner in which the exempt person (in the exempt person's capacity as such) carries out that type of regulated activity.

[2/2009]

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

[2/2009]

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

(*a*) the individual is an appointed representative, provisional representative or temporary representative in respect of that type of regulated activity; or

(*b*) the principal is an exempt person under section 99(1)(*f*), (*g*) or (*h*) and —

(i) the type and scope of the regulated activity carried out by the individual are within the type and scope of, or are the same as, that carried out by the exempt person (in the exempt person's capacity as such); and

(ii) the manner in which the individual carries out that type of regulated activity is the same as the manner in which the exempt person (in the exempt person's capacity as such) carries out that type of regulated activity.

[2/2009]

(4) Any person who contravenes subsection (1) shall be guilty of an offence and shall

be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

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

[2/2009]

Records and public register of representatives

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

(*a*) his or her name;

(*b*) the name of his or her current principal and every past principal, if any;

(*c*) the current and past types of regulated activities performed by him or her, the types of capital markets products in respect of which he or she performed each regulated activity and the date of commencement and cessation (if any) of his or her performance of such activities;

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

(*e*) disciplinary proceedings or other action taken by the Authority against him or her and published under section 322;

(*f*) such other information as may be prescribed.

[2/2009; 4/2017]

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

[2/2009]

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

[2/2009]

Appointed representative

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

(*a*) who satisfies such entry and examination requirements as the Authority may specify for that type of regulated activity, the fact of which has been notified to the Authority either in the document lodged under section 99H(1), or (if applicable) under section 99E(5) within the time prescribed under that provision;

(*b*) whose name is entered in the public register of representatives as an appointed representative;

(*c*) whose status as an appointed representative has not currently been revoked or suspended and who has not currently been prohibited by the Authority from carrying on business in that type of regulated activity;

(*d*) whose entry in the public register of representatives indicates that he or she is appointed to carry on business in that type of regulated activity and does not indicate that he or she has ceased to be so; and

(*e*) whose principal —

(i) is licensed to carry on business in that type of regulated activity; or

(ii) carries on business in that type of regulated activity in its capacity as a person exempted from the requirement to hold a capital markets services licence under section 99(1)(*a*), (*b*), (*c*) or (*d*).

[2/2009]

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

[2/2009]

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

[2/2009]

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

(*a*) he or she ceases to be the principal's representative or to carry out that type of regulated activity for that principal, the fact of which has been notified

to the Authority under subsection (8);

(*b*) his or her principal ceases to carry on business in that type of regulated activity;

(*c*) the licence of his or her principal is revoked or lapses or a prohibition order under section 101A is made against his or her principal prohibiting it from carrying out that type of regulated activity;

(*d*) the individual dies; or

(*e*) of the occurrence of such other circumstances as the Authority may prescribe.

[2/2009]

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

[2/2009]

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

[2/2009]

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

(*a*) avoid or affect any agreement, transaction or arrangement relating to that type of regulated activity entered into by that individual, whether the agreement, transaction or arrangement was entered into before, on or after the cessation or date of suspension; or

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

[2/2009]

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

(*a*) an individual ceases to be the principal's representative; or

(*b*) an individual who is the principal's representative ceases to carry on business in any type of regulated activity which the individual is appointed to carry on business in,

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

[2/2009]

Provisional representative

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

(*a*) who satisfies such entry requirements as the Authority may specify for that type of regulated activity;

(*b*) who intends to undergo an examination in order to satisfy the examination requirements specified by the Authority under section 99D(2) for that type of regulated activity, the fact of which has been notified to the Authority in the document lodged under section 99H(1);

(*c*) whose name is entered in the public register of representatives as a provisional representative;

(*d*) whose status as a provisional representative has not currently been revoked or suspended and who has not currently been prohibited by the Authority from carrying on business in that type of regulated activity;

(*e*) whose entry in the public register of representatives indicates that he or she is appointed to carry on business in that type of regulated activity and does not indicate that he or she has ceased to be so;

(*f*) whose principal —

(i) is licensed to carry on business in that type of regulated activity; or

(ii) carries on business in that type of regulated activity in its capacity as a person exempted from the requirement to hold a capital markets services licence under section 99(1)(*a*), (*b*), (*c*) or (*d*);

(*g*) who has not previously been appointed as a provisional representative by the Authority; and

(*h*) who is not, by virtue of any circumstances prescribed by the Authority, disqualified from acting as a provisional representative.

[2/2009]

(2) An individual may only be a provisional representative in respect of any type of regulated activity for such period of time as the Authority may specify against his or her name in the public register of representatives.

[2/2009]

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

(*a*) upon the expiry of the period of time specified by the Authority under

subsection (2);

(*b*) if he or she fails to comply with any condition or restriction imposed on him or her under section 99N;

(*c*) upon his or her principal informing the Authority of the satisfaction of the examination requirements specified for that or any other type of regulated activity under subsection (5); or

(*d*) on the occurrence of such other circumstances as the Authority may prescribe.

[2/2009]

(4) Section 99D(3) to (8) (other than section 99D(4)(*e*)) applies to a provisional representative —

(*a*) as if the reference in section 99D(6) to section 99D(1) were a reference to subsection (1); and

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

[2/2009]

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

[2/2009]

Temporary representative

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

(*a*) who satisfies such entry requirements as the Authority may specify for that type of regulated activity;

(*b*) whose name is entered in the public register of representatives as a temporary representative;

(*c*) whose status as a temporary representative has not currently been revoked or suspended and who has not currently been prohibited by the Authority from carrying on business in that type of regulated activity;

(*d*) whose entry in the public register of representatives indicates that he or she is appointed to carry on business in that type of regulated activity and does not indicate that he or she has ceased to be so;

(*e*) whose principal —

(i) is licensed to carry on business in that type of regulated activity; or

(ii) carries on business in that type of regulated activity in its capacity as a person exempted from the requirement to hold a capital markets services licence under section 99(1)(*a*), (*b*), (*c*) or (*d*); and

(*f*) who is not, by virtue of any circumstances prescribed by the Authority, disqualified from acting as a temporary representative.

[2/2009]

(2) An individual may only be a temporary representative in respect of any type of regulated activity for such period of time as the Authority may specify against his or her name in the public register of representatives.

[2/2009]

(3) A temporary representative in respect of any type of regulated activity immediately ceases to be one —

(*a*) upon the expiry of the period of time specified by the Authority under subsection (2);

(*b*) if he or she fails to comply with any condition or restriction imposed on him or her under section 99N; or

(*c*) on the occurrence of such other circumstances as the Authority may prescribe.

[2/2009]

(4) Section 99D(3) to (8) (other than section 99D(4)(*e*)) applies to a temporary representative —

(*a*) as if the reference in section 99D(6) to section 99D(1) were a reference to subsection (1); and

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

[2/2009]

Offences

99G.—(1) Any person who contravenes section 99D(3), 99E(4) (in relation to the application of section 99D(3) to a provisional representative) or 99F(4) (in relation to the application of section 99D(3) to a temporary representative) shall be guilty of an offence

and shall be liable on conviction to a fine not exceeding $50,000.

[2/2009]

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

[2/2009]

Lodgment of documents

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

(*a*) a notice of intent by the principal to appoint the individual as an appointed, provisional or temporary representative in respect of that type of regulated activity;

(*b*) a certificate by the principal that the individual is a fit and proper person to be an appointed, provisional or temporary representative in respect of that type of regulated activity;

(*c*) in the case of a provisional or temporary representative, an undertaking by the principal to undertake such responsibilities in relation to the representative as may be prescribed.

[2/2009]

(1A) Subsection (1) does not apply to a principal who desires to appoint, as an appointed representative in respect of any type of regulated activity, an individual who is a provisional representative in respect of that type of regulated activity, if —

(*a*) that individual has satisfied the examination requirements specified for that type of regulated activity; and

(*b*) the principal has informed the Authority of that fact in the prescribed form and manner under section 99E(5).

[34/2012]

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

[2/2009]

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

[2/2009]

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

[2/2009]

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

[2/2009]

Exemption

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

[2/2009]

(2) Such exemption is subject to such conditions or restrictions as the Authority may impose.

[2/2009]

Representative to act for only one principal

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

[2/2009]

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

[2/2009]

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

[2/2009]

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

not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

Lodgment and fees

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

[2/2009]

(2) An individual who is an appointed or provisional representative in respect of any type of regulated activity must, by the prescribed time each year, pay such annual fee as the Authority may prescribe in relation to the retention of his or her name, in the public register of representatives, as an appointed or provisional representative in respect of that type of regulated activity.

[34/2012]

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

[2/2009]

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

[2/2009]

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

[2/2009]

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

[2/2009]

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

[2/2009]

Additional regulated activity

99L.—(1) The principal of an appointed representative may at any time lodge a

notice with the Authority of its intention to appoint the representative as an appointed representative in respect of a type of regulated activity in addition to that indicated against the representative's name in the public register of representatives.

[2/2009]

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

[2/2009]

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

[2/2009]

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

[2/2009]

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

[2/2009]

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

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

(*a*) being an appointed, provisional or temporary representative, he or she fails or ceases to act as a representative in respect of all of the types of regulated activities that were notified to the Authority as activities which he or she is appointed to carry on business in as a representative;

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

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

(*d*) an enforcement order against him or her in respect of a judgment debt has been returned unsatisfied in whole or in part;

[Act 25 of 2021 wef 01/04/2022]

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

(*f*) he or she —

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

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

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

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

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

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

(iv) the Authority has reason to believe that he or she will not carry on business in that type of regulated activity efficiently, honestly or fairly;

(*h*) in the case of the revocation of the status of an individual as an appointed, provisional or temporary representative —

(i) he or she or his or her principal fails to satisfy the Authority, pursuant to a requirement imposed by the Authority as a condition for him or her to be an appointed, provisional or temporary representative, under section 99N or by regulations

(as the case may be), that he or she remains a fit and proper person to be an appointed, provisional or temporary representative or to carry on business in the type of regulated activity for which he or she is appointed;

(ii) the Authority is not satisfied with —

(A) his or her educational or other qualification or experience (being qualification or experience not known to the Authority at the time his or her name and particulars are entered in the public register of representatives); or

(B) his or her record of past performance or expertise,

having regard to the nature of his or her duties as an appointed, provisional or temporary representative;

(iii) the Authority has reason to believe that he or she will not carry, or has not carried, on business in the type of regulated activity for which he or she is appointed efficiently, honestly or fairly; or

(iv) the Authority has reason to believe that he or she has not acted in the best interests of the subscribers or customers of his or her principal;

(*i*) the Authority has reason to believe that he or she may not be able to act in the best interests of the subscribers or customers of his or her principal, having regard to his or her reputation, character, financial integrity and reliability;

(*j*) the Authority is not satisfied as to his or her financial standing;

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

(*l*) the individual is in arrears of the payment of such contributions on his or her own behalf to the Central Provident Fund as are required under the Central Provident Fund Act 1953;

(*m*) the Authority is of the opinion that it would be contrary to the interests of the public to enter the individual's name in the public register of representatives or allow him or her to continue carrying on business as an

appointed, provisional or temporary representative or to carry on business in that additional type of regulated activity, as the case may be;

(*n*) the Authority has reason to believe that any information or document that is provided by him or her or his or her principal to the Authority is false or misleading;

(*o*) he or she has contravened any provision of this Act applicable to him or her, any condition or restriction imposed on him under this Act or any direction issued to him or her by the Authority under this Act;

(*oa*) it appears to the Authority that he or she has failed to satisfy any of his or her obligations under or arising from —

(i) this Act; or

(ii) any written direction issued by the Authority under this Act;

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

(*q*) the licence of his or her principal is revoked;

(*r*) the individual fails to pay any fee referred to in section 99K;

(*s*) in the case of the proposed appointment of a temporary representative in respect of a type of regulated activity —

(i) he or she is not licensed, authorised or otherwise regulated as a representative in relation to a comparable type of regulated activity in a foreign jurisdiction;

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

(iii) the period of his or her proposed appointment, together with the period of any past appointment (or part thereof) that falls within a prescribed period before the date of expiry of his or her proposed appointment, exceeds the permitted period prescribed by the Authority; or

(*t*) in the case of the proposed appointment of a provisional representative in respect of a type of regulated activity —

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

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

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

[2/2009; 34/2012]

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

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

(*b*) at any time —

(i) extend the period of suspension; or

(ii) revoke the suspension.

[2/2009]

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

[2/2009]

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

[2/2009]

(5) Where the Authority has revoked the status of an individual as an appointed,

provisional or temporary representative, the Authority must —

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

(*b*) remove his or her name from the register.

[2/2009]

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

[2/2009]

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

[2/2009]

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

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

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

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

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

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

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

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

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

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

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

[2/2009]

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

[2/2009]

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

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

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

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

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

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

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

[2/2009]

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

(*a*) avoid or affect any agreement, transaction or arrangement relating to any regulated activity entered into by such individual, whether the agreement, transaction or arrangement was entered into before, on or after the revocation or suspension, as the case may be; or

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

[2/2009]

Power of Authority to impose conditions or restrictions

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

her.

[2/2009]

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

[2/2009]

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

[2/2009]

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

[2/2009]

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

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

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

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

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

[2/2009]

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

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

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

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

[2/2009]

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

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

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

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

[2/2009]

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

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

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

[2/2009]

Appeals

99P. Any person who is aggrieved by —

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

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

may, within 30 days after he or she is notified of the decision of the Authority, appeal to the Minister whose decision is final.

[2/2009]

Division 3 — General

Power of Authority to make regulations

100.—(1) Without affecting section 341, the Authority may make regulations relating

to the grant of a capital markets services licence, the proposed appointment of an individual as an appointed, provisional or temporary representative, the entering of his or her name or an additional type of regulated activity in the public register of representatives, and the revocation or suspension of his or her status as an appointed, provisional or temporary representative, and requirements applicable to the holder of a capital markets services licence, an exempt person, a representative or a class of such persons.

[2/2009]

(2) Regulations made under this section may provide —

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

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

Power of Authority to issue written directions

101.—(1) The Authority may, if it thinks it necessary or expedient in the interests of the public or a section of the public or for the protection of investors, issue written directions, either of a general or specific nature, to any holder of a capital markets services licence, exempt person, representative, or class of such persons, to comply with such requirements as the Authority may specify in the written directions.

[2/2009; 34/2012]

(2) Without limiting subsection (1), any written direction may be issued with respect to —

(*a*) the standards to be maintained by the person concerned in the conduct of and in respect of the risk management of the person's business;

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

(*c*) the qualifications, experience and training of representatives,

and the person to whom such direction is issued must comply with the direction.

[4/2017]

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

(4) It is not necessary to publish any direction issued under subsection (1) in the *Gazette*.

[34/2012]

Power of Authority to make prohibition orders

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

(*a*) the Authority suspends or revokes the capital markets services licence held by the person;

(*b*) where the person is exempt from the requirement to hold a capital markets services licence under section 99(1)(*a*), (*b*), (*c*) or (*d*), the Authority has reason to believe that circumstances exist under which, if the person were a holder of a capital markets services licence, there would exist a ground on which the Authority may suspend or revoke its licence under section 95;

(*c*) the Authority suspends or revokes the status of that person as an appointed, provisional or temporary representative;

(*ca*) where the relevant person is or was a representative of an exempt person but is not exempted under section 99B(2) from section 99B(1), the Authority has reason to believe that circumstances exist under which, if the relevant person were an appointed, provisional or temporary representative, there would exist a ground on which the Authority may revoke under section 99M the relevant person's status as an appointed, provisional or temporary representative;

(*cb*) where the relevant person is or was a representative of a holder of a capital markets services licence but is not exempted under section 99B(2) from section 99B(1), the Authority has reason to believe that circumstances exist under which there would exist a ground on which the Authority may revoke under section 99M the relevant person's status as an appointed, provisional or temporary representative;

(*cc*) where the relevant person is or was a representative of an exempt person, or a representative of a holder of a capital markets services licence, and is exempted under section 99B(2) from section 99B(1), the Authority has reason to believe that circumstances exist under which, if the person were an appointed representative, there would exist a ground on which the Authority may revoke under section 99M the relevant person's status as an appointed representative;

(*d*) the Authority has reason to believe that the person is contravening, is likely

to contravene or has contravened —

(i) any provision in this Act;

(ii) any condition or restriction imposed by the Authority under this Act; or

(iii) any written direction issued by the Authority under this Act;

(*e*) the person has been convicted of an offence under this Act or has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that the person acted fraudulently or dishonestly;

(*f*) the person has an order for the payment of a civil penalty made against the person by a court under Part 12 or has entered into an agreement with the Authority to pay a civil penalty under that Part;

(*g*) the person has been convicted of an offence involving the contravention of any law or requirement of a foreign country or territory relating to any regulated activity carried out by that person; or

(*h*) the person has been removed at the direction of the Authority from office or employment as an officer of the holder of a capital markets services licence under section 97(1A).

[2/2009; 34/2012]

(2) In subsection (1), "relevant person" means —

(*a*) the holder of a capital markets services licence or a person who was previously such a holder;

(*b*) a person that is exempt from the requirement to hold a capital markets services licence under section 99(1) or a person who was previously so exempt;

(*c*) a representative of a person exempt from the requirement to hold a capital markets services licence under section 99(1) or a person who was previously such a representative;

(*d*) an appointed, provisional or temporary representative or a person who was previously such a representative;

(*da*) a representative exempted under section 99B(2) from section 99B(1), or a person who was previously such a representative;

(*e*) an officer of the holder of a capital markets services licence or a person

that is exempt from the requirement to hold a capital markets services licence under section 99(1), or a person who was previously such an officer; or

(*f*) a person who has been convicted of an offence under section 82(1) or 99B(1).

[2/2009; 34/2012]

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

(*a*) prohibit the person, whether permanently or for a specified period, from —

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

(ii) taking part, directly or indirectly, in the management of, acting as a director of, or becoming a substantial shareholder of —

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

(B) an exempt person;

(*b*) include a provision allowing the person, subject to any condition specified in the order —

(i) to do specified acts; or

(ii) to do specified acts in specified circumstances,

that the order would otherwise prohibit the person from doing.

[2/2009]

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

[2/2009]

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

[2/2009]

(6) Where the Authority makes a prohibition order against any person who is an appointed, provisional or temporary representative, it must indicate against his or her name in the public register of representatives that fact, and the indication must remain in the register for the duration of the order.

[2/2009]

(7) The Authority must keep, in such form as it thinks fit, records on persons against whom prohibition orders are made under this section.

[34/2012]

(8) The Authority may publish the records referred to in subsection (7), or any part of them, in such manner as the Authority considers appropriate.

[34/2012]

Effect of prohibition orders

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

[2/2009]

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

[2/2009]

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

[2/2009]

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

[2/2009]

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

[2/2009]

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

[2/2009]

Variation or revocation of prohibition orders

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

is appropriate to do so because of a change in any of the circumstances based on which the Authority made the order.

[2/2009]

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

(*a*) on its own initiative; or

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

[2/2009]

(3) The Authority must not vary a prohibition order made against a person under subsection (2)(*a*) without giving the person an opportunity to be heard.

[2/2009]

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

[2/2009]

Date and effect of prohibition orders

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

[2/2009]

(2) A prohibition order does not operate so as to —

(*a*) avoid or affect any agreement, transaction or arrangement entered into by the person against whom the order is made, whether the agreement, transaction or arrangement was entered into before, on or after the issue of the prohibition order; or

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

[2/2009]

PART 5

BOOKS, CUSTOMER ASSETS AND AUDIT

Division 1 — Books

Keeping of books and providing of returns

102.—(1) A holder of a capital markets services licence must —

(*a*) keep, or cause to be kept, such books as will sufficiently explain the transactions and financial position of its business and enable true and fair profit and loss accounts and balance sheets to be prepared from time to time; and

(*b*) keep, or cause to be kept, such books in such a manner as will enable them to be conveniently and properly audited.

(2) An entry in the books of a holder of a capital markets services licence required to be kept in accordance with this section is deemed to have been made by, or with the authority of, the holder.

(3) A holder of a capital markets services licence must retain such books as may be required to be kept under this Act for a period of not less than 5 years.

[2/2007]

(4) A holder of a capital markets services licence must —

(*a*) furnish such returns and records in such form and manner as may be prescribed or as may be notified by the Authority in writing; and

(*b*) provide such information relating to its business as the Authority may require.

(5) The Authority may, without affecting section 341, make regulations in respect of all or any of the matters in this Division, including the keeping of such books, by a holder of a capital markets services licence, in such form and manner as the Authority may prescribe.

Penalties under this Division

103. A holder of a capital markets services licence which, without reasonable excuse, contravenes section 102(1), (3) or (4) or any regulation made under section 102(5), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

Division 2 — Customer Assets

Interpretation of this Division

103A. In this Division, unless the context otherwise requires, "money or other assets" means money received or retained by, or any other asset deposited with, a holder of a

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

Handling of customer assets

104.—(1) A holder of a capital markets services licence must, to the extent that it receives money or other assets from or on account of a customer —

(*a*) do so, except in such circumstances as the Authority may prescribe, on the basis that the money or other assets must be applied solely for such purpose as may be agreed to by the customer, when or before it receives the money or other assets;

(*b*) pending such application, pay or deposit the money or other assets in such manner as may be prescribed; and

(*c*) record and maintain a separate book entry for each customer in accordance with the provisions of this Act in relation to that customer's money or other assets.

[34/2012]

(2) The Authority may, without affecting section 341, make regulations in respect of all or any of the matters in this Division, including the handling of money or other assets by a holder of a capital markets services licence.

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

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

(*a*) are not available for payment of the debts of the holder of a capital markets services licence; and

(*b*) are not liable to be paid or taken under or pursuant to an enforcement order or a process of any court.

[Act 25 of 2021 wef 01/04/2022]

Penalties under this Division

105. Any holder of a capital markets services licence which, without reasonable excuse, contravenes section 104(1) or any regulation made under section 104(2), shall be guilty of an offence and shall be liable on conviction —

(*a*) where it is found to have committed the offence with intent to defraud, to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during

which the offence continues after conviction; or

(*b*) in any other case, to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

Division 3 — Audit

Appointment of auditors

106. A holder of a capital markets services licence must appoint an auditor to audit its accounts and where, for any reason, the auditor ceases to act for such holder, the holder must, as soon as practicable thereafter, appoint another auditor.

Lodgment of annual accounts, etc.

107.—(1) A holder of a capital markets services licence must, in respect of each financial year —

(*a*) prepare a true and fair profit and loss account and a balance sheet made up to the last day of the financial year; and

(*b*) lodge that account and balance sheet with the Authority within 5 months, or such extension thereof permitted by the Authority under subsection (2), after the end of the financial year, together with an auditor's report on the account and balance sheet.

(2) Where an application for an extension of the period of 5 months specified in subsection (1) has been made by a holder of a capital markets services licence to the Authority and the Authority is satisfied that there is any special reason for requiring the extension, the Authority may extend that period by not more than 4 months, subject to such conditions or restrictions as the Authority thinks fit to impose.

(3) Any holder of a capital markets services licence which contravenes subsection (1), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $500 for every day or part of a day that the lodgment is late, subject to a maximum fine of $50,000.

(4) Any holder of a capital markets services licence which contravenes any condition imposed under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000.

(5) Despite any other provision of this Act or any other written law, the Authority may, if it is not satisfied with the performance of duties by an auditor appointed by a

holder of a capital markets services licence —

(*a*) at any time direct the holder to remove the auditor; and

(*b*) direct the holder, as soon as practicable thereafter, to appoint another auditor,

and the holder must comply with such direction.

Reports by auditor to Authority in certain cases

108. Where, in the performance of his or her duties as an auditor for a holder of a capital markets services licence, an auditor becomes aware of —

(*a*) any matter which, in his or her opinion, adversely affects or may adversely affect the financial position of the holder to a material extent;

(*b*) any matter which, in his or her opinion, constitutes or may constitute a contravention of any provision of this Act or an offence involving fraud or dishonesty; or

(*c*) any irregularity that has or may have a material effect upon the accounts, including any irregularity that may affect or jeopardise the moneys or other assets of any customer of the holder,

the auditor must immediately thereafter send —

(*d*) a report in writing of the matter or irregularity to the Authority; and

(*e*) where the holder is a member of an approved exchange, a copy of the report to the approved exchange.

[4/2017]

Power of Authority to appoint auditor

109.—(1) Where —

(*a*) a holder of a capital markets services licence fails to lodge an auditor's report under section 107; or

(*b*) the Authority receives a report under section 108,

the Authority may, without affecting its powers under section 115, if it is satisfied that it is in the interests of the holder, the customers of the holder or the general public to do so, appoint in writing an auditor to examine and audit, either generally or in relation to any particular matter, the books of the holder.

(2) Where the Authority is of the opinion that the whole or any part of the costs and

expenses of an auditor appointed by the Authority under subsection (1) should be borne by the holder of a capital markets services licence, the Authority may, in writing, direct the holder to pay a specified amount, being the whole or part of such costs and expenses, within such time and in such manner as may be specified in the direction.

(3) Where a holder of a capital markets services licence fails to comply with a direction under subsection (2), the amount specified in the direction may be sued for and recovered by the Authority as a civil debt.

(4) An auditor appointed under subsection (1) must, on the conclusion of the examination and audit, submit a report to the Authority.

Power of auditors appointed by Authority

110.—(1) An auditor appointed by the Authority under section 109 may, for the purpose of carrying out an examination and audit of the books of a holder of a capital markets services licence —

(*a*) examine, on oath or affirmation, any officer, employee or agent of the holder or any other auditor appointed under this Act in relation to those books;

(*b*) require any officer, employee or agent of the holder, or any other auditor appointed under this Act, to produce any of the books held by or on behalf of the holder relating to its business, and to make copies of or take extracts from, or retain possession of, such books for such period as is necessary to enable them to be inspected;

(*c*) require any approved exchange, licensed trade repository, approved clearing house or recognised clearing house to produce any of the books kept by it, or any information in its possession, relating to the business of the holder;

(*d*) employ such persons as he or she considers necessary to assist him or her in carrying out the examination and audit; and

(*e*) authorise in writing any person employed by him or her to do, in relation to the examination and audit, any act or thing that he or she could do as an auditor under this subsection, other than the examination of any person on oath or affirmation.

[34/2012; 4/2017]

(2) Any person who, without reasonable excuse, refuses or fails to answer any question put to the person, or fails to comply with any request made to the person, by an auditor appointed under section 109 or a person authorised under subsection (1)(*e*), shall

be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 12 months or to both.

Offence to destroy, conceal, alter, etc., books

111.—(1) Any person who, with intent to prevent, delay or obstruct the carrying out of any examination or audit under this Division —

(*a*) destroys, conceals or alters any book relating to the business of a holder of a capital markets services licence; or

(*b*) sends, or conspires with any other person to send, out of Singapore, any book or asset of any description belonging to, in the possession of or under the control of a holder of a capital markets services licence,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 or to imprisonment for a term not exceeding 2 years or to both.

(2) If, in any proceedings for an offence under subsection (1), it is proved that the person charged with the offence —

(*a*) destroyed, concealed or altered any book referred to in subsection (1)(*a*); or

(*b*) sent, or conspired to send, out of Singapore, any book or asset referred to in subsection (1)(*b*),

the onus of proving that, in so doing, the person did not act with intent to prevent, delay or obstruct the carrying out of an examination and audit under this Division lies on that person.

Safeguarding of books

112.—(1) A holder of a capital markets services licence must take reasonable precautions —

(*a*) to prevent falsification of the books required to be kept by it under this Act; and

(*b*) to facilitate the discovery of any falsification of any such book.

(2) Any holder of a capital markets services licence who contravenes this section shall be guilty of an offence under this Act.

Restriction on auditor's and employee's right to communicate certain matters

113. Except as may be necessary for the carrying into effect of the provisions of this

Act or so far as may be required for the purposes of any legal proceedings, whether civil or criminal, an auditor appointed under section 109 or carrying out any duty imposed under section 115, and any employee of such an auditor, must not disclose any information which may come to his or her knowledge or possession in the course of performing his or her duties as such auditor or employee (as the case may be) to any person other than —

(*a*) the Authority; and

(*b*) in the case of an employee of such auditor, the auditor.

Exchanges, etc., may impose additional obligations on members

114. Nothing in this Division prevents any approved exchange, licensed trade repository, approved clearing house or recognised clearing house from imposing on its members any additional obligation or requirement which it thinks is necessary with respect to —

(*a*) the audit of accounts;

(*b*) the information to be given in reports by auditors; or

(*c*) the keeping of books.

[34/2012; 4/2017]

Additional powers of Authority in respect of auditors

115.—(1) The Authority may impose all or any of the following duties on an auditor of a holder of a capital markets services licence:

(*a*) a duty to submit to the Authority such additional information in relation to his or her audit as the Authority considers necessary;

(*b*) a duty to enlarge or extend the scope of his or her audit of the business and affairs of the holder;

(*c*) a duty to carry out any other examination or establish any procedure in any particular case;

(*d*) a duty to submit a report to the Authority on any of the matters referred to in paragraphs (*b*) and (*c*),

and the auditor must carry out such additional duty or duties.

(2) A holder of a capital markets services licence must remunerate the auditor in respect of the discharge of such additional duty or duties as the Authority may impose under subsection (1).

Defamation

116.—(1) No auditor or employee of such auditor shall, in the absence of malice on his or her part, be liable to any action for defamation at the suit of any person in respect of —

(*a*) any statement made orally or in writing in the discharge of his or her duties under this Part; or

(*b*) the submission of any report to the Authority under section 108, 109(4) or 115(1)(*d*).

(2) Subsection (1) does not restrict or otherwise affect any right, privilege or immunity that, apart from this section, the auditor or his or her employee has as a defendant in an action for defamation.

PART 6

CONDUCT OF BUSINESS

Division 1 — General

117. [*Repealed by Act 2 of 2009*]

118. [*Repealed by Act 2 of 2009*]

119. [*Repealed by Act 1 of 2005*]

120. [*Repealed by Act 2 of 2009*]

121. [*Repealed by Act 1 of 2005*]

122. [*Repealed by Act 2 of 2009*]

Power of Authority to make regulations

123.—(1) The Authority may make regulations in respect of the conduct of business in any regulated activity by the holder of a capital markets services licence or a representative of such a holder.

(2) Without limiting subsection (1), regulations made under this section may —

(*a*) specify requirements applicable to the holder of a capital markets services licence in relation to product financing;

(*aa*) specify, in the context of the granting of an unsecured advance, unsecured

loan or unsecured credit facility by the holder of a capital markets services licence —

(i) what constitutes any such unsecured advance, unsecured loan or unsecured credit facility; and

(ii) the requirements and restrictions relating to any such grant;

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

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

(*c*) specify terms and conditions to be included in customer contracts and provide that the terms and conditions are, unless the Authority in relation to any particular term or condition otherwise directs, to be deemed to be of the essence of the customer contracts in which they are included, whether or not a different intention appears in the provisions of the customer contracts;

(*d*) specify information that the holder of a capital markets services licence is to provide to its customer on entering into a customer contract with the customer, and thereafter on request by the customer, concerning the business of the holder and the identity and status of any person acting on behalf of the holder with whom the customer may have contact;

(*e*) require the holder of a capital markets services licence, and a representative of such a holder, to ascertain, in relation to each customer of the holder, specified matters relating to the customer's identity and the customer's financial situation, investment experience and investment objectives relevant to the services to be provided by the holder, and specify the steps to be taken for this purpose;

(*f*) require the holder of a capital markets services licence, and a representative of such a holder, when providing information or advice concerning capital markets products to a customer of the holder, to ensure the suitability of the information or advice to be provided to the customer, and specify the steps to be taken for this purpose;

(*g*) require the holder of a capital markets services licence, and a representative of such a holder, to disclose to a customer of the holder the financial risks in relation to capital markets products that the holder or the representative recommends to the customer, and specify the steps to be taken for this purpose;

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

(*h*) require the holder of a capital markets services licence, and a representative of such a holder, to disclose to a customer of the holder any commission or advantage the holder or the representative (as the case may be) receives or is to receive from a third party in connection with any capital markets products which the holder or the representative recommends to the customer, and specify the steps to be taken for this purpose;

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

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

(*j*) specify the circumstances in which, and the conditions under which, the holder of a capital markets services licence, and a representative of such a holder, may use information relating to the affairs of the customer of the holder;

(*k*) require the holder of a capital markets services licence, and a representative of such a holder, to take steps to avoid cases of conflict between any of their interests and those of a customer of the holder, and

specify the steps to be taken in the event of a potential or actual case of conflict;

(*l*) specify the circumstances in which the holder of a capital markets services licence may receive any property or service from another holder of a capital markets services licence in consideration of directing business to that other holder;

(*m*) specify the circumstances in which, and the conditions and restrictions under which, a representative of the holder of a capital markets services licence is permitted to deal or trade for the representative's own account in capital markets products;

(*n*) provide for any other matter relating to the practices and standards of conduct of the holder of a capital markets services licence and a representative of such a holder in carrying on business in any regulated activity; and

(*o*) provide that, subject to such conditions or restrictions as may be prescribed, all or specified provisions of this Part do not apply to a specified class of holders of a capital markets services licences or their representatives, or to a specified class of capital markets products.

[2/2009; 34/2012; 4/2017]

(3) Regulations made under this section may provide that any customer contract entered into by the holder of a capital markets services licence with its customer otherwise than in compliance with any specified regulation is, despite anything in the contract, unenforceable at the option of the customer.

(4) Regulations made under this section may provide —

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

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

(5) In this section, "customer contract" means any contract or arrangement between the holder of a capital markets services licence and a customer of the holder which contains terms on which the holder is to provide services to, or effect transactions for, the customer.

PART 6AA

FINANCIAL BENCHMARKS

Objectives of this Part

123A. The objectives of this Part are —

(*a*) to promote fair and transparent determination of financial benchmarks; and

(*b*) to reduce systemic risks.

[4/2017]

Division 1 — Designation of Financial Benchmarks

Power of Authority to designate financial benchmarks

123B. The Authority may, by order in the *Gazette*, designate a financial benchmark as a designated benchmark for the purposes of this Part if the Authority is satisfied that —

(*a*) the financial benchmark has systemic importance in the financial system of Singapore;

(*b*) a disruption in the determination of the financial benchmark could affect public confidence in the financial benchmark or the financial system of Singapore;

(*c*) the determination of the financial benchmark could be susceptible to manipulation; or

(*d*) it is otherwise in the interests of the public to do so.

[4/2017]

Withdrawal of designation of financial benchmark

123C. The Authority may, by order in the *Gazette*, withdraw the designation of any designated benchmark if the Authority is of the opinion that the considerations in section 123B are no longer valid or satisfied.

[4/2017]

Division 2 — Benchmark Administrators of Designated Benchmarks

Subdivision (1) — Authorised benchmark administrator

Requirement for authorisation

123D.—(1) No person may carry on, or hold out that the person is carrying on, a business of administering a designated benchmark, unless the person is an authorised benchmark administrator.

[4/2017]

(2) No person may hold out that the person is an authorised benchmark administrator, unless the person is an authorised benchmark administrator.

[4/2017]

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

[4/2017]

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

[4/2017]

Application for authorisation

123E.—(1) A corporation may apply to the Authority to be authorised as an authorised benchmark administrator.

[4/2017]

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

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

(*b*) accompanied by a non-refundable application fee of an amount prescribed by regulations made under section 123ZZA, which must be paid in the manner specified by the Authority.

[4/2017]

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

[4/2017]

Power of Authority to authorise benchmark administrators

123F.—(1) Where a corporation mentioned in section 123E(1) makes an application under that provision, the Authority may authorise the corporation as an authorised benchmark administrator.

[4/2017]

(2) The Authority may authorise a corporation as an authorised benchmark administrator under subsection (1) subject to such conditions or restrictions as the Authority may impose by written notice, including conditions or restrictions, either of a general or specific nature, relating to —

(*a*) the process for the determination of the designated benchmark; or

(*b*) any other activities that the corporation may undertake.

[4/2017]

(3) The Authority may, at any time, by written notice to the authorised benchmark administrator, vary any condition or restriction or impose any further condition or restriction.

[4/2017]

(4) An authorised benchmark administrator must, for the duration of the authorisation, satisfy every condition or restriction that may be imposed on it under subsections (2) and (3).

[4/2017]

(5) The Authority must not authorise a corporation as an authorised benchmark administrator, unless the corporation meets such requirements as the Authority may prescribe by regulations made under section 123ZZA, either generally or specifically.

[4/2017]

(6) The Authority may refuse to authorise a corporation as an authorised benchmark administrator, if —

(*a*) the corporation has not provided the Authority with such information, as the Authority may require, relating to —

(i) the corporation or any person employed by or associated with the corporation for the purposes of the corporation's business or operations; and

(ii) any circumstances likely to affect the corporation's manner of conducting business or operations;

(*b*) any information or document provided by the corporation to the Authority is false or misleading;

(*c*) the corporation or a substantial shareholder of the corporation is in the course of being wound up or otherwise dissolved, whether in Singapore or

elsewhere;

(*d*) an enforcement order against the corporation or a substantial shareholder of the corporation in respect of a judgment debt has been returned unsatisfied in whole or in part;

[Act 25 of 2021 wef 01/04/2022]

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

(*f*) the corporation or a substantial shareholder of the corporation has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with the creditors of the corporation or substantial shareholder (as the case may be) being a compromise or scheme of arrangement that is still in operation;

(*g*) the corporation, a substantial shareholder of the corporation or any officer of the corporation —

(i) has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after 8 October 2018, involving fraud or dishonesty or the conviction for which involved a finding that the corporation, shareholder or officer (as the case may be) had acted fraudulently or dishonestly; or

(ii) has been convicted of an offence under this Act committed before, on or after 8 October 2018;

(*h*) the Authority is not satisfied as to the educational or other qualifications or experience of the officers or employees of the corporation, having regard to the nature of the duties they are to perform in connection with the activity of administering a designated benchmark;

(*i*) the corporation fails to satisfy the Authority that the corporation is a fit and proper person or that all of its officers, employees and substantial shareholders are fit and proper persons;

(*j*) the Authority has reason to believe that the corporation may not be able to act in the best interests of a class, or the classes, of users of the designated benchmark, having regard to the reputation, character, financial integrity and reliability of the corporation or its officers, employees or substantial shareholders;

(*k*) the Authority is not satisfied as to —

(i) the financial standing of the corporation or any of its substantial shareholders; or

(ii) the manner in which the business of the corporation is to be conducted, or the operations of the corporation are to be conducted, in relation to administering a designated benchmark;

(*l*) the Authority is not satisfied as to the record of past performance or expertise of the corporation, having regard to the nature of the business or operations which the corporation may carry on or conduct in connection with administering a designated benchmark;

(*m*) there are other circumstances which are likely to —

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

(ii) reflect discredit on the manner of conducting the business or operations of the corporation or any of its substantial shareholders;

(*n*) the Authority has reason to believe that the corporation, or any of its officers or employees, will not perform the activity of administering a designated benchmark, efficiently, honestly or fairly;

(*o*) the Authority is of the opinion that it would be contrary to the interests of the public to authorise the corporation as an authorised benchmark administrator; or

(*p*) a prohibition order under section 123ZZC has been made by the Authority, and remains in force, against the corporation.

[4/2017]

(7) Subject to subsection (8), the Authority must not refuse to authorise a corporation as an authorised benchmark administrator under subsection (6) without giving the corporation an opportunity to be heard.

[4/2017]

(8) The Authority may refuse to authorise a corporation as an authorised benchmark administrator on any of the following grounds without giving the corporation an opportunity to be heard:

(*a*) the corporation is in the course of being wound up or otherwise dissolved,

whether in Singapore or elsewhere;

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

(*c*) the corporation has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after 8 October 2018, involving fraud or dishonesty or the conviction for which involved a finding that the corporation had acted fraudulently or dishonestly;

(*d*) a prohibition order under section 123ZZC has been made by the Authority, and remains in force, against the corporation.

[4/2017]

(9) The Authority must give notice in the *Gazette* of any authorisation under subsection (1).

[4/2017]

(10) Any corporation that is aggrieved by a refusal of the Authority to grant an authorisation under subsection (1) may, within 30 days after the corporation is notified of the refusal, appeal to the Minister, whose decision is final.

[4/2017]

(11) Any authorised benchmark administrator who contravenes subsection (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

Deposit to be lodged by corporation or authorised benchmark administrator

123G.—(1) The Authority may require the corporation mentioned in section 123E(1) that has made an application under that provision to lodge with the Authority, at the time of its application and in such manner as the Authority may determine, a deposit of such amount as the Authority may prescribe by regulations made under section 123ZZA in respect of that authorisation and in such form as the Authority may specify.

[4/2017]

(2) The Authority may prescribe by regulations made under section 123ZZA the circumstances and purposes for the use of the deposit.

[4/2017]

False statements in relation to application for authorisation

123H. Any person who, in connection with an application for authorisation as an

authorised benchmark administrator —

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

(*b*) without reasonable excuse, omits to state any matter or thing without which the application is misleading in a material respect,

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

[4/2017]

Annual fees payable by authorised benchmark administrator

123I.—(1) Every authorised benchmark administrator must pay to the Authority such annual fee as may be prescribed by regulations made under section 123ZZA, in such manner as the Authority may specify.

[4/2017]

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

[4/2017]

(3) The Authority need not refund any annual fee paid if —

(*a*) the authorisation is revoked, suspended or withdrawn during the period to which the annual fee relates;

(*b*) the authorised benchmark administrator ceases to carry on a business of administering a designated benchmark during the period to which the annual fee relates; or

(*c*) a prohibition order has been made against the authorised benchmark administrator under section 123ZZC.

[4/2017]

(4) Where an authorised benchmark administrator fails to pay the annual fee by the date on which such fee is due, the Authority may impose a late payment fee of an amount prescribed by regulations made under section 123ZZA for every day or part of a day that the payment is late and both fees are recoverable by the Authority as a judgment debt.

[4/2017]

Revocation, suspension or withdrawal of authorisation

123J.—(1) The Authority may revoke the authorisation of a corporation as an authorised benchmark administrator under section 123F(1) if —

(*a*) there exists a ground on which the Authority must refuse an application

under section 123F(5) or may refuse an application under section 123F(6);

(*b*) the corporation does not commence carrying out the activity of administering a designated benchmark within 12 months starting on the date on which it was granted the authorisation under section 123F(1);

(*c*) the corporation ceases to carry on a business of administering a designated benchmark in respect of a particular designated benchmark, or where it administers more than one designated benchmark, in respect of all of its designated benchmarks;

(*d*) where the corporation carries on a business of administering a designated benchmark only in respect of one designated benchmark, the Authority has withdrawn the designation of that designated benchmark under section 123C;

(*e*) the Authority has reason to believe that the corporation has not acted in the best interests of the users of the designated benchmark or any class of users of the designated benchmark;

(*f*) the Authority has reason to believe that the corporation, or any of its officers or employees, has not performed its or their duties efficiently, honestly or fairly;

(*g*) the corporation has contravened any condition or restriction applicable in respect of its authorisation, any written direction issued to it by the Authority under this Act, or any provision of this Act;

(*h*) it appears to the Authority that the corporation has failed to satisfy any of its obligations in compliance with, under or arising from —

(i) this Act; or

(ii) any written direction issued by the Authority under this Act;

(*i*) the Authority has reason to believe that the corporation is carrying out the activity of administering a designated benchmark in a manner that is contrary to the interests of the public;

(*j*) the corporation has provided any information or document to the Authority that is false or misleading;

(*k*) the corporation fails to pay the annual fee mentioned in section 123I in the manner specified by the Authority; or

(*l*) a prohibition order under section 123ZZC has been made by the Authority, and remains in force, against the corporation.

[4/2017]

(2) The Authority may —

(*a*) suspend the authorisation granted to an authorised benchmark administrator for a specific period instead of revoking it under subsection (1); and

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

[4/2017]

(3) Subject to subsection (4), the Authority may, upon a written application made to it by an authorised benchmark administrator, in such form and manner as the Authority may specify, withdraw the authorisation of the authorised benchmark administrator.

[4/2017]

(4) The Authority may refuse to withdraw the authorisation of an authorised benchmark administrator under subsection (3) where the Authority is of the opinion that —

(*a*) there is any matter concerning the corporation which should be investigated before the authorisation is withdrawn; or

(*b*) the withdrawal of the authorisation would not be in the public interest.

[4/2017]

(5) Subject to subsection (6), the Authority must not —

(*a*) revoke the authorisation granted to an authorised benchmark administrator under subsection (1);

(*b*) suspend the authorisation granted to an authorised benchmark administrator under subsection (2); or

(*c*) refuse the withdrawal of the authorisation granted to an authorised benchmark administrator under subsection (4),

without giving the authorised benchmark administrator an opportunity to be heard.

[4/2017]

(6) The Authority may revoke or suspend the authorisation of a corporation as an authorised benchmark administrator without giving the corporation an opportunity to be heard on any of the following grounds:

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

(*b*) a receiver, a receiver and manager or a person in an equivalent capacity has been appointed, whether in Singapore or elsewhere, in relation to, or in

respect of, any property of the corporation;

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

(*d*) where the corporation carries on a business of administering a designated benchmark only in respect of one designated benchmark, the Authority has withdrawn the designation of that designated benchmark under section 123C;

(*e*) a prohibition order under section 123ZZC has been made by the Authority, and remains in force, against the corporation.

[4/2017]

(7) Any corporation that is aggrieved by a decision of the Authority made in relation to the corporation under subsection (1), (2) or (4) may, within 30 days after the corporation is notified of the decision, appeal to the Minister, whose decision is final.

[4/2017]

(8) Despite the lodging of an appeal under subsection (7), any action taken by the Authority under this section continues to have effect pending the Minister's decision.

[4/2017]

(9) The Minister may, when deciding an appeal under subsection (7), make such modification as he or she considers necessary to any action taken by the Authority under this section, and such modified action has effect starting on the date of the Minister's decision.

[4/2017]

(10) Any revocation, suspension or withdrawal of the authorisation of a corporation as an authorised benchmark administrator does not operate so as to —

(*a*) avoid or affect any agreement, transaction or arrangement entered into by the corporation, whether the agreement, transaction or arrangement was entered into before, on or after the revocation, suspension or withdrawal of the authorisation; or

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

[4/2017]

(11) The Authority must give notice in the *Gazette* of any revocation of authorisation under subsection (1), suspension of authorisation under subsection (2)(*a*), extension or revocation of suspension of authorisation under subsection (2)(*b*) or withdrawal of

authorisation under subsection (3).

[4/2017]

Subdivision (2) — Exempt benchmark administrator

Power of Authority to exempt corporations from authorisation

123K.—(1) The Authority may —

(*a*) despite section 337(1), by regulations made under section 123ZZA exempt any corporation or class of corporations; or

(*b*) on the application of any corporation, by written notice, exempt the corporation,

from the requirement under section 123D(1) to be an authorised benchmark administrator.

[4/2017]

(2) The Authority may require a corporation to provide it with such information or documents as the Authority considers necessary in relation to an application made under subsection (1)(*b*).

[4/2017]

(3) The Authority may by regulations, or by written notice, impose any conditions or restrictions on an exempt benchmark administrator in relation to its carrying out the activity of administering a designated benchmark or any related matter, including conditions or restrictions relating to —

(*a*) the process for the determination of the designated benchmark; or

(*b*) any other activities that the corporation may undertake.

[4/2017]

(4) The Authority may, at any time, by written notice to an exempt benchmark administrator under subsection (1)(*b*), vary any condition or restriction mentioned in subsection (3) or impose any further condition or restriction relating to the exemption.

[4/2017]

(5) The Authority must give notice in the *Gazette* of any exemption under subsection (1)(*b*).

[4/2017]

(6) An exempt benchmark administrator must comply with such conditions or restrictions imposed on it under subsection (3) or (4).

[4/2017]

(7) Any exempt benchmark administrator who contravenes any condition or restriction imposed under subsection (3) or (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

False statements in relation to application for exemption

123L. Any person who, in connection with an application for exemption under section 123K(1)(*b*) —

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

(*b*) without reasonable excuse, omits to state any matter or thing without which the application is misleading in a material respect,

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

[4/2017]

Annual fees payable by exempt benchmark administrator

123M.—(1) Every exempt benchmark administrator must pay to the Authority such annual fee as may be prescribed by regulations made under section 123ZZA, in such manner as the Authority may specify.

[4/2017]

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

[4/2017]

(3) The Authority need not refund any annual fee paid if —

(*a*) the exemption is revoked during the period in which the annual fee relates;

(*b*) the exempt benchmark administrator ceases to carry on a business of administering a designated benchmark during the period to which the annual fee relates; or

(*c*) a prohibition order has been made against the exempt benchmark administrator under section 123ZZC.

[4/2017]

(4) Where an exempt benchmark administrator fails to pay the annual fee by the date on which such fee is due, the Authority may impose a late payment fee of an amount

prescribed by regulations made under section 123ZZA for every day or part of a day that the payment is late and both fees are recoverable by the Authority as a judgment debt.

[4/2017]

Power to revoke exemption

123N.—(1) The Authority may revoke any exemption granted to a corporation under section 123K(1) if —

(*a*) the corporation does not commence carrying on a business of administering a designated benchmark in respect of a particular designated benchmark or, where it administers more than one designated benchmark, all of its designated benchmarks, within 12 months starting on the date on which it was granted the exemption;

(*b*) the corporation ceases to carry on a business of administering a designated benchmark or, where it administers more than one designated benchmark, all of its designated benchmarks;

(*c*) where the corporation carries on a business of administering a designated benchmark only in respect of one designated benchmark, the Authority has withdrawn the designation of that designated benchmark under section 123C;

(*d*) the corporation contravenes any condition or restriction relating to the exemption, any direction issued to it by the Authority under this Act, or any provision of this Act;

(*e*) the Authority is of the opinion that the corporation has carried out the activity of administering a designated benchmark in a manner that is contrary to the interests of a class, or classes, of users of a designated benchmark, or the interests of the public;

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

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

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

(*i*) the corporation has provided any information or document to the Authority

that is false or misleading;

(*j*) the corporation fails to pay the annual fee mentioned in section 123M; or

(*k*) a prohibition order under section 123ZZC has been made by the Authority, and remains in force, against the corporation.

[4/2017]

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

[4/2017]

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

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

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

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

(*d*) where the corporation carries on a business of administering a designated benchmark only in respect of one designated benchmark, the Authority has withdrawn the designation of that designated benchmark under section 123C;

(*e*) a prohibition order under section 123ZZC has been made by the Authority, and remains in force, against the corporation.

[4/2017]

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

[4/2017]

(5) Despite the lodging of an appeal under subsection (4), any action taken by the Authority under this section continues to have effect pending the Minister's decision.

[4/2017]

(6) The Minister may, when deciding an appeal under subsection (4), make such modification as he or she considers necessary to any action taken by the Authority under

this section, and such modified action has effect starting on the date of the Minister's decision.

[4/2017]

(7) Any revocation of an exemption granted to any corporation does not operate so as to —

(*a*) avoid or affect any agreement, transaction or arrangement entered into by the corporation, whether the agreement, transaction or arrangement was entered into before, on or after the revocation of the exemption; or

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

[4/2017]

(8) The Authority must give notice in the *Gazette* of any revocation of an exemption mentioned in subsection (1).

[4/2017]

Subdivision (3) — Code on designated benchmark

Code on designated benchmark

123O.—(1) For the effective administration and control of designated benchmarks, every authorised benchmark administrator and exempt benchmark administrator must —

(*a*) prepare and issue (in the manner specified by the Authority) a code in respect of each designated benchmark in respect of which it carries on a business of administering a designated benchmark (called in this Act a code on designated benchmark) that —

(i) sets out the standards to be maintained by every authorised benchmark submitter, exempt benchmark submitter and designated benchmark submitter, in relation to that designated benchmark; and

(ii) complies with subsection (2); and

(*b*) obtain the Authority's written approval for the code on designated benchmark before that code on designated benchmark is issued.

[4/2017]

(2) A code on designated benchmark must deal with such matters as may be prescribed by regulations made under section 123ZZA or as may be specified by written notice to the authorised benchmark administrator or exempt benchmark administrator.

[4/2017]

(3) Every authorised benchmark administrator and exempt benchmark administrator must not amend a code on designated benchmark unless the authorised benchmark administrator and exempt benchmark administrator (as the case may be) —

(*a*) complies with such requirements as may be prescribed by regulations made under section 123ZZA;

(*b*) complies with such conditions or restrictions which the Authority may by written notice impose; and

(*c*) obtains the Authority's written approval to do so.

[4/2017]

(4) In this section, the reference to an amendment to a code on designated benchmark is to be construed as a reference to a change to any of the following:

(*a*) the scope of the code on designated benchmark;

(*b*) any requirement, obligation or restriction under the code on designated benchmark,

whether the change is made by an alteration to the text of the code on designated benchmark, or by any other notice issued by or on behalf of the authorised benchmark administrator or exempt benchmark administrator (as the case may be) modifying the meaning or interpretation of the code on designated benchmark.

[4/2017]

(5) Every authorised benchmark administrator and exempt benchmark administrator must, in respect of each code on designated benchmark that it issues —

(*a*) ensure that the code on designated benchmark takes into account the practices and developments in the market; and

(*b*) enforce compliance with the code on designated benchmark.

[4/2017]

(6) Every authorised benchmark submitter, exempt benchmark submitter and designated benchmark submitter must, in respect of its business or activity of providing information in relation to a designated benchmark, comply with the code on designated benchmark issued by the authorised benchmark administrator or exempt benchmark administrator, as the case may be.

[4/2017]

(7) Without affecting section 123ZL, every authorised benchmark submitter, exempt benchmark submitter and designated benchmark submitter must have systems and controls in place to ensure compliance with each code on designated benchmark that it is required to comply with under subsection (6).

[4/2017]

(8) Any authorised benchmark administrator or exempt benchmark administrator which contravenes subsection (1), (2), (3) or (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(9) Any authorised benchmark submitter, exempt benchmark submitter or designated benchmark submitter which contravenes subsection (7) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(10) Despite subsection (6), a failure of any authorised benchmark submitter, exempt benchmark submitter or designated benchmark submitter to comply with a code on designated benchmark does not of itself render that authorised benchmark submitter, exempt benchmark submitter or designated benchmark submitter (as the case may be) liable to criminal proceedings but any such failure may be relied upon by any party in any proceedings (whether civil or criminal) as tending to establish or negate any liability which is in question in those proceedings.

[4/2017]

Subdivision (4) — Obligations of authorised benchmark administrators and exempt benchmark administrators

General obligations

123P.—(1) Every authorised benchmark administrator and exempt benchmark administrator must, for every designated benchmark in respect of which it carries on a business of administering a designated benchmark —

(*a*) manage any risks associated with its business and operations prudently;

(*b*) ensure that the systems and controls concerning its performing the activity of administering a designated benchmark are adequate and appropriate for the scale and nature of its operations;

(*c*) have sufficient financial, human and system resources —

(i) to carry on a business of administering a designated benchmark; and

(ii) to meet contingencies or disasters;

(*d*) maintain governance arrangements that are adequate for the designated benchmark to be determined in a fair and efficient manner; and

(*e*) ensure that it appoints or employs fit and proper persons as its chairperson, chief executive officer, directors and key management officers.

[4/2017]

(2) In subsection (1)(*c*), "contingencies or disasters" includes technical disruptions occurring within automated systems.

[4/2017]

Obligation to notify Authority of certain matters

123Q.—(1) Every authorised benchmark administrator and exempt benchmark administrator must, as soon as practicable after the occurrence of any of the following circumstances, notify the Authority of the circumstance:

(*a*) any material change to the information provided by the authorised benchmark administrator or the exempt benchmark administrator, in its application under section 123E(1) or 123K(1)(*b*) respectively;

(*b*) the carrying on of any business (called in this section a proscribed business) by the authorised benchmark administrator or exempt benchmark administrator (as the case may be) other than such business or such class of businesses as the Authority may prescribe by regulations made under section 123ZZA;

(*c*) the acquisition by the authorised benchmark administrator or exempt benchmark administrator (as the case may be) of a substantial shareholding in a corporation (called in this section a proscribed corporation) that carries on any business other than such business or such class of businesses as the Authority may prescribe by regulations made under section 123ZZA;

(*d*) any failure of an authorised benchmark submitter, an exempt benchmark submitter or a designated benchmark submitter (as the case may be) to comply with the code on designated benchmark of the authorised benchmark administrator or exempt benchmark administrator;

(*e*) any other matter that the Authority may —

(i) prescribe by regulations made under section 123ZZA for the purposes of this paragraph; or

(ii) specify by written notice, to the authorised benchmark administrator or exempt benchmark administrator, as the case may be.

[4/2017]

(2) Without limiting section 123ZZB(1), the Authority may, at any time after receiving a notification mentioned in subsection (1), issue directions to the authorised benchmark administrator or exempt benchmark administrator (as the case may be) —

(*a*) where the notice relates to a matter mentioned in subsection (1)(*b*) —

(i) to cease carrying on the proscribed business; or

(ii) to carry on the proscribed business subject to such conditions or restrictions as the Authority may impose; or

(*b*) where the notice relates to a matter mentioned in subsection (1)(*c*) —

(i) to dispose all or any part of its shareholding in the proscribed corporation within such time and subject to such conditions as specified in the directions; or

(ii) to exercise or not to exercise its rights relating to such shareholding subject to such conditions or restrictions as the Authority may impose, if the Authority is of the opinion that such exercise or non-exercise of rights is in the interests of a class, or classes, of users of a designated benchmark, or in the interests of the public or a section of the public.

[4/2017]

(3) An authorised benchmark administrator or an exempt benchmark administrator must comply with every direction issued to it under subsection (2) despite anything to the contrary in the Companies Act 1967 or any other law.

[4/2017]

(4) An authorised benchmark administrator or an exempt benchmark administrator must notify the Authority of any matter that the Authority may prescribe by regulations made under section 123ZZA for the purposes of this subsection, no later than such time as the Authority may prescribe by those regulations.

[4/2017]

(5) An authorised benchmark administrator or an exempt benchmark administrator must notify the Authority of any matter that the Authority may specify by written notice to the authorised benchmark administrator or an exempt benchmark administrator (as the case may be) no later than such time as the Authority may specify in that notice.

[4/2017]

Obligation to maintain proper records

123R.—(1) Every authorised benchmark administrator and exempt benchmark administrator must maintain a record of the following in respect of a designated benchmark administered by it:

(*a*) all information or expressions of opinion used for the purposes of determining the designated benchmark;

(*b*) the manner in which the formula or other methods of calculation is applied to the information or expressions of opinion mentioned in paragraph (*a*) in determining the designated benchmark;

(*c*) such other matters as the Authority may prescribe by regulations made under section 123ZZA.

[4/2017]

(2) The record mentioned in subsection (1) must be kept for such period, and in such form and manner, as may be prescribed by regulations made under section 123ZZA.

[4/2017]

Obligation to submit periodic reports

123S. Every authorised benchmark administrator and exempt benchmark administrator must submit to the Authority such reports in such form, manner and frequency as the Authority may prescribe by regulations made under section 123ZZA.

[4/2017]

Notification of change of particulars

123T. Where —

(*a*) an authorised benchmark administrator or exempt benchmark administrator ceases to carry on a business of administering a designated benchmark; or

(*b*) a change occurs in any matter records of which are required by section 123U(1) to be kept in relation to the authorised benchmark administrator or exempt benchmark administrator,

the authorised benchmark administrator or exempt benchmark administrator (as the case may be) must, not later than 14 days after the occurrence of the event, provide particulars of the event to the Authority in the form and manner prescribed by regulations made under section 123ZZA.

[4/2017]

Records of authorised benchmark administrators and exempt benchmark administrators

123U.—(1) The Authority must keep records of every authorised benchmark

administrator and exempt benchmark administrator, setting out the following information of each authorised benchmark administrator and exempt benchmark administrator:

(*a*) the name of the authorised benchmark administrator or exempt benchmark administrator;

(*b*) the address of the principal place at which the authorised benchmark administrator or exempt benchmark administrator carries on a business of administering a designated benchmark;

(*c*) where the business is carried on under a name or style other than the name of the authorised benchmark administrator or exempt benchmark administrator (as the case may be) the name or style under which the business is carried on;

(*d*) such other information as may be prescribed by regulations made under section 123ZZA.

[4/2017]

(2) The Authority may publish the information mentioned in subsection (1) or any part of that information in any form and manner.

[4/2017]

Obligation to assist Authority

123V. Every authorised benchmark administrator and exempt benchmark administrator must provide such assistance to the Authority as the Authority may require for the performance of the functions and duties of the Authority, including —

(*a*) the submission of returns; and

(*b*) the provision of books and information —

(i) relating to the business of the authorised benchmark administrator or exempt benchmark administrator, as the case may be; or

(ii) in respect of a designated benchmark administered by it.

[4/2017]

Penalties under this Subdivision

123W. Any authorised benchmark administrator or exempt benchmark administrator which contravenes section 123P, 123Q, 123R, 123S, 123T or 123V shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $200,000 and, in the case of a continuing offence, to a further fine not exceeding $20,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

Subdivision (5) — Matters requiring approval of Authority

Approval of chief executive officer and director of authorised benchmark administrator

123X.—(1) Subject to subsection (3), an authorised benchmark administrator must not —

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

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

unless the authorised benchmark administrator has obtained the approval of the Authority.

[4/2017]

(2) Where an authorised benchmark administrator has obtained the approval of the Authority to appoint a person as its chief executive officer or director under subsection (1)(*a*), the person may be re-appointed as chief executive officer or director (as the case may be) of the authorised benchmark administrator immediately upon the expiry of the earlier term without the approval of the Authority.

[4/2017]

(3) Subsection (1) does not apply to the appointment of a person as a director of a foreign company, or the change in the nature of the appointment of a person as a director of a foreign company if, at the time of the appointment or change, the person —

(*a*) does not reside in Singapore; and

(*b*) is not directly responsible for its carrying out the activity of administering a designated benchmark or any part of the activity of administering a designated benchmark.

[4/2017]

(4) Without affecting any other matter that the Authority may consider relevant, the Authority may, in determining whether to grant its approval under subsection (1), have regard to such criteria as may be prescribed by regulations made under section 123ZZA or notified to the authorised benchmark administrator.

[4/2017]

(5) Subject to subsection (6), the Authority must not refuse an application for approval under subsection (1) without giving the authorised benchmark administrator an opportunity to be heard.

[4/2017]

(6) The Authority may refuse an application for approval under subsection (1) on any of the following grounds without giving the authorised benchmark administrator an opportunity to be heard:

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

(*b*) a prohibition order under section 123ZZC has been made by the Authority, and remains in force, against the person;

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

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

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

[4/2017]

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

[4/2017]

(8) Without affecting the Authority's power to impose conditions or restrictions under section 123F(2), the Authority may, at any time by written notice to the authorised benchmark administrator, impose on it a condition requiring it to notify the Authority of a change to any specified attribute (such as residence and nature of appointment) of its chief executive officer or director, and vary any such condition.

[4/2017]

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

[4/2017]

(10) Any authorised benchmark administrator which contravenes any condition imposed under subsection (8) shall be guilty of an offence.

[4/2017]

Removal of officer of authorised benchmark administrator

123Y.—(1) Despite the provisions of any other written law —

(*a*) an authorised benchmark administrator must not, without the prior written

consent of the Authority, permit a person to act as its executive officer; and

(*b*) an authorised benchmark administrator that is incorporated in Singapore must not, without the prior written consent of the Authority, permit a person to act as its director,

if the person —

(*c*) has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after 8 October 2018, being an offence —

(i) involving fraud or dishonesty;

(ii) the conviction for which involved a finding that he or she had acted fraudulently or dishonestly; or

(iii) that is specified in the Third Schedule to the Registration of Criminals Act 1949;

(*d*) is an undischarged bankrupt, whether in Singapore or elsewhere;

(*e*) has had an enforcement order against him or her in respect of a judgment debt returned unsatisfied in whole or in part;

[Act 25 of 2021 wef 01/04/2022]

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

(*g*) has had a prohibition order under section 68 of the Financial Advisers Act 2001, section 74 of the Insurance Act 1966, or section 101A or 123ZZC made against him or her that remains in force; or

(*h*) has been a director of, or directly concerned in the management of, a regulated financial institution, whether in Singapore or elsewhere —

(i) which is being or has been wound up by a court; or

(ii) the approval, authorisation, designation, recognition, registration or licence of which has been withdrawn, cancelled or revoked by the Authority or, in the case of a regulated financial institution in a foreign country or territory, by the regulatory authority in that foreign country or territory.

[4/2017]

(2) Despite the provisions of any other written law, where the Authority is satisfied that a director of an authorised benchmark administrator that is incorporated in

Singapore, or an executive officer of an authorised benchmark administrator —

(*a*) has wilfully contravened or wilfully caused the authorised benchmark administrator to contravene any provision of this Act;

(*b*) has, without reasonable excuse, failed to secure the compliance of the authorised benchmark administrator with this Act, the Monetary Authority of Singapore Act 1970 or any of the written laws set out in the Schedule to that Act; or

(*c*) has failed to discharge any of the duties of his or her office,

the Authority may, if it thinks it necessary in the interests of the public or a section of the public, or a class or classes of users of a designated benchmark, by written notice to the authorised benchmark administrator, direct the authorised benchmark administrator to remove the director or executive officer (as the case may be) from his or her office or employment within such period as the Authority may specify in the notice, and the authorised benchmark administrator must comply with the notice.

[4/2017]

(3) Without affecting any other matter that the Authority may consider relevant, the Authority may, when determining whether a director or an executive officer of an authorised benchmark administrator has failed to discharge the duties of his or her office for the purposes of subsection (2)(*c*), have regard to such criteria as may be prescribed by regulations made under section 123ZZA or notified to the authorised benchmark administrator.

[4/2017]

(4) The Authority must not direct an authorised benchmark administrator to remove a person from the person's office under subsection (2) without giving the authorised benchmark administrator an opportunity to be heard.

[4/2017]

(5) Where the Authority directs an authorised benchmark administrator to remove a person from the person's office or employment under subsection (2), the Authority need not give that person an opportunity to be heard.

[4/2017]

(6) No criminal or civil liability is incurred by —

(*a*) an authorised benchmark administrator; or

(*b*) any person acting on behalf of an authorised benchmark administrator,

in respect of anything done (including any statement made) or omitted to be done with reasonable care and in good faith in the discharge or purported discharge of its obligations under this section.

[4/2017]

(7) Any authorised benchmark administrator which contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(8) In this section, unless the context otherwise requires —

"regulated financial institution" means a person who carries on a business, the conduct of which is regulated or authorised by the Authority or, if it is carried on in Singapore, would be regulated or authorised by the Authority;

"regulatory authority", in relation to a foreign country or territory, means an authority of the foreign country or territory exercising any function that corresponds to a regulatory function of the Authority under this Act, the Monetary Authority of Singapore Act 1970 or any of the written laws set out in the Schedule to that Act.

[4/2017]

Control of take-over of authorised benchmark administrator

123Z.—(1) This section applies to all individuals whether resident in Singapore or not and whether citizens of Singapore or not, and to all bodies corporate or unincorporate, whether incorporated or carrying on business in Singapore or not.

[4/2017]

(2) A person must not enter into any arrangement in relation to shares in an authorised benchmark administrator that is a company by virtue of which the person would, if the arrangement is carried out, obtain effective control of the authorised benchmark administrator, unless the person has obtained the prior approval of the Authority to the person's entering into the arrangement.

[4/2017]

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

(*a*) the applicant is a fit and proper person to have effective control of the authorised benchmark administrator;

(*b*) having regard to the applicant's likely influence, the authorised benchmark administrator is likely to continue to carry on a business of administering a designated benchmark prudently and comply with the provisions of this Act and directions made thereunder; and

(*c*) the applicant satisfies such other criteria as may be prescribed by regulations made under section 123ZZA or as the Authority may specify in written directions.

[4/2017]

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

(*a*) restricting the applicant's disposal or further acquisition of shares or voting power in the authorised benchmark administrator; or

(*b*) restricting the applicant's exercise of voting power in the authorised benchmark administrator,

and the applicant must comply with such conditions.

[4/2017]

(5) Any condition imposed under subsection (4) has effect despite any provision of the Companies Act 1967 or anything contained in the constitution of the authorised benchmark administrator.

[4/2017]

(6) For the purposes of this section and section 123ZA —

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

(i) entering into an agreement or any formal or informal scheme, arrangement or understanding, to acquire those shares;

(ii) making or publishing a statement, however expressed, that expressly or impliedly invites the holder of those shares to offer to dispose of the holder's shares to the first person;

(iii) the first person obtaining a right to acquire shares under an option, or to have shares transferred to the first person or to the first person's order, whether the right is exercisable presently or in the future and whether on fulfilment of a condition or not; and

(iv) becoming a trustee of a trust in respect of those shares;

(*b*) a person is regarded as obtaining effective control of the authorised benchmark administrator by virtue of an arrangement if the person alone or acting together with any connected person would, if the arrangement is carried out —

(i) acquire or hold, directly or indirectly, 20% or more of the issued share capital of the authorised benchmark administrator; or

(ii) control, directly or indirectly, 20% or more of the voting power in the authorised benchmark administrator; and

(*c*) a reference to the voting power in the authorised benchmark administrator is a reference to the total number of votes that may be cast in a general meeting of the authorised benchmark administrator.

[4/2017]

(7) Any person who contravenes subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 or to imprisonment for a term not exceeding 3 years or to both.

[4/2017]

Objection to control of authorised benchmark administrator

123ZA.—(1) The Authority may serve a written notice of objection on —

(*a*) any person required to obtain the Authority's approval or who has obtained the approval under section 123Z; or

(*b*) any person who, whether before, on or after 8 October 2018, either alone or together with any connected person, holds, directly or indirectly, 20% or more of the issued share capital of the authorised benchmark administrator or controls, directly or indirectly, 20% or more of the voting power in the authorised benchmark administrator,

if the Authority is satisfied that —

(*c*) any condition of approval imposed on the person under section 123Z(4) has not been complied with;

(*d*) the person is not or ceases to be a fit and proper person to have effective control of the authorised benchmark administrator;

(*e*) having regard to the likely influence of the person, the authorised benchmark administrator is not able to or is no longer likely to conduct the activity of administering a designated benchmark prudently or to comply with the provisions of this Act or any direction made thereunder;

(*f*) the person does not or ceases to satisfy such criteria as may be prescribed by regulations made under section 123ZZA;

(*g*) the person has provided false or misleading information or documents in

connection with an application under section 123Z; or

(*h*) the Authority would not have granted its approval under section 123Z had it been aware, at that time, of circumstances relevant to the person's application for such approval.

[4/2017]

(2) The Authority must not serve a notice of objection on any person without giving the person an opportunity to be heard, except in the following circumstances:

(*a*) the person is in the course of being wound up or otherwise dissolved or, in the case of an individual, is an undischarged bankrupt whether in Singapore or elsewhere;

(*b*) a receiver, a receiver and manager, a judicial manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the person;

(*c*) a prohibition order under section 123ZZC has been made by the Authority, and remains in force, against the person;

(*d*) the person has been convicted, whether in Singapore or elsewhere, of any offence involving fraud or dishonesty or the conviction for which involved a finding that the person had acted fraudulently or dishonestly.

[4/2017]

(3) The Authority must, in any written notice of objection, specify a reasonable period within which the person to be served the written notice of objection must —

(*a*) take such steps as are necessary to ensure that the person ceases to be a party to the arrangement described in section 123Z(2), ceases to hold 20% or more of the issued share capital of the authorised benchmark administrator in the manner described in subsection (1)(*b*), or ceases to control 20% or more of the voting power in the authorised benchmark administrator in the manner described in subsection (1)(*b*); or

(*b*) comply with such other requirements as the Authority may specify in written directions.

[4/2017]

(4) Any person served with a notice of objection under this section must comply with the notice.

[4/2017]

(5) Any person who contravenes subsection (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 or to imprisonment for a term not exceeding 3 years or to both.

[4/2017]

Appeals

123ZB. Any authorised benchmark administrator who is aggrieved by —

(*a*) the refusal of the Authority to grant an approval to the authorised benchmark administrator to appoint a person as its chief executive officer or director; or

(*b*) the direction of the Authority to the authorised benchmark administrator to remove an officer from office or employment,

may within 30 days after it is notified of the decision of the Authority, appeal to the Minister whose decision is final.

[4/2017]

Division 3 — Benchmark Submitters of Designated Benchmarks

Subdivision (1) — Authorised benchmark submitter

Requirement for authorisation

123ZC.—(1) Subject to section 123ZH(1), no person may, as principal or agent, carry on a business or activity of providing information in relation to a designated benchmark unless the person is —

(*a*) an authorised benchmark submitter; or

(*b*) a designated benchmark submitter.

[4/2017]

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

Application for authorisation

123ZD.—(1) A corporation may apply to the Authority to be authorised as an authorised benchmark submitter.

[4/2017]

(2) An application made under subsection (1) must be —

(*a*) made in such form and manner as the Authority may specify; and

(*b*) accompanied by a non-refundable application fee of an amount prescribed by regulations made under section 123ZZA, which must be paid in the manner specified by the Authority.

[4/2017]

(3) The Authority may require an applicant to provide it with such information or documents as the Authority considers necessary in relation to the application.

[4/2017]

Power of Authority to authorise benchmark submitters

123ZE.—(1) Where a corporation mentioned in section 123ZD(1) has made an application under that provision, the Authority may authorise the corporation as an authorised benchmark submitter.

[4/2017]

(2) The Authority may authorise a corporation as an authorised benchmark submitter under subsection (1) subject to such conditions or restrictions as the Authority may impose by written notice, including conditions or restrictions, either of a general or specific nature, relating to the activities that the corporation may undertake.

[4/2017]

(3) The Authority may, at any time, by written notice to the authorised benchmark submitter, vary any condition or restriction or impose any further condition or restriction.

[4/2017]

(4) An authorised benchmark submitter must, for the duration of the authorisation, satisfy every condition or restriction that may be imposed on it under subsections (2) and (3).

[4/2017]

(5) Subject to regulations made under this Act, the Authority may refuse to authorise a corporation as an authorised benchmark submitter if —

(*a*) the corporation has not provided the Authority with such information, as the Authority may require, relating to —

(i) the corporation or any person employed by or associated with the corporation for the purposes of the corporation's business or operations; or

(ii) any circumstances likely to affect the corporation's manner of conducting business or operations;

(*b*) any information or document provided by the corporation to the Authority is false or misleading;

(*c*) the corporation or a substantial shareholder of the corporation is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;

(*d*) an enforcement order against the corporation or a substantial shareholder of the corporation in respect of a judgment debt has been returned unsatisfied in whole or in part;

[Act 25 of 2021 wef 01/04/2022]

(*e*) a receiver, a receiver and manager, judicial manager or a person in an equivalent capacity has been appointed, whether in Singapore or elsewhere, in relation to, or in respect of, any property of the corporation or a substantial shareholder of the corporation;

(*f*) the corporation or a substantial shareholder of the corporation has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with the creditors of the corporation or substantial shareholder (as the case may be) being a compromise or scheme of arrangement that is still in operation;

(*g*) the corporation, a substantial shareholder of the corporation or any officer of the corporation —

(i) has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after 8 October 2018, involving fraud or dishonesty or the conviction for which involved a finding that the corporation, shareholder or officer (as the case may be) had acted fraudulently or dishonestly; or

(ii) has been convicted of an offence under this Act committed before, on or after 8 October 2018;

(*h*) the corporation fails to satisfy the Authority that the corporation is a fit and proper person or that all of its officers, employees and substantial shareholders are fit and proper persons;

(*i*) the Authority has reason to believe that the corporation may not be able to act in the best interests of a class or classes of users of the designated benchmark having regard to the reputation, character, financial integrity and reliability of the corporation or its officers, employees or substantial shareholders;

(*j*) the Authority is not satisfied as to —

(i) the financial standing of the corporation or any of its substantial shareholders; or

(ii) the manner in which the business of the corporation is to be conducted, or the operations of the corporation are to be conducted, in relation to the activity of providing information in relation to a designated benchmark;

(*k*) the Authority is not satisfied as to the record of past performance or expertise of the corporation in providing information in relation to a designated benchmark, having regard to the nature of the business or operations which the corporation may carry on or conduct in connection with providing information in relation to a designated benchmark;

(*l*) there are other circumstances which are likely to —

(i) lead to improper conduct of business or operations by the corporation or any of its officers, employees or substantial shareholders; or

(ii) reflect discredit on the manner of conducting the business or operations of the corporation or any of its substantial shareholders;

(*m*) the Authority has reason to believe that the corporation will not carry on a business or activity of providing information in relation to a designated benchmark efficiently, honestly or fairly, or that any of the officers or employees of the corporation will not act efficiently, honestly or fairly in relation to such business;

(*n*) the Authority is of the opinion that it would be contrary to the interests of the public to authorise the corporation as an authorised benchmark submitter; or

(*o*) a prohibition order under section 123ZZC has been made by the Authority, and remains in force, against the corporation.

[4/2017]

(6) Subject to subsection (7), the Authority must not refuse to authorise a corporation as an authorised benchmark submitter without giving the corporation an opportunity to be heard.

[4/2017]

(7) The Authority may refuse to authorise a corporation as an authorised benchmark submitter on any of the following grounds without giving the corporation an opportunity to be heard:

(*a*) the corporation is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;

(*b*) a receiver, a receiver and manager or a person in an equivalent capacity has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the corporation;

(*c*) the corporation has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after 8 October 2018, involving fraud or dishonesty or the conviction for which involved a finding that it had acted fraudulently or dishonestly;

(*d*) a prohibition order under section 123ZZC has been made by the Authority, and remains in force, against the corporation.

[4/2017]

(8) Any corporation that is aggrieved by a refusal of the Authority to grant an authorisation under subsection (1) may, within 30 days after the corporation is notified of the refusal, appeal to the Minister whose decision is final.

[4/2017]

(9) Any authorised benchmark submitter that contravenes subsection (4) shall be guilty of an offence.

[4/2017]

False statements in relation to application for authorisation

123ZF. Any person who, in connection with an application for authorisation as an authorised benchmark submitter —

(*a*) without reasonable excuse, makes a statement which is false or misleading in a material particular; or

(*b*) without reasonable excuse, omits to state any matter or thing without which the application is misleading in a material respect,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000.

[4/2017]

Revocation, suspension or withdrawal of authorisation

123ZG.—(1) The Authority may revoke the authorisation of a corporation as an

authorised benchmark submitter under section 123ZE(1) if —

(*a*) there exists a ground on which the Authority may refuse an application under section 123ZE(5);

(*b*) the corporation does not commence providing information in relation to a designated benchmark within 12 months starting on the date on which it was granted the authorisation under section 123ZE(1);

(*c*) the corporation ceases to carry on a business or activity of providing information in relation to a designated benchmark;

(*d*) where the corporation carries on a business or activity of providing information in relation to a designated benchmark, the Authority has withdrawn the designation of that designated benchmark under section 123C;

(*e*) where the corporation carries on a business or activity of providing information in relation to a designated benchmark in respect of more than one designated benchmark, the Authority has withdrawn the designation of all of those designated benchmarks under section 123C;

(*f*) the Authority has reason to believe that the corporation, or any of its officers or employees, has not performed its or their duties efficiently, honestly or fairly;

(*g*) the corporation has contravened any condition or restriction applicable in respect of its authorisation, any written direction issued to it by the Authority under this Act, or any provision of this Act, or has failed to comply with any principle or rule under the code on designated benchmark of the authorised benchmark administrator or exempt benchmark administrator to which it provides information;

(*h*) it appears to the Authority that the corporation has failed to satisfy any of its obligations in compliance with, under or arising from —

(i) this Act; or

(ii) any written direction issued by the Authority under this Act;

(*i*) the Authority has reason to believe that the corporation is carrying on a business or activity of providing information in relation to a designated benchmark in a manner that is contrary to the interests of the public or a section of the public;

(*j*) the corporation has provided any information or document to the Authority that is false or misleading; or

(*k*) a prohibition order under section 123ZZC has been made by the Authority, and remains in force, against the corporation.

[4/2017]

(2) The Authority may —

(*a*) suspend the authorisation granted to an authorised benchmark submitter for a specific period instead of revoking it under subsection (1); and

(*b*) at any time extend or revoke the suspension.

[4/2017]

(3) Subject to subsection (4), the Authority, may upon a written application made to it by an authorised benchmark submitter, in such form and manner as the Authority may specify, withdraw the authorisation of the authorised benchmark submitter.

[4/2017]

(4) The Authority may refuse to withdraw the authorisation of an authorised benchmark submitter under subsection (3) where the Authority is of the opinion that —

(*a*) there is any matter concerning the corporation which should be investigated before the authorisation is withdrawn; or

(*b*) the withdrawal of the authorisation would not be in the public interest.

[4/2017]

(5) Subject to subsection (6), the Authority must not —

(*a*) revoke the authorisation granted to an authorised benchmark submitter under subsection (1);

(*b*) suspend the authorisation granted to an authorised benchmark submitter under subsection (2); or

(*c*) refuse the withdrawal of the authorisation granted to an authorised benchmark submitter under subsection (4),

without giving the authorised benchmark submitter an opportunity to be heard.

[4/2017]

(6) The Authority may revoke or suspend the authorisation of a corporation as an authorised benchmark submitter without giving the corporation an opportunity to be heard on any of the following grounds:

(*a*) the corporation is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;

(*b*) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, for or in respect of any

property of the corporation;

(*c*) the corporation has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that it had acted fraudulently or dishonestly;

(*d*) the Authority has withdrawn the designation of the designated benchmark under section 123C;

(*e*) a prohibition order under section 123ZZC has been made by the Authority, and remains in force, against the corporation.

[4/2017]

(7) Any corporation that is aggrieved by a decision of the Authority made in relation to the corporation under subsection (1), (2) or (4) may, within 30 days after the corporation is notified of the decision, appeal to the Minister whose decision is final.

[4/2017]

(8) Despite the lodging of an appeal under subsection (7), any action taken by the Authority under this section continues to have effect pending the Minister's decision.

[4/2017]

(9) The Minister may, when deciding an appeal under subsection (7), make such modification as he or she considers necessary to any action taken by the Authority under this section, and such modified action has effect starting on the date of the Minister's decision.

[4/2017]

Subdivision (2) — Exempt benchmark submitter

Exemptions from requirement to be authorised as authorised benchmark submitter

123ZH.—(1) The following persons are exempt from section 123ZC(1):

(*a*) any bank licensed under the Banking Act 1970;

(*b*) any merchant bank licensed under the Banking Act 1970;

(*c*) any finance company licensed under the Finance Companies Act 1967;

(*d*) any company or co-operative society licensed under the Insurance Act 1966;

(*e*) any approved exchange, recognised market operator or approved holding company;

(*f*) any approved clearing house or recognised clearing house;

(*g*) any holder of a capital markets services licence;

(*h*) any authorised benchmark administrator;

(*i*) any financial adviser licensed under the Financial Advisers Act 2001;

(*j*) such other person or class of persons as the Authority may exempt by regulations made under section 337.

[4/2017; 1/2020]

(2) The Authority may by regulations made under section 123ZZA or by written notice impose conditions or restrictions on an exempt person in relation to the business or activity of providing information in relation to a designated benchmark or any related matter and the exempt person must comply with such conditions or restrictions.

[4/2017]

(3) Any exempt person who contravenes any condition or restriction imposed under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(4) The Authority may revoke an exemption granted to any person under this section —

(*a*) if the person contravenes any provision of this Act which is applicable to it or any condition or restriction imposed on it under subsection (2);

(*b*) if the person contravenes any direction issued to it under section 123ZZB;

(*c*) if the person has failed to comply with any principle or rule under the code on designated benchmark;

(*d*) where the person carries on a business or activity of providing information in relation to a particular designated benchmark, if the Authority has withdrawn the designation of that designated benchmark under section 123C;

(*e*) where the person carries on a business or activity of providing information in relation to a designated benchmark in respect of more than one designated benchmark, the Authority has withdrawn the designation of all of those designated benchmarks under section 123C; or

(*f*) if the Authority considers that the person is carrying on a business or activity of providing information in relation to a designated benchmark in a manner that is, in the opinion of the Authority, contrary to the interests of a

class, or classes, of users of a designated benchmark, or the interests of the public.

[4/2017]

(5) Where the Authority revokes an exemption granted to any person under this section, the Authority need not give the person an opportunity to be heard.

[4/2017]

(6) A person who is aggrieved by a decision of the Authority made under subsection (4) may, within 30 days after it is notified of the decision of the Authority, appeal to the Minister whose decision is final.

[4/2017]

Subdivision (3) — Designated benchmark submitter

Power of Authority to designate benchmark submitters

123ZI.—(1) The Authority may, by order in the *Gazette*, designate any of the following persons as a designated benchmark submitter in relation to a designated benchmark:

(*a*) a bank licensed under the Banking Act 1970;

(*b*) a recognised market operator;

(*c*) a holder of a capital markets services licence;

(*d*) an exempt person;

(*e*) a person who belongs to such class of persons which is prescribed by regulations made under section 123ZZA, being a class of persons that the Authority believes on reasonable grounds is capable of providing information in relation to a designated benchmark.

[4/2017]

(2) For the purposes of subsection (1), in deciding whether to designate a person as a designated benchmark submitter in respect of a designated benchmark, the Authority must have regard to —

(*a*) the robustness of the designated benchmark;

(*b*) the extent to which the information or expressions of opinion which the person is able to provide in relation to the designated benchmark is or is likely to be necessary for the functionality of the market or markets in which the designated benchmark is used for reference;

(*c*) the size and extent of the person's actual and potential participation in the market that the designated benchmark seeks to measure, and the extent to which such actual or potential participation is or is likely to be material to the determination of the designated benchmark;

(*d*) the quality of the information or expressions of opinion which the person is able to provide to enable an authorised benchmark administrator or exempt benchmark administrator to determine the designated benchmark;

(*e*) the selection criteria of the authorised benchmark administrator or exempt benchmark administrator, in relation to the benchmark submitters of a designated benchmark; and

(*f*) such other factors as the Authority considers relevant.

[4/2017]

(3) The Authority must not exercise its powers under subsection (1) without giving the person concerned an opportunity to be heard.

[4/2017]

(4) A person who is aggrieved by the exercise of the Authority's powers under subsection (1) may, within 30 days after the date the order under subsection (1) is published, appeal to the Minister whose decision is final.

[4/2017]

(5) Despite the lodging of an appeal under subsection (4), a person designated by the Authority under subsection (1) is treated as a designated benchmark submitter pending the Minister's decision.

[4/2017]

(6) A designated benchmark submitter is not obliged to disclose any information to an authorised benchmark administrator or exempt benchmark administrator if the designated benchmark submitter is prohibited by any written law from disclosing such information.

[4/2017]

(7) The Authority may, by order in the *Gazette*, withdraw the designation of any designated benchmark submitter at any time if the Authority is of the opinion that the considerations in subsection (2) are no longer valid or satisfied.

[4/2017]

Obligation to provide information for purposes of determining designated benchmark

123ZJ.—(1) Every designated benchmark submitter must provide to the authorised benchmark administrator or exempt benchmark administrator in respect of a designated

benchmark such information or expression of opinion for the purposes of determining the designated benchmark, as the Authority may specify by written notice to the designated benchmark submitter, at such time and in such form or manner as the Authority may specify by written notice.

[4/2017]

(2) Any designated benchmark submitter which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

Power of Authority to impose requirements or restrictions

123ZK.—(1) The Authority may, by written notice, impose requirements or restrictions on a designated benchmark submitter.

[4/2017]

(2) The Authority may, at any time, by written notice to a designated benchmark submitter, vary any requirement or restriction imposed on the designated benchmark submitter.

[4/2017]

(3) Any designated benchmark submitter which fails to comply with any requirement or restriction imposed under subsection (1) or (2) shall be guilty of an offence.

[4/2017]

Subdivision (4) — Obligations of authorised benchmark submitters, exempt benchmark submitters and designated benchmark submitters

General obligations

123ZL.—(1) Every authorised benchmark submitter, exempt benchmark submitter and designated benchmark submitter must, in relation to the designated benchmark in respect of which it provides information —

(*a*) manage any risks associated with its business and operations prudently;

(*b*) ensure that the systems and controls concerning its performing the activity of providing information in relation to a designated benchmark are adequate and appropriate for the scale and nature of its operations;

(*c*) have sufficient financial, human and system resources —

(i) to carry on a business or activity of providing information in

relation to a designated benchmark; and

(ii) to meet contingencies or disasters; and

(*d*) in the case of an authorised benchmark submitter or a designated benchmark submitter, ensure that it appoints or employs fit and proper persons as its chairperson, chief executive officer, directors and key management officers.

[4/2017]

(2) In subsection (1)(*c*), "contingencies or disasters" includes technical disruptions occurring within automated systems.

[4/2017]

Obligation to notify Authority of certain matters

123ZM.—(1) Every authorised benchmark submitter, exempt benchmark submitter and designated benchmark submitter must, as soon as practicable after the occurrence of any of the following circumstances, notify the Authority of the circumstance:

(*a*) in the case of an authorised benchmark submitter, any material change to the information provided by the authorised benchmark submitter in its application under section 123ZD(1);

(*b*) any change to the type or number of designated benchmarks in relation to which the authorised benchmark submitter, exempt benchmark submitter or designated benchmark submitter (as the case may be) is carrying on a business or activity of providing information in relation to a designated benchmark;

(*c*) the carrying on of any business (called in this section a proscribed business) by the authorised benchmark submitter, exempt benchmark submitter or designated benchmark submitter (as the case may be) other than such business or such class of businesses prescribed by regulations made under section 123ZZA;

(*d*) the acquisition by the authorised benchmark submitter, exempt benchmark submitter or designated benchmark submitter (as the case may be) of a substantial shareholding in a corporation (called in this section a proscribed corporation), which carries on any business other than such business or such class of businesses prescribed by regulations made under section 123ZZA;

(*e*) any other matter that the Authority may —

(i) prescribe by regulations made under section 123ZZA for the purposes of this paragraph; or

(ii) specify by written notice to the authorised benchmark submitter, exempt benchmark submitter or designated benchmark submitter, as the case may be.

[4/2017]

(2) Without limiting section 123ZZB(1), the Authority may, at any time after receiving a notice mentioned in subsection (1), issue directions to the authorised benchmark submitter, exempt benchmark submitter or designated benchmark submitter —

(*a*) where the notice relates to a matter mentioned in subsection (1)(*c*) —

(i) to cease carrying on the proscribed business; or

(ii) to carry on the proscribed business subject to such conditions or restrictions as the Authority may impose; or

(*b*) where the notice relates to a matter mentioned in subsection (1)(*d*) —

(i) to dispose of all or any part of its shareholding in the proscribed corporation within such time and subject to such conditions as specified in the directions; or

(ii) to exercise its rights relating to such shareholding, or to not exercise such rights, subject to such conditions or restrictions as the Authority may impose.

[4/2017]

(3) An authorised benchmark submitter, an exempt benchmark submitter and a designated benchmark submitter must comply with every direction issued to it under subsection (2) despite anything to the contrary in the Companies Act 1967 or any other law.

[4/2017]

(4) An authorised benchmark submitter, an exempt benchmark submitter and a designated benchmark submitter must notify the Authority of any matter that the Authority may prescribe by regulations made under section 123ZZA for the purposes of this subsection, no later than such time as the Authority may prescribe by those regulations.

[4/2017]

(5) An authorised benchmark submitter, an exempt benchmark submitter and a

designated benchmark submitter must notify the Authority of any matter that the Authority may specify by written notice to the authorised benchmark submitter, exempt benchmark submitter, or designated benchmark submitter (as the case may be) no later than such time as the Authority may specify in that notice.

[4/2017]

Obligation to maintain proper records

123ZN.—(1) Every authorised benchmark submitter, exempt benchmark submitter and designated benchmark submitter must maintain a record of the following in respect of a designated benchmark:

(*a*) all information or expressions of opinion which the authorised benchmark submitter, exempt benchmark submitter or designated benchmark submitter (as the case may be) provides to any authorised benchmark administrator or exempt benchmark administrator;

(*b*) the basis of the information or the rationale of the expressions of opinion referred to in paragraph (*a*);

(*c*) such other matters as the Authority may prescribe by regulations made under section 123ZZA.

[4/2017]

(2) The records mentioned in subsection (1) must be kept for such period, and in such form and manner, as may be prescribed by regulations made under section 123ZZA.

[4/2017]

Obligation to submit periodic reports

123ZO. Every authorised benchmark submitter, exempt benchmark submitter or designated benchmark submitter, must submit to the Authority such reports in such form, manner and frequency as the Authority may prescribe by regulations made under section 123ZZA.

[4/2017]

Notification of change of particulars

123ZP. Where —

(*a*) an authorised benchmark submitter or exempt benchmark submitter ceases to carry on a business or activity of providing information in relation to a designated benchmark; or

(*b*) a change occurs in any matter records of which are required by section 123ZQ(1) to be kept in relation to the authorised benchmark

submitter, exempt benchmark submitter or designated benchmark submitter,

the authorised benchmark submitter, exempt benchmark submitter or designated benchmark submitter (as the case may be) must, not later than 14 days after the occurrence of the event, provide particulars of the event to the Authority in the form and manner prescribed by regulations made under section 123ZZA.

[4/2017]

Records of authorised benchmark submitters, exempt benchmark submitters and designated benchmark submitters

123ZQ.—(1) The Authority must keep records of every authorised benchmark submitter, exempt benchmark submitter and designated benchmark submitter, setting out the following information of each authorised benchmark submitter, exempt benchmark submitter and designated benchmark submitter:

(*a*) the name of the authorised benchmark submitter, exempt benchmark submitter or designated benchmark submitter, as the case may be;

(*b*) the address of the principal place at which the authorised benchmark submitter, exempt benchmark submitter or designated benchmark submitter (as the case may be) carries on the business or activity of providing information in relation to a designated benchmark;

(*c*) where the business or activity of providing information in relation to a designated benchmark is carried on under a name or style other than the name of the authorised benchmark submitter, exempt benchmark submitter or designated benchmark submitter, the name or style under which the business is carried on;

(*d*) such other information as may be prescribed by regulations made under section 123ZZA.

[4/2017]

(2) The Authority may publish the information mentioned in subsection (1) or any part of that information in any manner.

[4/2017]

Obligation to assist Authority

123ZR. Every authorised benchmark submitter, exempt benchmark submitter and designated benchmark submitter must provide such assistance to the Authority as the Authority may require for the proper administration of this Act, including —

(*a*) the furnishing of returns; and

(*b*) the provision of books and information relating to the business of the authorised benchmark submitter, exempt benchmark submitter or designated benchmark submitter, as the case may be.

[4/2017]

Penalties under this Subdivision

123ZS. Any authorised benchmark submitter, exempt benchmark submitter or designated benchmark submitter which contravenes section 123ZL, 123ZM, 123ZN, 123ZO, 123ZP or 123ZR shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

Subdivision (5) — Matters requiring approval of Authority

Approval of chief executive officer and director of authorised benchmark submitter or designated benchmark submitter

123ZT.—(1) Subject to subsection (3), an authorised benchmark submitter or designated benchmark submitter must not —

(*a*) appoint a person as its chief executive officer or director; or

(*b*) change the nature of the appointment of a person as a director from one that is non-executive to one that is executive,

unless it has the approval of the Authority to do so.

[4/2017]

(2) Where an authorised benchmark submitter or a designated benchmark submitter has obtained the approval of the Authority to appoint a person as its chief executive officer or director under subsection (1)(*a*), the person may be re-appointed as a chief executive officer or director (as the case may be) of the authorised benchmark submitter or designated benchmark submitter (as the case may be) immediately upon the expiry of the earlier term without the approval of the Authority.

[4/2017]

(3) Subsection (1) does not apply to the appointment of a person as a director of a foreign company, or the change in the nature of the appointment of a person as a director of a foreign company if, at the time of the appointment or change, the person —

(*a*) does not reside in Singapore; and

(*b*) is not directly responsible for its carrying out of the activity of providing information in relation to a designated benchmark or any part of the activity of providing information in relation to a designated benchmark.

[4/2017]

(4) Without affecting any other matter that the Authority may consider relevant, the Authority may, in determining whether to grant its approval under subsection (1), have regard to such criteria as may be prescribed by regulations made under section 123ZZA or notified to the authorised benchmark submitter or designated benchmark submitter, as the case may be.

[4/2017]

(5) Subject to subsection (6), the Authority must not refuse an application for approval under subsection (1) without giving the authorised benchmark submitter or designated benchmark submitter an opportunity to be heard.

[4/2017]

(6) The Authority may refuse an application for approval under subsection (1) on any of the following grounds without giving the authorised benchmark submitter or designated benchmark submitter an opportunity to be heard:

(*a*) the person is an undischarged bankrupt, whether in Singapore or elsewhere;

(*b*) a prohibition order under section 123ZZC has been made by the Authority, and remains in force, against the person;

(*c*) the person has been convicted, whether in Singapore or elsewhere, of an offence —

(i) involving fraud or dishonesty or the conviction for which involved a finding that he or she had acted fraudulently or dishonestly; and

(ii) punishable with imprisonment for a term of 3 months or more.

[4/2017]

(7) Where the Authority refuses an application for approval under subsection (1), the Authority need not give the person who was proposed to be appointed an opportunity to be heard.

[4/2017]

(8) Without affecting the Authority's power to impose conditions or restrictions under section 123ZE(2) or (3), or requirements or restrictions under section 123ZK, the Authority may, at any time by written notice to the authorised benchmark submitter or designated benchmark submitter, impose on it a condition requiring it to notify the

Authority of a change to any specified attribute (such as residence and nature of appointment) of its chief executive officer or director, and vary any such condition.

[4/2017]

(9) This section does not apply to any designated benchmark submitter that is —

(*a*) a bank licensed under the Banking Act 1970;

(*b*) a merchant bank licensed under the Banking Act 1970;

(*c*) a finance company licensed under the Finance Companies Act 1967;

(*d*) a holder of a capital markets services licence for any regulated activity;

(*e*) a licensed financial adviser under the Financial Advisers Act 2001;

(*f*) a direct insurer licensed under the Insurance Act 1966 to carry on life business;

(*g*) an insurance intermediary registered or regulated under the Insurance Act 1966, who arranges contracts of insurance in Singapore in respect of life business only; or

(*h*) such other person or class of persons as may be prescribed by regulations made under section 123ZZA.

[4/2017; 1/2020]

(10) Any authorised benchmark submitter or designated benchmark submitter which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(11) Any authorised benchmark submitter or designated benchmark submitter which contravenes any condition imposed on it under subsection (8) shall be guilty of an offence.

[4/2017]

Removal of officer of authorised benchmark submitter or designated benchmark submitter

123ZU.—(1) Despite the provisions of any other written law —

(*a*) an authorised benchmark submitter or a designated benchmark submitter must not, without the prior written consent of the Authority, permit a person to act as its executive officer; and

(*b*) an authorised benchmark submitter or a designated benchmark submitter,

that is incorporated in Singapore must not, without the prior written consent of the Authority, permit a person to act as its director,

if the person —

(*c*) has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after 8 October 2018, being an offence —

(i) involving fraud or dishonesty;

(ii) the conviction for which involved a finding that he or she had acted fraudulently or dishonestly; or

(iii) that is specified in the Third Schedule to the Registration of Criminals Act 1949;

(*d*) is an undischarged bankrupt, whether in Singapore or elsewhere;

(*e*) has had an enforcement order against him or her in respect of a judgment debt returned unsatisfied in whole or in part;

[Act 25 of 2021 wef 01/04/2022]

(*f*) has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with his or her creditors, being a compromise or scheme of arrangement that is still in operation;

(*g*) has had a prohibition order under section 68 of the Financial Advisers Act 2001, section 74 of the Insurance Act 1966, section 101A or 123ZZC made against him or her that remains in force; or

(*h*) has been a director of, or directly concerned in the management of, a regulated financial institution, whether in Singapore or elsewhere —

(i) which is being or has been wound up by a court; or

(ii) the approval, authorisation, designation, recognition, registration or licence of which has been withdrawn, cancelled or revoked by the Authority or, in the case of a regulated financial institution in a foreign country or territory, by the regulatory authority in that foreign country or territory.

[4/2017]

(2) Despite the provisions of any other written law, where the Authority is satisfied that a director of an authorised benchmark submitter or a designated benchmark submitter, that is incorporated in Singapore, or an executive officer of an authorised benchmark submitter or a designated benchmark submitter —

(*a*) has wilfully contravened or wilfully caused the authorised benchmark submitter or designated benchmark submitter (as the case may be) to contravene any provision of this Act;

(*b*) has, without reasonable excuse, failed to secure the compliance of the authorised benchmark submitter or designated benchmark submitter (as the case may be) with this Act, the Monetary Authority of Singapore Act 1970 or any of the written laws set out in the Schedule to that Act; or

(*c*) has failed to discharge any of the duties of his or her office,

the Authority may, if it thinks it necessary in the interests of the public or a section of the public, or a class or classes of users of a designated benchmark, by written notice to the authorised benchmark submitter or designated benchmark submitter (as the case may be) direct the authorised benchmark submitter or designated benchmark submitter to remove the director or executive officer (as the case may be) from the director's or executive officer's office or employment within such period as the Authority may specify in the notice, and the authorised benchmark submitter or designated benchmark submitter (as the case may be) must comply with the notice.

[4/2017]

(3) Without affecting any other matter that the Authority may consider relevant, the Authority may, when determining whether a director or an executive officer of an authorised benchmark submitter or designated benchmark submitter (as the case may be) has failed to discharge the duties of the director's or executive officer's office for the purposes of subsection (2)(*c*), have regard to such criteria as may be prescribed by regulations made under section 123ZZA or notified in writing to the authorised benchmark submitter or designated benchmark submitter, as the case may be.

[4/2017]

(4) The Authority must not direct an authorised benchmark submitter or designated benchmark submitter to remove a person from the person's office under subsection (2) without giving the authorised benchmark submitter or designated benchmark submitter (as the case may be) an opportunity to be heard.

[4/2017]

(5) Where the Authority directs an authorised benchmark submitter or a designated benchmark submitter to remove a person from the person's office or employment under subsection (2), the Authority need not give that person an opportunity to be heard.

[4/2017]

(6) No criminal or civil liability is incurred by —

(*a*) an authorised benchmark submitter;

(*b*) a designated benchmark submitter; or

(*c*) any person acting on behalf of the authorised benchmark submitter or designated benchmark submitter,

in respect of anything done (including any statement made) or omitted to be done with reasonable care and in good faith in the discharge or purported discharge of its obligations under this section.

[4/2017]

(7) This section does not apply to any designated benchmark submitter that is —

(*a*) a bank licensed under the Banking Act 1970;

(*b*) a merchant bank licensed under the Banking Act 1970;

(*c*) a finance company licensed under the Finance Companies Act 1967;

(*d*) the holder of a capital markets services licence for any regulated activity;

(*e*) a licensed financial adviser under the Financial Advisers Act 2001;

(*f*) a direct insurer licensed under the Insurance Act 1966 to carry on life business;

(*g*) an insurance intermediary registered or regulated under the Insurance Act 1966, who arranges contracts of insurance in Singapore in respect of life business only; or

(*h*) such other person or class of persons as may be prescribed by regulations made under section 123ZZA.

[4/2017; 1/2020]

(8) Any authorised benchmark submitter or designated benchmark submitter which contravenes subsection (1), or any direction issued by the Authority under subsection (2), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(9) In this section, unless the context otherwise requires —

"regulated financial institution" means a person who carries on a business, the conduct of which is regulated or authorised by the Authority or, if it is carried on in Singapore, would be regulated or authorised by the Authority;

"regulatory authority", in relation to a foreign country or territory, means an authority of the foreign country or territory exercising any function that corresponds to a regulatory function of the Authority under this Act, the Monetary Authority of Singapore Act 1970 or any of the written laws set out in

the Schedule to that Act.

[4/2017]

Control of take-over of authorised benchmark submitter or designated benchmark submitter

123ZV.—(1) This section applies to all individuals whether resident in Singapore or not and whether citizens of Singapore or not, and to all bodies corporate or unincorporate, whether incorporated or carrying on business in Singapore or not.

[4/2017]

(2) A person must not enter into any arrangement in relation to shares in an authorised benchmark submitter or designated benchmark submitter that is a company by virtue of which the person would, if the arrangement is carried out, obtain effective control of the authorised benchmark submitter or designated benchmark submitter, unless the person has obtained the prior approval of the Authority to the person's entering into the arrangement.

[4/2017]

(3) An application for the Authority's approval under subsection (2) must be made in writing, and the Authority may authorise the application if the Authority is satisfied that —

(*a*) the applicant is a fit and proper person to have effective control of the authorised benchmark submitter or designated benchmark submitter, as the case may be;

(*b*) having regard to the applicant's likely influence, the authorised benchmark submitter or designated benchmark submitter (as the case may be) is likely to continue to carry on a business or activity of providing information in relation to a designated benchmark prudently and comply with the provisions of this Act and directions made thereunder; and

(*c*) the applicant satisfies such other criteria as may be prescribed by regulations made under section 123ZZA or as the Authority may specify in written directions.

[4/2017]

(4) Any approval under subsection (3) may be granted to the applicant subject to such conditions as the Authority may determine, including any condition —

(*a*) restricting the applicant's disposal or further acquisition of shares or voting power in the authorised benchmark submitter or designated benchmark submitter, as the case may be; or

(*b*) restricting the applicant's exercise of voting power in the authorised

benchmark submitter or designated benchmark submitter, as the case may be,

and the applicant must comply with such conditions.

[4/2017]

(5) Any condition imposed under subsection (4) has effect despite any provision of the Companies Act 1967 or anything contained in the constitution of the authorised benchmark submitter or designated benchmark submitter.

[4/2017]

(6) For the purposes of this section and section 123ZW —

(*a*) a reference to a person entering into an arrangement in relation to shares of an authorised benchmark submitter or a designated benchmark submitter (as the case may be) includes —

(i) entering into an agreement or any formal or informal scheme, arrangement or understanding, to acquire those shares;

(ii) making or publishing a statement, however expressed, that expressly or impliedly invites the holder of those shares to offer to dispose of the holder's shares to the first person;

(iii) the first person obtaining a right to acquire shares under an option, or to have shares transferred to the first person or to the first person's order, whether the right is exercisable presently or in the future and whether on fulfilment of a condition or not; and

(iv) becoming a trustee of a trust in respect of those shares;

(*b*) a person is regarded as obtaining effective control of the authorised benchmark submitter or designated benchmark submitter (as the case may be) by virtue of an arrangement if the person alone or acting together with any connected person would, if the arrangement is carried out —

(i) acquire or hold, directly or indirectly, 20% or more of the issued share capital of the authorised benchmark submitter or designated benchmark submitter, as the case may be; or

(ii) control, directly or indirectly, 20% or more of the voting power in the authorised benchmark submitter or designated benchmark submitter, as the case may be; and

(*c*) a reference to the voting power in the authorised benchmark submitter or

designated benchmark submitter (as the case may be) is a reference to the total number of votes that may be cast in a general meeting of the authorised benchmark submitter or designated benchmark submitter, as the case may be.

[4/2017]

(7) This section does not apply in relation to any designated benchmark submitter that is —

(*a*) a bank licensed under the Banking Act 1970;

(*b*) a merchant bank licensed under the Banking Act 1970;

(*c*) a finance company licensed under the Finance Companies Act 1967;

(*d*) the holder of a capital markets services licence for any regulated activity;

(*e*) a licensed financial adviser under the Financial Advisers Act 2001;

(*f*) a direct insurer licensed under the Insurance Act 1966 to carry on life business;

(*g*) an insurance intermediary registered or regulated under the Insurance Act 1966, who arranges contracts of insurance in Singapore in respect of life business only; or

(*h*) such other person or class of persons as may be prescribed by regulations made under section 123ZZA.

[4/2017; 1/2020]

(8) Any person who contravenes subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 or to imprisonment for a term not exceeding 3 years or to both.

[4/2017]

Objection to control of authorised benchmark submitter or designated benchmark submitter

123ZW.—(1) The Authority may serve a written notice of objection on —

(*a*) any person required to obtain the Authority's approval or who has obtained the approval under section 123ZV; or

(*b*) any person who, whether before, on or after 8 October 2018, either alone or together with any connected person, holds, directly or indirectly, 20% or more of the issued share capital of the authorised benchmark submitter or designated benchmark submitter (as the case may be) or controls, directly

or indirectly, 20% or more of the voting power in the authorised benchmark submitter or designated benchmark submitter, as the case may be,

if the Authority is satisfied that —

(*c*) any condition of approval imposed on the person under section 123ZV(4) has not been complied with;

(*d*) the person is not or ceases to be a fit and proper person to have effective control of the authorised benchmark submitter or designated benchmark submitter, as the case may be;

(*e*) having regard to the likely influence of the person, the authorised benchmark submitter or designated benchmark submitter (as the case may be) is not able to or is no longer likely to carry on a business or activity of providing information in relation to a designated benchmark prudently and comply with the provisions of this Act and any direction made under this Act;

(*f*) the person does not or ceases to satisfy such criteria as may be prescribed by regulations made under section 123ZZA;

(*g*) the person has provided false or misleading information or documents in connection with an application under section 123ZV; or

(*h*) the Authority would not have granted its approval under section 123ZV had the Authority been aware, at that time, of circumstances relevant to the person's application for such approval.

[4/2017]

(2) The Authority must not serve a notice of objection on any person without giving the person an opportunity to be heard, except in the following circumstances:

(*a*) the person is in the course of being wound up or otherwise dissolved or, in the case of an individual, is an undischarged bankrupt whether in Singapore or elsewhere;

(*b*) a receiver, a receiver and manager, a judicial manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the person;

(*c*) a prohibition order under section 123ZZC has been made by the Authority, and remains in force, against the person;

(*d*) the person has been convicted, whether in Singapore or elsewhere, of any offence involving fraud or dishonesty or the conviction for which involved

a finding that the person had acted fraudulently or dishonestly.

[4/2017]

(3) Any person served with the written notice of objection must, within the period specified in the notice —

(*a*) take such steps as are necessary to ensure that the person ceases to be a party to the arrangement described in section 123ZV(2), ceases to hold 20% or more of the issued share capital of the authorised benchmark submitter or designated benchmark submitter (as the case may be) in the manner described in subsection (1)(*b*), or ceases to control 20% or more of the voting power in the authorised benchmark submitter or designated benchmark submitter (as the case may be) in the manner described in subsection (1)(*b*); and

(*b*) comply with such other requirements as the Authority may specify in the notice.

[4/2017]

(4) This section does not apply in relation to any designated benchmark submitter that is —

(*a*) a bank licensed under the Banking Act 1970;

(*b*) a merchant bank licensed under the Banking Act 1970;

(*c*) a finance company licensed under the Finance Companies Act 1967;

(*d*) the holder of a capital markets services licence for any regulated activity;

(*e*) a licensed financial adviser under the Financial Advisers Act 2001;

(*f*) a direct insurer licensed under the Insurance Act 1966 to carry on life business;

(*g*) an insurance intermediary registered or regulated under the Insurance Act 1966, who arranges contracts of insurance in Singapore in respect of life business only; or

(*h*) such other person or class of persons as may be prescribed by regulations made under section 123ZZA.

[4/2017; 1/2020]

(5) Any person who contravenes subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 or to imprisonment for a term not exceeding 3 years or to both.

[4/2017]

Appeals

123ZX. Any authorised benchmark submitter or designated benchmark submitter that is aggrieved by —

(*a*) the refusal of the Authority to grant an approval to the authorised benchmark submitter or the designated benchmark submitter to appoint a person as its chief executive officer or director; or

(*b*) the direction of the Authority to the authorised benchmark submitter or the designated benchmark submitter to remove an officer from office or employment,

may, within 30 days after it is notified of the decision of the Authority, appeal to the Minister whose decision is final.

[4/2017]

Division 4 — Information Gathering Powers over Financial Benchmarks, Disclosure of Information and Record Keeping

Provision of information to Authority

123ZY.—(1) The Authority may, by regulations made under section 123ZZA, require a person or a class of persons whom the Authority believes on reasonable grounds is capable of giving information on or concerning any financial benchmark or any market which a financial benchmark seeks to measure to disclose to the Authority the information that the person has under the person's control or possession, in such form and manner, and within such period or periods, as may be prescribed in those regulations.

[4/2017]

(2) The Authority may, by written notice to any person whom the Authority believes on reasonable grounds is capable of giving information on or concerning any financial benchmark or any market which a financial benchmark seeks to measure, require such person to disclose to the Authority the information that the person has under the person's control or possession, in such form and manner, and within such period or periods, as may be specified in the notice.

[4/2017]

(3) Subject to subsection (5), any person to whom a notice is issued under subsection (2) must comply with the notice.

[4/2017]

(4) Any person who contravenes subsection (3) shall be guilty of an offence and shall

be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(5) A person referred to in subsection (1) or a person to whom a notice is issued under subsection (2) is not obliged to disclose any information where the person is prohibited by any written law from disclosing such information.

[4/2017]

(6) Where a person claims, before providing the Authority with any information that the person is required to furnish under subsection (1) or (2), that the information might tend to incriminate the person, the information —

(*a*) is not admissible in evidence against the person in criminal proceedings other than proceedings under subsection (4) or in relation to a contravention of subsection (1); but

(*b*) is admissible in evidence for civil proceedings under Part 12.

[4/2017]

Power to require maintenance of records and submit periodic reports

123ZZ.—(1) The Authority may, by regulations made under section 123ZZA or by written notice, require any financial institution or class of financial institutions to —

(*a*) maintain a record of —

(i) all transactions undertaken by the financial institution in relation to one or more underlying things that are the subject of a designated benchmark; and

(ii) all transactions undertaken by the financial institution in relation to financial instruments that use a designated benchmark for reference to determine the price, value, interest payable, sums due or performance of the financial instrument,

in such form and manner as the Authority may prescribe in those regulations or specify by written notice, including —

(iii) the extent to which the record includes details of each transaction or exposure; and

(iv) the period of time that the record is to be maintained; and

(*b*) submit to the Authority such reports in such form, manner and frequency as the Authority may prescribe in those regulations or specify by written

notice.

[4/2017]

(2) In this section, "financial institution" means —

(*a*) a bank licensed under the Banking Act 1970;

(*b*) a merchant bank that is licensed under the Banking Act 1970;

(*c*) a finance company licensed under the Finance Companies Act 1967;

(*d*) the holder of a capital markets services licence under this Act;

(*e*) a licensed financial adviser under the Financial Advisers Act 2001;

(*f*) a company or co-operative society licensed under the Insurance Act 1966 as a direct insurer carrying on life business;

(*g*) an insurance intermediary licensed under any written law relating to insurance intermediaries if the intermediary arranges contracts of insurance in respect of life business; or

(*h*) such other person or class of persons as may be prescribed by regulations made under section 123ZZA.

[4/2017; 1/2020]

(3) Any person who, without reasonable excuse, contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

Division 5 — General Powers

Power of Authority to make regulations

123ZZA.—(1) Without affecting section 341, the Authority may make regulations prescribing matters required or permitted by this Part to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Part.

[4/2017]

(2) The regulations made under subsection (1) may, in particular —

(*a*) prescribe the requirements that an authorised benchmark administrator or an exempt benchmark administrator or a class of any of the foregoing persons must comply with; and

(*b*) prescribe the requirements that an authorised benchmark submitter, an

exempt benchmark submitter, a designated benchmark submitter or a class of any of the foregoing persons must comply with.

[4/2017]

(3) The regulations made under this section may provide —

(*a*) that a contravention of any specified provision of those regulations shall be an offence; and

(*b*) for a penalty not exceeding a fine of $100,000 or imprisonment for a term not exceeding 12 months or both for each offence and, in the case of a continuing offence, a further penalty not exceeding a fine of 10% of the maximum fine prescribed for that offence for every day or part of a day during which the offence continues after conviction.

[4/2017]

Power of Authority to issue written directions

123ZZB.—(1) The Authority may, if it thinks it necessary or expedient, in the interests of a class, or classes, of users of a designated benchmark, or in the interests of the public or a section of the public, issue written directions, either of a general or specific nature, to any of the following persons or class of persons, requiring such person or class of persons to comply with such requirements as the Authority may specify in the written directions:

(*a*) an authorised benchmark administrator;

(*b*) an exempt benchmark administrator;

(*c*) an authorised benchmark submitter;

(*d*) an exempt benchmark submitter;

(*e*) a designated benchmark submitter;

(*f*) a representative of any authorised benchmark administrator, exempt benchmark administrator, authorised benchmark submitter, exempt benchmark submitter or designated benchmark submitter;

(*g*) a class of any of the persons mentioned in paragraphs (*a*) to (*f*).

[4/2017]

(2) Without limiting subsection (1), any written direction may be issued with respect to —

(*a*) the standards to be maintained by the person concerned in carrying out the activity of administering a designated benchmark, or the activity of

providing information in relation to a designated benchmark;

(*b*) the type and frequency of submission of financial returns and other information to be submitted to the Authority; and

(*c*) the qualifications, experience and training of representatives,

and the person to whom such direction is issued must comply with the direction.

[4/2017]

(3) Any person who contravenes any of the directions issued under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine of $5,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(4) It is not necessary to publish any direction issued under subsection (1) in the *Gazette*.

[4/2017]

Power of Authority to make prohibition orders

123ZZC.—(1) The Authority may, by written notice, make a prohibition order against a relevant person if —

(*a*) the Authority cancels or revokes the authorisation of the relevant person as an authorised benchmark administrator;

(*b*) where the relevant person is exempt from the requirement to be authorised as an authorised benchmark administrator under section 123K(1), the Authority has reason to believe that circumstances exist under which, if the person were an authorised benchmark administrator, there would exist a ground on which the Authority may revoke its authorisation under section 123J;

(*c*) the Authority suspends or revokes the authorisation of the relevant person as an authorised benchmark submitter;

(*d*) where the relevant person is exempt from the requirement to be authorised as an authorised benchmark submitter under section 123ZH(1), the Authority has reason to believe that circumstances exist under which, if the relevant person were an authorised benchmark submitter, there would exist a ground on which the Authority may suspend or revoke its authorisation under section 123ZG;

(*e*) the Authority has reason to believe that the relevant person is contravening,

is likely to contravene or has contravened —

(i) any provision of this Act;

(ii) any condition or restriction imposed by the Authority under this Act; or

(iii) any written direction issued by the Authority under this Act;

(*f*) the relevant person has been convicted of an offence under this Act or has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that the person acted fraudulently or dishonestly;

(*g*) the relevant person has an order for the payment of a civil penalty made against the person by a court under Part 12 or has entered into an agreement with the Authority to pay a civil penalty under that Part;

(*h*) the relevant person has been convicted of an offence involving the contravention of any law or requirement of a foreign country or territory relating to the activity of administering a designated benchmark, or providing information in relation to a designated benchmark;

(*i*) the relevant person has been removed at the direction of the Authority from office or employment as an officer of the authorised benchmark administrator under section 123Y(2); or

(*j*) the relevant person has been removed at the direction of the Authority from office or employment as an officer of an authorised benchmark submitter or a designated benchmark submitter under section 123ZU(2).

[4/2017]

(2) In subsection (1), "relevant person" means —

(*a*) an authorised benchmark administrator or a person who was previously an authorised benchmark administrator;

(*b*) a person that is exempt from the requirement to be authorised as an authorised benchmark administrator under section 123K(1) or a person who was previously so exempt;

(*c*) an authorised benchmark submitter or a person who was previously an authorised benchmark submitter;

(*d*) a person that is exempt from the requirement to be authorised as an authorised benchmark submitter under section 123ZH(1) or a person who was previously so exempt;

(*e*) a representative of an authorised benchmark administrator or a person that is exempt from the requirement to be authorised as an authorised benchmark administrator under section 123K(1), or a person who was previously such a representative;

(*f*) a representative of an authorised benchmark submitter, a person that is exempt from the requirement to be authorised as an authorised benchmark submitter under section 123ZH(1), or a designated benchmark submitter, or a person who was previously such a representative;

(*g*) an officer of an authorised benchmark administrator or a person that is exempt from the requirement to be authorised as an authorised benchmark administrator under section 123K(1), or a person who was previously such an officer;

(*h*) an officer of an authorised benchmark submitter, a person that is exempt from the requirement to be authorised as an authorised benchmark submitter under section 123ZH(1), or a designated benchmark submitter, or a person who was previously such an officer;

(*i*) a person from whom any information or expression of opinion used in the determination of a designated benchmark was obtained; or

(*j*) a person who has been convicted of an offence under this Part.

[4/2017]

(3) A prohibition order made under subsection (1) may do one or more of the following:

(*a*) prohibit the person, whether permanently or for a specified period, from —

(i) carrying on a business of administering a designated benchmark, or performing the activity of administering a designated benchmark in specified circumstances or capacities;

(ii) carrying on a business or activity of providing information in relation to a designated benchmark or performing the activity of providing information in relation to a designated benchmark in specified circumstances or capacities;

(iii) taking part, directly or indirectly, in the management of, acting as a director of, or becoming a substantial shareholder of —

(A) an authorised benchmark administrator;

(B) an exempt benchmark administrator;

(C) an authorised benchmark submitter;

(D) an exempt benchmark submitter; or

(E) a designated benchmark submitter;

(*b*) include a provision allowing the person, subject to any condition specified in the order —

(i) to do specified acts; or

(ii) to do specified acts in specified circumstances,

that the order would otherwise prohibit the person from doing.

[4/2017]

(4) The Authority must not make a prohibition order against a person without giving the person an opportunity to be heard.

[4/2017]

(5) Any person who is aggrieved by the decision of the Authority to make a prohibition order against the person may, within 30 days of the decision, appeal in writing to the Minister.

[4/2017]

(6) The Authority must keep, in such form as it thinks fit, records on persons against whom prohibition orders are made under this section.

[4/2017]

(7) The Authority may publish the records mentioned in subsection (6), or any part of them, in such manner as the Authority considers appropriate.

[4/2017]

Effect of prohibition orders

123ZZD.—(1) A person against whom a prohibition order is made must comply with the prohibition order.

[4/2017]

(2) Where a prohibition order is made against a person and notified to an authorised benchmark administrator or an exempt benchmark administrator, the authorised benchmark administrator or exempt benchmark administrator (as the case may be), must not employ the firstmentioned person to carry out the activity, or in connection with the activity, of administering a designated benchmark, or use the firstmentioned person's service, information or expressions of opinion, to the extent that this is prohibited by the

order.

[4/2017]

(3) Where a prohibition order is made against a person and notified to an authorised benchmark submitter, an exempt benchmark submitter or a designated benchmark submitter, the authorised benchmark submitter, exempt benchmark submitter or designated benchmark submitter (as the case may be) must not employ the firstmentioned person to carry out the activity, or in connection with the activity, of providing information in relation to a designated benchmark, use the firstmentioned person's service, or pass on the firstmentioned person's information or expressions of opinion, to the extent that this is prohibited by the order.

[4/2017]

(4) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 or to imprisonment for a term not exceeding 2 years or to both.

[4/2017]

(5) Any person who contravenes subsection (2) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000.

[4/2017]

Variation or revocation of prohibition orders

123ZZE.—(1) The Authority may vary or revoke a prohibition order, by giving written notice to the person against whom the order was made, if the Authority is satisfied that it is appropriate to do so because of a change in any of the circumstances based on which the Authority made the order.

[4/2017]

(2) The Authority may vary or revoke a prohibition order under subsection (1) —

(*a*) on its own initiative; or

(*b*) if the person against whom the order was made lodges with the Authority an application for the Authority to do so, accompanied by such documents and fee as may be prescribed by regulations made under section 123ZZA.

[4/2017]

(3) The Authority must not vary a prohibition order made against a person under subsection (2)(*a*) without giving the person an opportunity to be heard.

[4/2017]

(4) Any person who is aggrieved by the decision of the Authority to vary a prohibition order made against the person under subsection (2)(*a*) may, within 30 days of the decision, appeal in writing to the Minister.

[4/2017]

Date and effect of prohibition orders

123ZZF.—(1) A prohibition order, or any variation or revocation of a prohibition order, takes effect on the date specified in the order by the Authority, being a date not earlier than the date on which the order, or variation or revocation, is made.

[4/2017]

(2) A prohibition order does not operate so as to —

(*a*) avoid or affect any agreement, transaction or arrangement entered into by the person against whom the order is made, whether the agreement, transaction or arrangement was entered into before, on or after the issue of the prohibition order; or

(*b*) affect any right, obligation or liability arising under any such agreement, transaction or arrangement.

[4/2017]

PART 6A

REPORTING OF DERIVATIVES CONTRACTS

[34/2012]

Interpretation of this Part

124. In this Part, unless the context otherwise requires —

"market contract" means —

(*a*) a contract subject to the business rules of an approved clearing house, or a recognised clearing house, that is entered into between the approved clearing house or recognised clearing house and a participant pursuant to a novation (however described), whether before or after default proceedings have commenced, which is in accordance with those business rules and for the purposes of the clearing or settlement of transactions using the clearing facility of the approved clearing house or recognised clearing house; or

(*b*) a transaction which is being cleared or settled using the clearing facility of an approved clearing house or a recognised clearing house, and in accordance with the business rules of the approved clearing house or recognised clearing house, whether or not a novation referred to in paragraph (*a*) is to take place;

"specified derivatives contract" means any derivatives contract that is, or that belongs to a class of derivatives contracts that is, prescribed by the Authority

by regulations made under section 129 for the purposes of this definition;

"specified person" means —

(*a*) any bank that is licensed under the Banking Act 1970;

(*b*) any subsidiary of a bank incorporated in Singapore;

(*c*) any merchant bank licensed under the Banking Act 1970;

(*d*) any finance company licensed under the Finance Companies Act 1967;

(*e*) any insurer licensed under the Insurance Act 1966;

(*f*) [*Deleted by Act 4 of 2017*]

(*g*) any holder of a capital markets services licence; or

(*h*) any other person who is, or who belongs to a class of persons which is, prescribed by the Authority by regulations made under section 129 for the purposes of this definition.

[34/2012; 10/2013; 4/2017; 1/2020]

Reporting of specified derivatives contracts

125.—(1) Every specified person who is a party to a specified derivatives contract must, at such time or times and in such form or manner as the Authority may prescribe by regulations made under section 129, report to a licensed trade repository or licensed foreign trade repository —

(*a*) such information on the specified derivatives contract as the Authority may prescribe by those regulations; and

(*b*) any amendment, modification, variation or change to the information referred to in paragraph (*a*).

[34/2012]

(2) Without affecting subsection (1), where the circumstances referred to in subsection (3) apply, a specified person who executes or causes to be executed a specified derivatives contract as an agent of a party to the specified derivatives contract must, at such time or times and in such form or manner as the Authority may prescribe by regulations made under section 129, report to a licensed trade repository or licensed foreign trade repository —

(*a*) such information on the specified derivatives contract as the Authority may prescribe by those regulations; and

(*b*) any amendment, modification, variation or change to the information

referred to in paragraph (*a*).

[34/2012; 4/2017]

(3) For the purposes of subsection (2), the circumstances are that the party to the specified derivatives contract —

(*a*) is not a specified person; or

(*b*) is a specified person, but is exempted under section 129A from subsection (1).

[34/2012; 4/2017]

(4) A specified person who is required to comply with subsection (1) or (2) in relation to any information on a specified derivatives contract (including any amendment, modification, variation or change to that information) is treated to have reported that information to a licensed trade repository or licensed foreign trade repository, if —

(*a*) any other person has, with the consent or authority of the specified person, reported that information, in such form or manner prescribed by regulations made under section 129, to that licensed trade repository or licensed foreign trade repository; and

(*b*) that information is true and correct and has been received by that licensed trade repository or licensed foreign trade repository.

[4/2017]

(5) A specified person who is treated under subsection (4) to have reported any information on a specified derivatives contract (including any amendment, modification, variation or change to that information) to a licensed trade repository or licensed foreign trade repository, is treated to have so reported that information at the time that information is received by that licensed trade repository or licensed foreign trade repository.

[4/2017]

(6) A specified person who —

(*a*) complies with subsection (1) or (2);

(*b*) consents to or authorises the reporting of any information in connection with subsection (4); or

(*c*) discloses any information in compliance with the foreign reporting obligations of such jurisdiction as may be prescribed by regulations made under section 129,

is not to be treated as being in breach of any restriction upon the disclosure of information imposed by written law, any rule of law, any contract or otherwise.

[4/2017]

(7) Any specified person who contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

(8) A specified person who is required under subsection (1) or (2) to report any information to a licensed trade repository or licensed foreign trade repository must use due care to ensure that the information reported is not false in any material particular.

[34/2012]

(9) Any specified person who contravenes subsection (8) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000.

[34/2012]

(10) Except where the parties to a specified derivatives contract have entered into an express agreement to the contrary, the specified derivatives contract is not, by reason only of a contravention of subsection (1), (2) or (8) in relation to the specified derivatives contract, voidable or void.

[34/2012]

(11) For the purposes of subsections (1)(*a*) and (2)(*a*), the information on a specified derivatives contract that the Authority may prescribe by regulations made under section 129 includes, but is not limited to —

(*a*) the identities of the parties to the specified derivatives contract; and

(*b*) the characteristics of the specified derivatives contract, including, but not limited to, operational data (such as clearing and settlement details), event data (such as execution time), underlying information and information on transaction economics (such as effective date and maturity date).

[34/2012]

(12) For the purposes of this section, where any right or obligation under a specified derivatives contract is transferred to any market contract, a reference to the specified derivatives contract includes a reference to that market contract.

[34/2012]

Power of Authority to obtain information

126.—(1) The Authority may require any person to provide the Authority with such information or documents as the Authority considers necessary for determining —

(*a*) whether any derivatives contract or class of derivatives contract should be prescribed for the purposes of the definition of "specified derivatives

contract" in section 124;

(*b*) whether the person or any other person or class of persons should be prescribed for the purposes of paragraph (*h*) of the definition of "specified person" in section 124; or

(*c*) whether the purpose or effect of any contract, arrangement, transaction or class of contracts, arrangements or transactions is to avoid, directly or indirectly, any requirement that is, or that would otherwise have been, imposed under section 125(1) or (2).

[34/2012]

(2) Subject to subsections (4) and (5), a person must comply with every requirement imposed on the person under subsection (1).

[34/2012]

(3) Any person who contravenes subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

(4) A person who complies with a requirement imposed under subsection (1) is not to be treated as being in breach of any restriction upon the disclosure of information imposed by written law, any rule of law, any contract or otherwise.

[4/2017]

(5) Nothing in this section compels an advocate and solicitor, or a legal counsel referred to in section 128A of the Evidence Act 1893, to provide any information on, or any document containing, any privileged communication made by or to him or her in that capacity.

[34/2012]

(6) Where a person claims, before providing the Authority with any information or documents that the person is required to provide under subsection (1)(*c*), that the information or documents might tend to incriminate the person, the information or documents —

(*a*) are not admissible in evidence against the person in criminal proceedings other than proceedings under subsection (3); but

(*b*) are admissible in evidence for civil proceedings under Part 12.

[34/2012]

Directions on alternative reporting arrangements

127.—(1) Where the Authority is of the opinion that any licensed trade repository or

licensed foreign trade repository is not available for the reporting of, or is incapable of receiving, any information on any specified derivatives contract (including any amendment, modification, variation or change to that information) under section 125(1) or (2), the Authority may issue directions, whether of a general or specific nature, by written notice, to any specified person referred to in section 125(1) or (2) or class of such persons, requiring the specified person or class of such persons to do one or more of the following:

(*a*) to maintain records of that information in such form or manner as the Authority may prescribe by regulations made under section 129;

(*b*) to report that information, or submit records of that information, in such form or manner as the Authority may specify in that notice, at such frequency and over such period as the Authority may specify in that notice, to such person as the Authority may specify in that notice;

(*c*) to give the Authority, or such person as the Authority may specify in that notice, access to that information, or to records of that information, in such manner as the Authority may specify in that notice.

[34/2012]

(2) A specified person referred to in subsection (1) must comply with every direction issued to the specified person under that subsection.

[34/2012]

(3) A specified person is treated to have complied with section 125(1) or (2) in relation to any information on a specified derivatives contract (including any amendment, modification, variation or change to that information) if, while a direction issued to the specified person under subsection (1) remains in force, the specified person complies with that direction in relation to that information.

[34/2012; 4/2017]

(4) The Authority may cancel a direction issued under subsection (1) in relation to any licensed trade repository or licensed foreign trade repository, if the Authority is of the opinion that the grounds for the issue of the direction have ceased to apply.

[34/2012]

(5) Any specified person who, without reasonable excuse, contravenes a direction issued to the specified person under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

(6) It is not necessary to publish any direction issued under subsection (1) in the *Gazette*.

[34/2012]

(7) For the purposes of this section, a reference to any information on a specified derivatives contract includes a reference to any such information which has previously been reported to a licensed trade repository or licensed foreign trade repository under section 125.

[34/2012]

Compliance with laws and practices of relevant reporting jurisdiction

128.—(1) Subject to subsection (3), a specified person who is a party to a specified derivatives contract is treated to have complied with section 125(1) in relation to any information on the specified derivatives contract (including any amendment, modification, variation or change to that information), if —

(*a*) any other party to the specified derivatives contract is incorporated, formed or established under the laws of, or has a place of business in, a relevant reporting jurisdiction; and

(*b*) the specified person, or any other party to the specified derivatives contract, is required to comply with, and has complied with, in relation to the specified derivatives contract, the requirements relating to the reporting of specified derivatives contracts under the laws and practices of the relevant reporting jurisdiction.

[34/2012; 4/2017]

(2) Subject to subsection (3), a specified person who executes or causes to be executed a specified derivatives contract as an agent of a party to the specified derivatives contract (called in this subsection the principal party) is treated to have complied with section 125(2) in relation to any information on the specified derivatives contract (including any amendment, modification, variation or change to that information), if —

(*a*) the principal party, or any other party to the specified derivatives contract, is incorporated, formed or established under the laws of, or has a place of business in, a relevant reporting jurisdiction; and

(*b*) the principal party, or any other party to the specified derivatives contract, is required to comply with, and has complied with, in relation to the specified derivatives contract, the requirements relating to the reporting of specified derivatives contracts under the laws and practices of the relevant reporting jurisdiction.

[34/2012; 4/2017]

(3) Subsections (1) and (2) do not apply to any specified derivatives contract that is, or that belongs to a class of specified derivatives contracts that is, prescribed by the Authority by regulations made under section 129 for the purposes of this subsection.

[34/2012]

(4) In this section —

"place of business", in relation to a party to a specified derivatives contract, means a head or main office, a branch, a representative office or any other office of the party;

"relevant reporting jurisdiction" means any foreign jurisdiction that is prescribed by the Authority by regulations made under section 129 for the purposes of this definition.

[34/2012]

Power of Authority to make regulations

129.—(1) Without affecting section 341, the Authority may make regulations for the purposes of this Part, including regulations to prescribe anything which may be prescribed under this Part.

[34/2012]

(2) In deciding whether to prescribe any derivatives contract or class of derivatives contracts for the purposes of the definition of "specified derivatives contract" in section 124, the Authority may have regard to —

(*a*) the significance of that derivatives contract or class of derivatives contracts in Singapore;

(*b*) international developments in the reporting of derivatives contracts; and

(*c*) any other matters that the Authority deems to be relevant.

[34/2012]

Exemption from section 125

129A.—(1) Without affecting section 337(1), the Authority may, by regulations made under section 129, exempt any specified person or class of specified persons from all or any of the provisions of section 125, subject to such conditions or restrictions as the Authority may prescribe in those regulations.

[34/2012]

(2) The Authority may, by written notice, exempt any specified person from all or any of the provisions of section 125, subject to such conditions or restrictions as the Authority may specify by written notice.

[34/2012; 4/2017]

(3) It is not necessary to publish any exemption granted under subsection (2) in the *Gazette*.

[34/2012]

(4) Every specified person that is granted an exemption under subsection (1) or (2) must satisfy every condition or restriction imposed on the specified person under the applicable subsection.

[34/2012]

(4A) The Authority may at any time add to, vary or revoke any condition or restriction imposed under this section.

[4/2017]

(5) Any specified person who contravenes subsection (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

PART 6B

CLEARING OF DERIVATIVES CONTRACTS

[34/2012]

Interpretation of this Part

129B. In this Part, unless the context otherwise requires —

"clearing" means any arrangement, process, mechanism or service provided by a person in respect of transactions, by which parties to those transactions substitute, through novation or otherwise, the credit of such person for the credit of the parties;

"specified derivatives contract" means any derivatives contract that is, or that belongs to a class of derivatives contracts that is, prescribed by the Authority by regulations made under section 129G for the purposes of this definition;

"specified person" means —

(*a*) any bank that is licensed under the Banking Act 1970;

(*b*) any merchant bank licensed under the Banking Act 1970;

(*c*) any finance company licensed under the Finance Companies Act 1967;

(*d*) any insurer licensed under the Insurance Act 1966;

(*e*) [*Deleted by Act 4 of 2017*]

(*f*) any holder of a capital markets services licence; or

(*g*) any other person who is, or who belongs to a class of persons which is, prescribed by the Authority by regulations made under section 129G for the purposes of this definition.

[34/2012; 10/2013; 4/2017; 1/2020]

Clearing of specified derivatives contracts

129C.—(1) Every specified person who is a party to a specified derivatives contract must, within such time as the Authority may prescribe by regulations made under section 129G, cause the specified derivatives contract to undergo clearing, by a clearing facility operated by an approved clearing house or a recognised clearing house, in accordance with the business rules of the approved clearing house or recognised clearing house, as the case may be.

[34/2012]

(2) Any specified person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 and, in the case of a continuing offence, to a further fine not exceeding $10,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

(3) Except where the parties to a specified derivatives contract have entered into an express agreement to the contrary, the specified derivatives contract is not, by reason only of a contravention of subsection (1) in relation to the specified derivatives contract, voidable or void.

[34/2012]

Power of Authority to obtain information

129D.—(1) The Authority may require any person to provide the Authority with such information or documents as the Authority considers necessary for determining —

(*a*) whether any derivatives contract or class of derivatives contracts should be prescribed for the purposes of the definition of "specified derivatives contract" in section 129B;

(*b*) whether the person or any other person or class of persons should be prescribed for the purposes of paragraph (*g*) of the definition of "specified person" in section 129B; or

(*c*) whether the purpose or effect of any contract, arrangement, transaction or class of contracts, arrangements or transactions is to avoid, directly or indirectly, any requirement that is, or that would otherwise have been, imposed under section 129C(1).

[34/2012]

(2) Subject to subsections (4) and (5), a person must comply with every requirement imposed on the person under subsection (1).

[34/2012]

(3) Any person who contravenes subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

(4) A person who complies with a requirement imposed under subsection (1) is not to be treated as being in breach of any restriction upon the disclosure of information imposed by written law, any rule of law, any contract or otherwise.

[4/2017]

(5) Nothing in this section compels an advocate and solicitor, or a legal counsel referred to in section 128A of the Evidence Act 1893, to provide any information on, or any document containing, any privileged communication made by or to him or her in that capacity.

[34/2012]

(6) Where a person claims, before providing the Authority with any information or documents that the person is required to provide under subsection (1)(*c*), that the information or documents might tend to incriminate the person, the information or documents —

(*a*) are not admissible in evidence against the person in criminal proceedings other than proceedings under subsection (3); but

(*b*) are admissible in evidence for civil proceedings under Part 12.

[34/2012]

Directions on alternative clearing arrangements

129E.—(1) Where the Authority is of the opinion that any clearing facility operated by any approved clearing house or recognised clearing house is not available for the clearing of, or is incapable of clearing, any specified derivatives contract or any class of specified derivatives contracts under section 129C(1), the Authority may issue directions, whether of a general or specific nature, by written notice, to any specified person who is a party to that specified derivatives contract, or any class of specified persons who are parties to that class of specified derivatives contracts, requiring the specified person or class of specified persons to cause that specified derivatives contract or that class of specified derivatives contracts to undergo clearing in the manner and within the time specified by the Authority in that notice.

[4/2017]

(2) A specified person referred to in subsection (1) must comply with every direction issued to the specified person under that subsection.

[34/2012]

(3) A specified person is treated to have complied with section 129C(1) in relation to a specified derivatives contract if, while a direction issued to the specified person under subsection (1) remains in force, the specified person complies with that direction in relation to that specified derivatives contract.

[34/2012; 4/2017]

(4) The Authority may cancel a direction issued under subsection (1) in relation to any clearing facility operated by any approved clearing house or recognised clearing house, if the Authority is of the opinion that the grounds for the issue of the direction have ceased to apply.

[34/2012]

(5) Any specified person who, without reasonable excuse, contravenes a direction issued to the specified person under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 and, in the case of a continuing offence, to a further fine not exceeding $10,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

(6) It is not necessary to publish any direction issued under subsection (1) in the *Gazette*.

[34/2012]

Compliance with laws and practices of relevant clearing jurisdiction

129F.—(1) Subject to subsection (2), a specified person who is a party to a specified derivatives contract is treated to have complied with section 129C(1) in relation to the specified derivatives contract, if —

(*a*) any other party to the specified derivatives contract is incorporated, formed or established under the laws of, or has a place of business in, a relevant clearing jurisdiction; and

(*b*) every party to the specified derivatives contract is required to comply with, and has complied with, in relation to the specified derivatives contract, the requirements relating to the clearing of specified derivatives contracts under the laws and practices of the relevant clearing jurisdiction.

[34/2012; 4/2017]

(2) Subsection (1) does not apply to any specified derivatives contract that is, or that belongs to a class of specified derivatives contracts that is, prescribed by the Authority by regulations made under section 129G for the purposes of this subsection.

[34/2012]

(3) In this section —

"place of business", in relation to a party to a specified derivatives contract, means a head or main office, a branch, a representative office or any other office of the party;

"relevant clearing jurisdiction" means a foreign jurisdiction that is prescribed by the Authority by regulations made under section 129G for the purposes of this definition.

[34/2012]

Power of Authority to make regulations

129G.—(1) Without affecting section 341, the Authority may make regulations for the purposes of this Part, including regulations to prescribe anything which may be prescribed under this Part.

[34/2012]

(2) In deciding whether to prescribe any derivatives contract or class of derivatives contracts for the purposes of the definition of "specified derivatives contract" in section 129B, the Authority may have regard to —

(*a*) the level of systemic risk posed by that derivatives contract or class of derivatives contracts;

(*b*) the characteristics and level of standardisation of the contractual terms and operational processes relating to that derivatives contract or class of derivatives contracts;

(*c*) the depth and liquidity of the market for that derivatives contract or class of derivatives contracts;

(*d*) the availability of fair, reliable and generally accepted pricing sources for that derivatives contract or class of derivatives contracts;

(*e*) the international regulatory approach towards that derivatives contract or class of derivatives contracts;

(*f*) whether there is any anti-competitive effect associated with that derivatives contract or class of derivatives contracts;

(*g*) the availability of approved clearing houses or recognised clearing houses that operate clearing facilities for the clearing of that derivatives contract or class of derivatives contracts; and

(*h*) any other matters that the Authority deems to be relevant.

[34/2012]

Exemption from section 129C

129H.—(1) Without affecting section 337(1), the Authority may, by regulations made under section 129G, exempt any specified person or class of specified persons from all or any of the provisions of section 129C, subject to such conditions or restrictions as the Authority may prescribe in those regulations.

[34/2012]

(2) The Authority may, by written notice, exempt any specified person from all or any of the provisions of section 129C, subject to such conditions or restrictions as the Authority may specify by written notice.

[34/2012; 4/2017]

(3) It is not necessary to publish any exemption granted under subsection (2) in the *Gazette*.

[34/2012]

(4) Every specified person that is granted an exemption under subsection (1) or (2) must satisfy every condition or restriction imposed on the specified person under the applicable subsection.

[34/2012]

(4A) The Authority may at any time add to, vary or revoke any condition or restriction imposed under this section.

[4/2017]

(5) Any specified person who contravenes subsection (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 and, in the case of a continuing offence, to a further fine not exceeding $10,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

PART 6C

TRADING OF DERIVATIVES CONTRACTS

[4/2017]

Interpretation of this Part

129I. In this Part, unless the context otherwise requires —

"specified derivatives contract" means any derivatives contract that is, or that belongs to a class of derivatives contracts that is, prescribed by regulations made under section 129N for the purposes of this definition;

"specified person" means —

(*a*) any bank that is licensed under the Banking Act 1970;

(*b*) any merchant bank licensed under the Banking Act 1970;

(*c*) any finance company licensed under the Finance Companies Act 1967;

(*d*) any insurer licensed under the Insurance Act 1966;

(*e*) any holder of a capital markets services licence; or

(*f*) any other person who is, or who belongs to a class of persons which is, prescribed by regulations made under section 129N.

[4/2017; 1/2020]

Trading of specified derivatives contracts

129J.—(1) Every specified person who executes a specified derivatives contract must do so —

(*a*) on an organised market operated by an approved exchange or a recognised market operator, or on or through any other facility prescribed by regulations made under section 129N; and

(*b*) in the form and manner prescribed by regulations made under that section.

[4/2017]

(2) Any specified person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000.

[4/2017]

(3) A failure to comply with subsection (1) does not of itself render the specified derivatives contract that is executed voidable or void.

[4/2017]

Power of Authority to obtain information

129K.—(1) The Authority may require any person to provide the Authority with such information or documents as the Authority considers necessary for determining —

(*a*) whether any derivatives contract or class of derivatives contracts should be prescribed for the purposes of the definition of "specified derivatives contract" in section 129I;

(*b*) whether the person or any other person or class of persons should be prescribed for the purposes of paragraph (*f*) of the definition of "specified person" in section 129I; or

(*c*) whether the purpose or effect of any contract, arrangement, transaction or class of contracts, arrangements or transactions is to avoid, directly or indirectly, any requirement that is, or that would otherwise have been, imposed under section 129J(1).

[4/2017]

(2) Subject to subsections (4) and (5), a person must comply with every requirement imposed on the person under subsection (1).

[4/2017]

(3) Any person who contravenes subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(4) A person who complies with a requirement imposed under subsection (1) is not to be treated as being in breach of any restriction upon the disclosure of information imposed by written law, any rule of law, any contract or otherwise.

[4/2017]

(5) Nothing in this section compels an advocate and solicitor, or a legal counsel referred to in section 128A of the Evidence Act 1893, to provide any information on, or any document containing, any privileged communication made by or to him or her in that capacity.

[4/2017]

(6) Where a person claims, before furnishing the Authority with any information or documents that the person is required to provide under subsection (1)(*c*), that the information or documents might tend to incriminate the person, the information or documents —

(*a*) are not admissible in evidence against the person in criminal proceedings other than proceedings under subsection (3); but

(*b*) are admissible in evidence for civil proceedings under Part 12.

[4/2017]

Directions on alternative trading arrangements

129L.—(1) Where the Authority is of the opinion that any organised market operated by any approved exchange or recognised market operator or any other facility prescribed for the purposes of section 129J(1) is not available for the execution of, or is incapable of executing, any specified derivatives contract under section 129J(1), the Authority may issue directions, whether of a general or specific nature, by written notice, to any specified person or to any class of such persons, requiring the specified person or class of

such persons to, when executing any such specified derivatives contract, comply with the requirements specified in the notice relating to the form and manner in which the contract must be executed, and the time within which the contract must be executed.

[4/2017]

(2) A specified person mentioned in subsection (1) must comply with every direction issued to the specified person under that subsection.

[4/2017]

(3) A specified person is treated to have complied with section 129J(1) in relation to a specified derivatives contract if, while a direction issued to the specified person under subsection (1) remains in force, the specified person executes that specified derivatives contract in the form and manner and within the time specified by the Authority in that direction.

[4/2017]

(4) The Authority may cancel a direction issued under subsection (1) if the Authority is of the opinion that the grounds for the issue of the direction have ceased to apply.

[4/2017]

(5) Any specified person who, without reasonable excuse, contravenes a direction issued to the specified person under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000.

[4/2017]

(6) It is not necessary to publish any direction issued under subsection (1) in the *Gazette*.

[4/2017]

Compliance with laws and practices of relevant trading jurisdiction

129M.—(1) Subject to subsection (2), a specified person is treated as having complied with section 129J(1) in relation to the specified derivatives contract if the specified person is required to comply with, and has complied with, in relation to the specified derivatives contract, the requirements relating to the execution of specified derivatives contracts under the laws and practices of the relevant trading jurisdiction.

[4/2017]

(2) Subsection (1) does not apply to any specified derivatives contract or any class of specified derivatives contracts prescribed by regulations made under section 129N.

[4/2017]

(3) In this section, "relevant trading jurisdiction" means a foreign jurisdiction that is prescribed by regulations made under section 129N.

[4/2017]

Power of Authority to make regulations

129N.—(1) Without affecting section 341, the Authority may make regulations for the purposes of this Part.

[4/2017]

(2) In deciding whether to prescribe any derivatives contract or class of derivatives contracts for the purposes of the definition of "specified derivatives contract" in section 129I, the Authority may have regard to —

(*a*) the level of systemic risk posed by that derivatives contract or class of derivatives contracts;

(*b*) the characteristics and level of standardisation of the contractual terms and operational processes relating to that derivatives contract or class of derivatives contracts;

(*c*) the depth and liquidity of the market for that derivatives contract or class of derivatives contracts;

(*d*) the international regulatory approach towards that derivatives contract or class of derivatives contracts;

(*e*) the types of persons that transact in that derivatives contract or class of derivatives contracts, and the purposes of transacting in that derivatives contract or class of derivatives contracts;

(*f*) the availability of approved exchanges or recognised market operators that operate organised markets, and the availability of facilities prescribed pursuant to section 129J(1), for the trading of that derivatives contract or class of derivatives contracts;

(*g*) whether there is any anti-competitive effect associated with that derivatives contract or class of derivatives contracts; and

(*h*) any other matter that the Authority considers to be relevant.

[4/2017]

Exemption from section 129J

129O.—(1) Despite section 337(1), the Authority may, by regulations made under section 129N, exempt any specified person or class of specified persons from section 129J, subject to such conditions or restrictions as the Authority may prescribe in those regulations.

[4/2017]

(2) The Authority may, by written notice, exempt any specified person from section 129J, subject to such conditions or restrictions as the Authority may specify by written notice.

[4/2017]

(3) It is not necessary to publish any exemption granted under subsection (2) in the *Gazette*.

[4/2017]

(4) Every specified person that is exempted under subsection (1) or (2) must satisfy every condition or restriction imposed on the specified person under the applicable subsection.

[4/2017]

(5) The Authority may at any time add to, vary or revoke any condition or restriction imposed under this section.

[4/2017]

(6) Any person who contravenes subsection (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 and, in the case of a continuing offence, to a further fine not exceeding $10,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

PART 7

DISCLOSURE OF INTERESTS

Division 1 — Disclosure of Interest in Corporation

Application and interpretation of this Division

130.—(1) This section has effect for the purposes of this Division but does not affect the operation of any other provision of this Act.

[2/2009]

(2) A reference to a corporation is a reference —

(*a*) to a company any or all of the shares in which are listed for quotation on the official list of an approved exchange; or

(*b*) to a corporation (not being a company, or a collective investment scheme constituted as a corporation) any or all of the shares in which are listed for quotation on the official list of an approved exchange, such listing being a primary listing.

[2/2009; 4/2017]

(3) In relation to a corporation the whole or a portion of the share capital of which consists of stock, an interest of a person in any such stock is deemed to be an interest in an issued share in the corporation having attached to it the same rights as are attached to

that stock.

[2/2009]

(4) A reference to a member —

(*a*) in relation to a company, means a person who is a member of the company under section 19(6) of the Companies Act 1967; and

(*b*) in relation to a corporation (other than a company), means any person equivalent to a member of a company.

[2/2009]

(5) To avoid doubt, section 4 applies for the purpose of determining whether a person has an interest in securities or securities-based derivatives contracts under this Division.

[35/2014; 4/2017]

(6) For the purposes of sections 133(3)(*b*)(i), 135(2)(*b*), 136(1), 137(1) and 137E(6), a person is conclusively presumed to have been aware of a fact or occurrence at a particular time —

(*a*) of which he or she would, if he had acted with reasonable diligence in the conduct of his or her affairs, have been aware at that time;

(*b*) where the person is a body corporate or unincorporated association (other than a partnership), of which its officer would, if he or she had acted with reasonable diligence in the conduct of its affairs, have been aware at that time;

(*c*) where the person is a limited liability partnership, of which its partner or manager would, if he or she had acted with reasonable diligence in the conduct of its affairs, have been aware at that time; or

(*d*) where the person is a partnership, of which its partner would, if he or she had acted with reasonable diligence in the conduct of its affairs, have been aware at that time.

[2/2009]

(7) In this section —

"officer" —

(*a*) in relation to a body corporate, means a director, member of the committee of management, chief executive officer, manager, secretary or other similar officer of the body, and includes a person purporting to act in any such capacity; or

(*b*) in relation to an unincorporated association (other than a partnership), means the president, the secretary, or a member of the committee of

the association, or a person holding a position analogous to that of president, secretary or member of the committee, and includes a person purporting to act in such capacity;

"partner" includes a person purporting to act as a partner.

[2/2009]

Persons obliged to comply with this Division and power of Authority to grant exemption or extension

131.—(1) The obligation to comply with this Division extends to all natural persons, whether resident in Singapore or not and whether citizens of Singapore or not, and to all entities, whether formed, constituted or carrying on business in Singapore or not.

[2/2009]

(2) This Division extends to acts done or omitted to be done outside Singapore.

[2/2009]

(3) The Authority may exempt any person or class of persons from any or all of the provisions of this Division.

[2/2009]

(4) The Authority may by written notice impose on a person exempted under subsection (3), or by regulations impose on a class of persons exempted under that subsection, such conditions or restrictions as the Authority thinks fit and the person or persons must comply with such conditions or restrictions.

[2/2009]

(5) Any person who contravenes any condition or restriction imposed under subsection (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(6) The Authority may, on the application of a person required to give a notice under this Division, extend, or further extend, the time for giving the notice.

[2/2009]

Authority may extend scope of Division in certain circumstances

132. The Authority may, if it thinks it is necessary in the interests of the public or a section of the public, to protect investors, or to enhance market transparency, by regulations extend, with or without modifications or adaptations, the provisions of this Division —

(*a*) to any person or class of persons, other than the persons to which this Division applies;

(*aa*) to any securities or securities-based derivatives contracts, or class of securities or securities-based derivatives contracts, other than the securities or securities-based derivatives contracts to which this Division applies;

(*ab*) to any interests in securities or securities-based derivatives contracts, or class of interests in securities or securities-based derivatives contracts, other than the interests in securities or securities-based derivatives contracts to which this Division applies; or

(*b*) to require the disclosure of interests in any entity, arrangement or trust other than a corporation,

and the provisions of this Division apply accordingly.

[2/2009; 4/2017]

Subdivision (1) — Disclosure by directors and chief executive officer of corporation

Duty of director or chief executive officer to notify corporation of his or her interests

133.—(1) Every director and chief executive officer of a corporation must give written notice to the corporation of particulars of —

(*a*) shares in —

(i) the corporation; or

(ii) a related corporation of the corporation,

which he or she holds, or in which he or she has an interest and the nature and extent of that interest;

(*b*) debentures of —

(i) the corporation; or

(ii) a related corporation of the corporation,

which he or she holds, or in which he or she has an interest and the nature and extent of that interest;

(*c*) his or her rights or options, or rights or options of his or hers and another person or other persons, in respect of the acquisition or disposal of shares

in or debentures of —

(i) the corporation; or

(ii) a related corporation of the corporation;

(*d*) contracts to which he or she is a party, or under which he or she is entitled to a benefit, being contracts under which a person has a right to call for or to make delivery of shares in —

(i) the corporation; or

(ii) a related corporation of the corporation;

(*e*) participatory interests made available by —

(i) the corporation; or

(ii) a related corporation of the corporation,

which he or she holds, or in which he or she has an interest and the nature and extent of that interest;

(*f*) such other securities or securities-based derivatives contracts as the Authority may prescribe, which are held, whether directly or indirectly, by him or her, or in which he or she has an interest and the nature and extent of that interest; and

(*g*) any change in respect of the particulars of any matter referred to in paragraphs (*a*) to (*f*).

[2/2009; 4/2017]

(2) Paragraphs (*a*)(ii), (*b*)(ii), (*c*)(ii), (*d*)(ii), (*e*) and (*g*) (in respect of a change in the particulars of any matter referred to in paragraphs (*a*)(ii), (*b*)(ii), (*c*)(ii), (*d*)(ii) and (*e*)) of subsection (1) only apply to a director of a corporation which is a company.

[2/2009]

(3) A notice under subsection (1) —

(*a*) must be in such form and must contain such information as the Authority may prescribe; and

(*b*) must be given —

(i) in the case of a notice under subsection (1)(*g*), within 2 business days after the director or chief executive officer becomes aware of the change; or

(ii) in any other case, within 2 business days after —

(A) the date on which the director or chief executive officer becomes such a director or chief executive officer; or

(B) the date on which the director or chief executive officer becomes a holder of, or acquires an interest in, the shares, debentures, rights, options, contracts, participatory interests, other securities or securities-based derivatives contracts referred to in subsection (1),

whichever last occurs.

[2/2009; 4/2017]

(4) For the purposes of this section —

(*a*) a director or chief executive officer of a corporation is deemed to have an interest in securities or securities-based derivatives contracts referred to in subsection (1) if a family member of the director or chief executive officer (not being himself or herself a director or chief executive officer of the corporation) (as the case may be) holds or has an interest in those securities or securities-based derivatives contracts; and

(*b*) any contract entered into by, any assignment or right of subscription made or exercised by, or any grant made to, a family member of a director or chief executive officer of a corporation (not being himself or herself a director or chief executive officer of the corporation) is deemed to have been entered into by, made or exercised by or made to the director or chief executive officer.

[2/2009; 4/2017]

(5) In this section —

(*a*) a reference to a participatory interest is a reference to a unit in a collective investment scheme; and

(*b*) a reference to a person who holds or acquires participatory interests, other securities or securities-based derivatives contracts referred to in subsection (1), or an interest in shares, debentures, participatory interests, other securities or securities-based derivatives contracts referred to in that subsection, includes a reference to a person who under an option holds or acquires a right to acquire or dispose of the participatory interests, securities or securities-based derivatives contracts, or the interest in shares, debentures, participatory interests, securities or securities-based derivatives

contracts.

[2/2009; 4/2017]

(6) In this section, "family member" means a spouse, or a son, adopted son, stepson, daughter, adopted daughter or stepdaughter below the age of 21 years.

[2/2009]

Penalties under this Subdivision

134.—(1) Any director or chief executive officer of a corporation who —

(*a*) intentionally or recklessly contravenes section 133(1)(*a*)(i), (*b*)(i), (*c*)(i), (*d*)(i) or (*f*), or section 133(1)(*g*) in respect of a change in the particulars of any matter referred to in section 133(1)(*a*)(i), (*b*)(i), (*c*)(i), (*d*)(i) and (*f*);

(*b*) intentionally or recklessly contravenes section 133(3) in respect of a notice of the particulars of any matter referred to in section 133(1)(*a*)(i), (*b*)(i), (*c*)(i), (*d*)(i) and (*f*) or of a change in any of those particulars; or

(*c*) in purported compliance with section 133(1)(*a*)(i), (*b*)(i), (*c*)(i), (*d*)(i) or (*f*), or section 133(1)(*g*) in respect of a change in the particulars of any matter referred to in section 133(1)(*a*)(i), (*b*)(i), (*c*)(i), (*d*)(i) and (*f*), provides any information which he or she knows is false or misleading in a material particular or is reckless as to whether it is,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $250,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding $25,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(2) Any director or chief executive officer of a corporation who —

(*a*) contravenes section 133(1) or (3); or

(*b*) in purported compliance with section 133, provides any information which is false or misleading in a material particular,

in circumstances other than as set out in subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $25,000 and, in the case of a continuing offence, to a further fine not exceeding $2,500 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(3) No proceedings shall be instituted against a person for an offence under this section after —

(*a*) a court has made an order against the person for the payment of a civil penalty under section 137ZD in respect of the same contravention; or

(*b*) the person has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 137ZD(4), in respect of the same contravention.

[2/2009]

Subdivision (2) — Disclosure by substantial shareholders in corporation

Duty of substantial shareholder to notify corporation of interests

135.—(1) A person who is or (if the person has ceased to be one) had been a substantial shareholder in a corporation must give written notice to the corporation of particulars of the voting shares in the corporation in which the person has or had an interest or interests and the nature and extent of that interest or those interests.

[2/2009]

(2) A notice under subsection (1) —

(*a*) must be in such form and must contain such information as the Authority may prescribe;

(*b*) must be given within 2 business days after the person becomes aware that the person is or (if the person has ceased to be one) had been a substantial shareholder; and

(*c*) must be given even though the person has ceased to be a substantial shareholder before the expiration of the period referred to in paragraph (*b*).

[2/2009]

Duty of substantial shareholder to notify corporation of change in interests

136.—(1) Where there is a change in the percentage level of the interest or interests of a substantial shareholder in a corporation in voting shares in the corporation, the substantial shareholder must give written notice to the corporation within 2 business days after the substantial shareholder becomes aware of the change.

[2/2009]

(2) A notice under subsection (1) must be in such form and must contain such information as the Authority may prescribe.

[2/2009]

(3) In subsection (1), "percentage level", in relation to a substantial shareholder in a

corporation, means the percentage figure ascertained by expressing the total votes attached to all the voting shares in which the substantial shareholder has an interest or interests immediately before or (as the case may be) immediately after the relevant time, as a percentage of the total votes attached to —

(*a*) all the voting shares (excluding treasury shares) in the corporation; or

(*b*) where the share capital of the corporation is divided into 2 or more classes of shares, all the voting shares (excluding treasury shares) in the class concerned,

and, if it is not a whole number, rounding that figure down to the next whole number.

[2/2009]

Duty of person who ceases to be substantial shareholder to notify corporation

137.—(1) A person who ceases to be a substantial shareholder in a corporation must give written notice to the corporation within 2 business days after the person becomes aware that the person has ceased to be a substantial shareholder.

[2/2009]

(2) A notice under subsection (1) must be in such form and must contain such information as the Authority may prescribe.

[2/2009]

Beneficial owner to ensure notification by person who holds, acquires or disposes of interests on beneficial owner's behalf

137A. Where a person (*A*) authorises another person (*B*) to hold, acquire or dispose of, on *A*'s behalf, voting shares or an interest or interests in voting shares in a corporation, *A* must take reasonable steps to ensure that *B* notifies *A* as soon as practicable and, in any case, no later than 2 business days after any acquisition or disposal of any of those voting shares or interest or interests in voting shares effected by *B* on *A*'s behalf which will or may give rise to any duty on the part of *A* to give notice under this Subdivision.

[2/2009]

Notification by person who holds, acquires or disposes of interests for benefit of another person

137B. Where a person (*A*) holds voting shares in a corporation, being voting shares in which another person (*B*) has an interest, *A* must give to *B* a notice of any acquisition or disposal of any of those shares effected by *A*, in such form as the Authority may prescribe, as soon as practicable and, in any case, no later than 2 business days after acquiring or disposing of the shares.

[2/2009]

Corporation to keep register of substantial shareholders

137C.—(1) A corporation must keep a register in which it must immediately enter —

(*a*) the names of persons from whom it has received a notice under section 135; and

(*b*) against each name so entered, the information given in the notice and, where it receives a notice under section 136 or 137, the information given in that notice.

[2/2009]

(2) The corporation must keep the register at its registered office or, if the corporation does not have a registered office, at its principal place of business in Singapore and the register must be open for inspection by a member of the corporation without charge, and by any other person on payment for each inspection of a sum of $2 or such lesser sum as the corporation requires.

[2/2009]

(3) A person may request the corporation to provide the person with a copy of the register or any part of the register on payment in advance of a sum of $1 or such lesser sum as the corporation requires for every page or part thereof required to be copied, and the corporation must send the copy to that person within 14 days, or such longer period as the Authority may allow in any particular case, after the day on which the corporation received the request.

[2/2009]

(4) The Authority may at any time in writing require the corporation to provide it with a copy of the register or any part of the register and the corporation must send the copy to the Authority within 7 days after the day on which the corporation received the requirement.

[2/2009]

(5) Any corporation which fails to comply with subsection (1), (2), (3) or (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(6) A corporation is not, by reason of anything done under this Subdivision —

(*a*) to be taken for any purpose of the Companies Act 1967 to have notice of; or

(*b*) to be put upon inquiry as to,

a right of a person to or in relation to a share in the corporation.

[2/2009]

Penalties under this Subdivision

137D.—(1) Any person who —

(*a*) intentionally or recklessly contravenes section 135, 136(1) or (2), 137, 137A or 137B; or

(*b*) in purported compliance with section 135, 136, 137 or 137B, provides any information which the person knows is false or misleading in a material particular or is reckless as to whether it is,

shall be guilty of an offence and shall —

(*c*) in the case of an individual, be liable on conviction to a fine not exceeding $250,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding $25,000 for every day or part of a day during which the offence continues after conviction; or

(*d*) in the case of a corporation, be liable on conviction to a fine not exceeding $250,000 and, in the case of a continuing offence, to a further fine not exceeding $25,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(2) Any person who —

(*a*) contravenes section 135, 136(1) or (2), 137, 137A or 137B; or

(*b*) in purported compliance with section 135, 136, 137 or 137B, provides any information which is false or misleading in a material particular,

in circumstances other than as set out in subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $25,000 and, in the case of a continuing offence, to a further fine not exceeding $2,500 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(3) No proceedings shall be instituted against a person for an offence under this section after —

(*a*) a court has made an order against the person for the payment of a civil penalty under section 137ZD in respect of the same contravention; or

(*b*) the person has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 137ZD(4), in respect of the same contravention.

[2/2009]

Powers of court with respect to non-compliance by substantial shareholders

137E.—(1) Where a person is or has been a substantial shareholder in a corporation and has failed to comply with section 135, 136 or 137, a court may, on the application of the Authority, whether or not that failure still continues, make one or more of the following orders:

(*a*) an order restraining the person who is or has been a substantial shareholder from disposing of any interest in shares in the corporation in which that person is or has been a substantial shareholder;

(*b*) an order restraining a person who is, or is entitled to be the holder of the shares referred to in paragraph (*a*) from disposing of any interest in those shares;

(*c*) an order restraining the exercise by any person of any voting or other rights attached to any share in the corporation in which the substantial shareholder has or has had an interest;

(*d*) an order directing the corporation not to make payment, or to defer making payment, of any sum due from the corporation in respect of any share in which the substantial shareholder has or has had an interest;

(*e*) an order directing the sale of any or all of the shares in the corporation in which the substantial shareholder has or has had an interest;

(*f*) an order directing the corporation not to register or cause to be registered in the register of members the transfer or transmission of shares specified by the court;

(*g*) an order directing the Depository (within the meaning of section 81SF) or any depository corporation not to register or cause to be registered the transfer or transmission of any shares or interest in shares in the corporation specified by the court;

(*h*) an order that any exercise by any person of the voting or other rights attached to shares in the corporation specified by the court in which the substantial shareholder has or has had an interest be disregarded;

(*i*) for the purposes of securing compliance with any other order made under this section, an order directing the corporation or any other person to do or refrain from doing an act specified by the court.

[2/2009; 35/2014]

(2) Any order made under this section may include such ancillary or consequential provisions as the court thinks just.

[2/2009]

(3) An order made under this section directing the sale of any share may provide that the sale is to be made within such time and subject to such conditions (if any) as the court thinks fit, including, if the court thinks fit, a condition that the sale must not be made to a person who is, or, as a result of the sale, would become a substantial shareholder in the corporation.

[2/2009]

(4) Where a share is not sold in accordance with an order of the court under this section, the Authority may apply to the court for directions, including directions as to who the unsold share is to vest in.

[2/2009]

(5) The court, before making an order under this section and in determining the terms of such an order, is to satisfy itself, so far as it can reasonably do so, that the order would not unfairly prejudice any person.

[2/2009]

(6) The court is not to make an order under this section, other than an order restraining the exercise of voting rights, if it is satisfied —

(*a*) that the failure of the person who is or has been a substantial shareholder to comply as mentioned in subsection (1) was due to the person's inadvertence or mistake or to the person not being aware of a relevant fact or occurrence; and

(*b*) that in all the circumstances, the failure ought to be excused.

[2/2009]

(7) The court may, before making an order under this section, direct that notice of the application be given to such persons as it thinks fit or direct that notice of the application be published in such manner as it thinks fit, or both.

[2/2009]

(8) The court may rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

[2/2009]

(9) Any person who contravenes an order made under this section that is applicable to the person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(10) Subsection (9) does not affect the powers of the court in relation to the punishment of contempt of the court.

[2/2009]

Power of corporation to require disclosure of beneficial interest in its voting shares

137F.—(1) Any corporation may by written notice require any member of the corporation within such reasonable time as is specified in the notice —

(*a*) to inform it whether the member holds any voting shares in the corporation as beneficial owner or as trustee; and

(*b*) if the member holds them as trustee, to indicate so far as the member can the persons for whom the member holds them (either by name or by other particulars sufficient to enable those persons to be identified) and the nature of their interest.

[2/2009]

(2) Where a corporation is informed pursuant to a notice given to any person under subsection (1) or under this subsection that any other person has an interest in any of the voting shares in the corporation, the corporation may by written notice require that other person within such reasonable time as is specified in the notice —

(*a*) to inform it whether that other person holds that interest as beneficial owner or as trustee; and

(*b*) if that other person holds it as trustee, to indicate so far as that other person can the persons for whom that other person holds it (either by name or by other particulars sufficient to enable them to be identified) and the nature of their interest.

[2/2009]

(3) Any corporation may by written notice require any member of the corporation to inform it, within such reasonable time as is specified in the notice, whether any of the voting rights carried by any voting shares in the corporation held by the member are the subject of an agreement or arrangement under which another person is entitled to control the member's exercise of those rights and, if so, to give particulars of the agreement or arrangement and the parties to it.

[2/2009]

(4) The notice referred to in subsection (1), (2) or (3) must contain such other information as the Authority may prescribe, and the delivery of such notice must comply with such requirements as the Authority may prescribe.

[2/2009]

(5) Any person to whom a notice is issued under subsection (1), (2) or (3) must comply with that notice.

[2/2009]

(6) Whenever a corporation receives information from a person pursuant to a requirement imposed on the person under this section with respect to shares held by a

member of the corporation, it is under an obligation to inscribe against the name of that member in a separate part of the register kept by it under section 137C —

(*a*) the fact that the requirement was imposed and the date on which it was imposed; and

(*b*) the information received pursuant to the requirement.

[2/2009]

(7) Section 137C applies in relation to the part of the register referred to in subsection (6) as it applies in relation to the remainder of the register and as if references to subsection (1) of that section included references to subsection (6).

[2/2009]

(8) Any person who —

(*a*) intentionally or recklessly contravenes subsection (5); or

(*b*) in purported compliance with subsection (5), provides any information which the person knows is false or misleading in a material particular or is reckless as to whether it is,

shall be guilty of an offence and shall —

(*c*) in the case of an individual, be liable on conviction to a fine not exceeding $250,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding $25,000 for every day or part of a day during which the offence continues after conviction; or

(*d*) in the case of a corporation, be liable on conviction to a fine not exceeding $250,000 and, in the case of a continuing offence, to a further fine not exceeding $25,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(9) Any person who —

(*a*) contravenes subsection (5); or

(*b*) in purported compliance with subsection (5), provides any information which is false or misleading in a material particular,

in circumstances other than as set out in subsection (8) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $25,000 and, in the case of a continuing offence, to a further fine not exceeding $2,500 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(10) A person shall not be guilty of an offence under subsection (8)(*a*) or (9)(*a*) if the person proves that the information in question was already in the possession of the corporation or that the requirement to give it was for any other reason frivolous or vexatious.

[2/2009]

(11) No proceedings shall be instituted against a person for an offence under this section after —

(*a*) a court has made an order against the person for the payment of a civil penalty under section 137ZD in respect of the same contravention; or

(*b*) the person has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 137ZD(4), in respect of the same contravention.

[2/2009]

Subdivision (3) — Disclosure by corporation

Duty of corporation to make disclosure

137G.—(1) Where a corporation has been notified in writing by —

(*a*) a director or chief executive officer of the corporation pursuant to a requirement imposed on him or her under section 133(1)(*a*)(i), (*b*)(i), (*c*)(i), (*d*)(i) or (*f*), or under section 133(1)(*g*) in respect of a change in the particulars of any matter referred to in section 133(1)(*a*)(i), (*b*)(i), (*c*)(i), (*d*)(i) and (*f*); or

(*b*) a substantial shareholder in the corporation pursuant to a requirement imposed on the substantial shareholder under section 135, 136 or 137,

the corporation must announce or otherwise disseminate the information stated in the notice to the organised market operated by the approved exchange on whose official list any or all of the shares of the corporation are listed, as soon as practicable and in any case, no later than the end of the business day following the day on which the corporation received the notice.

[2/2009; 4/2017]

(2) The corporation must announce or otherwise disseminate the information in such form and manner as the Authority may prescribe.

[2/2009]

(3) Any corporation that —

(*a*) intentionally or recklessly contravenes subsection (1) or (2); or

(*b*) in purported compliance with this section, announces or disseminates any information knowing that it is false or misleading in a material particular or reckless as to whether it is,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $250,000 and, in the case of a continuing offence, to a further fine not exceeding $25,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(4) Any corporation that —

(*a*) contravenes subsection (1) or (2); or

(*b*) in purported compliance with this section, announces or disseminates any information that is false or misleading in a material particular,

in circumstances other than as set out in subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $25,000 and, in the case of a continuing offence, to a further fine not exceeding $2,500 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(5) Where an offence has been committed by a corporation under subsection (3) or (4), any officer of the corporation who —

(*a*) causes the corporation to contravene subsection (1);

(*b*) announces or disseminates, or permits or authorises the announcement or dissemination of, the information that is false or misleading in a material particular; or

(*c*) announces or disseminates, or permits or authorises the announcement or dissemination of the information in contravention of subsection (2),

must —

(*d*) if he or she had acted intentionally or recklessly, or with knowledge that the information so announced or disseminated is false or misleading in a material particular or is reckless as to whether it is, be guilty of an offence and be liable on conviction to a fine not exceeding $250,000 or to imprisonment for a term not exceeding 2 years or to both; or

(*e*) if he or she had acted negligently, be guilty of an offence and be liable on conviction to a fine not exceeding $25,000.

[2/2009]

(6) In this section, "officer" means a director, member of the committee of

management, chief executive officer, manager, secretary or other similar officer of the corporation, and includes a person purporting to act in any such capacity.

[2/2009]

(7) No proceedings shall be instituted against a person for an offence under this section after —

(*a*) a court has made an order against the person for the payment of a civil penalty under section 137ZD in respect of the same contravention; or

(*b*) the person has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 137ZD(4), in respect of the same contravention.

[2/2009]

Division 2 — Disclosure of Interest in Business Trust and Interest in Trustee-Manager of Business Trust

Application and interpretation of this Division

137H.—(1) This section has effect for the purposes of this Division but does not affect the operation of any other provision of this Act.

[2/2009]

(2) A reference to a registered business trust is a reference to a registered business trust any or all of the units in which are listed for quotation on the official list of an approved exchange.

[2/2009; 4/2017]

(3) A reference to a recognised business trust is a reference to a recognised business trust any or all of the units in which are listed for quotation on the official list of an approved exchange, such listing being a primary listing.

[2/2009; 4/2017]

(4) To avoid doubt, section 4 applies for the purpose of determining whether a person has an interest in securities or securities-based derivatives contracts under this Division.

[35/2014; 4/2017]

(5) Section 130(6) and (7) applies for the purposes of —

(*a*) sections 135(2)(*b*), 136(1) and 137(1) as applied by section 137J(1); and

(*b*) sections 137L(6), 137N(2)(*b*)(i), 137P(1) and 137R(1),

as they apply for the purposes of sections 133(3)(*b*)(i), 135(2)(*b*), 136(1), 137(1) and 137E(6).

[2/2009]

Persons obliged to comply with this Division and power of Authority to grant exemption or extension

137I.—(1) The obligation to comply with this Division extends to all natural persons, whether resident in Singapore or not and whether citizens of Singapore or not, and to all entities, whether formed, constituted or carrying on business in Singapore or not.

[2/2009]

(2) This Division extends to acts done or omitted to be done outside Singapore.

[2/2009]

(3) The Authority may exempt any person or class of persons from any or all of the provisions of this Division.

[2/2009]

(4) The Authority may by written notice impose on a person exempted under subsection (3), or by regulations impose on a class of persons exempted under that subsection, such conditions or restrictions as the Authority thinks fit and the person or persons must comply with such conditions or restrictions.

[2/2009]

(5) Any person who contravenes any condition or restriction imposed under subsection (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(6) The Authority may, on the application of a person required to give a notice under this Division, extend, or further extend, the time for giving the notice.

[2/2009]

Authority may extend scope of Division in certain circumstances

137IA. The Authority may, if it thinks it is necessary in the interests of the public or a section of the public, to protect investors, or to enhance market transparency, by regulations extend, with or without modifications or adaptations, the provisions of this Division —

(*a*) to any person or class of persons, other than the persons to which this Division applies;

(*b*) to any securities or securities-based derivatives contracts, or class of securities or securities-based derivatives contracts, other than the securities or securities-based derivatives contracts to which this Division applies;

(*c*) to any interests in securities or securities-based derivatives contracts, or

class of interests in securities or securities-based derivatives contracts, other than the interests in securities or securities-based derivatives contracts to which this Division applies; or

(*d*) to require the disclosure of interests in any entity, arrangement or trust other than a business trust or a trustee-manager of a business trust,

and the provisions of this Division apply accordingly.

[4/2017]

Subdivision (1) — Disclosure by substantial unitholders of business trust

Duty of substantial unitholder to notify trustee-manager of interests

137J.—(1) Sections 135 to 137B apply, with such modifications and qualifications as may be necessary, to a person who is a substantial unitholder of a registered business trust or recognised business trust as though —

(*a*) references to the corporation to which notification should be given were references to the trustee-manager of the business trust;

(*b*) references to shares or voting shares in the corporation were references to units or voting units in the business trust; and

(*c*) references to a substantial shareholder in the corporation were references to a substantial unitholder of the business trust,

and such person must comply with those provisions accordingly.

[2/2009]

(2) Any person to whom subsection (1) applies who —

(*a*) intentionally or recklessly contravenes section 135, 136(1) or (2), 137, 137A or 137B as applied by subsection (1); or

(*b*) in purported compliance with section 135, 136, 137 or 137B as applied by subsection (1), provides any information which the person knows is false or misleading in a material particular or is reckless as to whether it is,

shall be guilty of an offence and shall —

(*c*) in the case of an individual, be liable on conviction to a fine not exceeding $250,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding $25,000 for every day or part of a day during which the offence continues

after conviction; or

(*d*) in the case of a corporation, be liable on conviction to a fine not exceeding $250,000 and, in the case of a continuing offence, to a further fine not exceeding $25,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(3) Any person to whom subsection (1) applies who —

(*a*) contravenes section 135, 136(1) or (2), 137, 137A or 137B as applied by subsection (1); or

(*b*) in purported compliance with section 135, 136, 137 or 137B as applied by subsection (1), provides any information which is false or misleading in a material particular,

in circumstances other than as set out in subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $25,000 and, in the case of a continuing offence, to a further fine not exceeding $2,500 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(4) No proceedings shall be instituted against a person for an offence under this section after —

(*a*) a court has made an order against the person for the payment of a civil penalty under section 137ZD in respect of the same contravention; or

(*b*) the person has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 137ZD(4), in respect of the same contravention.

[2/2009]

Trustee-manager to keep register of substantial unitholders

137K.—(1) The trustee-manager of a registered business trust or recognised business trust must keep a register in which it must immediately enter —

(*a*) the names of persons from whom it has received a notice under section 135 as applied by section 137J(1); and

(*b*) against each name so entered, the information given in the notice and, where it receives a notice under section 136 or 137 as applied by section 137J(1), the information given in that notice.

[2/2009]

(2) The trustee-manager must keep the register at its registered office or, if the trustee-manager does not have a registered office, at its principal place of business in Singapore, and the register must be open for inspection by a unitholder of the business trust without charge and by any other person on payment for each inspection of a sum of $2 or such lesser sum as the trustee-manager requires.

[2/2009]

(3) A person may request the trustee-manager to provide the person with a copy of the register or any part of the register on payment in advance of a sum of $1 or such lesser sum as the trustee-manager requires for every page or part thereof required to be copied, and the trustee-manager must send the copy to that person within 14 days, or such longer period as the Authority may allow in any particular case, after the day on which the trustee-manager received the request.

[2/2009]

(4) The Authority may at any time in writing require the trustee-manager to provide it with a copy of the register or any part of the register and the trustee-manager must send the copy to the Authority within 7 days after the day on which the trustee-manager received the requirement.

[2/2009]

(5) Any trustee-manager which fails to comply with subsection (1), (2), (3) or (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

Powers of court with respect to non-compliance by substantial unitholders

137L.—(1) Where a person is or has been a substantial unitholder of a registered business trust or recognised business trust and has failed to comply with section 135, 136 or 137 as applied by section 137J(1), a court may, on the application of the Authority, whether or not that failure still continues, make one or more of the following orders:

(*a*) an order restraining the person from disposing of any interest in units in the business trust of which the person is or has been a substantial unitholder;

(*b*) an order restraining a person who is, or is entitled to be, the holder of the units referred to in paragraph (*a*) from disposing of any interest in those units;

(*c*) an order restraining the exercise by any person of any voting or other rights attached to any unit in the business trust in which the substantial unitholder has or has had an interest;

(*d*) an order directing the trustee-manager of the business trust not to make

payment, or to defer making payment, out of the property of the business trust of any sum due in respect of any unit in which the substantial unitholder has or has had an interest;

(*e*) an order directing the sale of any or all of the units in the business trust in which the substantial unitholder has or has had an interest;

(*f*) an order directing the trustee-manager of the business trust not to register or cause to be registered in the register of unitholders the transfer or transmission of units specified by the court;

(*g*) an order directing the Depository (within the meaning of section 81SF) or any depository corporation not to register or cause to be registered the transfer or transmission of any units or interest in units in the business trust specified by the court;

(*h*) an order that any exercise by any person of the voting or other rights attached to units in the business trust specified by the court in which the substantial unitholder has or has had an interest be disregarded;

(*i*) for the purposes of securing compliance with any other order made under this section, an order directing the trustee-manager of the business trust or any other person to do or refrain from doing an act specified by the court.

[2/2009; 35/2014]

(2) Any order made under this section may include such ancillary or consequential provisions as the court thinks just.

[2/2009]

(3) An order made under this section directing the sale of any unit may provide that the sale is to be made within such time and subject to such conditions (if any) as the court thinks fit, including, if the court thinks fit, a condition that the sale must not be made to a person who is, or, as a result of the sale, would become a substantial unitholder of the business trust.

[2/2009]

(4) Where a unit is not sold in accordance with an order of the court under this section, the Authority may apply to the court for directions, including directions as to who the unsold unit is to vest in.

[2/2009]

(5) The court, before making an order under this section and in determining the terms of such an order, is to satisfy itself, so far as it can reasonably do so, that the order would not unfairly prejudice any person.

[2/2009]

(6) The court is not to make an order under this section, other than an order

restraining the exercise of voting rights, if it is satisfied —

(*a*) that the failure of the person who is or has been a substantial unitholder to comply as mentioned in subsection (1) was due to the person's inadvertence or mistake or to the person not being aware of a relevant fact or occurrence; and

(*b*) that in all the circumstances, the failure ought to be excused.

[2/2009]

(7) The court may, before making an order under this section, direct that notice of the application be given to such persons as it thinks fit or direct that notice of the application be published in such manner as it thinks fit, or both.

[2/2009]

(8) The court may rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

[2/2009]

(9) Any person who contravenes an order made under this section that is applicable to the person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(10) Subsection (9) does not affect the powers of the court in relation to the punishment of contempt of the court.

[2/2009]

Power of trustee-manager to require disclosure of beneficial interest in voting units

137M.—(1) The trustee-manager of a registered business trust or recognised business trust may by written notice require any unitholder of the business trust within such reasonable time as is specified in the notice —

(*a*) to inform it whether the unitholder holds any voting units in the business trust as beneficial owner or as trustee; and

(*b*) if the unitholder holds them as trustee, to indicate so far as the unitholder can the persons for whom the unitholder holds them (either by name or by other particulars sufficient to enable those persons to be identified) and the nature of their interest.

[2/2009]

(2) Where the trustee-manager of a registered business trust or recognised business trust is informed pursuant to a notice given to any person under subsection (1) or under

this subsection that any other person has an interest in any of the voting units in the business trust, the trustee-manager may by written notice require that other person within such reasonable time as is specified in the notice —

(*a*) to inform it whether that other person holds that interest as beneficial owner or as trustee; and

(*b*) if that other person holds it as trustee, to indicate so far as that other person can the persons for whom that other person holds it (either by name or by other particulars sufficient to enable them to be identified) and the nature of their interest.

[2/2009]

(3) The trustee-manager of a registered business trust or recognised business trust may by written notice require any unitholder of the business trust to inform it, within such reasonable time as is specified in the notice, whether any of the voting rights carried by any voting units in the business trust held by the unitholder are the subject of an agreement or arrangement under which another person is entitled to control the unitholder's exercise of those rights and, if so, to give particulars of the agreement or arrangement and the parties to it.

[2/2009]

(4) The notice referred to in subsection (1), (2) or (3) must contain such other information as the Authority may prescribe, and the delivery of such notice must comply with such requirements as the Authority may prescribe.

[2/2009]

(5) Any person to whom a notice is issued under subsection (1), (2) or (3) must comply with that notice.

[2/2009]

(6) Whenever the trustee-manager of a registered business trust or recognised business trust receives information from a person pursuant to a requirement imposed on the person under this section with respect to units held by a unitholder of the business trust, it is under an obligation to inscribe against the name of that unitholder in a separate part of the register kept by it under section 137K —

(*a*) the fact that the requirement was imposed and the date on which it was imposed; and

(*b*) the information received pursuant to the requirement.

[2/2009]

(7) Section 137K applies in relation to the part of the register referred to in subsection (6) as it applies in relation to the remainder of the register and as if references to subsection (1) of that section included references to subsection (6).

[2/2009]

(8) Any person who —

(*a*) intentionally or recklessly contravenes subsection (5); or

(*b*) in purported compliance with subsection (5), provides any information which the person knows is false or misleading in a material particular or is reckless as to whether it is,

shall be guilty of an offence and shall —

(*c*) in the case of an individual, be liable on conviction to a fine not exceeding $250,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding $25,000 for every day or part of a day during which the offence continues after conviction; or

(*d*) in the case of a corporation, be liable on conviction to a fine not exceeding $250,000 and, in the case of a continuing offence, to a further fine not exceeding $25,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(9) Any person who —

(*a*) contravenes subsection (5); or

(*b*) in purported compliance with subsection (5), provides any information which is false or misleading in a material particular,

in circumstances other than as set out in subsection (8) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $25,000 and, in the case of a continuing offence, to a further fine not exceeding $2,500 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(10) A person shall not be guilty of an offence under subsection (8)(*a*) or (9)(*a*) if the person proves that the information in question was already in the possession of the trustee-manager of the registered business trust or recognised business trust, or that the requirement to give it was for any other reason frivolous or vexatious.

[2/2009]

(11) No proceedings shall be instituted against a person for an offence under this section after —

(*a*) a court has made an order against the person for the payment of a civil penalty under section 137ZD in respect of the same contravention; or

(*b*) the person has entered into an agreement with the Authority to pay, with or

without admission of liability, a civil penalty under section 137ZD(4), in respect of the same contravention.

[2/2009]

Subdivision (2) — Disclosure by directors and chief executive officer of trustee-manager of business trust

Duty of director and chief executive officer of trustee-manager to notify of interests

137N.—(1) Every director and chief executive officer of the trustee-manager of a registered business trust or recognised business trust must give written notice to the trustee-manager of particulars of —

(*a*) units or derivatives of units in the business trust, being units or derivatives of units held by him or her, or in which he or she has an interest and the nature and extent of that interest;

(*b*) debentures or units of debentures of the business trust which are held by him or her, or in which he or she has an interest and the nature and extent of that interest;

(*c*) such other securities or securities-based derivatives contracts as the Authority may prescribe which are held, whether directly or indirectly, by him or her, or in which he or she has an interest and the nature and extent of that interest; and

(*d*) any change in respect of the particulars of any matter referred to in paragraphs (*a*), (*b*) and (*c*).

[2/2009; 4/2017]

(2) A notice under subsection (1) —

(*a*) must be in such form and must contain such information as the Authority may prescribe; and

(*b*) must be given —

(i) in the case of a notice under subsection (1)(*d*), within 2 business days after the director or chief executive officer becomes aware of the change; or

(ii) in any other case, within 2 business days after —

(A) the date on which the director or chief executive officer becomes such a director or chief executive officer; or

(B) the date on which the director or chief executive officer becomes a holder of, or acquires an interest in, the units, derivatives of units, debentures, units of debentures, other securities or securities-based derivatives contracts referred to in subsection (1),

whichever last occurs.

[2/2009; 4/2017]

(3) For the purposes of this section, a director or chief executive officer of a trustee-manager is deemed to have an interest in securities or securities-based derivatives contracts referred to in subsection (1) if a family member of the director or chief executive officer (not being himself or herself a director or chief executive officer of the trustee-manager) (as the case may be) has an interest in those securities or securities-based derivatives contracts.

[2/2009; 4/2017]

(4) In this section —

"family member" means a spouse, or a son, adopted son, stepson, daughter, adopted daughter or stepdaughter below the age of 21 years;

"unit", in relation to a debenture, means any right or interest, whether legal or equitable, in the debenture, by whatever name called, and includes any option to acquire any such right or interest in the debenture.

[2/2009]

Penalties under this Subdivision

137O.—(1) Any director or chief executive officer of the trustee-manager of a registered business trust or recognised business trust who —

(*a*) intentionally or recklessly contravenes section 137N(1) or (2); or

(*b*) in purported compliance with section 137N, provides any information which he or she knows is false or misleading in a material particular or is reckless as to whether it is,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $250,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding $25,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(2) Any director or chief executive officer of the trustee-manager of a registered

business trust or recognised business trust who —

(*a*) contravenes section 137N(1) or (2); or

(*b*) in purported compliance with section 137N, provides any information which is false or misleading in a material particular,

in circumstances other than as set out in subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $25,000 and, in the case of a continuing offence, to a further fine not exceeding $2,500 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(3) No proceedings shall be instituted against a person for an offence under this section after —

(*a*) a court has made an order against the person for the payment of a civil penalty under section 137ZD in respect of the same contravention; or

(*b*) the person has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 137ZD(4), in respect of the same contravention.

[2/2009]

Subdivision (3) — Disclosure by holders of voting shares in trustee-manager

Duty of holders of voting shares in trustee-manager to notify trustee-manager

137P.—(1) Where the percentage of interest of a person in the voting shares in a trustee-manager of a registered business trust or recognised business trust reaches, crosses or falls below 15%, 30%, 50% or 75%, the person must give written notice to the trustee-manager within 2 business days after the person becomes aware of this.

[2/2009]

(2) A notice under subsection (1) must be in such form and must contain such information as the Authority may prescribe.

[2/2009]

(3) In subsection (1), the percentage of interest of a person in the voting shares in a trustee-manager of a registered business trust or recognised business trust is ascertained by expressing the total votes attached to all the voting shares in which the person has an interest or interests immediately before or (as the case may be) immediately after the relevant time, as a percentage of the total votes attached to —

(*a*) all the voting shares (excluding treasury shares) in the trustee-manager; or

(*b*) where the share capital of the trustee-manager is divided into 2 or more classes of shares, all the voting shares (excluding treasury shares) in the class concerned,

and, if it is not a whole number, rounding that figure down to the next whole number.

[2/2009]

Penalties under this Subdivision

137Q.—(1) Any person who —

(*a*) intentionally or recklessly contravenes section 137P(1) or (2); or

(*b*) in purported compliance with section 137P, provides any information which the person knows is false or misleading in a material particular or is reckless as to whether it is,

shall be guilty of an offence and shall —

(*c*) in the case of an individual, be liable on conviction to a fine not exceeding $250,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding $25,000 for every day or part of a day during which the offence continues after conviction; or

(*d*) in the case of a corporation, be liable on conviction to a fine not exceeding $250,000 and, in the case of a continuing offence, to a further fine not exceeding $25,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(2) Any person who —

(*a*) contravenes section 137P(1) or (2); or

(*b*) in purported compliance with section 137P, provides any information which is false or misleading in a material particular,

in circumstances other than as set out in subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $25,000 and, in the case of a continuing offence, to a further fine not exceeding $2,500 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(3) No proceedings shall be instituted against a person for an offence under this section after —

(*a*) a court has made an order against the person for the payment of a civil penalty under section 137ZD in respect of the same contravention; or

(*b*) the person has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 137ZD(4), in respect of the same contravention.

[2/2009]

Subdivision (4) — Disclosure by trustee-manager

Duty of trustee-manager of business trust to make disclosure

137R.—(1) Where the trustee-manager of a registered business trust or recognised business trust —

(*a*) acquires or disposes of interests in units or derivatives of units in, or debentures or units of debentures of, the business trust;

(*aa*) acquires or disposes of interests in such securities or securities-based derivatives contracts of the business trust as may be prescribed by regulations made under section 341; or

(*b*) has been notified in writing by —

(i) a substantial unitholder of the business trust pursuant to a requirement imposed on the substantial unitholder under section 135, 136 or 137 as applied by section 137J(1);

(ii) a director or chief executive officer of the trustee-manager pursuant to a requirement imposed on him or her under section 137N; or

(iii) a person who holds an interest or interests in voting shares in the trustee-manager pursuant to a requirement imposed on the person under section 137P,

the trustee-manager must announce or otherwise disseminate the particulars of the acquisition or disposal, or the information stated in the notice it received (as the case may be) to the organised market operated by the approved exchange on whose official list any or all of the units in the business trust are listed, as soon as practicable and in any case no later than the end of the business day following the day on which the trustee-manager became aware of the acquisition or disposal, or received the notice.

[2/2009; 4/2017]

(2) The trustee-manager must announce or otherwise disseminate the information in such form and manner as the Authority may prescribe.

[2/2009]

(3) Any trustee-manager of a registered business trust or recognised business trust that —

(*a*) intentionally or recklessly contravenes subsection (1) or (2); or

(*b*) in purported compliance with this section, announces or disseminates any information which the trustee-manager knows is false or misleading in a material particular or is reckless as to whether it is,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $250,000 and, in the case of a continuing offence, to a further fine not exceeding $25,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(4) Any trustee-manager of a registered business trust or recognised business trust that —

(*a*) contravenes subsection (1) or (2); or

(*b*) in purported compliance with this section, announces or disseminates any information that is false or misleading in a material particular,

in circumstances other than as set out in subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $25,000 and, in the case of a continuing offence, to a further fine not exceeding $2,500 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(5) Where an offence has been committed by a trustee-manager under subsection (3) or (4), any officer of the trustee-manager who —

(*a*) causes the trustee-manager to contravene subsection (1);

(*b*) announces or disseminates, or permits or authorises the announcement or dissemination of, the information that is false or misleading in a material particular; or

(*c*) announces or disseminates, or permits or authorises the announcement or dissemination of the information in contravention of subsection (2),

shall —

(*d*) if he or she had acted intentionally or recklessly, or with knowledge that the information so announced or disseminated is false or misleading in a

material particular or is reckless as to whether it is, be guilty of an offence and be liable on conviction to a fine not exceeding $250,000 or to imprisonment for a term not exceeding 2 years or to both; or

(*e*) if he or she had acted negligently, be guilty of an offence and be liable on conviction to a fine not exceeding $25,000.

[2/2009]

(6) In this section, "officer" means a director, member of the committee of management, chief executive officer, manager, secretary or other similar officer of the trustee-manager, and includes a person purporting to act in any such capacity.

[2/2009]

(7) No proceedings shall be instituted against a person for an offence under this section after —

(*a*) a court has made an order against the person for the payment of a civil penalty under section 137ZD in respect of the same contravention; or

(*b*) the person has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 137ZD(4), in respect of the same contravention.

[2/2009]

Division 3 — Disclosure of Interests in Real Estate Investment Trust and Interests in Shares of Responsible Person

Application and interpretation of this Division

137S.—(1) This section has effect for the purposes of this Division but does not affect the operation of any other provision of this Act.

[2/2009]

(2) In this Division —

"real estate investment trust" means a collective investment scheme that is a trust, that invests primarily in real estate and real estate-related assets specified by the Authority in the Code on Collective Investment Schemes, and any or all the units in which are listed, by way of a primary listing, for quotation on the official list of an approved exchange;

"trustee" means —

(*a*) in relation to a real estate investment trust authorised under section 286, the trustee approved under section 289 for the trust; and

(*b*) in relation to any other real estate investment trust, an entity equivalent to a trustee referred to in paragraph (*a*).

[2/2009; 4/2017]

(3) To avoid doubt, section 4 applies for the purpose of determining whether a person has an interest in securities, securities-based derivatives contracts or units in a collective investment scheme under this Division.

[35/2014; 4/2017]

(4) Section 130(6) and (7) applies for the purposes of —

(*a*) sections 135(2)(*b*), 136(1) and 137(1) as applied by section 137U(1); and

(*b*) sections 137W(6), 137Y(2)(*b*)(i), 137ZA(1) and 137ZC(1),

as they apply for the purposes of sections 133(3)(*b*)(i), 135(2)(*b*), 136(1), 137(1) and 137E(6).

[2/2009]

Persons obliged to comply with Division and power of Authority to grant exemption or extension

137T.—(1) The obligation to comply with this Division extends to all natural persons, whether resident in Singapore or not and whether citizens of Singapore or not, and to all entities, whether formed, constituted or carrying on business in Singapore or not.

[2/2009]

(2) This Division extends to acts done or omitted to be done outside Singapore.

[2/2009]

(3) The Authority may exempt any person or class of persons from any or all of the provisions of this Division.

[2/2009]

(4) The Authority may by written notice impose on a person exempted under subsection (3), or by regulations impose on a class of persons exempted under that subsection, such conditions or restrictions as the Authority thinks fit and the person or persons must comply with such conditions or restrictions.

[2/2009]

(5) Any person who contravenes any condition or restriction imposed under subsection (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(6) The Authority may, on the application of a person required to give a notice under this Division, extend, or further extend, the time for giving the notice.

[2/2009]

Authority may extend scope of Division in certain circumstances

137TA. The Authority may, if it thinks it is necessary in the interests of the public or a section of the public, to protect investors, or to enhance market transparency, by regulations extend, with or without modifications or adaptations, the provisions of this Division —

(*a*) to any person or class of persons, other than the persons to which this Division applies;

(*b*) to any securities, securities-based derivatives contracts or units in a collective investment scheme, or class of securities, securities-based derivatives contracts or units in a collective investment scheme, other than the securities, securities-based derivatives contracts or units in a collective investment scheme to which this Division applies;

(*c*) to any interests in securities, securities-based derivatives contracts or units in a collective investment scheme, or class of interests in securities, securities-based derivatives contracts or units in a collective investment scheme, other than the interests in securities, securities-based derivatives contracts or units in a collective investment scheme to which this Division applies; or

(*d*) to require the disclosure of interests in any entity, arrangement or trust other than a real estate investment trust or a responsible person for a real estate investment trust,

and the provisions of this Division apply accordingly.

[4/2017]

Subdivision (1) — Disclosure by substantial unitholders of real estate investment trust

Duty of substantial unitholder to notify trustee and responsible person of interests

137U.—(1) Sections 135 to 137B apply, with such modifications and qualifications as may be necessary, to a person who is a substantial unitholder of a real estate investment trust as though —

(*a*) references to the corporation to which notification should be given were

references to —

(i) the trustee of the real estate investment trust; and

(ii) the responsible person for the real estate investment trust;

(*b*) references to shares or voting shares in the corporation were references to units or voting units in the real estate investment trust; and

(*c*) references to a substantial shareholder in the corporation were references to a substantial unitholder of the real estate investment trust,

and such person must comply with those provisions accordingly.

[2/2009]

(2) Any person to whom subsection (1) applies who —

(*a*) intentionally or recklessly contravenes section 135, 136(1) or (2), 137, 137A or 137B as applied by subsection (1); or

(*b*) in purported compliance with section 135, 136, 137 or 137B as applied by subsection (1), provides any information which the person knows is false or misleading in a material particular or is reckless as to whether it is,

shall be guilty of an offence and shall —

(*c*) in the case of an individual, be liable on conviction to a fine not exceeding $250,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding $25,000 for every day or part of a day during which the offence continues after conviction; or

(*d*) in the case of a corporation, be liable on conviction to a fine not exceeding $250,000 and, in the case of a continuing offence, to a further fine not exceeding $25,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(3) Any person to whom subsection (1) applies who —

(*a*) contravenes section 135, 136(1) or (2), 137, 137A or 137B as applied by subsection (1); or

(*b*) in purported compliance with section 135, 136, 137 or 137B as applied by subsection (1), provides any information which is false or misleading in a material particular,

in circumstances other than as set out in subsection (2) shall be guilty of an offence and

shall be liable on conviction to a fine not exceeding $25,000 and, in the case of a continuing offence, to a further fine not exceeding $2,500 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(4) No proceedings shall be instituted against a person for an offence under this section after —

(*a*) a court has made an order against the person for the payment of a civil penalty under section 137ZD in respect of the same contravention; or

(*b*) the person has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 137ZD(4), in respect of the same contravention.

[2/2009]

Trustee to keep register of substantial unitholders

137V.—(1) The trustee of a real estate investment trust must keep a register in which it must immediately enter —

(*a*) the names of persons from whom it has received a notice under section 135 as applied by section 137U(1); and

(*b*) against each name so entered, the information given in the notice and, where it receives a notice under section 136 or 137 as applied by section 137U(1), the information given in that notice.

[2/2009]

(2) The trustee must keep the register at its registered office or, if the trustee does not have a registered office, at its principal place of business in Singapore, and the register must be open for inspection by a unitholder of the real estate investment trust without charge and by any other person on payment for each inspection of a sum of $2 or such lesser sum as the trustee requires.

[2/2009]

(3) A person may request the trustee to provide the person with a copy of the register or any part of the register on payment in advance of a sum of $1 or such lesser sum as the trustee requires for every page or part thereof required to be copied, and the trustee must send the copy to that person within 14 days, or such longer period as the Authority may allow in any particular case, after the day on which the trustee received the request.

[2/2009]

(4) The Authority may at any time in writing require the trustee to provide it with a copy of the register or any part of the register and the trustee must send the copy to the Authority within 7 days after the day on which the trustee received the requirement.

[2/2009]

(5) Any trustee which fails to comply with subsection (1), (2), (3) or (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

Powers of court with respect to non-compliance by substantial unitholders

137W.—(1) Where a person is or has been a substantial unitholder of a real estate investment trust and has failed to comply with section 135, 136 or 137 as applied by section 137U(1), a court may, on the application of the Authority, whether or not that failure still continues, make one or more of the following orders:

(*a*) an order restraining the person who is or has been a substantial unitholder from disposing of any interest in units in the real estate investment trust of which the person is or has been a substantial unitholder;

(*b*) an order restraining a person who is, or is entitled to be, the holder of units referred to in paragraph (*a*) from disposing of any interest in those units;

(*c*) an order restraining the exercise by any person of any voting or other rights attached to any unit in the real estate investment trust in which the substantial unitholder has or has had an interest;

(*d*) an order directing the trustee of the real estate investment trust not to make payment, or to defer making payment, out of the property of the trust of any sum due in respect of any unit in which the substantial unitholder has or has had an interest;

(*e*) an order directing the sale of any or all of the units in the real estate investment trust in which the substantial unitholder has or has had an interest;

(*f*) an order directing the trustee of the real estate investment trust not to register or cause to be registered in the register of unitholders the transfer or transmission of units specified by the court;

(*g*) an order directing the Depository (within the meaning of section 81SF) or any depository corporation not to register or cause to be registered the transfer or transmission of any units or interest in units in the real estate investment trust specified by the court;

(*h*) an order that any exercise by any person of the voting or other rights attached to units in the real estate investment trust specified by the court in

which the substantial unitholder has or has had an interest be disregarded;

(*i*) for the purposes of securing compliance with any other order made under this section, an order directing the responsible person for or the trustee of the real estate investment trust, or any other person, to do or refrain from doing an act specified by the court.

[2/2009; 35/2014]

(2) Any order made under this section may include such ancillary or consequential provisions as the court thinks just.

[2/2009]

(3) An order made under this section directing the sale of any unit may provide that the sale is to be made within such time and subject to such conditions (if any) as the court thinks fit, including, if the court thinks fit, a condition that the sale must not be made to a person who is, or, as a result of the sale, would become a substantial unitholder of the real estate investment trust.

[2/2009]

(4) Where a unit is not sold in accordance with an order of the court under this section, the Authority may apply to the court for directions, including directions as to who the unsold unit is to vest in.

[2/2009]

(5) The court, before making an order under this section and in determining the terms of such an order, is to satisfy itself, so far as it can reasonably do so, that the order would not unfairly prejudice any person.

[2/2009]

(6) The court is not to make an order under this section, other than an order restraining the exercise of voting rights, if it is satisfied —

(*a*) that the failure of the person who is or has been a substantial unitholder to comply as mentioned in subsection (1) was due to the person's inadvertence or mistake or to the person not being aware of a relevant fact or occurrence; and

(*b*) that in all the circumstances, the failure ought to be excused.

[2/2009]

(7) The court may, before making an order under this section, direct that notice of the application be given to such persons as it thinks fit or direct that notice of the application be published in such manner as it thinks fit, or both.

[2/2009]

(8) The court may rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

[2/2009]

(9) Any person who contravenes an order made under this section that is applicable to the person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(10) Subsection (9) does not affect the powers of the court in relation to the punishment of contempt of the court.

[2/2009]

Power of trustee to require disclosure of beneficial interest in voting units

137X.—(1) The trustee of a real estate investment trust may by written notice require any unitholder of the trust within such reasonable time as is specified in the notice —

(*a*) to inform it whether the unitholder holds any voting units in the trust as beneficial owner or as trustee; and

(*b*) if the unitholder holds them as trustee, to indicate so far as the unitholder can the persons for whom the unitholder holds them (either by name or by other particulars sufficient to enable those persons to be identified) and the nature of their interest.

[2/2009]

(2) Where the trustee of a real estate investment trust is informed pursuant to a notice given to any person under subsection (1) or under this subsection that any other person has an interest in any of the voting units in the trust, the trustee may by written notice require that other person within such reasonable time as is specified in the notice —

(*a*) to inform it whether that other person holds that interest as beneficial owner or as trustee; and

(*b*) if that other person holds it as trustee, to indicate so far as that other person can the persons for whom that other person holds it (either by name or by other particulars sufficient to enable them to be identified) and the nature of their interest.

[2/2009]

(3) The trustee of a real estate investment trust may by written notice require any unitholder of the trust to inform it, within such reasonable time as is specified in the notice, whether any of the voting rights carried by any voting units in the trust held by the unitholder are the subject of an agreement or arrangement under which another person is entitled to control the unitholder's exercise of those rights and, if so, to give particulars of the agreement or arrangement and the parties to it.

[2/2009]

(4) The notice referred to in subsection (1), (2) or (3) must contain such other information as the Authority may prescribe, and the delivery of such notice must comply with such requirements as the Authority may prescribe.

[2/2009]

(5) Any person to whom a notice is issued under subsection (1), (2) or (3) must comply with that notice.

[2/2009]

(6) Whenever the trustee of a real estate investment trust receives information from a person pursuant to a requirement imposed on the person under this section with respect to units held by a unitholder of the trust, it is under an obligation to inscribe against the name of that unitholder in a separate part of the register kept by it under section 137V —

(*a*) the fact that the requirement was imposed and the date on which it was imposed; and

(*b*) the information received pursuant to the requirement.

[2/2009]

(7) Section 137V applies in relation to the part of the register referred to in subsection (6) as it applies in relation to the remainder of the register and as if references to subsection (1) of that section included references to subsection (6).

[2/2009]

(8) Any person who —

(*a*) intentionally or recklessly contravenes subsection (5); or

(*b*) in purported compliance with subsection (5), provides any information which the person knows is false or misleading in a material particular or is reckless as to whether it is,

shall be guilty of an offence and shall —

(*c*) in the case of an individual, be liable on conviction to a fine not exceeding $250,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding $25,000 for every day or part of a day during which the offence continues after conviction; or

(*d*) in the case of a corporation, be liable on conviction to a fine not exceeding $250,000 and, in the case of a continuing offence, to a further fine not exceeding $25,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(9) Any person who —

(*a*) contravenes subsection (5); or

(*b*) in purported compliance with subsection (5), provides any information which is false or misleading in a material particular,

in circumstances other than as set out in subsection (8) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $25,000 and, in the case of a continuing offence, to a further fine not exceeding $2,500 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(10) A person shall not be guilty of an offence under subsection (8)(*a*) or (9)(*a*) if the person proves that the information in question was already in the possession of the trustee of the real estate investment trust, or that the requirement to give it was for any other reason frivolous or vexatious.

[2/2009]

(11) No proceedings shall be instituted against a person for an offence under this section after —

(*a*) a court has made an order against the person for the payment of a civil penalty under section 137ZD in respect of the same contravention; or

(*b*) the person has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 137ZD(4), in respect of the same contravention.

[2/2009]

Subdivision (2) — Disclosure by directors and chief executive officer of responsible person

Duty of director and chief executive officer of responsible person to notify of interests

137Y.—(1) Every director and chief executive officer of the responsible person for a real estate investment trust must give written notice to the responsible person of particulars of —

(*a*) units in the trust, being units held by him or her, or in which he or she has an interest and the nature and extent of that interest;

(*b*) debentures or units of debentures of the trust which are held by him or her, or in which he or she has an interest and the nature and extent of that interest;

(*c*) such other securities, securities-based derivatives contracts or units in a collective investment scheme as the Authority may prescribe, which are held, whether directly or indirectly, by him or her, or in which he or she has an interest and the nature and extent of that interest; and

(*d*) any change in respect of the particulars of any matter referred to in paragraphs (*a*), (*b*) and (*c*).

[2/2009; 4/2017]

(2) A notice under subsection (1) —

(*a*) must be in such form and must contain such information as the Authority may prescribe; and

(*b*) must be given —

(i) in the case of a notice under subsection (1)(*d*), within 2 business days after the director or chief executive officer becomes aware of the change; or

(ii) in any other case, within 2 business days after —

(A) the date on which the director or chief executive officer becomes such a director or chief executive officer; or

(B) the date on which the director or chief executive officer becomes a holder of, or acquires an interest in, the units, debentures, units of debentures, other securities, securities-based derivatives contracts or units in a collective investment scheme referred to in subsection (1),

whichever last occurs.

[2/2009; 4/2017]

(3) For the purposes of this section, a director or chief executive officer of a responsible person is deemed to have an interest in securities, securities-based derivatives contracts or units in a collective investment scheme referred to in subsection (1) if a family member of the director or chief executive officer (not being himself or herself a director or chief executive officer of the responsible person) (as the case may be) has an interest in those securities, securities-based derivatives contracts or units in a collective investment scheme.

[2/2009; 4/2017]

(4) In this section —

"family member" means a spouse, or a son, adopted son, stepson, daughter,

adopted daughter or stepdaughter below the age of 21 years;

"unit", in relation to a debenture, means any right or interest, whether legal or equitable, in the debenture, by whatever name called, and includes any option to acquire any such right or interest in the debenture.

[2/2009]

Penalties under this Subdivision

137Z.—(1) Any director or chief executive officer of the responsible person for a real estate investment trust who —

(*a*) intentionally or recklessly contravenes section 137Y(1) or (2); or

(*b*) in purported compliance with section 137Y, provides any information which he or she knows is false or misleading in a material particular or is reckless as to whether it is,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $250,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding $25,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(2) Any director or chief executive officer of the responsible person for a real estate investment trust who —

(*a*) contravenes section 137Y(1) or (2); or

(*b*) in purported compliance with section 137Y, provides any information which is false or misleading in a material particular,

in circumstances other than as set out in subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $25,000 and, in the case of a continuing offence, to a further fine not exceeding $2,500 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(3) No proceedings shall be instituted against a person for an offence under this section after —

(*a*) a court has made an order against the person for the payment of a civil penalty under section 137ZD in respect of the same contravention; or

(*b*) the person has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 137ZD(4), in respect of the same contravention.

[2/2009]

Subdivision (3) — Disclosure by holders of voting shares in responsible person

Duty of holders of voting shares in responsible person to notify responsible person

137ZA.—(1) Where the percentage of interest of a person in the voting shares in a responsible person for a real estate investment trust reaches, crosses or falls below 15%, 30%, 50% or 75%, the person must give written notice to the responsible person within 2 business days after the person becomes aware of this.

[2/2009]

(2) A notice under subsection (1) must be in such form and must contain such information as the Authority may prescribe.

[2/2009]

(3) In subsection (1), the percentage of interest of a person in the voting shares in a responsible person for a real estate investment trust is ascertained by expressing the total votes attached to all the voting shares in which the person has an interest or interests immediately before or (as the case may be) immediately after the relevant time, as a percentage of the total votes attached to —

(*a*) all the voting shares (excluding treasury shares) in the responsible person; or

(*b*) where the share capital of the responsible person is divided into 2 or more classes of shares, all the voting shares (excluding treasury shares) in the class concerned,

and, if it is not a whole number, rounding that figure down to the next whole number.

[2/2009]

Penalties under this Subdivision

137ZB.—(1) Any person who —

(*a*) intentionally or recklessly contravenes section 137ZA(1) or (2); or

(*b*) in purported compliance with section 137ZA, provides any information which the person knows is false or misleading in a material particular or is reckless as to whether it is,

shall be guilty of an offence and shall —

(*c*) in the case of an individual, be liable on conviction to a fine not exceeding

$250,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding $25,000 for every day or part of a day during which the offence continues after conviction; or

(*d*) in the case of a corporation, be liable on conviction to a fine not exceeding $250,000 and, in the case of a continuing offence, to a further fine not exceeding $25,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(2) Any person who —

(*a*) contravenes section 137ZA(1) or (2); or

(*b*) in purported compliance with section 137ZA, provides any information which is false or misleading in a material particular,

in circumstances other than as set out in subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $25,000 and, in the case of a continuing offence, to a further fine not exceeding $2,500 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(3) No proceedings shall be instituted against a person for an offence under this section after —

(*a*) a court has made an order against the person for the payment of a civil penalty under section 137ZD in respect of the same contravention; or

(*b*) the person has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 137ZD(4), in respect of the same contravention.

[2/2009]

Subdivision (4) — Disclosure by responsible person

Duty of responsible person for real estate investment trust to make disclosure

137ZC.—(1) Where the responsible person for a real estate investment trust —

(*a*) acquires or disposes of interests in units in, or debentures or units of debentures of, the real estate investment trust;

(*aa*) acquires or disposes of interests in such securities, securities-based derivatives contracts or units in a collective investment scheme of the real

estate investment trust as may be prescribed by regulations made under section 341; or

(*b*) has been notified in writing by —

(i) a substantial unitholder of the real estate investment trust pursuant to a requirement imposed on the substantial unitholder under section 135, 136 or 137 as applied by section 137U(1);

(ii) a director or chief executive officer of the responsible person pursuant to a requirement imposed on him or her under section 137Y; or

(iii) a person who holds an interest or interests in voting shares in the responsible person pursuant to a requirement imposed on the person under section 137ZA,

the responsible person must announce or otherwise disseminate the particulars of the acquisition or disposal, or the information stated in the notice it received (as the case may be) to the organised market operated by the approved exchange on whose official list any or all of the units in the trust are listed, as soon as practicable and in any case no later than the end of the business day following the day on which the responsible person became aware of the acquisition or disposal, or received the notice.

[2/2009; 4/2017]

(2) The responsible person must announce or otherwise disseminate the information in such form and manner as the Authority may prescribe.

[2/2009]

(3) Any responsible person for a real estate investment trust that —

(*a*) intentionally or recklessly contravenes subsection (1) or (2); or

(*b*) in purported compliance with this section, announces or disseminates any information which the responsible person knows is false or misleading in a material particular or is reckless as to whether it is,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $250,000 and, in the case of a continuing offence, to a further fine not exceeding $25,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(4) Any responsible person for a real estate investment trust that —

(*a*) contravenes subsection (1) or (2); or

(*b*) in purported compliance with this section, announces or disseminates any

information that is false or misleading in a material particular,

in circumstances other than as set out in subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $25,000 and, in the case of a continuing offence, to a further fine not exceeding $2,500 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(5) Where an offence has been committed by a responsible person under subsection (3) or (4), any officer of the responsible person who —

(*a*) causes the responsible person to contravene subsection (1);

(*b*) announces or disseminates, or permits or authorises the announcement or dissemination of, the information that is false or misleading in a material particular; or

(*c*) announces or disseminates, or permits or authorises the announcement or dissemination of the information in contravention of subsection (2),

shall —

(*d*) if he or she had acted intentionally or recklessly, or with knowledge that the information so announced or disseminated is false or misleading in a material particular or is reckless as to whether it is, be guilty of an offence and be liable on conviction to a fine not exceeding $250,000 or to imprisonment for a term not exceeding 2 years or to both; or

(*e*) if he or she had acted negligently, be guilty of an offence and be liable on conviction to a fine not exceeding $25,000.

[2/2009]

(6) In this section, "officer" means a director, member of the committee of management, chief executive officer, manager, secretary or other similar officer of the responsible person, and includes a person purporting to act in any such capacity.

[2/2009]

(7) No proceedings shall be instituted against a person for an offence under this section after —

(*a*) a court has made an order against the person for the payment of a civil penalty under section 137ZD in respect of the same contravention; or

(*b*) the person has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 137ZD(4), in respect of the same contravention.

[2/2009]

Civil penalty

137ZD.—(1) Whenever it appears to the Authority that any person has —

(*a*) intentionally or recklessly, contravened any of the following provisions:

(i) section 133(1) or (3), 135, 136(1) or (2), 137, 137A, 137B, 137F(5), 137G(1) or (2), 137M(5), 137N(1) or (2), 137P(1) or (2), 137R(1) or (2), 137X(5), 137Y(1) or (2), 137ZA(1) or (2) or 137ZC(1) or (2);

(ii) section 135, 136, 137, 137A or 137B as applied by section 137J(1);

(iii) section 135, 136, 137, 137A or 137B as applied by section 137U(1);

(*b*) in purported compliance with any of the following provisions, provided, announced or disseminated any information which the person knows is false or misleading in a material particular or is reckless as to whether it is:

(i) section 133, 135, 136, 137, 137B, 137F(5), 137G, 137M(5), 137N, 137P, 137R, 137X(5), 137Y, 137ZA or 137ZC;

(ii) section 135, 136, 137 or 137B as applied by section 137J(1);

(iii) section 135, 136, 137 or 137B as applied by section 137U(1); or

(*c*) being an officer of a corporation to which Division 1 applies, an officer of a trustee-manager of a registered or recognised business trust to which Division 2 applies, or an officer of a responsible person for a real estate investment trust to which Division 3 applies, intentionally or recklessly committed an act referred to in subsection (5)(*a*), (*b*) or (*c*) of section 137G, 137R or 137ZC, as the case may be,

the Authority may, with the consent of the Public Prosecutor, bring an action in a court against the person to seek an order for a civil penalty in respect of that act.

[2/2009]

(2) If the court is satisfied on a balance of probabilities that subsection (1)(*a*), (*b*) or (*c*) (as the case may be) has been proved, the court may make an order against the person for the payment of a civil penalty of a sum not less than $50,000 and not more than

$2 million.

[2/2009]

(3) Despite subsection (2), the court may make an order against a person against whom an action has been brought under this section if the Authority, with the consent of the Public Prosecutor, has agreed to allow the person to consent to the order with or without admission of having committed an act referred to in subsection (1)(*a*), (*b*) or (*c*) (whichever is applicable), and the order may be made on such terms as may be agreed between the Authority and the person.

[2/2009]

(4) Nothing in this section is to be construed to prevent the Authority from entering into an agreement with the person to pay, with or without admission of liability, a civil penalty within the limits referred to in subsection (2) for an act referred to in subsection (1)(*a*), (*b*) or (*c*).

[2/2009]

(5) A civil penalty imposed under this section is to be paid into the Consolidated Fund and is to be treated as a debt due to the Government for the purposes of section 10 of the Government Proceedings Act 1956.

[2/2009; 4/2017]

(6) If the person fails to pay the civil penalty imposed on the person within the time specified in the court order referred to in subsection (3) or specified under the agreement referred to in subsection (4), the Authority may recover the civil penalty as though the civil penalty were a judgment debt due to the Authority.

[2/2009]

(7) Any defence that is available to a person who is prosecuted for an act under subsection (1)(*a*), (*b*) or (*c*), is also available to a person against whom an action is brought under this section for the same act.

[2/2009]

Action under section 137ZD not to commence, etc., in certain situations

137ZE.—(1) An action under section 137ZD for an act referred to in subsection (1)(*a*), (*b*) or (*c*) of that section must not be commenced against any person —

(*a*) after the expiration of 6 years from the date of the act; or

(*b*) if the person has been convicted or acquitted in criminal proceedings instituted against the person for that act, except where the person has been acquitted because of the withdrawal of the charge against the person.

[2/2009]

(2) An action under section 137ZD against any person for an act referred to in subsection (1)(*a*), (*b*) or (*c*) of that section must be stayed after criminal proceedings

have been commenced against the person for that act, and may thereafter be continued only if —

(*a*) that person has been discharged in respect of that act and the discharge does not amount to an acquittal; or

(*b*) the charge against that person in respect of that act has been withdrawn.

[2/2009]

Jurisdiction of District Court

137ZF. A District Court has jurisdiction to hear and determine any action under section 137ZD regardless of the monetary amount.

[2/2009]

Rules of Court

137ZG. Rules of Court may be made —

(*a*) to regulate and prescribe the procedure and practice to be followed in respect of proceedings under section 137ZD; and

(*b*) to provide for costs and fees of such proceedings, and for regulating any matter relating to the costs of such proceedings.

[2/2009]

PART 7A

SHORT SELLING

[4/2017]

Interpretation of this Part

137ZH.—(1) In this Part, unless the context otherwise requires —

"securities lending arrangement" means a written arrangement where a person (called in this Part the lender) who has an interest in specified capital markets products is to transfer title to some or all of the specified capital markets products to another person (called in this Part the borrower) for an agreed period of time, after which the borrower is to transfer title to those specified capital markets products back to the lender;

"short position" means the amount by which the quantity, volume or value of any specified capital markets products in which a person has an interest is less than the quantity, volume or value of the specified capital markets products which the person is under an obligation to deliver, where the quantity, volume or

value of any specified capital markets products is determined in accordance with the criteria, methods or formulae prescribed by regulations made under section 137ZM;

"short sell order" means an order to sell any specified capital markets products where the person who makes the order does not, at the time of the order, have an interest in the specified capital markets products;

"specified capital markets products" means any capital markets products listed or to be listed on an approved exchange that is, or that belongs to a class of capital markets products that is, prescribed by regulations made under section 137ZM.

[4/2017]

(2) In this Part and subject to subsection (3), a person has an interest in specified capital markets products if —

(*a*) the person is the legal owner of the specified capital markets products;

(*b*) the person is the beneficial owner of the specified capital markets products;

(*c*) the person has authority (whether formal or informal, or express or implied) to dispose of the specified capital markets products;

(*d*) the person —

(i) has purchased or entered into an unconditional agreement or arrangement to purchase the specified capital markets products, but has not received delivery of the specified capital markets products;

(ii) has tendered the specified capital markets products for conversion or exchange, or has issued irrevocable instructions to convert or exchange capital markets products into the specified capital markets products, but has not received delivery of the specified capital markets products;

(iii) has exercised an option to subscribe for the specified capital markets products, but has not received delivery of the specified capital markets products; or

(iv) has exercised a right under a warrant to subscribe for the specified capital markets products, but has not received delivery of the specified capital markets products,

and, under the agreement, arrangement, conversion, exchange, option or right (referred to in sub-paragraphs (i) to (iv)), the person is to receive

delivery of the specified capital markets products before the time that the person is to deliver the specified capital markets products;

(*e*) the person —

(i) is the lender in a securities lending arrangement;

(ii) has transferred title to the specified capital markets products to the borrower in the securities lending arrangement; and

(iii) is to receive title from the borrower in the securities lending arrangement to the specified capital markets products before the time that the person is to deliver the specified capital markets products; or

(*f*) the person is a party to an agreement or arrangement that is, or that belongs to a class of agreements or arrangements that is, prescribed by regulations made under section 137ZM for the purposes of this paragraph.

[4/2017]

(3) Despite subsection (2), a person does not have an interest in specified capital markets products if —

(*a*) the person is a borrower under a securities lending arrangement and has obtained title to the specified capital markets products pursuant to the securities lending arrangement;

(*b*) the person is the legal owner or the beneficial owner of the specified capital markets products but has sold, or entered into an unconditional agreement or arrangement to sell, the specified capital markets products; or

(*c*) the person is the legal owner or the beneficial owner of the specified capital markets products, or has authority to dispose of the specified capital markets products, but is a party to an agreement or arrangement that is, or that belongs to a class of agreements or arrangements that is, prescribed by regulations made under section 137ZM for the purposes of this paragraph.

[4/2017]

(4) In the definition of "short position" in subsection (1), the following are the specified capital markets products which a person is under an obligation to deliver:

(*a*) the specified capital markets products in respect of which the person has an obligation to deliver under a sale agreement, but has not delivered;

(*b*) the specified capital markets products in respect of which the person has an obligation to vest title in a lender under a securities lending arrangement,

but has not vested title;

(*c*) the specified capital markets products in respect of which the person has any other non-contingent legal obligation to deliver, but has not delivered.

[4/2017]

Persons obliged to comply with this Part and power of Authority to grant exemptions or extensions

137ZI.—(1) The obligation to comply with this Part extends to all natural persons, whether resident in Singapore or not and whether citizens of Singapore or not, and to all entities, whether formed, constituted or carrying on business in Singapore or not.

[4/2017]

(2) This Part extends to acts done or omitted to be done outside Singapore.

[4/2017]

(3) Despite section 337(1), the Authority may by regulations made under section 137ZM exempt any person or class of persons from all or any provisions of this Part, subject to such conditions or restrictions as the Authority may prescribe in those regulations.

[4/2017]

(4) The Authority may, by written notice, exempt any person or class of persons from all or any provisions of this Part, subject to such conditions or restrictions as the Authority may specify in writing.

[4/2017]

(5) It is not necessary to publish any exemption granted under subsection (4) in the *Gazette*.

[4/2017]

(6) Any person that is exempted under subsection (3) or (4) must satisfy every condition or restriction imposed on the person under the applicable subsection.

[4/2017]

(7) The Authority may at any time add to, vary or revoke any condition or restriction imposed under this section.

[4/2017]

(8) Any person who contravenes subsection (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $25,000 and, in the case of a continuing offence, to a further fine not exceeding $2,500 for every day or part of a day during which the offence continues after conviction.

[4/2017]

Disclosure of short sell orders

137ZJ.—(1) Subject to subsection (2), a person (*A*) who makes a short sell order on any approved exchange must, before or at the time of the short sell order, disclose to the approved exchange —

(*a*) that *A* intends to make or is making a short sell order; and

(*b*) the quantity, volume or value of the specified capital markets products in relation to which *A* intends to make or is making an order to sell but in which *A* does not have an interest.

[4/2017]

(2) Where another person (*B*) places the short sell order mentioned in subsection (1) on *A*'s behalf, *A* need not comply with subsection (1) if, before or at the time of the short sell order, *A* discloses to *B* —

(*a*) that *A* intends to make or is making a short sell order; and

(*b*) the quantity, volume or value of the specified capital markets products in relation to which *A* intends to make or is making an order to sell but in which *A* does not have an interest.

[4/2017]

(3) Where *A* has made the disclosure mentioned in subsection (2) to *B*, *B* must, before or at the time of the short sell order, disclose to the approved exchange —

(*a*) that *A* intends to make or is making a short sell order; and

(*b*) the quantity, volume or value of the specified capital markets products in relation to which *A* intends to make or is making an order to sell but in which *A* does not have an interest.

[4/2017]

(4) Any person who contravenes subsection (1) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $25,000.

[4/2017]

Reporting of short position

137ZK.—(1) Where a person's (*A*) short position in relation to any specified capital markets products is equivalent to or more than the short position threshold prescribed by regulations made under section 137ZM, *A* must, at the time or times and in the form and manner prescribed by regulations made under section 137ZM, report to the Authority directly or through another person (*B*) —

(*a*) information on —

(i) the identity and business activities of *A* and (if applicable) *B*; and

(ii) *A*'s short position in relation to the specified capital markets products,

prescribed by regulations made under section 137ZM; and

(*b*) any change to the information mentioned in paragraph (*a*).

[4/2017]

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $25,000 and, in the case of a continuing offence, to a further fine not exceeding $2,500 for every day or part of a day during which the offence continues after conviction.

[4/2017]

Power of Authority to publish information

137ZL. Without affecting section 322, the Authority may, for the purpose of maintaining a fair, orderly or transparent market, publish in any form or manner the information or any part of the information reported to the Authority under section 137ZK(1).

[4/2017]

Power of Authority to make regulations

137ZM. Without affecting section 341, the Authority may make regulations for the purposes of this Part, including regulations to prescribe anything which may be prescribed under this Part.

[4/2017]

PART 8

SECURITIES INDUSTRY COUNCIL AND TAKE-OVER OFFERS

Securities Industry Council

138.—(1) The advisory body known as the Securities Industry Council referred to in section 14 of the repealed Securities Industry Act (Cap. 289, 1985 Revised Edition) continues in existence as if it had been established under this Act.

(2) The function of the Securities Industry Council is, in addition to the functions conferred upon it under this Part, to advise the Minister on all matters relating to the securities industry.

(3) The Securities Industry Council consists of such representatives of business, the

Government and the Authority as the Minister may appoint and those representatives are to serve for such period or periods as the Minister may determine.

(4) The Securities Industry Council has the power, in the exercise of its functions, to enquire into any matter or thing related to the securities industry and may, for this purpose, summon any person to give evidence on oath or affirmation or produce any document or material necessary for the purpose of the enquiry.

(5) Nothing in subsection (4) compels the production by an advocate and solicitor, or a legal counsel referred to in section 128A of the Evidence Act 1893, of a document containing a privileged communication made by or to him or her in that capacity or authorise the taking of possession of any such document which is in his or her possession.

[34/2012]

(6) An advocate and solicitor, or a legal counsel referred to in section 128A of the Evidence Act 1893, who refuses to produce the document referred to in subsection (5) is nevertheless obliged to give the name and address (if he or she knows them) of the person to whom or by or on behalf of whom the communication was made.

[34/2012]

(7) The Authority may consult the Securities Industry Council for the proper and effective implementation of this Act.

(8) For the purposes of this Act, every member of the Securities Industry Council —

(*a*) is deemed to be a public servant within the meaning of the Penal Code 1871; and

(*b*) has, in case of any action or suit brought against him or her for any act done or omitted to be done in the execution of his or her duty under the provisions of this Act, the like protection and privileges as are by law given to a Judge in the execution of his or her office.

(9) The Securities Industry Council must in the exercise of its functions have regard to the interests of the public, the protection of investors and the safeguarding of sources of information.

(10) Subject to the provisions of this Act, the Securities Industry Council may regulate its own procedure and is not bound by the rules of evidence.

Take-over Code

139.—(1) This section and section 140 apply to and in relation to all natural persons, whether resident in Singapore or not and whether citizens of Singapore or not, and to all corporations or bodies unincorporate, whether incorporated or carrying on business in

Singapore or not, and extend to acts done outside Singapore.

(2) For the more effective administration, supervision and control of take-over offers and matters connected therewith, the Authority is to, on the advice of the Securities Industry Council and under section 321, issue a code known as the Singapore Code on Take-overs and Mergers (called in this Act the Take-over Code).

(3) To avoid doubt, the Take-over Code is deemed not to be subsidiary legislation.

(4) The Take-over Code applies to a take-over offer and to matters connected therewith, and all parties concerned in a take-over offer or a matter connected therewith must comply with its provisions.

(5) The Take-over Code is administered and enforced by the Securities Industry Council.

(6) The Authority may, on the advice of the Securities Industry Council, revise the Take-over Code by deleting, amending or adding to the provisions thereof.

(7) The Securities Industry Council may issue rulings on the interpretation of the general principles and rules in the Take-over Code and lay down the practice to be followed by parties concerned in a take-over offer or a matter connected therewith, and such rulings or practice is final.

(8) A failure of any party concerned in a take-over offer or a matter connected therewith to observe any of the provisions of the Take-over Code does not of itself render that party liable to criminal proceedings but any such failure may, in any proceedings whether civil or criminal, be relied upon by any party to the proceedings as tending to establish or to negate any liability which is in question in the proceedings.

(9) Nothing in subsection (8) is to be construed as preventing the Securities Industry Council from invoking such sanctions (including public censure) as it may decide in relation to breaches of the Take-over Code by any party concerned in a take-over offer or a matter connected therewith.

(10) Where the Securities Industry Council has reason to believe that any party concerned in a take-over offer or a matter connected therewith, or any person advising on a take-over offer or a matter connected therewith, is in breach of the provisions of the Take-over Code or is otherwise believed to have committed acts of misconduct in relation to such take-over offer or matter, the Securities Industry Council has power to enquire into the suspected breach or misconduct.

(11) For the purpose of subsection (10), the Securities Industry Council may summon any person to give evidence on oath or affirmation, which it is authorised to administer, or produce any document or material necessary for the purpose of the enquiry.

Offences relating to take-over offers

140.—(1) A person who has no intention to make an offer in the nature of a take-over offer must not give notice or publicly announce that the person intends to make a take-over offer.

(2) A person must not make a take-over offer or give notice or publicly announce that the person intends to make a take-over offer if the person has no reasonable or probable grounds for believing that the person will be able to perform the person's obligations if the take-over offer is accepted or approved, as the case may be.

(3) Where a person contravenes subsection (1) or (2), the person and, where the person is a corporation, every officer of the corporation who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $250,000 or to imprisonment for a term not exceeding 7 years or to both.

PART 9

SUPERVISION AND INVESTIGATION

Division 1 — Supervisory Powers

[2/2009]

Subdivision (1) — Powers of Authority to require disclosure of information about capital markets products

[4/2017]

Interpretation of this Subdivision

141. In this Subdivision, a reference to disclosing information includes, in relation to information that is contained in a document, a reference to producing the document.

Acquisition and disposal of capital markets products

142.—(1) The Authority may, where it considers it necessary for the protection of investors, require the holder of a capital markets services licence to deal in capital markets products, or an exempt person carrying on business in such activity, to disclose to the Authority, in relation to any acquisition or disposal of capital markets products —

(*a*) the name of the person from or through whom or on whose behalf the capital markets products were acquired; or

(*b*) the name of the person to or through whom or on whose behalf the capital

markets products were disposed of,

and the nature of the instructions given to the holder or exempt person in respect of the acquisition or disposal.

[4/2017]

(2) The Authority may require a person who has acquired, held or disposed of capital markets products to disclose to the Authority whether the person acquired, held or disposed of those capital markets products (as the case may be) as trustee for, or on behalf of, another person (whether or not as a nominee), and if so —

(*a*) the name of that other person; and

(*b*) the nature of any instructions given to the firstmentioned person in respect of the acquisition, holding or disposal.

[4/2017]

(3) The Authority may require an approved exchange to disclose to the Authority, in relation to an acquisition or disposal of capital markets products on the organised market of that approved exchange, the names of the members of that approved exchange who acted in the acquisition or disposal.

[4/2017]

(4) The Authority may require an approved clearing house or a recognised clearing house for an organised market to disclose to the Authority, in relation to any dealing in capital markets products on that organised market, the names of the members of the approved clearing house or recognised clearing house who were concerned in any act or omission in relation to the dealing.

[4/2017]

Exercise of certain powers in relation to capital markets products and financial instruments

143.—(1) This section applies where the Authority considers that —

(*a*) it may be necessary to prohibit trading in securities or securities-based derivatives contracts or units in a collective investment scheme under section 46;

(*b*) it may be necessary to give a direction or take any action under section 46AA or 81S in relation to any capital markets products or financial instruments;

(*c*) a person may have contravened any of the provisions of Part 7 in relation to any capital markets products; or

(*d*) a person may have contravened any of the provisions of Part 12 in relation

to any capital markets products or financial instruments.

[4/2017]

(2) The Authority may require an officer of an entity or trust, the securities, securities-based derivatives contracts and units in a collective investment scheme of which are mentioned in subsection (1), to disclose to the Authority any information of which he or she is aware and which may have affected any dealing or trading that has taken place, or which may affect any dealing or trading that may take place, in the securities, securities-based derivatives contracts and units in a collective investment scheme.

[4/2017]

(3) Where the Authority believes on reasonable grounds that a person is capable of giving information concerning any of the following matters:

(*a*) any dealing in capital markets products mentioned in subsection (1);

(*b*) any advice given, or any report or analysis issued or published concerning such capital markets products, by the holder of a capital markets services licence to deal in capital markets products, or a representative of such a holder;

(*c*) the financial position of any business carried on by a person who is or has been (either alone or together with another person or other persons) the holder of a capital markets services licence to deal in capital markets products and who has dealt in or given advice or issued or published a report or an analysis concerning such capital markets products;

(*d*) the financial position of any business carried on by a nominee controlled by a person mentioned in paragraph (*c*) or jointly controlled by 2 or more persons at least one of whom is a person mentioned in that paragraph;

(*e*) an audit of, or any report of an auditor concerning, any book of the holder of a capital markets services licence to deal in capital markets products, being a book relating to dealings in such capital markets products,

the Authority may require the person to disclose to the Authority the information that the person has about that matter.

[4/2017]

Exercise of certain powers in relation to financial benchmarks

144.—(1) This section applies where the Authority considers that —

(*a*) it may be necessary to give a direction in relation to any designated benchmark under section 123ZZB; or

(*b*) a person may have contravened any of the provisions of Part 12 in relation to a financial benchmark.

[4/2017]

(2) Where the Authority believes on reasonable grounds that a person is capable of giving information concerning any of the following matters:

(*a*) the activity of administering a financial benchmark;

(*b*) the activity of providing information in relation to a financial benchmark;

(*c*) the financial position of any authorised benchmark administrator, exempt benchmark administrator, authorised benchmark submitter, exempt benchmark submitter or designated benchmark submitter;

(*d*) the financial position of any business carried on by a nominee controlled by a person mentioned in paragraph (*c*) or jointly controlled by 2 or more persons, at least one of whom is a person mentioned in that paragraph;

(*e*) an audit of, or any report of an auditor concerning, any book of any authorised benchmark administrator, exempt benchmark administrator, authorised benchmark submitter, exempt benchmark submitter, or designated benchmark submitter, being a book relating to a designated benchmark,

the Authority may require the person to disclose to the Authority the information that the person has about that matter.

[4/2017]

Self-incrimination

145.—(1) A person is not excused from disclosing information to the Authority, under a requirement made of the person under section 142, 143 or 144, on the ground that the disclosure of the information might tend to incriminate the person.

(2) Where a person claims, before making a statement disclosing information that the person is required to disclose by a requirement made of the person under section 142, 143 or 144, that the statement might tend to incriminate the person, that statement —

(*a*) is not admissible in evidence against the person in criminal proceedings other than proceedings under section 148; but

(*b*) is admissible in evidence for civil proceedings under Part 12.

Saving for advocates and solicitors

146.—(1) Nothing in this Subdivision compels the disclosure by an advocate and

solicitor, or a legal counsel referred to in section 128A of the Evidence Act 1893, of information containing a privileged communication made by or to him or her in that capacity.

[34/2012]

(2) An advocate and solicitor, or a legal counsel referred to in section 128A of the Evidence Act 1893, who refuses to disclose the information referred to in subsection (1) is nevertheless obliged to give the name and address (if he or she knows them) of the person to whom, or by or on behalf of whom, that privileged communication was made.

[34/2012]

Immunities

147.—(1) No civil or criminal proceedings, other than proceedings for an offence under section 148, shall lie against any person for disclosing any information to the Authority if the person had done so in good faith in compliance with a requirement of the Authority under section 142, 143 or 144.

(2) Any person who complies with a requirement of the Authority under section 142, 143 or 144 is not treated as being in breach of any restriction upon the disclosure of information or thing imposed by any prescribed written law or any requirement imposed thereunder, any rule of law, any contract or any rule of professional conduct.

Offences

148.—(1) A person who, without reasonable excuse, refuses or fails to comply with a requirement of the Authority under section 142, 143 or 144 shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

(2) A person who, in purported compliance with a requirement of the Authority under section 142, 143 or 144, discloses information, or makes a statement, that is false or misleading in a material particular shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 2 years or to both.

(3) It is a defence to a prosecution for an offence under subsection (2) if the defendant proves that the defendant believed on reasonable grounds that the information or statement was true and was not misleading.

Copies of or extracts from documents to be admitted in evidence

149.—(1) Subject to this section, a copy of or extract from a document produced

under this Subdivision that is proved to be a true copy of the document or of the relevant part of the document is admissible in evidence as if it were the original document or the relevant part of the original document.

(2) For the purposes of subsection (1), evidence that a copy of or extract from a document is a true copy of the document or of a part of the document may be given by a person who has compared the copy or extract with the document or the relevant part of the document and may be given orally or by an affidavit sworn, or by a declaration made, before a person authorised to take affidavits or statutory declarations.

Subdivision (2) — Inspection powers of Authority

Inspection by Authority

150.—(1) The Authority may inspect under conditions of secrecy, the books of an approved exchange, a recognised market operator, a licensed trade repository, a licensed foreign trade repository, an approved clearing house, a recognised clearing house, an approved holding company, the holder of a capital markets services licence, an exempt person, an authorised benchmark administrator, an exempt benchmark administrator, an authorised benchmark submitter, an exempt benchmark submitter, a designated benchmark submitter, or a representative.

[4/2017]

(2) For the purpose of an inspection under this section —

(*a*) a person referred to in subsection (1) or any person in possession of the books, must produce such books to the Authority and give such information and facilities as the Authority may require; and

(*b*) a person referred to in subsection (1) must procure that any person who is in possession of such books produce the books to the Authority and give such information and facilities as the Authority may require.

(3) The Authority may —

(*a*) make copies of, or take possession of, any of the books;

(*b*) use, or permit the use of, any of the books for the purposes of any proceedings under this Act; and

(*c*) retain possession of any of the books for so long as is necessary —

(i) for the purposes of exercising a power conferred by this section (other than subsection (5));

(ii) for a decision to be made about whether or not any proceedings under this Act to which the books concerned would be relevant should be instituted; or

(iii) for such proceedings to be instituted and carried on.

(4) No person is entitled, as against the Authority, to claim a lien on any of the books, but such a lien is not otherwise prejudiced.

(5) While the books are in the possession of the Authority, the Authority —

(*a*) must permit another person to inspect at all reasonable times such of the books (if any) as the other person would be entitled to inspect if they were not in the Authority's possession; and

(*b*) may permit another person to inspect any of the books.

(6) The Authority may require a person who produced any of the books to the Authority to explain to the best of the person's knowledge and belief any matter about the compilation of the books or to which the books relate.

(7) Any person who, without reasonable excuse, fails to comply with subsection (2) or a requirement of the Authority under subsection (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 2 years or to both.

(8) Sections 146 and 147 apply, with the necessary modifications, in relation to the production of any book or disclosure of any information to the Authority under this section.

(9) Section 149 applies, with the necessary modifications, in relation to a copy of, or extract from, a book inspected under this section.

Confidentiality of inspection reports

150A.—(1) Where a written report or any part of a written report (called in this section the report) has been produced by the Authority upon an inspection under section 150 in respect of any person mentioned in subsection (1) of that section (called in this section the inspected person) and is provided by the Authority to the inspected person, the report must not be disclosed by the inspected person or, if the inspected person is a corporation, by any of its officers or auditors, to any other person except in the circumstances provided under subsection (2).

[4/2017]

(2) Disclosure of the report referred to in subsection (1) may be made —

(*a*) by the inspected person to any officer or auditor of that inspected person solely in connection with the performance of the duties of the officer or auditor (as the case may be) in that inspected person;

(*b*) by any officer or auditor of the inspected person to any other officer or auditor of that inspected person, solely in connection with the performance of their duties in that inspected person; or

(*c*) to such other person as the Authority may approve in writing.

[2/2009]

(3) In granting written approval for any disclosure under subsection (2)(*c*), the Authority may impose such conditions or restrictions as it thinks fit on the inspected person, any of its officers or auditors or the person to whom disclosure is approved, and that person must comply with such conditions or restrictions.

[2/2009]

(4) The obligation on an officer or auditor referred to in subsection (1) continues after the termination or cessation of his or her employment or appointment by the inspected person.

[2/2009]

(5) Any person who contravenes subsection (1) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 2 years or to both.

[2/2009]

(6) Any person to whom the report is disclosed and who knows or has reasonable grounds for believing, at the time of the disclosure, that the report was disclosed to the person in contravention of subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 2 years or to both, unless the person proves that —

(*a*) the disclosure was made contrary to the person's desire;

(*b*) where the disclosure was made in any written form, the person had as soon as practicable after receiving the report surrendered or taken all reasonable steps to surrender the report and all copies thereof to the Authority; and

(*c*) where the disclosure was made in an electronic form, the person had as soon as practicable after receiving the report taken all reasonable steps to ensure that all electronic copies of the report had been deleted and that the report and all copies thereof in other forms had been surrendered to the Authority.

[2/2009]

Subdivision (3) — Inspection powers of foreign regulatory authority

Inspection by foreign regulatory authority

150B.—(1) A foreign regulatory authority of a country or territory other than Singapore may conduct an inspection in Singapore of the books of —

(*a*) the holder of a capital markets services licence;

(*b*) a person exempted under section 99(1)(*a*), (*b*), (*c*), (*d*) or (*h*) from the requirement to hold a capital markets services licence;

(*c*) an approved exchange;

(*d*) a recognised market operator incorporated in Singapore;

(*e*) a licensed trade repository;

(*f*) an approved clearing house;

(*g*) a recognised clearing house incorporated in Singapore;

(*h*) an approved holding company incorporated in Singapore;

(*i*) an approved trustee mentioned in section 289;

(*j*) an authorised benchmark administrator;

(*k*) an exempt benchmark administrator;

(*l*) an authorised benchmark submitter;

(*m*) an exempt benchmark submitter; or

(*n*) a designated benchmark submitter,

(called in this section and in section 150C a relevant person) with the prior written approval of the Authority and under conditions of secrecy.

[2/2009; 4/2017]

(2) In deciding whether to grant approval to a foreign regulatory authority under subsection (1), the Authority may have regard to the following considerations:

(*a*) whether the inspection, and the information obtained in the course of the inspection, is required by the foreign regulatory authority for the sole purpose of enabling the foreign regulatory authority to carry out its regulatory functions;

(*b*) whether the foreign regulatory authority has regulatory oversight in its

jurisdiction over the relevant person;

(*c*) whether the foreign regulatory authority is prohibited by the laws applicable to it from disclosing information obtained by it in the course of the inspection to any other person;

(*d*) whether the foreign regulatory authority has provided or is willing to provide similar assistance to the Authority;

(*e*) such other matters as the Authority may consider relevant.

[2/2009; 4/2017]

(3) The Authority may at any time, whether before, on or after giving written approval for an inspection under this section, impose conditions or restrictions on the foreign regulatory authority relating to —

(*a*) the classes of information to which the foreign regulatory authority has or does not have access in the course of the inspection;

(*b*) the conduct of the inspection;

(*c*) the use or disclosure of any information obtained in the course of the inspection; and

(*d*) such other matters as the Authority may determine.

[2/2009]

(4) The Authority may, in relation to an inspection by a foreign regulatory authority conducted or to be conducted under this section on the relevant person, at any time, by written notice to the relevant person impose any conditions or restrictions on the relevant person, and the relevant person must comply with such conditions or restrictions.

[4/2017]

(4A) To avoid doubt, this section, and section 150C in relation to an inspection under this section, do not apply to any inspection by a foreign regulatory authority of the books of any person, if —

(*a*) the foreign regulatory authority is an AML/CFT authority as defined in section 152 of the Monetary Authority of Singapore Act 1970, and exercises consolidated supervision authority as defined in that section over that person; and

(*b*) the inspection is solely for the purpose of such consolidated supervision.

[31/2017]

(5) For the purposes of this section and section 150C, a reference to a foreign regulatory authority is a reference to an authority of a country or territory other than Singapore, exercising any function that corresponds to a regulatory function of the

Authority under the Monetary Authority of Singapore Act 1970.

[2/2009]

Confidentiality of inspection report by foreign regulatory authority

150C.—(1) Where a written report or any part of a written report (called in this section the report) has been produced by a foreign regulatory authority upon an inspection under section 150B in respect of any relevant person (called in this section the inspected person) and is provided by the foreign regulatory authority to the inspected person, the report must not be disclosed by the inspected person or, if the inspected person is a corporation, by any of its officers or auditors, to any other person except in the circumstances provided under subsection (2).

[2/2009; 4/2017]

(2) Disclosure of the report referred to in subsection (1) may be made —

(*a*) by the inspected person to any officer or auditor of that inspected person solely in connection with the performance of the duties of the officer or auditor (as the case may be) in that inspected person;

(*b*) by any officer or auditor of the inspected person to any other officer or auditor of that inspected person, solely in connection with the performance of their duties in that inspected person;

(*c*) to the Authority, if requested by the Authority; or

(*d*) to such other person as the Authority may approve in writing.

[2/2009]

(3) In granting written approval for any disclosure under subsection (2)(*d*), the Authority may impose such conditions or restrictions as it thinks fit on the inspected person, any of its officers or auditors or the person to whom disclosure is approved, and that person must comply with such conditions or restrictions.

[2/2009]

(4) The obligation on an officer or auditor referred to in subsection (1) continues after the termination or cessation of his or her employment or appointment by the inspected person.

[2/2009]

(5) Any person who contravenes subsection (1) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 2 years or to both.

[2/2009]

(6) Any person to whom the report is disclosed and who knows or has reasonable grounds for believing, at the time of the disclosure, that the report was disclosed to the

person in contravention of subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 2 years or to both, unless the person proves that —

(*a*) the disclosure was made contrary to the person's desire;

(*b*) where the disclosure was made in any written form, the person had as soon as practicable after receiving the report surrendered or taken all reasonable steps to surrender the report and all copies thereof to the Authority; and

(*c*) where the disclosure was made in an electronic form, the person had as soon as practicable after receiving the report taken all reasonable steps to ensure that all electronic copies of the report had been deleted and that the report and all copies thereof in other forms had been surrendered to the Authority.

[2/2009]

Division 2 — Power of Minister to Appoint Inspector for Investigating Dealings in Securities, etc.

Power of Minister to appoint inspectors

151.—(1) Despite anything in this Act, the Minister may, if he or she thinks it in the public interest to do so, appoint any person as an inspector to investigate any matter concerning dealing in capital markets products, administering a designated benchmark or providing information in relation to a designated benchmark.

[4/2017]

(2) An inspector appointed under subsection (1) has all the powers conferred upon an inspector under Part 9 of the Companies Act 1967 and that Part applies, with the necessary modifications, to such investigation.

(3) Any inspector appointed under subsection (1) must report the results of the inspector's investigation to the Minister and the Minister may, if he or she thinks it in the public interest to do so, cause the report to be printed and published.

Division 3 — Investigative Powers of Authority

Subdivision (1) — General

Investigation by Authority

152.—(1) The Authority may conduct such investigation as it considers necessary or expedient for any of the following purposes:

(*a*) to exercise any of its powers or to perform any of its functions and duties under this Act;

(*b*) to ensure compliance with this Act or any written direction issued under this Act;

(*c*) to investigate an alleged or suspected contravention of any provision of this Act or any written direction issued under this Act.

(2) The Authority may exercise any of its powers under this Division for the purposes of conducting an investigation under subsection (1) despite the provisions of any prescribed written law or any requirement imposed thereunder or any rule of law.

(3) A requirement imposed by the Authority in the exercise of its powers under this Division has effect despite any obligations as to secrecy or other restrictions upon the disclosure of information imposed by any prescribed written law or any requirement imposed thereunder, any rule of law, any contract or any rule of professional conduct.

(4) Any person who complies with a requirement imposed by the Authority in the exercise of its powers under this Division is not treated as being in breach of any restriction upon the disclosure of information or thing imposed by any prescribed written law or any requirement imposed thereunder, any rule of law, any contract or any rule of professional conduct.

(5) No civil or criminal action, other than proceedings for an offence under section 162 or 168, shall lie against any person —

(*a*) for giving assistance to the Authority, including answering questions, if the person had given the assistance or answered the questions in good faith in compliance with a requirement imposed under this Division;

(*b*) for providing information or producing books to the Authority if the person had provided the information or produced the books in good faith in compliance with a requirement imposed by the Authority under this Division; or

(*c*) for doing or omitting to do any act, if the person had done or omitted to do the act in good faith and as a result of complying with a requirement imposed by the Authority under this Division.

(6) In this section, "requirement imposed by the Authority" includes a requirement

imposed by an investigator under Subdivision (2) or (3).

[34/2012]

Confidentiality of investigation reports

152A.—(1) Where a written report or any part thereof (called in this section the report) has been produced by the Authority in respect of any investigation under section 152 and is provided by the Authority to the person under investigation (called in this section the investigated person), the report must not be disclosed by the investigated person or, if the investigated person is a corporation, by any of its officers or auditors, to any other person except in the circumstances provided under subsection (2).

[2/2009]

(2) Disclosure of the report referred to in subsection (1) may be made —

(*a*) by the investigated person to any officer or auditor of that investigated person solely in connection with the performance of the duties of the officer or auditor (as the case may be) in that investigated person;

(*b*) by any officer or auditor of the investigated person to any other officer or auditor of that investigated person, solely in connection with the performance of their duties in that investigated person; or

(*c*) to such other person as the Authority may approve in writing.

[2/2009]

(3) In granting written approval for any disclosure under subsection (2)(*c*), the Authority may impose such conditions or restrictions as it thinks fit on the investigated person, any of its officers or auditors or the person to whom disclosure is approved, and that person must comply with such conditions or restrictions.

[2/2009]

(4) The obligation on an officer or auditor referred to in subsection (1) continues after the termination or cessation of his or her employment or appointment by the investigated person.

[2/2009]

(5) Any person who contravenes subsection (1) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 2 years or to both.

[2/2009]

(6) Any person to whom the report is disclosed and who knows or has reasonable grounds for believing, at the time of the disclosure, that the report was disclosed to the person in contravention of subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 2 years or to both, unless the person proves that —

(*a*) the disclosure was made contrary to the person's desire;

(*b*) where the disclosure was made in any written form, the person had as soon as practicable after receiving the report surrendered or taken all reasonable steps to surrender the report and all copies thereof to the Authority; and

(*c*) where the disclosure was made in an electronic form, the person had as soon as practicable after receiving the report taken all reasonable steps to ensure that all electronic copies of the report had been deleted and that the report and all copies thereof in other forms had been surrendered to the Authority.

[2/2009]

Self-incrimination and saving for advocates and solicitors

153.—(1) A person is not excused from disclosing information to the Authority or, as the case may be, an investigator under Subdivision (2) or (3), under a requirement made of the person under any provision of this Division on the ground that the disclosure of the information might tend to incriminate the person.

[34/2012]

(2) Where a person claims, before making a statement disclosing information that the person is required to under any provision of this Division to the Authority or (as the case may be) an investigator under Subdivision (2) or (3), that the statement might tend to incriminate the person, that statement —

(*a*) is not admissible in evidence against the person in criminal proceedings other than proceedings for an offence under section 162(3); but

(*b*) is, to avoid doubt, admissible in evidence in civil proceedings under Part 12.

[2/2009; 34/2012]

(3) Nothing in this Division —

(*a*) compels an advocate and solicitor, or a legal counsel referred to in section 128A of the Evidence Act 1893, to disclose or produce a privileged communication, or a document or other material containing a privileged communication, made by or to him or her in that capacity; or

(*b*) authorises the taking of any such document or other material which is in his or her possession.

[34/2012]

(4) An advocate and solicitor, or a legal counsel referred to in section 128A of the Evidence Act 1893, who refuses to disclose the information or produce the document or

other material referred to in subsection (3) is nevertheless obliged to give the name and address (if he or she knows them) of the person to whom, or by or on behalf of whom, that privileged communication was made.

[34/2012]

Subdivision (2) — Examination of persons

Requirement to appear for examination

154.—(1) For the purpose of an investigation under this Division, the Authority may, in writing, require a person —

(*a*) to give to the Authority all reasonable assistance in connection with the investigation; and

(*b*) to appear before an officer of the Authority duly authorised by the Authority for examination on oath and to answer questions.

(2) A written requirement imposed under subsection (1) must state the general nature of the matter referred to in subsection (1).

Proceedings at examination

155. The provisions of this Subdivision apply where, pursuant to a requirement made under section 154 for the purposes of an investigation under this Division, a person (called in this Subdivision the examinee) appears before another person (called in this Subdivision the investigator) for examination.

Requirements made of examinee

156.—(1) The investigator may examine the examinee on oath or affirmation and may, for that purpose, administer an oath or affirmation to the examinee.

(2) The oath or affirmation to be taken or made by the examinee for the purposes of the examination is an oath or affirmation that the statements that the examinee will make are true.

(3) The investigator may require the examinee to answer a question that is put to the examinee at the examination and is relevant to a matter that the Authority is investigating, or is to investigate, under this Division.

Examination to take place in private

157.—(1) The examination must take place in private and the investigator may give

directions as to who may be present during the examination or part thereof.

(2) A person must not be present at the examination unless the person is —

(*a*) the investigator or the examinee;

(*b*) a person approved by the Authority; or

(*c*) entitled to be present by virtue of a direction under subsection (1).

Record of examination

158.—(1) The investigator may, and must if the examinee so requests, cause a record to be made of statements made at the examination.

(2) If a record made under subsection (1) is in writing or is reduced to writing —

(*a*) the investigator may require the examinee to read the record, or to have it read to the examinee, and may require the examinee to sign it; and

(*b*) the investigator must, if requested in writing by the examinee to give to the examinee a copy of the written record, comply with the request without charge but subject to such conditions as the investigator may impose.

Giving copies of record to other persons

159.—(1) The Authority may give a copy of a written record of the examination, or such a copy together with a copy of any related book, to an advocate and solicitor acting on behalf of a person who is carrying on, or is contemplating in good faith, a proceeding in respect of a matter to which the examination relates.

(2) If the Authority gives a copy to a person under subsection (1), the person, or any other person who has possession, custody or control of the copy or a copy of it, must not, except in connection with preparing, beginning or carrying on, or in the course of, any proceedings —

(*a*) use the copy or a copy of it; or

(*b*) publish, or communicate to a person, the copy, a copy of it, or any part of the copy's contents.

(3) The Authority may, subject to such conditions or restrictions as it may impose, give to a person a copy of a written record of the examination, or such a copy together with a copy of any related book.

Copies given subject to conditions

160. If a copy of a written record or a book is given to a person under section 158(2)

or 159(3) subject to conditions or restrictions imposed by the Authority, the person, and any other person who has possession, custody or control of the copy or a copy of it, must comply with the conditions.

Record to accompany report

161. If —

(*a*) in the Authority's opinion, a statement made at an examination is relevant to any other investigation conducted under this Division;

(*b*) a record of the statement was made under section 158; and

(*c*) a report about the other investigation is prepared under section 151(3),

a copy of the record must accompany the report to be submitted to the Minister under section 151(3).

Offences under this Subdivision

162.—(1) A person who, without reasonable excuse, refuses or fails to comply with a requirement under section 154 or 156(3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 2 years or to both.

[34/2012]

(2) A person who, without reasonable excuse —

(*a*) refuses or fails to take an oath or make an affirmation when required to do so by an investigator examining the person under this Subdivision;

(*b*) refuses or fails to comply with a requirement of an investigator under section 158(2)(*a*); or

(*c*) refuses or fails to comply with section 159(2) or 160,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 12 months or to both.

(3) A person who, in purported compliance with the provisions of this Subdivision, or in the course of examination of the person, provides information or makes a statement that is false or misleading in a material particular shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 2 years or to both.

(4) It is a defence to a prosecution for an offence under subsection (3) if the defendant proves that the defendant believed on reasonable grounds that the information or statement was true and was not misleading.

(5) A person who, without reasonable excuse, obstructs or hinders the Authority or another person in the exercise of any power under this Subdivision shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 2 years or to both.

Subdivision (3) — Powers to obtain information

Power of Authority to order production of books

163. For the purpose of an investigation under this Division, the Authority may, in writing, require any person at a specified time and place to provide information or produce books relating to any matter under investigation, and that person must comply with that requirement.

Power to enter premises without warrant

163A.—(1) In connection with an investigation under this Division, any officer of the Authority who is authorised by the Authority to do so (called in this section an investigator) and such other officers or persons as the Authority has authorised in writing to accompany the investigator (each called in this section an authorised person) may enter any premises.

[34/2012]

(2) No investigator and no authorised person accompanying the investigator may enter any premises in the exercise of the powers under this section unless the investigator has given the occupier of the premises a written notice which —

(*a*) gives at least 2 working days' notice of the intended entry;

(*b*) indicates the subject matter and purpose of the investigation; and

(*c*) indicates the nature of the offences created by section 168.

[34/2012]

(3) Subsection (2) does not apply —

(*a*) if the investigation relates to an alleged or a suspected contravention of any provision of Part 12, and the investigator has reasonable grounds for suspecting that the premises are, or have been, occupied by a person who is being investigated in relation to the contravention; or

(*b*) if the investigator has taken all such steps as are reasonably practicable to give notice under subsection (2)(*a*) but has not been able to do so.

[34/2012]

(4) Where subsection (3) applies, the power of entry conferred by subsection (1) may only be exercised upon production of —

(*a*) evidence of the investigator's authorisation and the authorisation of every authorised person accompanying the investigator; and

(*b*) a document containing the information referred to in subsection (2)(*b*) and (*c*).

[34/2012]

(5) An investigator or authorised person entering any premises under this section may —

(*a*) take with him or her such equipment as appears to him or her to be necessary;

(*b*) require any person on the premises to produce any book which the investigator or authorised person considers relates to any matter relevant to the investigation;

(*c*) require any person on the premises to state, to the best of the person's knowledge and belief, where any such book is to be found; and

(*d*) take any step, or issue to any person on the premises any requirement, which appears to be necessary for the purpose of preserving or preventing interference with any book which the investigator or authorised person considers relates to any matter relevant to the investigation.

[34/2012]

Warrant to seize books, etc.

164.—(1) A Magistrate may, on the application of the Authority —

(*a*) issue a warrant, if the Magistrate is satisfied that there are reasonable grounds to suspect that there is, on any particular premises, any book —

(i) the production of which has been required by the Authority under section 163 or by an investigator or authorised person under section 163A, but which has not been produced in compliance with that requirement; or

(ii) which, if required by the Authority under section 163 to be produced, will be concealed, removed, tampered with or destroyed; and

(*b*) if the Magistrate is also satisfied that there are reasonable grounds to suspect that there is, on those premises, any other book which relates to

any matter relevant to the investigation concerned, direct that the powers exercisable under the warrant extend to that other book.

[34/2012]

(2) A warrant issued under subsection (1) authorises the Authority or any person named in the warrant, with or without assistance —

(*a*) to enter the premises specified in the warrant, using such force as is reasonably necessary for the purpose;

(*b*) to search the premises and to break open and search anything, whether a fixture or not, in the premises;

(*c*) to take possession of, or secure against interference, any book that appears to be a book referred to in subsection (1)(*a*) or, where applicable, subsection (1)(*b*);

(*d*) to require any person to provide an explanation of any book that appears to be a book referred to in subsection (1)(*a*) or, where applicable, subsection (1)(*b*), or to state, to the best of that person's knowledge and belief, where any such book may be found;

(*e*) to search any person on those premises, if there are reasonable grounds to suspect that the person has in that person's possession any book referred to in subsection (1)(*a*) or, where applicable, subsection (1)(*b*), or any equipment or article which relates to any matter relevant to the investigation concerned; and

(*f*) to remove from those premises for examination any book that appears to be a book referred to in subsection (1)(*a*) or, where applicable, subsection (1)(*b*), or any equipment or article which relates to any matter relevant to the investigation concerned.

[34/2012]

(3) The Authority or any person named in the warrant to execute it may allow any equipment or article referred to in subsection (2)(*f*) to be retained on the premises specified in the warrant to be searched, subject to such conditions as the Authority or that person may require.

[34/2012]

(4) Any person entering any premises by virtue of a warrant issued under subsection (1) may take with him or her such equipment as appears to him or her to be necessary.

[34/2012]

(5) Where a warrant is issued under subsection (1), and there is no one present at the premises specified in the warrant to be searched when the Authority or any person named

in the warrant proposes to execute the warrant, the Authority or that person must, before executing the warrant —

(*a*) take such steps as are reasonable in all the circumstances to inform the occupier of the premises of the intended entry into the premises; and

(*b*) subject to subsection (6), give the occupier or the occupier's legal or other representative a reasonable opportunity to be present when the warrant is executed.

[34/2012]

(6) If the Authority or any person named in the warrant to execute it is unable to inform the occupier of the premises of the intended entry into the premises, the Authority or that person must, when executing the warrant, leave a copy of the warrant in a prominent place on the premises.

[34/2012]

(7) On leaving any premises specified in a warrant issued under subsection (1), the Authority or any person named in the warrant to execute it must, if the premises are unoccupied or if the occupier of the premises is temporarily absent, leave the premises as effectively secured as the Authority or that person found the premises.

[34/2012]

(8) The powers conferred by this section are in addition to, and not in derogation of, any other powers conferred by any other written law or rule of law.

[34/2012]

(9) In this section —

"occupier", in relation to any premises specified in a warrant issued under subsection (1), includes any person whom the Authority or any person named in the warrant to execute it reasonably believes to be the occupier of those premises;

"premises" includes any structure, building, aircraft, vehicle or vessel.

[34/2012]

Powers where books are produced or seized

165.—(1) This section applies where —

(*a*) books are produced to the Authority —

(i) pursuant to a requirement of the Authority under section 163 or of an investigator or authorised person under section 163A(5); or

(ii) during an entry into any premises by an investigator or

authorised person under section 163A;

(*b*) under a warrant issued under section 164, the Authority or a person named therein —

(i) takes possession of books; or

(ii) secures books against interference; or

(*c*) under a previous application of subsection (6), books are delivered into the possession of the Authority or a person authorised by it.

[34/2012]

(2) If subsection (1)(*a*) applies, the Authority may take possession of any of the books.

(3) The Authority or, where applicable, a person referred to in subsection (1)(*b*) may —

(*a*) inspect, and may make copies of, or take extracts from, any of the books;

(*b*) use, or permit the use of, any of the books for the purposes of any proceedings;

(*c*) retain possession of any of the books for so long as is necessary —

(i) for the purposes of exercising a power conferred by this section (other than subsection (5));

(ii) for a decision to be made about whether or not any proceedings to which the books concerned would be relevant should be instituted; or

(iii) for such proceedings to be instituted and carried on; and

(*d*) require any book which the Authority or person referred to in subsection (1)(*b*) is satisfied relates to any matter relevant to an investigation under this Division, and which is stored in any electronic form, to be produced in a form which can be taken away and which is visible and legible.

[34/2012]

(4) No person is entitled, as against the Authority or, where applicable, a person referred to in subsection (1)(*b*) to claim a lien on any of the books, but such a lien is not otherwise prejudiced.

(5) While the books are in the possession of the Authority or, where applicable, the person referred to in subsection (1)(*b*), the Authority or person —

(*a*) must permit another person to inspect at all reasonable times such of the books (if any) as the second-mentioned person would be entitled to inspect if they were not in possession of the Authority or the firstmentioned person; and

(*b*) may permit any other person to inspect any of the books.

(6) Unless subsection (1)(*b*)(ii) applies, an investigator or authorised person referred to in subsection (1)(*a*) or a person referred to in subsection (1)(*b*) may deliver any of the books into the possession of the Authority or of a person authorised by the Authority to receive them.

[34/2012]

(7) Without affecting sections 163A(5) and 164(2)(*d*), where subsection (1)(*a*) or (*b*) applies, the Authority, an investigator or authorised person referred to in subsection (1)(*a*), a person referred to in subsection (1)(*b*) or a person into whose possession the books are delivered under subsection (6), may require —

(*a*) if subsection (1)(*a*) applies, a person who so produced any of the books; or

(*b*) in any other case, a person who was a party to the compilation of any of the books,

to explain to the best of his or her knowledge and belief any matter about the compilation of any of the books or to which any of the books relate.

[34/2012]

Powers where books not produced

166. Where a person fails to comply with a requirement imposed by the Authority under section 163 to produce any book, the Authority may require the person to state, to the best of the person's knowledge and belief —

(*a*) the place where such book may be found; and

(*b*) the person who last had possession, custody or control of such book and the place where that person may be found.

Copies of or extracts from books to be admitted in evidence

167.—(1) Subject to this section, a copy of or extract from a book referred to in this Subdivision that is proved to be a true copy of the book or of the relevant part of the book is admissible in evidence as if it were the original book or the relevant part of the original book.

(2) For the purposes of subsection (1), evidence that a copy of or extract from a book is a true copy of the book or of a part of the book may be given by a person who has compared the copy or extract with the book or the relevant part of the book and may be given orally or by an affidavit sworn, or by a declaration made, before a person authorised to take affidavits or statutory declarations.

Offences under this Division

168.—(1) A person who, without reasonable excuse, refuses or fails to comply with any requirement imposed under section 163, 163A(5), 165(3)(*d*) or (7) or 166, or pursuant to an authorisation referred to in section 164(2)(*d*), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 2 years or to both.

[34/2012]

(2) A person who, in purported compliance with a requirement under this Subdivision, provides information or makes a statement that is false or misleading in a material particular shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 2 years or to both.

(3) It is a defence to a prosecution for an offence under subsection (2) if the defendant proves that the defendant believed on reasonable grounds that the information or statement was true and not misleading.

(4) Any person, who conceals, destroys, mutilates or alters any book, equipment or article relating to a matter that the Authority is investigating or about to investigate under this Division or who, where any such book, equipment or article is within the territory of Singapore, takes or sends the book, equipment or article out of Singapore, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 or to imprisonment for a term not exceeding 2 years or to both.

[34/2012]

(5) A person who, without reasonable excuse, obstructs or hinders the Authority in the exercise of any power under this Subdivision, or obstructs or hinders a person who is exercising any power under section 163A(1) or (5) or executing a warrant issued under section 164, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 2 years or to both.

[34/2012]

(6) Any occupier or person in charge of any premises who fails to provide, to any person who enters those premises under section 163A(1) or under a warrant issued under section 164(1), all reasonable facilities and assistance for the effective exercise of that person's powers under section 163A(1) or (5) or under the warrant (as the case may be) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding

$5,000 or to imprisonment for a term not exceeding 12 months or to both.

[34/2012]

Division 4 — Transfer of Evidence

Interpretation of this Division

168A. In this Division —

"Commercial Affairs Officer" means a Commercial Affairs Officer appointed under section 64 of the Police Force Act 2004;

"police officer" means a member of the Singapore Police Force who is deployed in the Commercial Affairs Department of that Force.

[2/2009]

Evidence obtained by Authority may be used in criminal investigations and proceedings

168B.—(1) Despite the provisions of any written law or any rule of law, the Authority may provide any book, document, written record of any examination or other information obtained by the Authority in the exercise of its powers under this Part to —

(*a*) a police officer;

(*b*) a Commercial Affairs Officer; or

(*c*) the Public Prosecutor,

for the purposes of any investigation into or criminal proceedings against a person for an alleged contravention of any provision under Part 12.

[2/2009]

(2) To avoid doubt, any book, document, written record of examination or other information provided by the Authority under subsection (1) is not inadmissible in any criminal proceedings by reason only that it was first obtained by the Authority in the exercise of its powers under this Act, and the admissibility thereof is to be determined in accordance with the rules of evidence under written law and any relevant rules of law.

[2/2009]

Evidence obtained in police investigations may be used in civil proceedings

168C.—(1) Despite the provisions of any written law or any rule of law, any book, document, statement or other information obtained by a police officer or a Commercial Affairs Officer in the exercise of his or her powers under Divisions 1 and 2 of Part 4 and sections 111, 258, 260, 261 and 280 of the Criminal Procedure Code 2010 may be

provided to the Authority, if the Public Prosecutor is satisfied that such information is necessary to enable the Authority to investigate or bring an action for a civil penalty order against a person in respect of a contravention of any provision in Part 12.

[2/2009; 15/2010]

(2) To avoid doubt, any book, document, statement or other information provided to the Authority under subsection (1) is not inadmissible in any civil proceedings under this Act to which the Authority is a party by reason only that it was first obtained by a police officer or a Commercial Affairs Officer in the exercise of his or her powers under the Criminal Procedure Code 2010, and the admissibility thereof is to be determined in accordance with the rules of evidence under written law and any relevant rules of law.

[2/2009]

PART 10

ASSISTANCE TO FOREIGN REGULATORY AUTHORITIES

Interpretation of this Part

169. In this Part, unless the context otherwise requires —

"enforce" means enforce through criminal, civil or administrative proceedings;

"enforcement" means the taking of any action to enforce a law or regulatory requirement against a specified person, being a law or regulatory requirement that relates to the securities and derivatives industry of, or financial benchmarks in, the foreign country of the regulatory authority concerned;

"foreign country" means a country or territory other than Singapore;

"investigation" means an investigation to determine if a specified person has contravened or is contravening a law or regulatory requirement, being a law or regulatory requirement that relates to the securities and derivatives industry of, or financial benchmarks in, the foreign country of the regulatory authority concerned;

"material" includes any information, book, document or other record in any form whatsoever, and any container or article relating thereto;

"regulatory authority", in relation to a foreign country, means an authority of the foreign country exercising any function that corresponds to a regulatory function of the Authority under this Act;

"supervision", in relation to a regulatory authority, means the taking of any action for or in connection with the supervision of —

(*a*) a person operating an organised market, an intermediary or any other person regulated by the regulatory authority;

(*b*) the issuance of or trading in capital markets products in the foreign country of the regulatory authority; or

(*c*) a person administering a financial benchmark, or providing information in relation to a financial benchmark, in the foreign country of the regulatory authority.

[34/2012; 4/2017]

Application of this Part

169A. This Part does not apply to any request for assistance mentioned in section 154(1) of the Monetary Authority of Singapore Act 1970.

[31/2017]

Conditions for provision of assistance

170.—(1) The Authority may provide the assistance referred to in section 172 to a regulatory authority of a foreign country if the Authority is satisfied that all of the following conditions are fulfilled:

(*a*) the request by the regulatory authority for assistance is received by the Authority on or after 6 March 2000;

(*b*) the assistance is intended to enable the regulatory authority, or any other authority of the foreign country, to carry out the supervision, investigation or enforcement;

(*c*) the contravention of the law or regulatory requirement to which the request relates took place on or after 6 March 2000;

(*d*) the regulatory authority has given a written undertaking that any material or copy thereof obtained pursuant to its request must not be used for any purpose other than a purpose that is specified in the request and approved by the Authority;

(*e*) the regulatory authority has given a written undertaking not to disclose to a third party (other than a designated third party of the foreign country in accordance with paragraph (*f*)) any material received pursuant to the request unless the regulatory authority is compelled to do so by the law or a court of the foreign country;

(*f*) the regulatory authority has given a written undertaking to obtain the prior consent of the Authority before disclosing any material received pursuant

to the request to a designated third party, and to make such disclosure only in accordance with such conditions as the Authority may impose;

(*g*) the material requested for is of sufficient importance to the carrying out of the supervision, investigation or enforcement to which the request relates and cannot reasonably be obtained by any other means;

(*h*) the matter to which the request relates is of sufficient gravity;

(*i*) the rendering of assistance will not be contrary to the public interest or the interest of the investing public.

(2) In subsection (1)(*e*) and (*f*), "designated third party", in relation to a foreign country, means —

(*a*) any person or body responsible for supervising the regulatory authority in question;

(*b*) any authority of the foreign country responsible for carrying out the supervision, investigation or enforcement in question; or

(*c*) any authority of the foreign country exercising a function that corresponds to a regulatory function of the Authority under this Act.

Other factors to consider for provision of assistance

171. In deciding whether to grant a request for assistance referred to in section 172 from a regulatory authority of a foreign country, the Authority may also have regard to the following:

(*a*) whether the act or omission that is alleged to constitute the contravention of the law or regulatory requirement to which the request relates would, if it had occurred in Singapore, have constituted an offence under this Act;

(*b*) whether the regulatory authority has given or is willing to give an undertaking to the Authority to comply with a future request by the Authority to the regulatory authority for similar assistance;

(*c*) whether the regulatory authority has given or is willing to give an undertaking to the Authority to contribute towards the costs of providing the assistance that the regulatory authority has requested for.

Assistance that may be rendered

172.—(1) Despite the provisions of any prescribed written law or any requirement imposed thereunder or any rule of law, the Authority or any person authorised by the Authority may, in relation to a request by a regulatory authority of a foreign country for

assistance —

(*a*) transmit to the regulatory authority any material in the possession of the Authority that is requested by the regulatory authority or a copy thereof;

(*b*) order any person to provide to the Authority any material that is requested by the regulatory authority or a copy thereof, and transmit the material or copy to the regulatory authority;

(*c*) order any person to transmit directly to the regulatory authority any material that is requested by the regulatory authority or a copy thereof;

(*d*) order any person to make an oral statement to the Authority on any information requested by the regulatory authority, record such statement, and transmit the recorded statement to the regulatory authority; or

(*e*) request any Ministry, Government department or statutory authority to provide to the Authority any material that is requested by the regulatory authority or a copy thereof, and transmit the material or copy to the regulatory authority.

(2) The assistance referred to in subsection (1)(*c*) may only be rendered if the material sought is to enable the regulatory authority to carry out investigation or enforcement.

(3) An order under subsection (1)(*b*), (*c*) or (*d*) has effect despite any obligations as to secrecy or other restrictions upon the disclosure of information imposed by any prescribed written law or any requirement imposed thereunder, any rule of law, any contract or any rule of professional conduct.

(4) Nothing in this section compels an advocate and solicitor, or a legal counsel referred to in section 128A of the Evidence Act 1893 —

(*a*) to provide or transmit any material or copy thereof that contains; or

(*b*) to disclose,

a privileged communication made by or to him or her in that capacity.

[34/2012]

(5) An advocate and solicitor, or a legal counsel referred to in section 128A of the Evidence Act 1893, who refuses to provide or transmit any material or copy thereof that contains, or to disclose, any privileged communication is nevertheless obliged to give the name and address (if he or she knows them) of the person to whom, or by or on behalf of whom, the privileged communication was made.

[34/2012]

(6) A person is not excused from making an oral statement pursuant to an order made

under subsection (1)(*d*) on the ground that the statement might tend to incriminate the person but, where the person claims before making the statement that the statement might tend to incriminate the person, that statement —

(*a*) is not admissible in evidence against the person in criminal proceedings other than proceedings for an offence under section 173; but

(*b*) is admissible in evidence in civil proceedings under Part 12.

Offences under this Part

173. Any person who —

(*a*) without reasonable excuse refuses or fails to comply with an order under section 172(1)(*b*), (*c*) or (*d*);

(*b*) in purported compliance with an order under section 172(1)(*b*) or (*c*), provides to the Authority or transmits to a regulatory authority any material or copy thereof known to the person to be false or misleading in a material particular; or

(*c*) in purported compliance with an order made under section 172(1)(*d*), makes a statement to the Authority that is false or misleading in a material particular,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 2 years or to both.

Immunities

174.—(1) No civil or criminal proceedings, other than proceedings for an offence under section 173, shall lie against any person for —

(*a*) providing to the Authority or transmitting any material or copy thereof to the Authority or a regulatory authority of a foreign country if the person had provided or transmitted that material or copy in good faith in compliance with an order made under section 172(1)(*b*) or (*c*);

(*b*) making a statement to the Authority in good faith and in compliance with an order made under section 172(1)(*d*); or

(*c*) doing or omitting to do any act, if the person had done or omitted to do the act in good faith and as a result of complying with such an order.

(2) Any person who complies with an order referred to in subsection (1)(*a*) or (*b*) is not treated as being in breach of any restriction upon the disclosure of information or

thing imposed by any prescribed written law or any requirement imposed thereunder, any rule of law, any contract or any rule of professional conduct.

PART 11

INVESTOR COMPENSATION SCHEME

Interpretation of this Part

175. In this Part, "member", in relation to an approved exchange, means a person who —

(*a*) holds membership of any class or description of the approved exchange, whether or not the person holds any share in the share capital of such exchange; and

(*b*) is licensed by the Authority to carry on the business of dealing in capital markets products.

[2/2009; 4/2017]

Establishment of fidelity fund

176.—(1) Each approved exchange must establish, keep and administer a fidelity fund (called in this Part a fidelity fund or fund).

[2/2009]

(2) The assets of the fidelity fund of an approved exchange —

(*a*) are the property of the exchange;

(*b*) must be kept separate from all other property of the exchange; and

(*c*) must be held in trust for the purposes set out in this Part.

[2/2009]

Moneys constituting fidelity fund

177. The fidelity fund of an approved exchange consists of —

(*a*) all moneys paid to the exchange by its members in accordance with this Part;

(*b*) all moneys paid to the fund by the exchange;

(*c*) all interest and profits from time to time accruing from the investment of the fund;

(*d*) all moneys recovered by or on behalf of the exchange in the exercise of

any right of action conferred by this Part;

(*e*) all moneys paid by an insurer pursuant to a contract of insurance or indemnity entered into by the exchange under section 194; and

(*f*) all other moneys lawfully paid into the fund.

[2/2009]

Fund to be kept in separate bank account

178. All moneys forming part of a fidelity fund must, pending the investment or application thereof in accordance with this Part, be kept in a separate bank account in Singapore.

Payments out of fidelity fund

179. Subject to this Part, there is to be paid out of the fidelity fund of an approved exchange as required and in such order as the exchange considers proper —

(*a*) the amount of all claims, including costs, allowed by the exchange or established against the exchange under this Part;

(*b*) all legal and other expenses incurred in investigating or defending claims made under this Part or incurred in relation to the fund or in the exercise by the exchange of the rights, powers and authorities vested in it by this Part in relation to the fund;

(*c*) all premiums payable in respect of contracts of insurance or indemnity entered into by the exchange under section 194;

(*d*) all expenses incurred or involved in the administration of the fund, including the salaries and wages of persons employed by the exchange in relation thereto; and

(*e*) all other moneys payable out of the fund in accordance with this Act.

[2/2009]

Accounts of fund

180.—(1) An approved exchange must establish and keep proper accounts of its fidelity fund and must, within 5 months from the last day of each financial year of that exchange, cause a balance sheet in respect of such accounts to be made out as at the last day of that financial year.

[2/2009]

(2) The approved exchange must appoint an auditor to audit the accounts of the fidelity fund.

[2/2009]

(3) The auditor appointed by the approved exchange must —

(*a*) regularly and fully audit the accounts of the fidelity fund; and

(*b*) audit each balance sheet and cause it to be laid before the exchange not later than 3 months after the balance sheet was made out.

[2/2009]

Fidelity fund to consist of amount of $20 million, etc.

181. The fidelity fund of an approved exchange must consist of an amount of not less than —

(*a*) $20 million; or

(*b*) such other amount as the Authority may, by order in the *Gazette*, specify in substitution of the amount specified under paragraph (*a*),

to be paid to the credit of the fund on the approval of the exchange under this Act or at any time after its approval as determined by the Authority.

[2/2009]

Provisions if fund is reduced below minimum amount

182. If the fidelity fund of an approved exchange is reduced below the minimum amount referred to in section 181, the exchange must take steps to make up the deficiency —

(*a*) by transferring an amount that is equal to the deficiency from other funds of the exchange to the fidelity fund; and

(*b*) in the event that there are insufficient funds to transfer under paragraph (*a*), by requiring each member of the exchange to contribute to the fund such amount as the exchange may determine.

[2/2009]

Levy to meet liabilities

183.—(1) If at any time a fidelity fund is not sufficient to satisfy the liabilities that are then ascertained of an approved exchange in relation thereto, the approved exchange —

(*a*) may impose on every member a levy of such amount as it thinks fit; or

(*b*) if ordered by the Authority, must impose a levy of such amount which must in the aggregate be equivalent to the amount so specified in the order.

[2/2009]

(2) The amount of the levy must be paid within the time and in the manner specified by the approved exchange either generally or in relation to any particular case.

[2/2009]

(3) No member of an approved exchange may be required to pay by way of levy under this section more than $300,000 in the aggregate in any particular case.

[2/2009]

Power of approved exchange to make advances to fund

184.—(1) An approved exchange may, out of its general funds, give or advance any sum of money to its fidelity fund on such terms as it thinks fit.

[2/2009]

(2) Any sum of money advanced by an approved exchange under subsection (1) may be repaid out of the fidelity fund to the general funds of the approved exchange.

[2/2009]

Investment of fund

185. Any moneys in a fidelity fund that are not immediately required for any purpose referred to in this Part may be invested by an approved exchange in any manner in which trustees are for the time being authorised by law to invest trust funds.

[2/2009]

Application of fund

186.—(1) Subject to this Part, a fidelity fund must be held and applied for the purpose of compensating any person (other than an accredited investor) who suffers pecuniary loss because of a defalcation committed —

(*a*) in the course of, or in connection with, a dealing in capital markets products;

(*b*) by a member of an approved exchange or by any agent of such member; and

(*c*) in relation to any money or other property which, after the establishment of the fidelity fund was entrusted to or received —

(i) by that member or by any of its agents for or on behalf of any other person; or

(ii) by that member either as the sole trustee or as trustee with any other person or persons, or by any of its agents as trustee or for or on behalf of the trustees of that money or property.

[2/2009; 4/2017]

(2) Subject to this Part, the fidelity fund is to be applied for the purpose of paying to the Official Assignee or a trustee in bankruptcy within the meaning of the Insolvency, Restructuring and Dissolution Act 2018 an amount not greater than the amount that the Official Assignee or the trustee in bankruptcy (as the case may be) certifies is required in order to make up or reduce the total deficiency arising because the available assets of a bankrupt, who is a member of an approved exchange, are insufficient to satisfy any debts arising from dealings in capital markets products that have been proved in the bankruptcy by creditors of the bankrupt member.

[2/2009; 4/2017; 40/2018]

(3) Subsection (2) applies in the case of a member of an approved exchange who has made a voluntary arrangement with the member's creditors under Part 14 of the Insolvency, Restructuring and Dissolution Act 2018 in like manner as that subsection applies in the case of a member who has become bankrupt.

[2/2009; 40/2018]

(4) For the purposes of subsection (3) —

(*a*) a reference to a trustee in bankruptcy in subsection (2) is deemed to be a reference to a nominee within the meaning of Part 14 of the Insolvency, Restructuring and Dissolution Act 2018;

(*b*) a reference to debts proved in bankruptcy in subsection (2) is deemed to be a reference to debts provable in relation to a voluntary arrangement within the meaning of Part 14 of the Insolvency, Restructuring and Dissolution Act 2018; and

(*c*) a reference to the bankrupt in subsection (2) is deemed to be a reference to the person who made the voluntary arrangement under Part 14 of the Insolvency, Restructuring and Dissolution Act 2018.

[40/2018]

(5) Subject to this Part, the fidelity fund is to be applied for the purpose of paying to a liquidator of a member of an approved exchange that is being wound up an amount not greater than the amount that the liquidator certifies is required to make up or reduce the total deficiency arising because the available assets of the member are insufficient to satisfy any debts arising from dealings in capital markets products that have been proved in the liquidation of the member.

[2/2009; 4/2017]

(6) Where a claim has been made for compensation in respect of a pecuniary loss under subsection (1), no claim for a payment under subsection (2) or (5) may be made in respect of the same pecuniary loss.

(7) Where a claim has been made for a payment in respect of a deficiency referred to in subsection (2), no claim for compensation under subsection (1) or for a payment under

subsection (5) may be made in respect of the same deficiency.

(8) Where a claim has been made for a payment in respect of a deficiency referred to in subsection (5), no claim for compensation under subsection (1) or for a payment under subsection (2) may be made in respect of the same deficiency.

(9) Moneys paid under subsection (2) or (5) may only be applied by the Official Assignee, a trustee in bankruptcy, a nominee or a liquidator (as the case may be) for the purpose of satisfying debts arising from dealings in capital markets products, and for no other purpose.

[4/2017]

(10) Subject to the provisions of this section, the amount or the sum of the amounts that may be paid out of the fidelity fund under this Part for the purpose of —

(*a*) compensating pecuniary loss under subsection (1); or

(*b*) making a payment under subsection (2) or (5),

must not, in respect of each member, exceed the prescribed amount.

(11) Subject to the provisions of this section —

(*a*) the amount that may be paid out of the fidelity fund to each claimant under subsection (1) in relation to each member; or

(*b*) the amount that the Official Assignee, a trustee in bankruptcy, a nominee or a liquidator may pay to each creditor of a member from any amount paid to the Official Assignee, trustee in bankruptcy, nominee or liquidator (as the case may be) under subsection (2) or (5),

must not exceed the prescribed amount.

(12) For the purposes of subsections (10) and (11), any amount paid out of the fidelity fund, to the extent to which the fund is subsequently reimbursed therefor, is disregarded.

(13) In this section, "agent", in relation to a member of an approved exchange —

(*a*) means a person who is a director, an officer, an employee or a representative of the member; and

(*b*) includes a person who has been, but at the time of any defalcation in question has ceased to be, a director, an officer, an employee or a representative of the member if, at the time of the defalcation, the person claiming compensation has reasonable grounds for believing that person to be a director, an officer, an employee or a representative of the member.

[2/2009]

(14) In this section, any reference to dealing in capital markets products is a reference to such dealing which is done or to be done —

(*a*) on the approved exchange which establishes, keeps and administers the fidelity fund; or

(*b*) through a trading linkage of the approved exchange with an overseas exchange.

[4/2017]

Claims against fund

187.—(1) Subject to this Part, every person who suffers pecuniary loss referred to in section 186 is entitled to claim compensation out of the fidelity fund and to take proceedings in the General Division of the High Court under this Act against an approved exchange to establish such claim.

[2/2009; 40/2019]

(2) A person does not have any claim against the fidelity fund in respect of a defalcation in respect of money or other property which prior to the commission of the defalcation had, in the due course of the administration of a trust, ceased to be under the sole control of the director or directors of the member of an approved exchange.

[2/2009]

(3) Subject to this Part, the amount which any claimant is entitled to claim as compensation out of a fidelity fund is the amount of the actual pecuniary loss suffered by the claimant (including the reasonable costs of and disbursements incidental to the making and proof of the claimant's claim) less the amount or value of all moneys or other benefits received or receivable by the claimant from any source other than the fund in reduction of the loss.

Notice calling for claims against fund

188.—(1) An approved exchange may cause to be published in a daily newspaper published and circulating generally in Singapore a notice, in or to the effect of the form prescribed, specifying a date, not being earlier than 3 months after the date of publication, on or before which claims for compensation out of the fidelity fund, in relation to the person specified in the notice, may be made.

[2/2009]

(2) A claim for compensation out of a fidelity fund in respect of a defalcation must be made in writing to the approved exchange —

(*a*) where a notice under subsection (1) has been published, on or before the date specified in the notice; or

(*b*) where no such notice has been published, within 6 months after the claimant became aware of the defalcation.

[2/2009]

(3) Any claim which is not made in accordance with subsection (2) is barred unless the approved exchange otherwise allows.

[2/2009]

(4) No action for damages shall lie against an approved exchange or against any member or employee of the approved exchange by reason of any notice published in good faith and without malice for the purposes of this section.

[2/2009]

Power of approved exchange to settle claims

189.—(1) An approved exchange may, subject to this Part, allow and settle any proper claim for compensation out of a fidelity fund at any time after the commission of the defalcation in respect of which the claim arose.

[2/2009]

(2) Subject to subsection (3), a person must not commence proceedings under this Part against an approved exchange without the consent of the approved exchange, unless —

(*a*) the approved exchange has disallowed the person's claim; and

(*b*) the claimant has exhausted all relevant rights of action and other legal remedies for the recovery of the money or other property, in respect of which the defalcation was committed, available against a member of the approved exchange in relation to whom or to which the claim arose and all other persons liable in respect of the loss suffered by the claimant.

[2/2009]

(3) A person who has been refused consent to commence proceedings under this Part by an approved exchange under subsection (2) may apply for permission to a Judge sitting in chambers in the General Division of the High Court who may make such order in the matter as he or she thinks fit.

[2/2009; 40/2019]
[Act 25 of 2021 wef 01/04/2022]

(4) An approved exchange must, after disallowing (whether wholly or in part) any claim for compensation out of a fidelity fund, serve notice of the disallowance in the prescribed form on the claimant or the claimant's solicitor.

[2/2009]

(5) No proceedings against an approved exchange in respect of a claim which has been disallowed by the exchange may be commenced after the expiration of 3 months

after service of notice of disallowance under subsection (4).

[2/2009]

(6) In any proceedings brought to establish a claim —

(*a*) evidence of any admission or confession by, or other evidence which would be admissible against, the member of an approved exchange or other person by whom it is alleged a defalcation was committed, is admissible to prove the commission of the defalcation, even though the member or other person is not the defendant in or a party to those proceedings; and

(*b*) all defences which would have been available to that member or person are available to the approved exchange.

[2/2009]

(7) An approved exchange or, where proceedings are brought to establish a claim, the General Division of the High Court, if satisfied that the defalcation on which the claim is founded was actually committed, may allow the claim and act accordingly, even though the person who committed the defalcation has not been convicted or prosecuted therefor or that the evidence on which the approved exchange or the General Division of the High Court (as the case may be) acts would not be sufficient to establish the guilt of that person upon a criminal trial in respect of the defalcation.

[2/2009; 40/2019]

Power of approved exchange to require production of evidence

190.—(1) An approved exchange may require any person to produce and deliver any contract note, document or statement of evidence necessary to support any claim made, or necessary for the purpose either of exercising its rights against a member of an approved exchange or the directors of that member or any other person concerned, or of enabling criminal proceedings to be taken against any person in respect of a defalcation.

[2/2009]

(2) Where a person who is required under subsection (1) to produce or deliver any contract note, document or statement of evidence fails to do so, the approved exchange may disallow any claim by the person under this Part.

[2/2009]

Subrogation of approved exchange to rights, etc., of claimant upon payment from fund

191. On payment out of a fidelity fund of any moneys in respect of any claim under this Part, the approved exchange is subrogated to the extent of such payment to all the rights and remedies of the claimant in relation to the loss suffered by the claimant by reason of the defalcation on which the claim was based.

[2/2009]

Payment of claims only from fund

192. No moneys or other property belonging to an approved exchange, other than the fidelity fund, is available for the payment of any claim under this Part, whether the claim is allowed by the approved exchange or is made the subject of an order of the General Division of the High Court.

[2/2009; 40/2019]

Provision where fund insufficient to meet claims or where claims exceed total amount payable

193.—(1) Where the amount at credit in a fidelity fund is insufficient to pay the whole amount of all claims against it which have been allowed or in respect of which orders of the General Division of the High Court have been made, then the amount at credit in the fund must, subject to subsection (2), be apportioned between the claimants in such manner as the approved exchange thinks equitable, and such claim must, so far as it then remains unpaid, be charged against future receipts of the fund and paid out of the fund when moneys are available therein.

[2/2009; 40/2019]

(2) Where the aggregate of all claims which have been allowed or in respect of which orders of the General Division of the High Court have been made in relation to a defalcation by or in connection with a member of an approved exchange exceeds the total amount which may, pursuant to section 186(10), be paid under this Part in respect of that member, then such total amount must be apportioned between the claimants in such manner as the approved exchange thinks equitable.

[2/2009; 40/2019]

(3) Upon payment out of the fidelity fund of such total amount in accordance with the apportionment of all such claims under subsection (2), any order relating thereto and all other claims against the fund which may thereafter arise or be made in respect of that defalcation by or in connection with that member are absolutely discharged.

Power of approved exchange to enter into contracts of insurance

194.—(1) An approved exchange may enter into any contract with any person or body of persons, corporate or unincorporate, carrying on fidelity insurance business in Singapore whereby the approved exchange will be insured or indemnified to the extent and in the manner provided by such contract against liability in respect of claims under this Part.

[2/2009]

(2) Any contract under subsection (1) may be entered into in relation to members generally, or in relation to any particular member or members named therein, or in relation to members generally with the exclusion of any particular member or members

named therein.

(3) No action shall lie against an approved exchange or against any member or employee of an approved exchange for injury alleged to have been suffered by any other member by reason of the publication in good faith of a statement that any contract entered into under this section does or does not apply with respect to it.

[2/2009]

Application of insurance moneys

195. No claimant against a fidelity fund has any right of action against any person or body of persons with whom a contract of insurance or indemnity is made under this Part in respect of such contract, or has any right or claim with respect to any moneys paid by the insurer in accordance with any such contract.

PART 12

MARKET CONDUCT

Division 1 — Prohibited Conduct — Capital Markets Products

[4/2017]

Application of this Division

196. This Division applies to —

(*a*) acts occurring within Singapore in relation to —

(i) securities or securities-based derivatives contracts of any corporation, whether formed or carrying on business in Singapore or elsewhere;

(ii) securities or securities-based derivatives contracts of any business trust;

(iii) securities or securities-based derivatives contracts listed for quotation or quoted on an organised market in Singapore or elsewhere;

(iv) units in a collective investment scheme listed for quotation or quoted on an organised market in Singapore or elsewhere;

(v) derivatives contracts, whether traded in Singapore or elsewhere;

(vi) spot foreign exchange contracts for purposes of leveraged foreign exchange trading, whether traded in Singapore or elsewhere; or

(vii) any other capital markets products, whether traded in Singapore or elsewhere; and

(*b*) acts occurring outside Singapore in relation to —

(i) securities or securities-based derivatives contracts of a corporation that is formed or carrying on business in Singapore;

(ii) securities or securities-based derivatives contracts of a business trust, the trustee of which is formed in Singapore or carries on business on behalf of the business trust in Singapore;

(iii) securities or securities-based derivatives contracts listed for quotation or quoted on an organised market in Singapore;

(iv) units in a collective investment scheme listed for quotation or quoted on an organised market in Singapore;

(v) derivatives contracts traded in Singapore;

(vi) spot foreign exchange contracts for purposes of leveraged foreign exchange trading that are traded in or accessible from Singapore; or

(vii) any other capital markets products that are traded in Singapore.

[4/2017]

Interpretation of this Division

196A. In this Division —

(*a*) "debenture" has the meaning given by section 2(1) and, in relation to a business trust, means any debenture issued by the trustee-manager of the business trust in its capacity as trustee-manager of the business trust;

(*b*) a reference to a securities-based derivatives contract of a corporation in sections 196(*a*)(i) and (*b*)(i), 198, 202 and 203 is to be read as a reference to a securities-based derivatives contract of which the underlying thing or any of the underlying things are securities of the corporation; and

(*c*) a reference to a securities-based derivatives contract of a business trust in

sections 196(*a*)(ii) and (*b*)(ii), 198, 202 and 203 is to be read as a reference to a securities-based derivatives contract of which the underlying thing or any of the underlying things, are securities of the business trust.

[4/2017]

False trading and market rigging transactions

197.—(1) A person must not do any thing, cause any thing to be done or engage in any course of conduct, if the person's purpose, or any of the person's purposes, for doing that thing, causing that thing to be done or engaging in that course of conduct (as the case may be) is to create a false or misleading appearance —

(*a*) of active trading in any capital markets products on an organised market; or

(*b*) with respect to the market for, or the price of, any capital markets products traded on an organised market.

[34/2012; 4/2017]

(1A) A person must not do any thing, cause any thing to be done or engage in any course of conduct that creates, or is likely to create, a false or misleading appearance of active trading in any capital markets products on an organised market, or with respect to the market for, or the price of, any capital markets products traded on an organised market, if —

(*a*) the person knows that doing that thing, causing that thing to be done or engaging in that course of conduct (as the case may be) will create, or will be likely to create, that false or misleading appearance; or

(*b*) the person is reckless as to whether doing that thing, causing that thing to be done or engaging in that course of conduct (as the case may be) will create, or will be likely to create, that false or misleading appearance.

[34/2012; 4/2017]

(2) A person must not maintain, inflate, depress, or cause fluctuations in, the market price of any capital markets products —

(*a*) by means of any purchase or sale of any capital markets products that does not involve a change in the beneficial ownership of the capital markets products; or

(*b*) by any fictitious transaction or device.

[4/2017]

(3) Without limiting subsection (1), it is presumed that a person's purpose, or one of a person's purposes, is to create a false or misleading appearance of active trading in capital markets products on an organised market if the person —

(*a*) effects, takes part in, is concerned in or carries out, directly or indirectly, any transaction of purchase or sale of the capital markets products, being a transaction that does not involve any change in the beneficial ownership of the capital markets products;

(*b*) makes or causes to be made an offer to sell the capital markets products at a specified price, where the person has made or caused to be made or proposes to make or to cause to be made, or knows that a person associated with the person has made or caused to be made or proposes to make or to cause to be made, an offer to purchase the same number, or substantially the same number, of the capital markets products at a price that is substantially the same as the firstmentioned price; or

(*c*) makes or causes to be made an offer to purchase the capital markets products at a specified price, where the person has made or caused to be made or proposes to make or to cause to be made, or knows that a person associated with the person has made or caused to be made or proposes to make or to cause to be made, an offer to sell the same number, or substantially the same number, of the capital markets products at a price that is substantially the same as the firstmentioned price.

[4/2017]

(4) The presumption under subsection (3) may be rebutted if the defendant establishes that the purpose or purposes for which the defendant did the act was not, or did not include, the purpose of creating a false or misleading appearance of active trading in the capital markets products on the organised market.

[34/2012; 4/2017]

(5) For the purposes of this section, a purchase or sale of capital markets products does not involve a change in the beneficial ownership if any of the following persons has an interest in the capital markets products after the purchase or sale:

(*a*) a person who had an interest in the capital markets products before the purchase or sale;

(*b*) a person associated with the person mentioned in paragraph (*a*).

[4/2017]

(6) In any proceedings against a person for a contravention of subsection (2) in relation to a purchase or sale of capital markets products that did not involve a change in the beneficial ownership of the capital markets products, it is a defence if the defendant establishes that the purpose or purposes for which the defendant purchased or sold the capital markets products was not, or did not include, the purpose of creating a false or misleading appearance with respect to the market for, or the price of, the capital markets

products.

[4/2017]

(7) The reference in subsection (3)(*a*) to a transaction of purchase or sale of the capital markets products includes —

(*a*) a reference to the making of an offer to purchase or sell the capital markets products; and

(*b*) a reference to the making of an invitation, however expressed, that expressly or impliedly invites a person to offer to purchase or sell the capital markets products.

[4/2017]

Market manipulation in relation to securities and securities-based derivatives contracts

198.—(1) A person must not effect, take part in, be concerned in or carry out, directly or indirectly, 2 or more transactions in securities, or securities-based derivatives contracts, of a corporation, being transactions that have, or are likely to have, the effect of raising, lowering, maintaining or stabilising the price of securities, or securities-based derivatives contracts (as the case may be) of the corporation on an organised market, with the intent to induce other persons to subscribe for, purchase or sell securities, or securities-based derivatives contracts (as the case may be) of the corporation or of a related corporation.

[4/2017]

(2) A person must not effect, take part in, be concerned in or carry out, directly or indirectly, 2 or more transactions in securities, or securities-based derivatives contracts, of a business trust, being transactions that have, or are likely to have, the effect of raising, lowering, maintaining or stabilising the price of securities, or securities-based derivatives contracts (as the case may be) of the business trust on an organised market, with the intent to induce other persons to subscribe for, purchase or sell securities, or securities-based derivatives contracts (as the case may be) of the business trust.

[4/2017]

(3) In this section —

(*a*) a reference to transactions in securities or securities-based derivatives contracts of a corporation includes —

(i) a reference to the making of an offer to purchase or sell such securities or securities-based derivatives contracts, as the case may be; and

(ii) a reference to the making of an invitation, however expressed,

that directly or indirectly invites a person to offer to purchase or sell such securities or securities-based derivatives contracts, as the case may be; and

(*b*) a reference to transactions in securities or securities-based derivatives contracts of a business trust includes —

(i) a reference to the making of an offer to purchase or sell such securities or securities-based derivatives contracts, as the case may be; and

(ii) a reference to the making of an invitation, however expressed, that directly or indirectly invites a person to offer to purchase or sell such securities or securities-based derivatives contracts, as the case may be.

[4/2017]

False or misleading statements, etc.

199. A person must not make a statement, or disseminate information, that is false or misleading in a material particular and is likely —

(*a*) to induce other persons to subscribe for securities, securities-based derivatives contracts or units in a collective investment scheme;

(*b*) to induce the sale or purchase of securities, securities-based derivatives contracts or units in a collective investment scheme, by other persons; or

(*c*) to have the effect (whether significant or otherwise) of raising, lowering, maintaining or stabilising the market price of securities, securities-based derivatives contracts or units in a collective investment scheme,

if, when the person makes the statement or disseminates the information —

(*d*) the person does not care whether the statement or information is true or false; or

(*e*) the person knows or ought reasonably to have known that the statement or information is false or misleading in a material particular.

[4/2017]

Fraudulently inducing persons to deal in capital markets products

200.—(1) A person must not —

(*a*) by making or publishing any statement, promise or forecast that the person knows or ought reasonably to have known to be misleading, false or deceptive;

(*b*) by any dishonest concealment of material facts;

(*c*) by the reckless making or publishing of any statement, promise or forecast that is misleading, false or deceptive; or

(*d*) by recording or storing in, or by means of, any mechanical, electronic or other device information that the person knows to be false or misleading in a material particular,

induce or attempt to induce another person to deal in capital markets products.

[4/2017]

(2) In any proceedings against a person for a contravention of subsection (1) constituted by recording or storing information as mentioned in subsection (1)(*d*), it is a defence if it is established that, at the time when the defendant so recorded or stored the information, the defendant had no reasonable grounds for expecting that the information would be available to any other person.

(3) In any proceedings against a person for a contravention of subsection (1) in relation to the dealing in capital markets products that are securities, securities-based derivatives contracts or units in a collective investment scheme, the opinion of any public accountant as to the financial position of any company at any time or during any period in respect of which he or she has made an audit or examination of the affairs of the company according to recognised audit practice is admissible, for any party to the proceedings, as evidence of the financial position of the company at that time or during that period, even though the opinion is based in whole or in part on book-entries, documents or vouchers or on written or verbal statements by other persons.

[4/2017]

Employment of manipulative and deceptive devices

201. A person must not, directly or indirectly, in connection with the subscription, purchase or sale of any capital markets products —

(*a*) employ any device, scheme or artifice to defraud;

(*b*) engage in any act, practice or course of business which operates as a fraud or deception, or is likely to operate as a fraud or deception, upon any person;

(*c*) make any statement the person knows to be false in a material particular; or

(*d*) omit to state a material fact necessary in order to make the statements

made, in the light of the circumstances under which they were made, not misleading.

[4/2017]

Bucketing

201A.—(1) A person must not knowingly execute, or hold himself, herself or itself out as having executed, an order for the purchase or sale of a derivatives contract, without having effected in good faith a purchase or sale of that derivatives contract in accordance with the order or with the business rules and practices of an organised market on which the derivatives contract is to be purchased or sold.

[4/2017]

(2) A person must not knowingly execute, or hold himself, herself or itself out as having executed, an order to make a purchase or sale of a spot foreign exchange contract for purposes of leveraged foreign exchange trading, without having effected in good faith a purchase or sale in accordance with the order.

[4/2017]

Manipulation of price of derivatives contracts and cornering

201B. A person must not, directly or indirectly —

(*a*) manipulate or attempt to manipulate the price of a derivatives contract traded on an organised market, or of any underlying thing which is the subject of such derivatives contract; or

(*b*) corner, or attempt to corner, any underlying thing which is the subject of a derivatives contract.

[4/2017]

Dissemination of information about illegal transactions

202.—(1) A person must not circulate or disseminate, or authorise or be concerned in the circulation or dissemination of, any statement or information to any of the following effect if any condition in subsection (2) is satisfied:

(*a*) the price of any securities or securities-based derivatives contract, of a corporation will, or is likely, to rise or fall or be maintained by reason of any transaction entered into or to be entered into or other act or thing done or to be done in relation to the securities or securities-based derivatives contracts, of that corporation (or of a related corporation) which to the person's knowledge was entered into or done in contravention of section 197, 198, 199, 200 or 201, or if entered into or done would be in contravention of section 197, 198, 199, 200 or 201;

(*b*) the price of any securities or securities-based derivatives contract, of a business trust will, or is likely, to rise or fall or be maintained by reason of any transaction entered into or to be entered into or other act or thing done or to be done in relation to the securities or securities-based derivatives contracts, of that business trust which to the person's knowledge was entered into or done in contravention of section 197, 198, 199, 200 or 201, or if entered into or done would be in contravention of section 197, 198, 199, 200 or 201;

(*c*) the price of a class of derivatives contracts will, or is likely to, rise or fall or be maintained by reason of any transaction entered into or to be entered into, or other act or thing done or to be done, in relation to that class of derivatives contracts by one or more persons which to the person's knowledge was entered into, or done, in contravention of section 197, 200, 201, 201A or 201B, or if entered into, or done, would be in contravention of section 197, 200, 201, 201A or 201B;

(*d*) the price of a class of spot foreign exchange contracts for purposes of leveraged foreign exchange trading, will, or is likely to, rise or fall or be maintained by reason of any transaction entered into or to be entered into, or other act or thing done or to be done, in relation to that class of spot foreign exchange contracts for purposes of leveraged foreign exchange trading, by one or more persons which to the person's knowledge was entered into, or done, in contravention of section 197, 200, 201, 201A or 201B, or if entered into, or done, would be in contravention of section 197, 200, 201, 201A or 201B.

[4/2017]

(2) For the purpose of subsection (1), the condition is either —

(*a*) the person mentioned in subsection (1), or a person associated with that person, has entered into or purports to enter into any such transaction, or has done or purports to do any such act or thing; or

(*b*) the person mentioned in subsection (1), or a person associated with that person, has received, or expects to receive, directly or indirectly, any consideration or benefit for circulating or disseminating, or authorising or being concerned in the circulation or dissemination of, the statement or information.

[4/2017]

Continuous disclosure

203.—(1) A person to whom this subsection applies must not intentionally, recklessly

or negligently fail to notify the approved exchange of such information as is required to be disclosed by the approved exchange under the listing rules or any other requirement of the approved exchange, if the person is required by the approved exchange under the listing rules or any other requirement of the approved exchange to notify the approved exchange of information on specified events or matters as they occur or arise for the purpose of the approved exchange making that information available to an organised market operated by the approved exchange.

[4/2017]

(2) Subsection (1) applies to any of the following:

(*a*) an entity, the securities or securities-based derivatives contracts of which are listed for quotation on an approved exchange;

(*b*) a trustee-manager of a business trust, where the securities or securities-based derivatives contracts of the business trust are listed for quotation on an approved exchange;

(*c*) a responsible person of a collective investment scheme, where the units in the collective investment scheme are listed for quotation on an approved exchange.

[4/2017]

(3) Despite section 204 or 335, a contravention of subsection (1) is not an offence unless the failure to notify is intentional or reckless.

[4/2017]

Penalties under this Division

204.—(1) Any person who contravenes any of the provisions of this Division shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $250,000 or to imprisonment for a term not exceeding 7 years or to both.

(2) No proceedings shall be instituted against a person for an offence in respect of a contravention of any of the provisions of this Division after —

(*a*) a court has made an order against the person for the payment of a civil penalty under section 232; or

(*b*) the person has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 232(5),

in respect of that contravention.

[2/2009]

Division 2 — Prohibited Conduct — Financial Benchmarks

Application of this Division

205. This Division applies to —

(*a*) acts occurring within Singapore in relation to financial benchmarks, whether administered in Singapore or elsewhere; and

(*b*) acts occurring outside Singapore in relation to financial benchmarks that are administered in Singapore.

[4/2017]

Interpretation of this Division

206. In this Division —

"administer", in relation to a financial benchmark, means the activity of administering the financial benchmark;

"international body" means the European Central Bank, the Organization of the Petroleum Exporting Countries, and such other international bodies as may be prescribed by regulations made under section 341;

"public authority" means —

(*a*) any ministry or department of the Government, or any statutory body, or any board, commission, committee or similar body, whether corporate or unincorporated, established under a public Act for a public purpose;

(*b*) in relation to a foreign country or territory, an authority of the foreign country or territory, or any board, commission, committee or similar body, whether corporate or unincorporated, established under the law of the foreign country or territory for a public purpose; or

(*c*) such other organisation as the Authority may prescribe by regulations made under section 341.

[4/2017]

Manipulation of financial benchmarks

207.—(1) A person must not do any thing, cause any thing to be done or engage in any course of conduct, if the person's purpose, or any of the person's purposes, for doing that thing, causing that thing to be done or engaging in that course of conduct (as the case may be) is to create a false or misleading appearance as to the price, value, performance or rate of any financial benchmark.

[4/2017]

(2) A person must not do any thing, cause any thing to be done or engage in any course of conduct that creates, or is likely to create, a false or misleading appearance, as to the price, value, performance or rate of any financial benchmark, if —

(*a*) the person knows that doing that thing, causing that thing to be done or engaging in that course of conduct (as the case may be) will create, or will likely create, that false or misleading appearance; or

(*b*) the person is reckless as to whether doing that thing, causing that thing to be done or engaging in that course of conduct (as the case may be) will create, or will likely create, that false or misleading appearance.

[4/2017]

Exception for conduct pursuant to policy requirement

208. Section 207 does not apply in respect of any thing done or to be done or any course of conduct engaged by, or by a person acting on behalf of, a public authority or international body, whether in Singapore or elsewhere —

(*a*) in respect of monetary policy;

(*b*) in respect of policies with respect to exchange rates, the management of public debt or foreign exchange reserves; or

(*c*) for the purpose of managing the price or value of any commodity.

[4/2017]

False or misleading statements

209. A person must not make a statement, disseminate any information or express any opinion that is false or misleading in a material particular to a person who carries out the activity of administering a financial benchmark if —

(*a*) the person intends that the statement, information or opinion be used for the purpose of administering a financial benchmark; and

(*b*) the person knows or ought reasonably to have known that the statement, information or opinion is false or misleading in a material particular, or is reckless as to whether the statement, information or opinion is false or misleading in a material particular.

[4/2017]

Penalties under this Division

210.—(1) Any person who contravenes any of the provisions of this Division shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $250,000 or to imprisonment for a term not exceeding 7 years or to both.

[4/2017]

(2) No proceedings shall be instituted against a person for an offence in respect of a contravention of any of the provisions of this Division after —

(*a*) a court has made an order against the person for the payment of a civil penalty under section 232; or

(*b*) the person has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 232(5),

in respect of that contravention.

[4/2017]

211. [*Repealed by Act 4 of 2017*]

212. [*Repealed by Act 4 of 2017*]

Division 3 — Insider Trading

Application of this Division

213. This Division applies to —

(*a*) acts occurring within Singapore in relation to —

(i) securities or securities-based derivatives contracts of any corporation, whether formed or carrying on business in Singapore or elsewhere;

(ii) securities or securities-based derivatives contracts of any business trust;

(iii) securities or securities-based derivatives contracts listed for quotation or quoted on an organised market in Singapore or elsewhere;

(iv) securities-based derivatives contracts, whether traded in Singapore or elsewhere; or

(v) CIS units —

(A) listed for quotation or quoted on an organised market in Singapore or elsewhere; or

(B) traded in Singapore or elsewhere; and

(*b*) acts occurring outside Singapore in relation to —

(i) securities or securities-based derivatives contracts of a corporation that is formed or carries on business in Singapore;

(ii) securities or securities-based derivatives contracts of a business trust, the trustee of which is formed in Singapore or carries on business on behalf of the business trust in Singapore;

(iii) securities or securities-based derivatives contracts listed for quotation or quoted on an organised market in Singapore;

(iv) securities-based derivatives contracts traded in Singapore; or

(v) CIS units —

(A) listed for quotation or quoted on an organised market in Singapore; or

(B) traded in Singapore.

[4/2017]

Interpretation of this Division

214.—(1) In this Division —

"Collective Investment Scheme unit" or "CIS unit" means —

(*a*) a right or interest (however described) in a collective investment scheme (whether or not constituted as an entity), and includes an option to acquire any such right or interest in the collective investment scheme; or

(*b*) a contract or arrangement under which —

(i) a party to the contract or arrangement is required to, or may be required to, discharge its obligations under the contract or arrangement at some future time; and

(ii) the value of the contract or arrangement, is determined (whether directly or indirectly, or whether wholly or in part) by reference to, derived from, or varies by reference to any of the following:

(A) the value or amount of units of a collective investment scheme;

(B) fluctuations in the values or amount of units of a collective investment scheme;

"debenture" has the meaning given by section 2 and, in relation to a business trust, means a debenture issued by the trustee of the business trust in its capacity as trustee of the business trust;

"financial performance", in relation to a business trust, means the performance of the business relating to the trust property of the business trust which is managed and operated by the trustee of the business trust;

"information" includes —

(*a*) matters of supposition and other matters that are insufficiently definite to warrant being made known to the public;

(*b*) matters relating to the intentions, or the likely intentions, of a person;

(*c*) matters relating to negotiations or proposals with respect to —

(i) commercial dealings; or

(ii) dealing in capital markets products that are securities, securities-based derivatives contracts or CIS units;

(iii) [*Deleted by Act 4 of 2017*]

(*d*) information relating to the financial performance of a corporation or business trust, or otherwise;

(*e*) information that —

(i) a person proposes to enter into, or had previously entered into, one or more transactions or agreements in relation to any securities, securities-based derivatives contract or CIS unit; or

(ii) a person has prepared or proposes to issue a statement relating to any securities, securities-based derivatives contract or CIS unit; and

(*f*) matters relating to the future;

"persons who commonly invest", in relation to investment in any kind of securities, securities-based derivatives contracts or CIS units, means a section

of the public that is accustomed, or would be likely, to deal in securities, securities-based derivatives contracts or CIS units, or in a class of securities, securities-based derivatives contracts or CIS units, of that kind;

"purchase", in relation to securities-based derivatives contracts or CIS units, includes a contract or arrangement under which a party acquires an option or right from another party, acquiring the option or right under the contract, or taking an assignment of the option or right, whether or not on another's behalf;

"sell", in relation to securities-based derivatives contracts or CIS units, includes a contract or arrangement under which a party acquires an option or right from another party —

(*a*) grant or assign the option or right; or

(*b*) take, or cause to be taken, such action as releases the option or right,

whether or not on another's behalf;

"trust property" has the meaning given by section 2 of the Business Trusts Act 2004.

[2/2009; 4/2017]

(2) In this Division —

(*a*) a reference to a securities-based derivatives contract of a corporation in sections 213(*a*)(i) and (*b*)(i) and 218 is a reference to a securities-based derivatives contract of which the underlying thing, or any of the underlying things, is a security of that corporation; and

(*b*) a reference to a securities-based derivatives contract of a business trust in sections 213(*a*)(ii) and (*b*)(ii) and 218 is a reference to a securities-based derivatives contract of which the underlying thing, or any of the underlying things, is a security of that business trust.

[4/2017]

Information generally available

215. For the purposes of this Division, information is generally available if —

(*a*) it consists of readily observable matter;

(*b*) without limiting paragraph (*a*) —

(i) it has been made known in a manner that would, or would be likely to, bring it to the attention of any of the following classes of persons:

(A) persons who commonly invest in securities of a kind of which the price or value might be affected by the information;

(B) persons who commonly invest in securities-based derivatives contracts of a kind of which the price or value might be affected by the information;

(C) persons who commonly invest in CIS units of a kind of which the price or value might be affected by the information; and

(ii) since it was so made known, a reasonable period for it to be disseminated among such persons has elapsed; or

(*c*) it consists of deductions, conclusions or inferences made or drawn from either or both of the following:

(i) information referred to in paragraph (*a*);

(ii) information made known as referred to in paragraph (*b*)(i).

[4/2017]

Material effect on price or value of securities, securities-based derivatives contracts or CIS units

216. For the purposes of this Division, a reasonable person would be taken to expect information to have a material effect on the price or value of securities, securities-based derivatives contracts or CIS units, if the information would, or would be likely to, influence any of the following persons in deciding whether or not to subscribe for, buy or sell those securities, securities-based derivatives contracts or CIS units:

(*a*) the persons who commonly invest in the securities, securities-based derivatives contracts or CIS units;

(*b*) any one or more classes of persons who constitute the persons mentioned in paragraph (*a*).

[4/2017]

Trading and procuring trading in securities, securities-based derivatives contracts or CIS units

217.—(1) For the purposes of this Division, trading in any securities, securities-based derivatives contracts or CIS units, that is ordinarily permitted on an organised market is

taken to be permitted on that organised market even though trading in such securities, securities-based derivatives contracts or CIS units (as the case may be) on that organised market is suspended.

[4/2017]

(2) For the purposes of this Division but without limiting the meaning that the expression "procure" has apart from this section, if a person incites, induces, or encourages an act or omission by another person, the firstmentioned person is taken to procure the act or omission by the other person.

Prohibited conduct by connected person in possession of inside information

218.—(1) Subject to this Division, where —

(*a*) a person who is connected to a corporation possesses information concerning that corporation that is not generally available but, if the information were generally available, a reasonable person would expect it to have a material effect on the price or value of securities or securities-based derivatives contracts of that corporation; and

(*b*) the connected person knows or ought reasonably to know that —

(i) the information is not generally available; and

(ii) if it were generally available, it might have a material effect on the price or value of those securities or securities-based derivatives contracts of that corporation,

subsections (2), (3), (4), (5) and (6) apply.

[4/2017]

(1A) Subsections (2), (3), (4A), (5) and (6) apply if —

(*a*) a person is connected to —

(i) a corporation that is the trustee of, or manages or operates, a business trust; or

(ii) a corporation that is the trustee or manager of a collective investment scheme —

(A) that invests primarily in real estate and real estate-related assets specified by the Authority in the Code on Collective Investment Schemes; and

(B) all or any units of which are listed on an approved exchange;

(*b*) the connected person possesses —

(i) where the person is connected to a corporation mentioned in paragraph (*a*)(i), any information concerning the corporation or business trust that is not generally available but, if the information were generally available, a reasonable person would expect it to have a material effect on the price or value of securities or securities-based derivatives contracts of the corporation or business trust; or

(ii) where the person is connected to a corporation mentioned in paragraph (*a*)(ii), any information concerning the corporation or collective investment scheme that is not generally available but, if the information were generally available, a reasonable person would expect it to have a material effect on the price or value of securities or securities-based derivatives contracts of the corporation, or the price or value of CIS units in the scheme; and

(*c*) the connected person knows or ought reasonably to know that —

(i) the information is not generally available; and

(ii) if it were generally available, it might have a material effect on —

(A) where the person is connected to a corporation mentioned in paragraph (*a*)(i), the price or value of securities or securities-based derivatives contracts of the corporation or business trust; or

(B) where the person is connected to a corporation mentioned in paragraph (*a*)(ii), the price or value of securities or securities-based derivatives contracts of the corporation, or the price or value of CIS units in the collective investment scheme.

[4/2017]

(2) The connected person must not (whether as principal or agent) —

(*a*) subscribe for, purchase or sell, or enter into an agreement to subscribe for, purchase or sell —

(i) the securities or securities-based derivatives contracts mentioned in subsection (1); or

(ii) the securities, securities-based derivatives contracts or CIS units mentioned in subsection (1A); or

(*b*) procure another person to subscribe for, purchase or sell, or to enter into an agreement to subscribe for, purchase or sell —

(i) the securities or securities-based derivatives contracts mentioned in subsection (1); or

(ii) the securities, securities-based derivatives contracts or CIS units mentioned in subsection (1A).

[4/2017]

(3) The connected person must not, directly or indirectly, communicate the information mentioned in subsection (1) or (1A), or cause the information to be communicated, to another person if the connected person knows, or ought reasonably to know, that the other person would or would be likely to —

(*a*) subscribe for, purchase or sell, or enter into an agreement to subscribe for, purchase or sell —

(i) the securities or securities-based derivatives contracts mentioned in subsection (1); or

(ii) the securities, securities-based derivatives contracts or CIS units mentioned in subsection (1A); or

(*b*) procure a third person to subscribe for, purchase or sell, or to enter into an agreement to subscribe for, purchase or sell —

(i) the securities or securities-based derivatives contracts mentioned in subsection (1); or

(ii) the securities, securities-based derivatives contracts or CIS units mentioned in subsection (1A).

[4/2017]

(4) In any proceedings for a contravention of subsection (2) or (3) against a person connected to a corporation referred to in subsection (1), where the prosecution or claimant proves that the connected person was at the material time —

(*a*) in possession of information concerning the corporation to which the person was connected; and

(*b*) the information was not generally available,

it is presumed, until the contrary is proved, that the connected person knew at the material time that —

(*c*) the information was not generally available; and

(*d*) if the information were generally available, it might have a material effect on the price or value of securities or securities-based derivatives contracts of that corporation.

[4/2017]
[Act 25 of 2021 wef 01/04/2022]

(4A) In any proceedings for a contravention of subsection (2) or (3) against a person connected to a corporation mentioned in subsection (1A)(*a*)(i) or (ii), the presumption in subsection (4B) applies until the contrary is proved, if the prosecution or claimant proves that the connected person was at the material time —

(*a*) in possession of information concerning the corporation, business trust or collective investment scheme, as the case may be; and

(*b*) the information was not generally available.

[4/2017]
[Act 25 of 2021 wef 01/04/2022]

(4B) For the purpose of subsection (4A), the presumption is the connected person knew at the material time that —

(*a*) the information was not generally available; and

(*b*) if the information were generally available, it might have a material effect on —

(i) where the person is connected to a corporation mentioned in subsection (1A)(*a*)(i), the price or value of securities or securities-based derivatives contracts of the corporation or business trust; or

(ii) where the person is connected to a corporation mentioned in subsection (1A)(*a*)(ii), the price or value of the securities or securities-based derivatives contracts of the corporation or the price or value of CIS units in the collective investment scheme.

[4/2017]

(5) In this Division —

(*a*) "connected person" means a person referred to in subsection (1) or (1A) who is connected to a corporation; and

(*b*) a person is connected to a corporation if —

(i) the person is an officer of that corporation or of a related corporation;

(ii) the person is a substantial shareholder in that corporation or in a related corporation; or

(iii) the person occupies a position that may reasonably be expected to give the person access to information of a kind to which this section applies by virtue of —

(A) any professional or business relationship existing between the person (or the person's employer or a corporation of which the person is an officer) and that corporation or a related corporation; or

(B) being an officer of a substantial shareholder in that corporation or in a related corporation.

[2/2009]

(6) In subsection (5), "officer", in relation to a corporation, includes —

(*a*) a director, secretary or employee of the corporation;

(*b*) a receiver, or receiver and manager, of property of the corporation;

(*c*) a judicial manager of the corporation;

(*d*) a liquidator of the corporation; and

(*e*) a trustee or other person administering a compromise or arrangement made between the corporation and another person.

Prohibited conduct by other persons in possession of inside information

219.—(1) Subject to this Division, where —

(*a*) a person who is not a connected person referred to in section 218 (called in this section the insider) possesses information that is not generally available but, if the information were generally available, a reasonable person would expect it to have a material effect on the price or value of securities, securities-based derivatives contracts or CIS units; and

(*b*) the insider knows that —

(i) the information is not generally available; and

(ii) if it were generally available, it might have a material effect on the price or value of those securities, securities-based derivatives contracts or CIS units, as the case may be,

subsections (2) and (3) apply.

[4/2017]

(2) The insider must not (whether as principal or agent) —

(*a*) subscribe for, purchase or sell, or enter into an agreement to subscribe for, purchase or sell, any such securities, securities-based derivatives contracts or CIS units, as the case may be; or

(*b*) procure another person to subscribe for, purchase or sell, or to enter into an agreement to subscribe for, purchase or sell, any such securities, securities-based derivatives contracts or CIS units, as the case may be.

[4/2017]

(3) The insider must not, directly or indirectly, communicate the information mentioned in subsection (1), or cause the information to be communicated, to another person if the insider knows, or ought reasonably to know, that the other person would or would be likely to —

(*a*) subscribe for, purchase or sell, or enter into an agreement to subscribe for, purchase or sell, the securities, securities-based derivatives contracts or CIS units mentioned in subsection (1); or

(*b*) procure a third person to subscribe for, purchase or sell, or to enter into an agreement to subscribe for, purchase or sell, the securities, securities-based derivatives contracts or CIS units mentioned in subsection (1).

[4/2017]

Not necessary to prove intention to use

220.—(1) To avoid doubt, in any proceedings against a person for a contravention of section 218 or 219, it is not necessary for the prosecution or claimant to prove that the accused person or defendant intended to use the information referred to in section 218(1)(*a*) or (1A)(*a*) or 219(1)(*a*) in contravention of section 218 or 219, as the case may be.

[Act 25 of 2021 wef 01/04/2022]

(2) In any proceedings against a person for a contravention of section 218 or 219, it is not necessary for the prosecution or claimant to prove the absence of facts or circumstances which if they existed would, by virtue of sections 222 to 230 or any regulations made under section 341, preclude the act from constituting a contravention of

section 218 or 219, as the case may be.

[Act 25 of 2021 wef 01/04/2022]

Penalties under this Division

221.—(1) A person who contravenes section 218 or 219, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $250,000 or to imprisonment for a term not exceeding 7 years or to both.

(2) No proceedings shall be instituted against a person for an offence in respect of a contravention of section 218 or 219 after —

(*a*) a court has made an order against the person for the payment of a civil penalty under section 232; or

(*b*) the person has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 232(5),

in respect of that contravention.

[2/2009]

Exception for redemption of units in collective investment scheme

222. Sections 218(2) and 219(2) do not apply in respect of the redemption of units in a collective investment scheme by a trustee or manager under a trust deed relating to that collective investment scheme in accordance with a buy-back covenant contained or deemed to be contained in the trust deed at a price that is required by the trust deed to be calculated, so far as is reasonably practicable, by reference to the underlying value of the assets less —

(*a*) any liabilities of that collective investment scheme to which the units relates; and

(*b*) any reasonable charge for purchasing the units.

Exception for underwriters

223.—(1) Sections 218(2) and 219(2) do not apply in respect of —

(*a*) subscribing for, or purchasing, securities, securities-based derivatives contracts or CIS units under an underwriting agreement or a sub-underwriting agreement;

(*b*) entering into an agreement referred to in paragraph (*a*); or

(*c*) selling securities, securities-based derivatives contracts or CIS units subscribed for, or purchased, under an agreement referred to in

paragraph (*a*).

[4/2017]

(2) Sections 218(3) and 219(3) do not apply in respect of the communication of information in relation to securities, securities-based derivatives contracts or CIS units —

(*a*) to a person solely for the purpose of procuring the person to enter into an underwriting agreement in relation to any such securities, securities-based derivatives contracts or CIS units; or

(*b*) by a person who may be required under an underwriting agreement to subscribe for, or purchase, any such securities, securities-based derivatives contracts or CIS units if the communication is made to another person solely for the purpose of procuring the other person to do either or both of the following:

(i) enter into a sub-underwriting agreement in relation to any such securities, securities-based derivatives contracts or CIS units;

(ii) subscribe for, or purchase, any such securities, securities-based derivatives contracts or CIS units.

[4/2017]

Exception for purchase pursuant to legal requirement

224.—(1) Sections 218(2) and 219(2) do not apply in respect of the purchase of securities, securities-based derivatives contracts or CIS units pursuant to a requirement imposed by the Government, a statutory body or any regulatory authority, or any requirement imposed under any written law or order of court.

[4/2017]

(2) Sections 218(2) and 219(2) do not apply in respect of the sale of securities, securities-based derivatives contracts or CIS units pursuant to any requirement imposed by the Government or any requirement imposed under any written law or order of court.

[4/2017]

Exception for information communicated pursuant to legal requirement

225. Sections 218(3) and 219(3) do not apply in respect of the communication of information pursuant to a requirement imposed by the Government, a statutory body or any regulatory authority, or any requirement imposed under any written law or order of court.

Attribution of knowledge within corporations

226.—(1) For the purposes of this Division —

(*a*) a corporation is taken to possess any information which an officer of the corporation possesses and which came into his or her possession in the course of the performance of duties as such an officer; and

(*b*) if an officer of a corporation knows or ought reasonably to know any matter or thing because he or she is an officer of the corporation, it is to be presumed, until the contrary is proved, that the corporation knows or ought reasonably to know that matter or thing.

(2) A corporation does not contravene section 218(2) or 219(2) by entering into a transaction or agreement at any time merely because of information in the possession of an officer of the corporation if —

(*a*) the decision to enter into the transaction or agreement was taken on its behalf by a person other than that officer;

(*b*) it had in operation at that time arrangements that could reasonably be expected to ensure that the information was not communicated to the person who made the decision and that no advice with respect to the transaction or agreement was given to that person by a person in possession of the information; and

(*c*) the information was not so communicated and no such advice was so given.

Attribution of knowledge within partnerships and limited liability partnerships

227.—(1) For the purposes of this Division —

(*a*) a partner of a partnership or a limited liability partnership (as the case may be) is taken to possess any information —

(i) which another partner of the partnership or limited liability partnership (as the case may be) possesses and which came into such other partner's possession in his or her capacity as a partner of the partnership or limited liability partnership (as the case may be); or

(ii) which an employee of the partnership or a manager of a limited liability partnership (as the case may be) possesses and which came into the possession of such an employee or manager in the course of the performance of his or her duties as such an employee or manager; and

(*b*) if a partner or employee of a partnership or a partner, manager or employee

of a limited liability partnership (as the case may be) knows or ought reasonably to know any matter or thing in his or her capacity as such a partner, manager or employee, it is to be presumed that every partner of the partnership or limited liability partnership (as the case may be) knows or ought reasonably to know that matter or thing.

(2) The partners of a partnership or limited liability partnership (as the case may be) do not contravene section 218(2) or 219(2) by entering into a transaction or agreement at any time merely because one or more (but not all) of the partners, or a manager or managers, or an employee or employees, of the partnership or limited liability partnership (as the case may be) are in actual possession of information if —

(*a*) the decision to enter into the transaction or agreement was taken on behalf of the partnership or limited liability partnership by any one or more of the following persons:

(i) a partner who is taken to have possessed the information merely because another partner, or a manager or employee, of the partnership or limited liability partnership, was in possession of the information;

(ii) an employee of the partnership or limited liability partnership or a manager of the limited liability partnership who was not in possession of the information;

(*b*) the partnership or limited liability partnership had in operation at that time arrangements that could reasonably be expected to ensure that the information was not communicated to the person or persons who made the decision and that no advice with respect to the transaction or agreement was given to that person or any of those persons by a person in possession of the information; and

(*c*) the information was not so communicated and no such advice was so given.

(3) A partner of a partnership or limited liability partnership (as the case may be) does not contravene section 218(2) or 219(2) by entering into a transaction or agreement otherwise than on behalf of the partnership or limited liability partnership merely because he or she is taken to possess information that is in the possession of another partner, a manager or an employee of the partnership.

Exception for knowledge of individual's own intentions or activities

228. An individual does not contravene section 218(2) or 219(2) by entering into a

transaction or agreement in relation to securities, securities-based derivatives contracts or CIS units merely because the individual is aware that the individual proposes to enter into, or has previously entered into, one or more transactions or agreements in relation to those securities, securities-based derivatives contracts or CIS units.

[4/2017]

Exception for corporations and its officers, etc.

229.—(1) A corporation does not contravene section 218(2) or 219(2) by entering into a transaction or agreement in relation to securities, securities-based derivatives contracts or CIS units merely because the corporation is aware that it proposes to enter into or has previously entered into, one or more transactions or agreements in relation to those securities, securities-based derivatives contracts or CIS units.

[4/2017]

(2) Subject to subsection (3), a corporation does not contravene section 218(2) or 219(2) by entering into a transaction or agreement in relation to securities, securities-based derivatives contracts or CIS units merely because an officer of the corporation is aware that the corporation proposes to enter into, or has previously entered into, one or more transactions or agreements in relation to those securities, securities-based derivatives contracts or CIS units.

[4/2017]

(3) Subsection (2) does not apply unless the officer of the corporation mentioned in that subsection became aware of the matters referred to in that subsection in the course of the performance of duties as such an officer.

(4) Subject to subsection (5), a person does not contravene section 218(2) or 219(2) by entering into a transaction or agreement on behalf of a corporation in relation to securities, securities-based derivatives contracts or CIS units merely because the person is aware that the corporation proposes to enter into, or has previously entered into, one or more transactions or agreements in relation to those securities, securities-based derivatives contracts or CIS units.

[4/2017]

(5) Subsection (4) does not apply unless the person became aware of the matters referred to in that subsection in the course of the performance of duties as an officer of the corporation or in the course of acting as an agent of the corporation.

Unsolicited transactions by holder of capital markets services licence and representatives

230.—(1) The holder of a capital markets services licence to deal in capital markets products, or a representative of such a holder, does not contravene section 218(2) or 219(2) by subscribing for, purchasing or selling, or entering into an agreement to

subscribe for, purchase or sell, securities, securities-based derivatives contracts or CIS units if —

(*a*) the holder or representative entered into the transaction or agreement concerned on behalf of another person (called in this section the principal) under a specific instruction by the principal to enter into that transaction or agreement which was not solicited by the holder or representative;

(*b*) the holder or representative has not given any advice to the principal in relation to the transaction or agreement or otherwise sought to procure the principal's instructions to enter into the transaction or agreement; and

(*c*) the principal is not an associate of the holder or representative.

[2/2009; 4/2017]

(2) Nothing in this section affects the application of section 218(2) or 219(2) in relation to the principal.

Parity of information defences

231.—(1) In any proceedings against a person for a contravention of section 218(2) or 219(2) because the person entered into, or procured another person to enter into, a transaction or agreement at a time when certain information was in the firstmentioned person's possession, it is a defence if the court is satisfied that —

(*a*) the information came into the firstmentioned person's possession solely as a result of the information having been made known as referred to in section 215(*b*)(i); or

(*b*) the other party to the transaction or agreement knew, or ought reasonably to have known, of the information before entering into the transaction or agreement.

(2) In an action against a person for a contravention of section 218(3) or 219(3) because the person communicated information, or caused information to be communicated, to another person, it is a defence if the court is satisfied that —

(*a*) the information came into the firstmentioned person's possession solely as a result of the information having been made known as referred in section 215(*b*)(i); or

(*b*) the other person knew, or ought reasonably to have known, of the information before the information was communicated.

Division 4 — Civil Liability

Civil penalty

232.—(1) Whenever it appears to the Authority that any person has contravened any provision in this Part, the Authority may, with the consent of the Public Prosecutor, bring an action in a court against the person to seek an order for a civil penalty in respect of that contravention.

(2) If the court is satisfied on a balance of probabilities that the person has contravened a provision in this Part, the court may make an order against the person for the payment of a civil penalty of a sum not exceeding the greater of the following:

(*a*) 3 times —

(i) the amount of the profit that the person gained as a result of the contravention; or

(ii) the amount of the loss that the person avoided as a result of the contravention;

(*b*) $2 million.

[4/2017]

(3) The civil penalty ordered under subsection (2) must not be less than —

(*a*) in the case where the person is a corporation, $100,000; and

(*b*) in any other case, $50,000.

[4/2017]

(4) Despite subsections (2) and (3), the court may make an order against a person against whom an action has been brought under this section if the Authority, with the consent of the Public Prosecutor, has agreed to allow the person to consent to the order with or without admission of a contravention of a provision in this Part and the order may be made on such terms as may be agreed between the Authority and the defendant.

(5) Nothing in this section prevents the Authority from entering into an agreement with any person to pay, with or without admission of liability, a civil penalty within the limits referred to in subsection (2) or (3) for a contravention of any provision in this Part.

(6) A civil penalty imposed under this section must be paid into the Consolidated Fund and is to be treated as a judgment debt due to the Government for the purposes of section 10 of the Government Proceedings Act 1956.

[34/2012; 4/2017]

(7) If the person fails to pay the civil penalty imposed on the person within the time specified in the court order referred to in subsection (4) or specified under the agreement referred to in subsection (5), the Authority may recover the civil penalty on behalf of the

Government as though the civil penalty were a judgment debt due to the Authority.
[34/2012]

(8) Any defence that is available to a person who is prosecuted for a contravention of any provision in this Part, is also available to a defendant to an action under this section in respect of that contravention.

Action under section 232 not to commence, etc., in certain situations

233.—(1) An action under section 232 must not be commenced after the expiration of 6 years from the date of the contravention of any of the provisions in this Part.

(2) An action under section 232 must not be commenced if the person has been convicted or acquitted in criminal proceedings for the contravention of any of the provisions in this Part, except where the person has been acquitted on the ground of the withdrawal of the charge against the person.

(3) An action under section 232 must be stayed after criminal proceedings have been commenced against the person for the contravention of any of the provisions in this Part, and may thereafter be continued only if —

(*a*) that person has been discharged in respect of that contravention and the discharge does not amount to an acquittal; or

(*b*) the charge against the person in respect of that contravention has been withdrawn.

Civil liability

234.—(1) A person who has acted in contravention of any of the provisions in this Part (called in this section and sections 235 and 236 the contravening person) is, if the contravening person had gained a profit or avoided a loss as a result of that contravention, whether or not the contravening person had been convicted or had a civil penalty imposed on the contravening person in respect of that contravention, liable to pay compensation to any person (called in this section and sections 235 and 236 the claimant) who —

(*a*) had been dealing in capital markets products of the same description contemporaneously with the contravention; and

(*b*) had suffered loss by reason of the difference between —

(i) the price at which the capital markets products were dealt in contemporaneously with the contravention; and

(ii) the price at which the capital markets products would have been

likely to have been so dealt in at the time of the contemporaneous dealing if —

(A) in the case where the contravening person had acted in contravention of section 218 or 219, the information mentioned in section 218(1) or (1A) or 219(1) (as the case may be) had been generally available; or

(B) in any other case, the contravention had not occurred.

[2/2009; 34/2012; 4/2017]

(1A) Without affecting subsection (1), the contravening person is, whether or not the contravening person had gained a profit or avoided a loss as a result of that contravention, and whether or not the contravening person had been convicted or had a civil penalty imposed on the contravening person in respect of that contravention, liable to pay compensation to the claimant, if —

(*a*) the contravening person has contravened section 199, 200 or 201 in connection with any dealing in capital markets products, by —

(i) making, disseminating or publishing any false, misleading or deceptive statement, information, promise or forecast; or

(ii) concealing or omitting to state any material fact; and

(*b*) the claimant —

(i) in reliance on that statement, information, promise or forecast or in ignorance of that concealed or omitted material fact, had (whether contemporaneously with the contravention or otherwise) been dealing in capital markets products of the same description; and

(ii) had suffered loss.

[34/2012; 4/2017]

(2) The amount of compensation that the contravening person is liable to pay to the claimant under subsection (1) is the amount of the loss suffered by the claimant referred to in subsection (1)(*b*), after deducting any amount of compensation paid or payable to the same claimant in respect of the same contravention under an order of court or an agreement to pay by the contravening person or any defendant, defendant corporation or defendant partnership under Division 4 or 5 or under an order for disgorgement under section 236L, up to the maximum amount recoverable.

[34/2012]

(2A) The amount of compensation that the contravening person is liable to pay to the claimant under subsection (1A) is —

(*a*) in any case where the claimant had contemporaneously with the contravention been dealing in capital markets products of the same description, and had suffered the loss referred to in subsection (1)(*b*), any one of the following amounts that is elected by the claimant:

(i) the amount of the loss suffered by the claimant referred to in subsection (1)(*b*), after deducting any amount of compensation paid or payable to the same claimant in respect of the same contravention under an order of court or an agreement to pay by the contravening person or any defendant, defendant corporation or defendant partnership under Division 4 or 5 or under an order for disgorgement under section 236L, up to the maximum amount recoverable;

(ii) the amount of any loss that reasonably results from the claimant's reliance on the statement, information, promise or forecast referred to in subsection (1A)(*a*)(i) or ignorance of the concealed or omitted material fact referred to in subsection (1A)(*a*)(ii), after deducting any amount of compensation paid or payable to the same claimant in respect of the same contravention under an order of court or an agreement to pay by the contravening person or any defendant, defendant corporation or defendant partnership under Division 4 or 5 or under an order for disgorgement under section 236L; or

(*b*) in any other case, the amount of any loss that reasonably results from the claimant's reliance on the statement, information, promise or forecast referred to in subsection (1A)(*a*)(i) or ignorance of the concealed or omitted material fact referred to in subsection (1A)(*a*)(ii), after deducting any amount of compensation paid or payable to the same claimant in respect of the same contravention under an order of court or an agreement to pay by the contravening person or any defendant, defendant corporation or defendant partnership under Division 4 or 5 or under an order for disgorgement under section 236L.

[34/2012; 4/2017]

(3) Any defence that is available to a person who is prosecuted for a contravention of any provision in this Part, is also available to a defendant to an action under this section in respect of the contravention.

(4) An action under this section must not be commenced after the expiration of 6 years from the date of completion of the dealing in which the loss occurred.

[34/2012; 4/2017]

(5) For the purposes of this section, in determining whether any dealing in capital markets products took place contemporaneously with the contravention, the court is to take into account the following matters:

(*a*) the volume of capital markets products of the same description dealt in between the date and time of the contravention, and the date and time of the dealing in capital markets products;

(*b*) if the contravention was effected by a transaction or transactions involving the dealing in capital markets products, the date on and time at which the transaction or transactions were cleared and settled;

(*c*) whether the dealing in capital markets products took place before or after the contravention;

(*d*) in the case of a contravention under section 203, 218 or 219, whether the dealing in capital markets products that are securities, securities-based derivatives contracts or CIS units as defined in section 214(1) (as the case may be) took place before or after the information to which the contravention relates became generally known;

(*e*) such other factors and developments, whether in Singapore or elsewhere, as the court may consider relevant.

[34/2012; 4/2017]

(6) In this section and section 236, "maximum recoverable amount", in respect of each contravention by a contravening person means —

(*a*) the amount of the profit that the contravening person gained; or

(*b*) the amount of the loss that the contravening person avoided,

as a result of the contravention, after deducting all amounts of compensation that the contravening person had previously been ordered by a court to pay, in respect of the same contravention, to other claimants (each being a claimant whose claim is one where the amount of compensation that the contravening person is liable to pay is specified under subsection (2) or (2A)(*a*)(i)).

[34/2012]

Action under section 234 not to commence, etc., in certain situations

235.—(1) Except with the permission of court, no action under section 234 may be brought against the contravening person in respect of a contravention of any of the

provisions in this Part which resulted in the contravening person gaining a profit or avoiding a loss after the commencement of —

(*a*) criminal proceedings under this Part against the contravening person for the same contravention; or

(*b*) an action under section 232 against the contravening person for the same contravention.

[Act 25 of 2021 wef 01/04/2022]

(2) Any action under section 234 against the contravening person in respect of a contravention of any of the provisions in this Part which resulted in the contravening person gaining a profit or avoiding a loss, being an action that is pending on the date of commencement of —

(*a*) criminal proceedings under this Part against the contravening person for the same contravention; or

(*b*) an action under section 232 against the contravening person for the same contravention,

must be stayed, and may not thereafter be continued except with the permission of court.

[Act 25 of 2021 wef 01/04/2022]

(3) Permission under subsection (1) or (2) may not be granted if a date has been fixed by a court under section 236(1) for the filing of claims, and in that event the claimant to the proposed action or the action that has been stayed (as the case may be) must comply with such directions relating to the filing and proof of the claimant's claim under section 236 as that court may issue in the claimant's case.

[Act 25 of 2021 wef 01/04/2022]

Civil liability in event of conviction, etc.

236.—(1) Despite section 234, where the contravening person —

(*a*) has been convicted of an offence under this Part; or

(*b*) has an order for the payment of a civil penalty made against the contravening person under section 232, other than by way of a default judgment or a consent order made with or without admission of contravention under section 232(4),

in respect of the contravention of any of the provisions in this Part, the court which convicted the contravening person or made the order against the contravening person (called in this section the relevant court) may, after the conviction or the order imposing the civil penalty has been made final, fix a date on or before which all claimants have to file and prove their claims for compensation in respect of that contravention.

[2/2009; 34/2012]

(2) For the purposes of subsection (1), the relevant court must not fix a date that is earlier than 3 months from the date the conviction or the order imposing the civil penalty (as the case may be) has been made final.

(3) Subject to subsection (3A), the relevant court may, after the expiry of the date fixed under subsection (1), make an order against the contravening person to pay compensation to each claimant who has filed and proven that claimant's claim for compensation.

[34/2012]

(3A) Where the amount of compensation that a claimant would have been entitled if the claimant had brought an action under section 234 is specified under section 234(2) or (2A)(*a*)(i), the compensation amount ordered by the relevant court for that claimant is equal to the lesser of the following amounts:

(*a*) the amount of compensation which that claimant has proven to the satisfaction of the court that the claimant would have been entitled to if the claimant had brought an action under section 234 against the contravening person;

(*b*) the pro-rated portion of the maximum recoverable amount, calculated according to the relationship which the amount referred to in paragraph (*a*) bears to the total amount of all other claims (each being a claim the claimant of which is one who, if the claimant had brought an action under section 234, would have been entitled to the amount of compensation specified under section 234(2) or (2A)(*a*)(i)) which have been proved to the court.

[34/2012]

(4) For the purposes of this section, a conviction is made final if —

(*a*) the conviction is upheld on appeal, revision or otherwise;

(*b*) the conviction is not subject to further appeal;

(*c*) no notice of appeal against the conviction is lodged within the time prescribed by sections 377 and 378 of the Criminal Procedure Code 2010; or

(*d*) any appeal against the conviction is withdrawn.

[15/2010]

(5) For the purposes of this section, an order imposing a civil penalty is made final if —

(*a*) the order is not set aside on appeal or revision or is varied only as to the amount of the civil penalty to be imposed;

(*b*) the order is not subject to further appeal;

(*c*) no notice of appeal against the imposition of the penalty is lodged within the time prescribed by Rules of Court made under section 238; or

(*d*) any appeal against the imposition of the penalty is withdrawn.

Division 5 — Attributed Liability

Interpretation of this Division

236A. In this Division, unless the context otherwise requires —

"defendant" means an individual liable to an order for a civil penalty under section 236H in respect of a contravention of any provision in this Part committed by a corporation, partnership, limited liability partnership or unincorporated association;

"defendant corporation" means a corporation —

(*a*) liable to be punished under section 236B(1) or to an order for a civil penalty under section 236B(3) in respect of a contravention of any provision in this Part committed by its employee or officer; or

(*b*) liable to an order for a civil penalty under section 236C(1);

"defendant partnership" means a partnership or limited liability partnership —

(*a*) liable to be punished under section 236E(1) or to an order for a civil penalty under section 236E(3) in respect of a contravention of any provision in this Part committed by a partner or employee of the partnership or a partner, manager or employee of the limited liability partnership, as the case may be; or

(*b*) liable to an order for a civil penalty under section 236F(1);

"partnership", in Subdivision (2), means the partnership at the time of the contravention by the contravening person referred to in section 236E(1) or 236F(1), as the case may be.

[2/2009]

Subdivision (1) — Corporations

Liability of corporation when employee or officer commits contravention with

consent or connivance of corporation

236B.—(1) Where an offence of contravening any provision in this Part is proved to have been committed by an employee or an officer of a corporation (called in this section the contravening person) —

(*a*) with the consent or connivance of the corporation; and

(*b*) for the benefit of the corporation,

the corporation shall be guilty of that offence as if the corporation had committed the contravention, and shall be liable to be proceeded against and punished accordingly.

[2/2009]

(2) No proceedings shall be instituted against a corporation under subsection (1) after —

(*a*) a court has made an order against the corporation for the payment of a civil penalty under subsection (3); or

(*b*) the corporation has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 232(5) (as that provision is applied to an action under subsection (3) by subsection (6)),

in respect of the same contravention.

[2/2009]

(3) Where it appears to the Authority that a corporation is liable to be punished under subsection (1) for a contravention committed by a contravening person, the Authority may, with the consent of the Public Prosecutor, bring an action in a court against the corporation to seek an order for a civil penalty in respect of that contravention as if the corporation had committed the contravention, whether or not such action is brought against the contravening person.

[2/2009]

(4) If the court in subsection (3) is satisfied on a balance of probabilities that the corporation is liable to be punished under subsection (1) for a contravention of any provision of this Part, the court may make an order against the corporation for the payment of a civil penalty of a sum not less than $100,000 but not exceeding the greater of the following:

(*a*) 3 times —

(i) the amount of the profit that the corporation gained as a result of the contravention by the contravening person; or

(ii) the amount of the loss that the corporation avoided as a result of the contravention by the contravening person;

(*b*) $2 million.

[4/2017]

(5) [*Deleted by Act 4 of 2017*]

(6) Sections 232(4) to (7) and 233 apply in relation to an action brought against a corporation under subsection (3) as they apply in relation to an action under section 232.

[2/2009]

(7) Any defence that would be available to —

(*a*) the contravening person if the contravening person were prosecuted for the contravening person's contravention; or

(*b*) the corporation if it were prosecuted under subsection (1) in respect of that contravention,

is also available to the corporation in an action under subsection (3) in respect of that contravention.

[2/2009]

(8) The means by which consent or connivance of the corporation under subsection (1) or (3) may be established include proving that —

(*a*) the corporation's board of directors intentionally, knowingly or recklessly carried out the relevant conduct, or expressly, tacitly or impliedly authorised or permitted the contravention;

(*b*) a high managerial agent of the corporation intentionally, knowingly or recklessly engaged in the relevant conduct, or expressly, tacitly or impliedly authorised or permitted the contravention; or

(*c*) a corporate culture existed within the corporation that directed or encouraged non-compliance with the relevant provision.

[2/2009]

(9) In this section —

"board of directors" means the body (by whatever name called) exercising the executive authority of the corporation;

"corporate culture" means an attitude, policy, rule, course of conduct or practice existing within the corporation generally or in the part of the corporation in which the relevant activity takes place;

"high managerial agent" means an employee, agent or officer of the corporation with duties of such responsibility that his or her conduct may fairly be assumed to represent the corporation's policy.

[2/2009]

Civil penalty when corporation fails to prevent or detect contravention by employee or officer

236C.—(1) A corporation which fails to prevent or detect a contravention of any provision in this Part committed by an employee or officer of the corporation (called in this section the contravening person), which contravention is —

(*a*) committed for the benefit of the corporation; and

(*b*) attributable to the negligence of the corporation,

commits a contravention and shall be liable to an order for a civil penalty under this section.

[2/2009]

(2) Where it appears to the Authority that a corporation has committed a contravention under subsection (1), the Authority may, with the consent of the Public Prosecutor, bring an action in a court against the corporation to seek an order for a civil penalty.

[2/2009]

(3) If the court is satisfied on a balance of probabilities that the corporation has committed a contravention under subsection (1), the court may make an order against the corporation for the payment of a civil penalty of a sum not less than $100,000 but not exceeding the greater of the following:

(*a*) 3 times —

(i) the amount of the profit that the corporation gained as a result of the contravention by the contravening person; or

(ii) the amount of the loss that the corporation avoided as a result of the contravention by the contravening person;

(*b*) $2 million.

[4/2017]

(4) [*Deleted by Act 4 of 2017*]

(5) Sections 232(4) to (7) and 233 apply in relation to an action brought against a corporation under subsection (2) as they apply in relation to an action under section 232.

[2/2009]

(6) Any defence that would be available to the contravening person if the contravening person were prosecuted for the contravening person's contravention is also available to the corporation in an action under subsection (2) in respect of its failure to prevent or detect that contravention.

[2/2009]

(7) For the purposes of subsection (1), in determining whether a contravention is attributable to the negligence of a corporation, the court is to take into account the following matters:

(*a*) whether the corporation has established adequate policies and procedures for the purposes of preventing and detecting market misconduct;

(*b*) whether the corporation has consistently enforced compliance with its policies and procedures referred to in paragraph (*a*);

(*c*) such other factors as the court may consider relevant.

[2/2009]

Civil liability of corporation for contravention by employee or officer

236D.—(1) A defendant corporation which has gained a profit or avoided a loss as a result of the contravention of a provision in this Part by the contravening person referred to in section 236B(1) or 236C(1) is, whether or not it had been convicted or had a civil penalty imposed on it, liable to pay compensation to any person (called in this section the claimant) who —

(*a*) had been dealing in capital markets products of the same description contemporaneously with the contravention by the contravening person; and

(*b*) had suffered loss by reason of the difference between —

(i) the price at which the capital markets products were dealt in contemporaneously with the contravention by the contravening person; and

(ii) the price at which the capital markets products would have been likely to have been so dealt in at the time of the contemporaneous dealing if —

(A) in any case where the contravening person had acted in contravention of section 218 or 219, the information referred to in section 218(1) or 219(1) (as the case may be) had been generally available; or

(B) in any other case, the contravention by the

contravening person had not occurred.

[2/2009; 34/2012; 4/2017]

(2) The amount of compensation that the defendant corporation is liable to pay to the claimant under subsection (1) is the amount of the loss suffered by the claimant, after deducting any amount of compensation paid or payable —

(*a*) by the contravening person under an order of court or an agreement to pay; or

(*b*) under an order for disgorgement under section 236L,

to the same claimant in respect of the same contravention, up to the maximum recoverable amount.

[2/2009]

(3) Any defence that would be available to —

(*a*) the contravening person if the contravening person were prosecuted for the contravening person's contravention; or

(*b*) the defendant corporation if it were prosecuted under section 236B(1) or had an action brought against it under section 236C(2),

is also available to the defendant corporation in an action under this section in respect of that contravention.

[2/2009]

(4) An action under this section must not be commenced after the expiration of 6 years from the date of completion of the contemporaneous dealing in which the loss occurred.

[2/2009; 4/2017]

(5) In determining whether the dealing took place contemporaneously with the contravention by the contravening person, the court is to take into account the matters set out in section 234(5).

[2/2009; 4/2017]

(6) In this section, "maximum recoverable amount" means —

(*a*) the amount of profit that the defendant corporation gained; or

(*b*) the amount of the loss that it avoided,

as a result of the contravention by the contravening person, after deducting all amounts of compensation that the defendant corporation had previously been ordered by a court to pay to other claimants under this section in respect of the same contravention.

[2/2009]

Liability of partnership and limited liability partnership when partner, etc., commits contravention with consent or connivance

236E.—(1) Where an offence of contravening any provision of this Part is proved to have been committed by a partner or employee of a partnership or a partner, manager or employee of a limited liability partnership (called in this section the contravening person) —

(*a*) with the consent or connivance of the partnership or limited liability partnership; and

(*b*) for the benefit of the partnership or limited liability partnership,

the partnership or limited liability partnership shall be guilty of that offence as if it had committed the contravention, and every partner of that partnership, or the limited liability partnership (as the case may be) shall be liable to be proceeded against and punished accordingly.

[2/2009]

(2) No proceedings shall be instituted against any partner of the partnership or the limited liability partnership under subsection (1) after —

(*a*) a court has made an order against the partner or limited liability partnership for the payment of a civil penalty under subsection (3); or

(*b*) the partner or limited liability partnership has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 232(5) (as that provision is applied to an action under subsection (3) by subsection (6)),

in respect of the same contravention.

[2/2009]

(3) Where it appears to the Authority that a partnership or a limited liability partnership is liable to be punished under subsection (1) for a contravention committed by a contravening person, the Authority may, with the consent of the Public Prosecutor, bring an action in a court against the partnership or limited liability partnership to seek an order for a civil penalty in respect of that contravention as if the partnership or limited liability partnership had committed the contravention, whether or not such action is brought against the contravening person.

[2/2009]

(4) If the court in subsection (3) is satisfied on a balance of probabilities that the

partnership or limited liability partnership is liable to be punished under subsection (1) for a contravention of any provision of this Part, the court may make an order against the partnership or limited liability partnership for the payment of a civil penalty of a sum not less than $50,000 but not exceeding the greater of the following:

(*a*) 3 times —

(i) the amount of the profit that the partnership or limited liability partnership gained as a result of the contravention by the contravening person; or

(ii) the amount of the loss that the partnership or limited liability partnership avoided as a result of the contravention by the contravening person;

(*b*) $2 million.

[4/2017]

(5) [*Deleted by Act 4 of 2017*]

(6) Sections 232(4) to (7) and 233 apply in relation to an action brought against a partnership or limited liability partnership under subsection (3) as they apply in relation to an action under section 232.

[2/2009]

(7) Any defence that would be available to —

(*a*) the contravening person if the contravening person were prosecuted for the contravening person's contravention; or

(*b*) the partnership or limited liability partnership if it were prosecuted under subsection (1) in respect of that contravention,

is also available to the partnership or limited liability partnership in an action under subsection (3) in respect of that contravention.

[2/2009]

(8) The means by which consent or connivance of the partnership or limited liability partnership under subsection (1) or (3) may be established include proving that —

(*a*) the executive partners of the partnership or limited liability partnership intentionally, knowingly or recklessly carried out the relevant conduct, or expressly, tacitly or impliedly authorised or permitted the contravention;

(*b*) a high managerial agent of the partnership or limited liability partnership intentionally, knowingly or recklessly engaged in the relevant conduct, or expressly, tacitly or impliedly authorised or permitted the contravention; or

(*c*) a corporate culture existed within the partnership or limited liability partnership that directed or encouraged non-compliance with the relevant provision.

[2/2009]

(9) In this section —

"corporate culture" means an attitude, policy, rule, course of conduct or practice existing within the partnership or limited liability partnership generally or in the part of the partnership or limited liability partnership in which the relevant activity takes place;

"executive partners" means the partners exercising the executive authority of the partnership or limited liability partnership;

"high managerial agent" means a partner, manager or employee of the partnership or limited liability partnership with duties of such responsibility that his or her conduct may fairly be assumed to represent the partnership or limited liability partnership's policy.

[2/2009]

Civil penalty when partnership or limited liability partnership fails to prevent or detect contravention by partner, etc.

236F.—(1) A partnership or limited liability partnership which fails to prevent or detect a contravention of any provision in this Part committed by a partner or employee of the partnership or a partner, manager or employee of the limited liability partnership, as the case may be (called in this section the contravening person), which contravention is —

(*a*) committed for the benefit of the partnership or limited liability partnership; and

(*b*) attributable to the negligence of the partnership or limited liability partnership,

commits a contravention and shall be liable to an order for a civil penalty under this section.

[2/2009]

(2) Where it appears to the Authority that a partnership or limited liability partnership has committed a contravention under subsection (1), the Authority may, with the consent of the Public Prosecutor, bring an action in a court against the partnership or limited liability partnership to seek an order for a civil penalty.

[2/2009]

(3) If the court is satisfied on a balance of probabilities that the partnership or limited liability partnership has committed a contravention under subsection (1), the court may make an order against the partnership or limited liability partnership for the payment of a civil penalty of a sum not less than $50,000 but not exceeding the greater of the following:

(*a*) 3 times —

(i) the amount of the profit that the partnership or limited liability partnership gained as a result of the contravention by the contravening person; or

(ii) the amount of the loss that the partnership or limited liability partnership avoided as a result of the contravention by the contravening person;

(*b*) $2 million.

[4/2017]

(4) [*Deleted by Act 4 of 2017*]

(5) Sections 232(4) to (7) and 233 apply in relation to an action brought against a partnership or limited liability partnership under subsection (2) as they apply in relation to an action under section 232.

[2/2009]

(6) Any defence that would be available to the contravening person if the contravening person were prosecuted for the contravening person's contravention is also available to the partnership or limited liability partnership in an action under subsection (2) in respect of its failure to prevent or detect that contravention.

[2/2009]

(7) For the purposes of subsection (1), in determining whether a contravention is attributable to the negligence of a partnership or limited liability partnership, the court is to take into account the following matters:

(*a*) whether the partnership or limited liability partnership has established adequate policies and procedures for the purposes of preventing and detecting market misconduct;

(*b*) whether the partnership or limited liability partnership has consistently enforced compliance with its policies and procedures referred to in paragraph (*a*);

(*c*) such other factors as the court may consider relevant.

[2/2009]

Civil liability of partnership or limited liability partnership for contravention by partner, etc.

236G.—(1) A defendant partnership which has gained a profit or avoided a loss as a result of the contravention of a provision in this Part by the contravening person referred to in section 236E(1) or 236F(1) is, whether or not the partners of the partnership or the limited liability partnership had been convicted or the partnership or limited liability partnership had a civil penalty imposed on it, liable to pay compensation to any person (called in this section the claimant) who —

(*a*) had been dealing in capital markets products of the same description contemporaneously with the contravention by the contravening person; and

(*b*) had suffered loss by reason of the difference between —

(i) the price at which the capital markets products were dealt in contemporaneously with the contravention by the contravening person; and

(ii) the price at which the capital markets products would have been likely to have been so dealt in at the time of the contemporaneous dealing if —

(A) in any case where the contravening person had acted in contravention of section 218 or 219, the information referred to in section 218(1) or 219(1) (as the case may be) had been generally available; or

(B) in any other case, the contravention by the contravening person had not occurred.

[2/2009; 34/2012; 4/2017]

(2) The amount of compensation that the defendant partnership is liable to pay to the claimant under subsection (1) is the amount of the loss suffered by the claimant, after deducting any amount of compensation paid or payable —

(*a*) by the contravening person under an order of court or an agreement to pay; or

(*b*) under an order for disgorgement under section 236L,

to the same claimant in respect of the same contravention, up to the maximum recoverable amount.

[2/2009]

(3) Any defence that would be available to —

(*a*) the contravening person if the contravening person were prosecuted for the contravening person's contravention; or

(*b*) the defendant partnership if it were prosecuted under section 236E(1) or had an action brought against it under section 236F(2),

is also available to the defendant partnership in an action under this section in respect of that contravention.

[2/2009]

(4) An action under this section must not be commenced after the expiration of 6 years from the date of completion of the contemporaneous dealing in which the loss occurred.

[2/2009; 4/2017]

(5) In determining whether the dealing took place contemporaneously with the contravention by the contravening person, the court is to take into account the matters set out in section 234(5).

[2/2009; 4/2017]

(6) In this section, "maximum recoverable amount" means —

(*a*) the amount of profit that the defendant partnership gained; or

(*b*) the amount of the loss that it avoided,

as a result of the contravention by the contravening person, after deducting all amounts of compensation that the defendant partnership had previously been ordered by a court to pay to other claimants under this section in respect of the same contravention.

[2/2009]

Subdivision (3) — Officers, partners, etc., of entities

Civil penalty against officer of corporation, etc.

236H.—(1) Where it appears to the Authority that a corporation, partnership, limited liability partnership or unincorporated association (called in this section the contravening person) has contravened any provision in this Part —

(*a*) with the consent or connivance of a person (called in this section the defendant) who is an officer or (where its affairs are managed by its members) a member of the corporation, a partner of the partnership, a partner or manager of the limited liability partnership, or an officer of the unincorporated association (other than a partnership) or a member of its governing body, as the case may be; or

(*b*) as a result of any neglect on the part of the defendant,

the Authority may, with the consent of the Public Prosecutor, bring an action in a court against the defendant to seek an order for a civil penalty in respect of that contravention as if the defendant had committed the contravention, whether or not such action is brought against the contravening person.

[2/2009]

(2) If the court is satisfied on a balance of probabilities that the contravening person has contravened a provision in this Part with the consent or connivance of the defendant, or as a result of any neglect on the part of the defendant, the court may make an order against the defendant for the payment of a civil penalty of a sum not less than $50,000 but not exceeding the greater of the following:

(*a*) 3 times —

(i) the amount of the profit that the defendant gained as a result of the contravention by the contravening person; or

(ii) the amount of the loss that the defendant avoided as a result of the contravention by the contravening person;

(*b*) $2 million.

[4/2017]

(3) [*Deleted by Act 4 of 2017*]

(4) Sections 232(4) to (7) and 233 apply in relation to an action brought against a defendant under subsection (1) as they apply in relation to an action under section 232.

[2/2009]

(5) Any defence that would be available to —

(*a*) the contravening person if it were prosecuted for its contravention; or

(*b*) the defendant if he or she were prosecuted under section 331 in respect of that contravention,

is also available to the defendant in an action under subsection (1) in respect of that contravention.

[2/2009]

Civil liability of officer of corporation, etc.

236I.—(1) A defendant who has gained a profit or avoided a loss as a result of the contravention of a provision in this Part by a contravening person referred to in section 236H(1) is, whether or not the defendant had been convicted under section 331 or had a civil penalty imposed on the defendant under section 236H, liable to pay

compensation to any person (called in this section the claimant) who —

(*a*) had been dealing in capital markets products of the same description contemporaneously with the contravention by the contravening person; and

(*b*) had suffered loss by reason of the difference between —

(i) the price at which the capital markets products were dealt in contemporaneously with the contravention by the contravening person; and

(ii) the price at which the capital markets products would have been likely to have been so dealt in at the time of the contemporaneous dealing if —

(A) in any case where the contravening person had acted in contravention of section 218 or 219, the information referred to in section 218(1) or 219(1) (as the case may be) had been generally available; or

(B) in any other case, the contravention by the contravening person had not occurred.

[2/2009; 34/2012; 4/2017]

(2) The amount of compensation that the defendant is liable to pay to the claimant is the amount of the loss suffered by the claimant, after deducting any amount of compensation paid or payable —

(*a*) by the contravening person under an order of court or an agreement to pay; or

(*b*) under an order for disgorgement under section 236L,

to the same claimant in respect of the same contravention, up to the maximum recoverable amount.

[2/2009]

(3) Any defence that would be available to —

(*a*) the contravening person if it were prosecuted for its contravention; or

(*b*) the defendant if he or she were prosecuted under section 331 in respect of that contravention,

is also available to the defendant in an action under this section in respect of that contravention.

[2/2009]

(4) An action under this section must not be commenced after the expiration of

6 years from the date of completion of the contemporaneous dealing in which the loss occurred.

[2/2009; 4/2017]

(5) In determining whether a dealing in capital markets products took place contemporaneously with the contravention by the contravening person, the court is to take into account the matters referred to in section 234(5)(*a*) to (*e*).

[2/2009; 4/2017]

(6) In this section, "maximum recoverable amount" means —

(*a*) the amount of the profit that the defendant gained; or

(*b*) the amount of the loss that the defendant avoided,

as a result of the contravention by the contravening person, after deducting all amounts of compensation that the defendant had previously been ordered by a court to pay to other claimants under this section in respect of the same contravention.

[2/2009]

Subdivision (4) — General

Actions not to commence or stayed in certain situations

236J.—(1) Except with the permission of court, no action may be brought against —

(*a*) a defendant corporation under section 236B, 236C or 236D;

(*b*) a defendant partnership (including, in the case of a partnership, any of the partners) under section 236E, 236F or 236G; or

(*c*) a defendant under section 236H or 236I,

which relates to a contravention of a provision in this Part (called in this section the primary contravention) by a contravening person referred to in section 236B(1) or 236C(1) (in relation to the defendant corporation), 236E(1) or 236F(1) (in relation to the defendant partnership) or 236H(1) (in relation to the defendant), as the case may be, after the commencement of —

(*d*) criminal proceedings in respect of the primary contravention against the contravening person; or

(*e*) an action under section 232 in respect of the primary contravention against the contravening person,

and any such action in paragraph (*a*), (*b*) or (*c*) pending on the date of commencement of the proceedings or action in paragraph (*d*) or (*e*) must be stayed, and may not thereafter

be continued except with the permission of court.

[2/2009]
[Act 25 of 2021 wef 01/04/2022]

(2) Permission under subsection (1) may not be granted if —

(*a*) in the criminal proceedings referred to in subsection (1)(*d*), the contravening person has been acquitted of the primary contravention; or

(*b*) in the action under section 232 referred to in subsection (1)(*e*), the court is not satisfied that the contravening person has committed the primary contravention.

[2/2009]
[Act 25 of 2021 wef 01/04/2022]

(3) Except with the permission of court, no action under section 236D, 236G or 236I may be brought against the defendant corporation, defendant partnership or defendant in respect of a primary contravention after the commencement of —

(*a*) criminal proceedings against the defendant corporation under section 236B(1), the defendant partnership (including, in the case of a partnership, any of the partners) under section 236E(1) or the defendant under section 331 in respect of the same contravention;

(*b*) an action against the defendant corporation under section 236B(3), the defendant partnership under section 236E(3) or the defendant under section 236H in respect of the same contravention; or

(*c*) an action against the defendant corporation under section 236C(2) or the defendant partnership under section 236F(2) in respect of the failure to prevent or detect that contravention,

and any such action under section 236D, 236G or 236I (as the case may be) pending on the date of commencement of the proceedings or action in paragraph (*a*), (*b*) or (*c*) must be stayed, and may not thereafter be continued except with the permission of court.

[2/2009]
[Act 25 of 2021 wef 01/04/2022]

(4) Permission under subsection (3) may not be granted if a date has been fixed by a court under section 236K for the filing of claims, and in that event the claimant to the proposed action or the action that has been stayed (as the case may be) must comply with such directions relating to the filing and proof of the claimant's claim under section 236K as that court may issue in the claimant's case.

[2/2009]
[Act 25 of 2021 wef 01/04/2022]

Civil liability in event of conviction or civil penalty

236K.—(1) Despite section 236D, 236G or 236I, where a defendant corporation, defendant partnership (including, in the case of a partnership, any of the partners) or defendant —

(*a*) has been convicted of an offence under this Division; or

(*b*) has had an order for the payment of civil penalty made against it, him or her under this Division, other than by way of a default judgment or a consent order made with or without admission of contravention,

and has gained a profit or avoided a loss as a result of the contravention by the contravening person referred to in section 236B(1), 236C(1), 236E(1), 236F(1) or 236H(1) (as the case may be) the court which convicted or made the order for a civil penalty against the defendant corporation, defendant partnership (or any of the partners thereof) or defendant may, after the conviction or the order imposing the civil penalty has been made final, fix a date on or before which all claimants have to file and prove their claims against the defendant corporation, defendant partnership or defendant (as the case may be) for compensation in respect of that contravention.

[2/2009]

(2) Section 236(2) to (5) applies, with the necessary modifications, to an action under subsection (1), and in such application —

(*a*) any reference to the contravening person is to be read as the defendant corporation, the defendant partnership or the defendant in subsection (1); and

(*b*) the reference to an action under section 234 is to be read as an action under section 236D (in relation to the defendant corporation), 236G (in relation to the defendant partnership) or 236I (in relation to the defendant), as the case may be.

[2/2009]

(3) In this section, "claimant" means any person who would qualify as a claimant to bring an action against the defendant corporation, defendant partnership or defendant under section 236D, 236G or 236I, as the case may be.

[2/2009]

Order for disgorgement against third party

236L.—(1) Without affecting any action under section 234, 236, 236D, 236G, 236I or 236K, where —

(*a*) a person has been convicted by a court of an offence in respect of a contravention of any provision in this Part;

(*b*) a person has had an order for the payment of a civil penalty made against

the person under section 232 or any of the provisions in this Division by a court, other than by way of a default judgment or a consent order made with or without admission of contravention, in respect of a contravention of any provision in this Part; or

(*c*) in an action commenced under this section, a court is satisfied on a balance of probabilities that a contravention by a person of any provision in this Part has occurred,

the court may, on the application of the Authority or any claimant, make an order against any other person (called in this section a third party) who has received the whole or any part of the benefit of that contravention for disgorgement of that benefit, being benefit derived from trades carried out for the third party by the person referred to in paragraph (*a*), (*b*) or (*c*).

[2/2009]

(2) The court must issue a notice to a third party against whom an application for an order for disgorgement under subsection (1) is made, giving the third party an opportunity to show cause, within such time as may be specified in the notice, why the order should not be made.

[2/2009]

(3) An application for an order for disgorgement under subsection (1) must not be commenced after the expiration of 6 years from the date on which the contravention referred to in that subsection was committed.

[2/2009]

(4) The court is not to make an order for disgorgement against a third party, or is not to order disgorgement of the entire benefit derived by the third party, if the court is satisfied, on a balance of probabilities, that —

(*a*) the third party acquired the benefit without knowing, and in circumstances such as not to arouse a reasonable suspicion, that the benefit was derived from the contravention referred to in subsection (1); and

(*b*) the third party has so altered the third party's position in reliance on the third party having an indefeasible interest in the benefit that, in the opinion of the court, it would be inequitable to make the order for disgorgement or to order disgorgement of the entire benefit derived by the third party, as the case may be.

[2/2009]

(5) Despite subsection (4), the court may make an order for disgorgement against a third party referred to in subsection (4) of a sum that is, in the opinion of the court, equitable.

[2/2009]

(6) The court may, after the order for disgorgement has been made final, fix a date, not earlier than 6 months from the date the order for disgorgement has been made final, on or before which all claimants have to file and prove their claims for compensation in respect of the contravention referred to in subsection (1).

[2/2009]

(7) The court may, after the expiry of the date fixed under subsection (6), order that each claimant who has filed and proven the claimant's claim for compensation be paid out of the sum under the final order for disgorgement, an amount —

(*a*) equal to the amount of loss suffered by the claimant, after deducting any other compensation paid or payable to the same claimant under an order of court or an agreement to pay in respect of the same contravention; or

(*b*) equal to the pro-rated portion of the sum under the final order for disgorgement, calculated according to the relationship which the amount referred to in paragraph (*a*) bears to all amounts proved to the court,

whichever is the lesser.

[2/2009]

(8) Any sum remaining under the order for disgorgement must be paid into the Consolidated Fund and is to be treated as a debt due to the Government for the purposes of section 10 of the Government Proceedings Act 1956.

[2/2009; 4/2017]

(9) If the third party fails to pay the sums under the order for disgorgement within the time specified in the court order under subsection (7) —

(*a*) each claimant may recover the sum due to the claimant under the order for disgorgement as though it were a judgment debt due to the claimant; and

(*b*) the remaining sum under the order for disgorgement may be recovered by the Authority as though it were a judgment debt due to the Authority and paid into the Consolidated Fund.

[2/2009]

(10) After the expiry of the date fixed under subsection (6), no person may make any subsequent application under this section for an order for disgorgement against the third party in respect of the same contravention.

[2/2009]

(11) For the purposes of this section, an order for disgorgement is made final if —

(*a*) the order is not set aside on appeal or revision or is varied only as to the sum to be disgorged;

(*b*) the order is not subject to further appeal;

(*c*) no notice of appeal against the order is lodged within the time prescribed by Rules of Court; or

(*d*) any appeal against the order is withdrawn.

[2/2009]

(12) In this section —

"benefit", in relation to a contravention of any provision in this Part, means a profit gained or loss avoided as a result of that contravention;

"claimant", in relation to a contravention of any provision in this Part, means any person who would qualify as a claimant under section 234 in respect of that contravention.

[2/2009]

Division 6 — Miscellaneous

[2/2009]

Jurisdiction of District Court

237. A District Court has jurisdiction to hear and determine any action or application under Division 4 or 5 regardless of the monetary amount.

[34/2012]

Rules of Court

238.—(1) Rules of Court may be made —

(*a*) to regulate and prescribe the procedure and practice to be followed in respect of proceedings under Divisions 4 and 5; and

(*b*) to provide for costs and fees of such proceedings, and for regulating any matter relating to the costs of such proceedings.

[2/2009; 34/2012]

(2) Without limiting subsection (1), Rules of Court may, in relation to proceedings under sections 236, 236K and 236L —

(*a*) provide for the advertisement of a notice for the filing and proof of claims under those sections;

(*b*) prescribe the procedure for the filing, proof and hearing of those claims; and

(*c*) provide for the payment of the costs and fees of an action that has been

stayed under section 235(2) or 236J.

[2/2009]

PART 13

OFFERS OF INVESTMENTS

Division 1 — Securities and Securities-based Derivatives Contracts

[4/2017]

Subdivision (1) — Interpretation

Preliminary provisions

239.—(1) In this Division —

"borrowing entity" means an entity that is or will be under a liability (whether or not such liability is present or future) to repay any money received by it in response to an invitation to subscribe for or purchase debentures of the entity;

"control", in relation to an entity, means the capacity of a person to determine the outcome of decisions on the financial and operating policies of the entity, having regard to —

(*a*) the influence which the person can, in practice, exert on the entity (as opposed to the rights which the person can exercise in the entity); and

(*b*) any practice or pattern of behaviour of the person affecting the financial or operating policies of the entity (even if such practice or pattern of behaviour involves a breach of an agreement or a breach of trust),

but does not include any capacity of a person to influence decisions on the financial and operating policies of the entity if such influence is required by law or under any contract or order of court to be exercised for the benefit of other persons;

"dealing in capital markets products", in respect of capital markets products that are securities or securities-based derivatives contracts, means (whether as principal or agent) —

(*a*) making or offering to make with any person; or

(*b*) inducing or attempting to induce any person to enter into or to offer to enter into,

any agreement for or with a view to acquiring, disposing of, subscribing for, entering into, effecting, arranging or underwriting any securities or securities-based derivatives contracts;

"debenture issuance programme" means any scheme or arrangement by an entity for the issue of debentures or units of debentures where only part of the maximum amount or aggregate number of debentures or units of debentures under the programme is offered initially and a further tranche or tranches may be offered subsequently;

"expert" has the meaning given by section 4(1) of the Companies Act 1967;

"guarantor entity", in relation to a borrowing entity, means an entity that has guaranteed or has agreed to guarantee the repayment of any money received or to be received by the borrowing entity in response to an invitation to subscribe for or purchase debentures of the borrowing entity;

"immediate family", in relation to an individual, means the individual's spouse, son, adopted son, stepson, daughter, adopted daughter, stepdaughter, father, stepfather, mother, stepmother, brother, stepbrother, sister or stepsister;

"issuer" means —

(*a*) in relation to an offer of securities or securities-based derivatives contracts (other than units or derivatives of units in a business trust), the entity that issues or will be issuing the securities or securities-based derivatives contracts being offered;

(*b*) in relation to an offer of units in a business trust, the trustee-manager of the business trust in its capacity as the trustee that issues or will be issuing the units; and

(*c*) in relation to an offer of derivatives of units in a business trust, the trustee-manager of the business trust in its capacity as the trustee, or any other entity that issues or will be issuing the derivatives of units;

"minimum subscription", in relation to any securities or securities-based derivatives contracts offered for subscription, means the amount stated in the prospectus relating to the offer as the minimum amount which must be raised by the issue of the securities or securities-based derivatives contracts so

offered, failing which no securities or securities-based derivatives contracts will be allotted or issued;

"preliminary document" means a document which has been lodged with the Authority and is issued for the purpose of determining the appropriate issue or sale price of, and the number of, securities or securities-based derivatives contracts to be issued or sold and which contains the information required to be included in a prospectus under section 243, except for such information as the Authority may prescribe;

"product highlights sheet" means a product highlights sheet referred to in section 240AA(1);

"profile statement" means a profile statement referred to in section 240(4);

"promoter", in relation to a prospectus issued by or in connection with an entity or a business trust, means a promoter of the entity or business trust (as the case may be) who was a party to the preparation of the prospectus or of any relevant portion thereof, but does not include any person by reason only of the person acting in a professional capacity;

"prospectus" means any prospectus, notice, circular, material, advertisement, publication or other document used to make an offer of securities or securities-based derivatives contracts, and includes any document deemed to be a prospectus under section 257, but does not include —

(*a*) a profile statement;

(*b*) any material, advertisement or publication which is authorised by section 251 (other than subsection (5)); or

(*c*) a product highlights sheet;

"recognised securities exchange" means a corporation which has been declared by the Authority, by order in the *Gazette*, to be a recognised securities exchange for the purposes of this Division;

"related party" means —

(*a*) in relation to an entity —

(i) a director or an equivalent person of the entity;

(ii) the chief executive officer or equivalent person of the entity;

(iii) a person who controls the entity;

(iv) a related corporation;

(v) any other entity controlled by it;

(vi) any other entity controlled by the person referred to in sub-paragraph (iii); and

(vii) a related party of any individual referred to in sub-paragraph (i), (ii) or (iii); and

(*b*) in relation to an individual —

(i) his or her immediate family;

(ii) a trustee of any trust of which the individual or any member of the individual's immediate family is —

(A) a beneficiary; or

(B) where the trust is a discretionary trust, a discretionary object,

when the trustee acts in that capacity; and

(iii) any corporation in which the individual and his or her immediate family (whether directly or indirectly) have interests in voting shares of an aggregate of not less than 30% of the total votes attached to all voting shares;

"replacement document" means a replacement prospectus or a replacement profile statement referred to in section 241(1), as the case may be;

"statutory meeting" has the meaning given by section 4(1) of the Companies Act 1967;

"supplementary document" means a supplementary prospectus or a supplementary profile statement referred to in section 241(1), as the case may be;

"trust deed" has the same meaning as "deed" in section 2 of the Business Trusts Act 2004;

"trust property" has the meaning given by section 2 of the Business Trusts Act 2004;

"underlying entity", in relation to an offer of units of shares or debentures, means the entity the shares or debentures of which are the subject of the offer;

"unit", in relation to a share or debenture, means any right or interest, whether legal or equitable, in the share or debenture, by whatever name called, and includes any option to acquire any such right or interest in the share or debenture.

[2/2009; 34/2012; 4/2017]

(2) For the purposes of this Division, a statement is deemed to be included in a prospectus or profile statement if it is contained in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

(3) For the purposes of this Division —

(*a*) any invitation to a person to deposit money with or to lend money to an entity is deemed to be an offer of debentures of the entity; and

(*b*) any document that is issued or intended or required to be issued by an entity acknowledging or evidencing or constituting an acknowledgment of the indebtedness of the entity in respect of any money that is or may be deposited with or lent to the entity in response to such an invitation is deemed to be a debenture.

(3A) Despite subsection (3) —

(*a*) any invitation to a person by a prescribed entity to make a deposit with the prescribed entity is not an offer of debentures; and

(*b*) the following documents issued or intended or required to be issued by a prescribed entity are not debentures:

(i) any certificate of deposit;

(ii) any other document acknowledging or evidencing or constituting an acknowledgment of the indebtedness of the prescribed entity in respect of any deposit that is or may be made with the prescribed entity.

(4) In subsections (3A) and (5) —

"deposit" has the meaning given by section 4B(4) of the Banking Act 1970;

"prescribed entity" means —

(*a*) any bank licensed under the Banking Act 1970; or

(*b*) any entity or any entity of a class which has been declared by the Authority, by order in the *Gazette*, to be a prescribed entity for the purposes of this subsection.

(4A) For the purposes of this Division, references to a debenture includes a debenture, or a unit of debenture, issued by a trustee of a trust on behalf of the trust.

[4/2017]

(5) The Authority may, by written notice —

(*a*) impose such conditions or restrictions on a prescribed entity as it thinks fit; and

(*b*) at any time vary or revoke any condition or restriction so imposed,

and the prescribed entity must comply with every such condition or restriction imposed on it by the Authority that has not been revoked by the Authority.

(5A) Any person who contravenes any condition or restriction imposed under subsection (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

(6) For the purposes of this Division, a person makes an offer of any securities or securities-based derivatives contracts if, and only if, as principal —

(*a*) the person makes (either personally or by an agent) an offer to any person in Singapore which upon acceptance would give rise to a contract for the issue or sale of those securities or securities-based derivatives contracts by the firstmentioned person or another person with whom the firstmentioned person has made arrangements for that issue or sale; or

(*b*) the person invites (either personally or by an agent) any person in Singapore to make an offer which upon acceptance would give rise to a contract for the issue or sale of those securities or securities-based derivatives contracts by the firstmentioned person or another person with whom the firstmentioned person has made arrangements for that issue or sale.

[4/2017]

(7) In subsection (6), "sale" includes any disposal for valuable consideration.

(8) This Division applies only in relation to offers of securities or securities-based derivatives contracts made on or after 1 July 2002.

[4/2017]

Authority may disapply this Division to certain offers

239A.—(1) Despite any provision to the contrary in this Division, where —

(*a*) an offer of securities or securities-based derivatives contracts is one to which (but for this section) both this Division and Division 2 apply; and

(*b*) the Authority has by order in the *Gazette* declared that this Division does not apply to that offer or a class of offers to which that offer belongs,

then this Division does not apply to that offer.

[4/2017]

(2) This Division does not apply to an offer of securities or securities-based derivatives contracts being units or derivatives of units in a business trust, where —

(*a*) the business trust is also a collective investment scheme that has been authorised under section 286 or recognised under section 287; or

(*b*) the business trust is also a collective investment scheme and the offer is made in reliance on an exemption under Subdivision (4) of Division 2.

[4/2017]

Modification of provisions to certain offers

239B. The Authority may, if it thinks it necessary in the interests of the public or a section of the public or for the protection of investors, by regulations modify or adapt the provisions of this Division in their application to such offer of securities or securities-based derivatives contracts as may be prescribed, and the provisions of this Division apply to such offer subject to such modifications or adaptations.

[2/2009; 4/2017]

Subdivision (1A) — Offers of units in and recognition of business trusts

Requirement for registration or recognition

239C.—(1) A person must not make an offer of units or derivatives of units in a business trust unless the business trust is a registered business trust or a recognised business trust.

[4/2017]

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

Power of Authority to recognise business trusts constituted outside Singapore

239D.—(1) The Authority may, upon an application made to it in such form and manner as may be prescribed and subject to subsection (2), recognise a business trust constituted outside Singapore.

[4/2017]

(2) The Authority may recognise a business trust under subsection (1) if and only if the Authority is satisfied that —

(*a*) the laws and practices of the jurisdiction under which the business trust is constituted and regulated affords to investors in Singapore protection at least equivalent to that provided to them under the Business Trusts Act 2004 in the case of registered business trusts;

(*b*) the business trust satisfies such criteria as may be prescribed by regulations made under section 341; and

(*c*) the person making the offer of, or the issuer of, units or derivatives of units in the business trust, or the trustee-manager of the business trust, satisfies such criteria as may be prescribed by regulations made under section 341.

[4/2017]

(3) Without affecting subsection (2), in considering whether to recognise a business trust under subsection (1), the Authority may have regard to such other factors as may be prescribed.

[4/2017]

(4) Without affecting subsection (2), the Authority may refuse to recognise any business trust where it appears to the Authority that it is not in the public interest to do so.

[4/2017]

(5) The Authority must not refuse to recognise a business trust under subsection (1) without giving the person who made the application an opportunity to be heard, except that an opportunity to be heard need not be given if the refusal is on the ground that it is not in the public interest to recognise the business trust on the basis of any of the following circumstances:

(*a*) the person making the offer (being an entity), the issuer or the trustee-manager of the business trust or the business trust itself is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;

(*b*) the person making the offer (being an individual) is an undischarged bankrupt, whether in Singapore or elsewhere;

(*c*) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of —

(i) any property of the person making the offer (being an entity) or the issuer;

(ii) any property of the trustee-manager of the business trust; or

(iii) the trust property of the business trust.

[4/2017]

(6) Any person making an application under subsection (1) may, within 30 days after the person is notified that the Authority has refused to recognise that business trust constituted outside Singapore, appeal to the Minister whose decision is final.

[4/2017]

(7) An application made under subsection (1) must be accompanied by such information or record as the Authority may require.

[4/2017]

(8) The Authority may publish for public information, in such manner as it considers appropriate, particulars of any business trust that is recognised under subsection (1).

[4/2017]

(9) While a business trust remains a recognised business trust, each of the following persons must ensure that the criteria prescribed by regulations made under section 341 in accordance with subsection (2)(*b*) and (*c*) which are applicable to the person continue to be satisfied:

(*a*) a person making an offer of units or derivatives of units in the trust;

(*b*) an issuer of units or derivatives of units in the trust;

(*c*) the trustee-manager of the trust.

[4/2017]

(10) The trustee-manager of a recognised business trust must provide such information or record regarding the business trust as the Authority may, at any time, require for the proper administration of this Act.

[4/2017]

(11) Any person who contravenes subsection (9) or (10) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 and, in the case of a continuing offence, to a further fine not exceeding $10,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

Power of Authority to impose conditions or restrictions

239E.—(1) The Authority may recognise a business trust under section 239D(1) subject to such conditions or restrictions as it thinks fit to impose on any of the following persons for the purpose of protecting investors of the business trust:

(*a*) the trustee-manager of the trust;

(*b*) a person making an offer of units or derivatives of units in the trust;

(*c*) an issuer of units or derivatives of units in the trust.

[4/2017]

(2) Each of the persons mentioned in subsection (1) must comply with the conditions or restrictions applicable to the person.

[4/2017]

(3) The Authority may, at any time, by written notice to any of the persons mentioned in subsection (1), vary any condition or restriction or impose any further condition or restriction as the Authority thinks fit.

[4/2017]

(4) Any person who contravenes any condition or restriction applicable to the person under subsection (1) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 and, in the case of a continuing offence, to a further fine not exceeding $10,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

Revocation, suspension or withdrawal of recognition

239F.—(1) The Authority may revoke the recognition of a recognised business trust granted under section 239D(1) if —

(*a*) the application for recognition, or any related information or record submitted to the Authority, whether at the same time as or subsequent to the application, was false or misleading in a material particular or omitted a material particular which, had it been known to the Authority at the time of submission, would have resulted in the Authority not granting the recognition;

(*b*) the Authority is of the opinion that the continued recognition of the business trust is or will be against the public interest;

(*c*) the Authority is of the opinion that the continued recognition of the business trust is or will be prejudicial to its unitholders or potential unitholders; or

(*d*) there has been a contravention of section 239D(9) or (10) or a condition or restriction mentioned in section 239E(1) or (3).

[4/2017]

(2) Where the Authority revokes the recognition of a recognised business trust under subsection (1), the Authority may issue any directions it thinks fit to any of the following persons:

(*a*) a person making an offer of units or derivatives of units in the business trust;

(*b*) the issuer of units or derivatives of units in the business trust;

(*c*) the trustee-manager of the business trust,

and the person must comply with such directions.

[4/2017]

(3) The directions mentioned in subsection (2) may include a direction that the person provides the holders of the units or derivatives of units with an option to redeem or sell back to the person their units or derivatives of units (as the case may be) on such terms as the Authority may approve.

[4/2017]

(4) In determining whether to issue a direction under subsection (2), the Authority must consider —

(*a*) whether the trustee-manager of the business trust is able to liquidate the property of the business trust without material adverse financial effect to the unitholders and for this purpose, the factors which the Authority may take into account include —

(i) the liquidity of the property of the business trust;

(ii) the penalties (if any) payable for liquidating the property; and

(iii) where the units of the business trust are also listed for quotation or quoted on an overseas exchange, the potential impact which the liquidation may have on unitholders in the country or territory where the units are listed; and

(*b*) where the units or derivatives of units in the business trust are listed for quotation on the official list of an approved exchange, whether the holders of the units or derivatives of units are afforded an opportunity to liquidate, sell or redeem their units or derivatives of units on reasonable terms in accordance with the requirements of the listing rules of the approved exchange.

[4/2017]

(5) A person who, without reasonable excuse, contravenes any of the directions issued by the Authority under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(6) Despite subsection (1), the Authority may, if it considers it desirable to do so, instead of revoking the recognition of a recognised business trust, suspend the recognition of that recognised business trust for a specific period, and may at any time remove such suspension.

[4/2017]

(7) Where the Authority revokes the recognition of a recognised business trust under subsection (1) or suspends the recognition of a recognised business trust under subsection (6), it must notify the trustee-manager of the business trust and, where the Authority deems it necessary, the person who made the application to the Authority for recognition of the business trust under section 239D(1).

[4/2017]

(8) Subject to subsection (9), the Authority may, upon a written application made to it by the trustee-manager of the business trust or the person who made the application to the Authority for recognition of a business trust under section 239D(1), in such form and manner as may be prescribed, withdraw the recognition of that recognised business trust.

[4/2017]

(9) The Authority may refuse to withdraw the recognition of a recognised business trust under subsection (8) where the Authority is of the opinion that —

(*a*) there is any matter concerning the recognised business trust which should be investigated before the recognition is withdrawn; or

(*b*) the withdrawal of the recognition would not be in the public interest.

[4/2017]

(10) The Authority must not —

(*a*) revoke the recognition of a recognised business trust under subsection (1) without giving the trustee-manager of the business trust and, where the Authority deems it necessary, the person who made the application to the Authority for recognition of the business trust under section 239D(1), an opportunity to be heard;

(*b*) impose a direction on a person mentioned in subsection (2) without giving that person an opportunity to be heard;

(*c*) suspend the recognition of a recognised business trust under subsection (6) without giving the trustee-manager of the business trust and, where the Authority deems it necessary, the person who made the application to the Authority for recognition of the business trust under section 239D(1), an opportunity to be heard; or

(*d*) refuse the withdrawal of the recognition of a recognised business trust under subsection (9) without giving the person mentioned in subsection (8) an opportunity to be heard.

[4/2017]

(11) Despite subsection (10), an opportunity to be heard need not be given for a revocation or suspension on the ground that the continued recognition of the recognised business trust is against the public interest on the basis of any of the following circumstances:

(*a*) the person making the offer (being an entity), the issuer, the trustee-manager of the recognised business trust or the recognised business trust itself, is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;

(*b*) the person making the offer (being an individual) is an undischarged bankrupt, whether in Singapore or elsewhere;

(*c*) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of —

(i) any property of the person making the offer (being an entity) or the issuer;

(ii) any property of the trustee-manager of the recognised business trust; or

(iii) the trust property of the recognised business trust.

[4/2017]

(12) The following persons may appeal to the Minister within 30 days after being notified of the following decisions of the Authority:

(*a*) where the Authority revokes the recognition of a recognised business trust under subsection (1), or suspends the recognition of a recognised business trust under subsection (6), the person or persons mentioned in subsection (7);

(*b*) where the Authority has imposed a direction on a person under subsection (2), the person mentioned in subsection (2);

(*c*) where the Authority refuses to withdraw the recognition of a recognised business trust under subsection (9), the person mentioned in subsection (8).

[4/2017]

(13) A decision of the Minister in an appeal under subsection (12) is final.

[4/2017]

(14) Where the Authority revokes a recognition under subsection (1), suspends a recognition under subsection (6) or withdraws a recognition under subsection (8), it may —

(*a*) impose such conditions on the revocation, suspension or withdrawal (as the case may be) as it considers appropriate; and

(*b*) publish notice of the revocation, suspension or withdrawal (as the case may be), and the reason for the revocation, suspension or withdrawal (as the case may be), in such manner as it considers appropriate.

[4/2017]

Subdivision (2) — Prospectus requirements

Requirement for prospectus and profile statement, where relevant

240.—(1) A person must not make an offer of securities or securities-based derivatives contracts unless the offer —

(*a*) is made in or accompanied by a prospectus in respect of the offer —

(i) that is prepared in accordance with section 243;

(ii) a copy of which, being one that has been signed in accordance with subsection (4A), is lodged with the Authority; and

(iii) that is registered by the Authority; and

(*b*) complies with such requirements as the Authority may prescribe.

[4/2017]

(2) A person who lodges a preliminary document with the Authority is deemed to have lodged a prospectus with the Authority.

(3) A preliminary document referred to in subsection (2) must contain all information to be included in a prospectus other than such information as the Authority may

prescribe.

(4) Despite subsection (1), an offer of securities or securities-based derivatives contracts may be made in or accompanied by an extract from, or an abridged version of, a prospectus (called in this section a profile statement), instead of a prospectus, if —

(*a*) a prospectus in respect of such offer is prepared in accordance with section 243, and the profile statement is prepared in accordance with section 246;

(*b*) a copy of the prospectus and a copy of the profile statement, each of which has been signed in accordance with subsection (4A), are lodged with the Authority, and the prospectus is lodged no later than the profile statement;

(*c*) the prospectus and profile statement are registered by the Authority;

(*d*) sufficient copies of the prospectus are made available for collection at the times and places specified in the profile statement; and

(*e*) the offer complies with such requirements as the Authority may prescribe.

[4/2017]

(4A) The copy of a prospectus or profile statement lodged with the Authority must be signed —

(*a*) where the person making the offer is the issuer —

(i) in a case where the issuer is not the government of a State — by every director or equivalent person of the issuer and every person who is named therein as a proposed director or an equivalent person of the issuer; or

(ii) in a case where the issuer is the government of a State — by an official of that government who is authorised to sign the prospectus on its behalf;

(*b*) where the person making the offer is an individual and is not the issuer —

(i) in a case where the issuer is not the government of a State —

(A) by that person; and

(B) if the issuer is controlled by that person, one or more of his or her related parties, or that person and one or more of his or her related parties — by every director or equivalent person of the issuer and every person who is named therein as a proposed director or an equivalent

person of the issuer; or

(ii) in a case where the issuer is the government of a State — by that person;

(*c*) where the person making the offer is an entity (not being the government of a State) and is not the issuer —

(i) in a case where the issuer is not the government of a State —

(A) by every director or equivalent person of that entity; and

(B) if the issuer is controlled by that entity, one or more of its related parties, or that entity and one or more of its related parties — by every director or equivalent person of the issuer, and every person who is named therein as a proposed director or an equivalent person of the issuer; or

(ii) in a case where the issuer is the government of a State — by every director or equivalent person of that entity; and

(*d*) where the person making the offer is the government of a State and is not the issuer —

(i) in a case where the issuer is not the government of another State —

(A) by an official of the government of the State who is authorised to sign the prospectus on its behalf; and

(B) if the issuer is controlled by that government, one or more of its related parties, or that government and one or more of its related parties — by every director or every equivalent person of the issuer, and every person who is named therein as a proposed director or an equivalent person of the issuer; or

(ii) in a case where the issuer is the government of another State — by an official of the government of the firstmentioned State who is authorised to sign the prospectus on its behalf.

(4B) A requirement under subsection (4A) for the copy of a prospectus or profile statement to be signed by a director or an equivalent person is satisfied if the copy is signed —

(*a*) by that director or equivalent person; or

(*b*) by a person who is authorised in writing by that director or equivalent person to sign on his or her behalf.

(4C) A requirement under subsection (4A) for the copy of a prospectus or profile statement to be signed by a person named therein as a proposed director or an equivalent person is satisfied if the copy is signed —

(*a*) by that proposed director or equivalent person; or

(*b*) by a person who is authorised in writing by that proposed director or equivalent person to sign on his or her behalf.

(5) A person must not make any offer of securities or securities-based derivatives contracts in respect of an entity or a business trust that has not been formed or does not exist.

[4/2017]

(6) [*Deleted by Act 1 of 2005*]

(7) Any person who contravenes subsection (1) or (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

(8) The Authority may register a prospectus or a profile statement on any day within the period prescribed by the Authority from the date of lodgment thereof with the Authority, unless —

(*a*) the Authority gives to the person making the offer a notice of an opportunity to be heard under subsection (15);

(*b*) the Authority gives to the person making the offer a notice of an extension, in which case the Authority may, not later than 28 days from the date of lodgment of the prospectus or profile statement —

(i) register the prospectus or profile statement; or

(ii) give the person making the offer a notice of an opportunity to be heard under subsection (15);

(*c*) the person making the offer applies in writing to extend the period during which the prospectus or profile statement may be registered, and the Authority grants an extension as it thinks fit, in which case the Authority may, at any time up to and including the date on which the extended period ends —

(i) register the prospectus or profile statement; or

(ii) give the person making the offer a notice of an opportunity to be heard under subsection (15); or

(*d*) the person making the offer gives a written notice to the Authority to withdraw the lodgment of the prospectus or profile statement, in which case the Authority must not register the prospectus or profile statement.

[2/2009]

(8A) Where, after a notice of an opportunity to be heard has been given under subsection (8)(*a*), (*b*)(ii) or (*c*)(ii), the Authority decides not to refuse registration of the prospectus or profile statement, the Authority may proceed with the registration on such date as it considers appropriate, except that that date must not be earlier than such day from the date of lodgment of the prospectus or profile statement with the Authority as the Authority may prescribe.

[2/2009]

(8B) For the purposes of subsections (8) and (8A), the Authority may prescribe the same period and day for all offers or different periods and days for different offers.

[2/2009]

(9) Where a prospectus lodged with the Authority is a preliminary document, the Authority must not register the prospectus unless a copy of the prospectus which has been signed in accordance with subsection (4A) and which contains the information required to be stipulated in the prospectus under section 243, including such information which could be omitted from the preliminary document by virtue of subsection (3), has been lodged with the Authority.

(9A) A person making an offer of securities or securities-based derivatives contracts may lodge any amendment to a prospectus or profile statement in respect of that offer at any time before, but not after, the registration of the prospectus or profile statement by the Authority.

[4/2017]

(10) Subject to subsection (11) —

(*a*) where any amendment to a prospectus is lodged, the prospectus and any profile statement which is lodged is deemed for the purposes of

subsection (8) to have been lodged when such amendment was lodged; and

(*b*) where any amendment to a profile statement is lodged, the profile statement is deemed for the purposes of subsection (8) to have been lodged when such amendment was lodged.

(11) Where an amendment to a prospectus or profile statement is lodged with the consent of the Authority, the prospectus or profile statement as amended is deemed, for the purposes of subsection (8), to have been lodged when the original prospectus or profile statement was lodged with the Authority.

(11A) An amendment to a prospectus or profile statement that is lodged is treated as part of the original prospectus or profile statement.

(12) The Authority may, for public information, publish —

(*a*) a prospectus or profile statement lodged with the Authority under this section; and

(*b*) where applicable, the translation thereof in the English language lodged with the Authority under section 318A(1),

and, for the purposes of this subsection, the person making the offer must provide the Authority with a copy of the prospectus or profile statement and, where applicable, the translation in such form or medium for publication as the Authority may require.

(13) The Authority must refuse to register a prospectus if —

(*a*) the Authority is of the opinion that the prospectus contains a false or misleading statement;

(*b*) there is an omission from the prospectus of any information that is required to be included in it under section 243;

(*c*) the copy of the prospectus that is lodged with the Authority is not signed in accordance with subsection (4A);

(*d*) the Authority is of the opinion that the prospectus does not comply with the requirements of this Act;

(*e*) any written consent of an expert to the issue of the prospectus required under section 249, or a copy thereof which is verified as prescribed, is not lodged with the Authority;

(*ea*) any written consent of an issue manager to the issue of the prospectus required under section 249A(1), or a copy thereof which is verified as prescribed, is not lodged with the Authority;

(*eb*) any written consent of an underwriter to the issue of the prospectus required under section 249A(2), or a copy thereof which is verified as prescribed, is not lodged with the Authority; or

(*f*) the Authority is of the opinion that it is not in the public interest to do so.

(14) The Authority must refuse to register a profile statement if —

(*a*) the Authority is of the opinion that the profile statement contains a false or misleading statement;

(*b*) there is an omission from the profile statement of information required by section 246 to be included in it or an inclusion in the profile statement of information prohibited by that section from being included in it;

(*c*) the copy of the profile statement that is lodged with the Authority is not signed in accordance with subsection (4A);

(*ca*) any written consent of an expert to the issue of the profile statement required under section 249, or a copy thereof which is verified as prescribed, is not lodged with the Authority;

(*cb*) any written consent of an issue manager to the issue of the profile statement required under section 249A(1), or a copy thereof which is verified as prescribed, is not lodged with the Authority;

(*cc*) any written consent of an underwriter to the issue of the profile statement required under section 249A(2), or a copy thereof which is verified as prescribed, is not lodged with the Authority;

(*d*) the Authority is of the opinion that the profile statement does not comply with the requirements of this Act;

(*e*) the prospectus has not been registered by the Authority; or

(*f*) the Authority is of the opinion that it is not in the public interest to do so.

(15) The Authority must not refuse to register a prospectus under subsection (13) or a profile statement under subsection (14) without giving the person making the offer an opportunity to be heard, except that an opportunity to be heard need not be given if the refusal is on the ground that it is not in the public interest to register the prospectus or profile statement on the basis of any of the following circumstances:

(*a*) the person making the offer (being an entity), the issuer or the trustee-manager of the business trust or, where applicable, the underlying entity or the business trust is in the course of being wound up or otherwise

dissolved, whether in Singapore or elsewhere;

(*b*) the person making the offer (being an individual) is an undischarged bankrupt, whether in Singapore or elsewhere;

(*c*) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the person making the offer (being an entity), the issuer or the trustee-manager of the business trust or, where applicable, the underlying entity, or in relation to or in respect of the trust property of the business trust.

[4/2017]

(16) Any person making an offer may, within 30 days after the person is notified that the Authority has refused to register a prospectus or profile statement to which the person's offer relates under subsection (13) or (14), appeal to the Minister, whose decision is final.

(17) If —

(*a*) a prospectus or profile statement is issued, circulated or distributed before it has been registered by the Authority; or

(*b*) an application to subscribe for or purchase securities or securities-based derivatives contracts is accepted, or securities or securities-based derivatives contracts are allotted, issued or sold, before a prospectus and, where applicable, profile statement in respect of the securities or securities-based derivatives contracts has been registered by the Authority,

the person making the offer and every person who is knowingly a party to —

(*c*) the issue, circulation or distribution of the prospectus or profile statement;

(*d*) the acceptance of the application to subscribe for or purchase the securities or securities-based derivatives contracts; or

(*e*) the allotment, issue or sale of the securities or securities-based derivatives contracts,

as the case may be, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(18) This section is subject to section 240A.

(19) For the purposes of subsections (13)(*a*) and (14)(*a*), any reference to a statement includes a reference to any information presented, regardless of whether such information is in text or otherwise.

(20) Regulations made under this section may provide that a contravention of specified provisions thereof shall be an offence and may provide penalties not exceeding a fine of $50,000.

Requirement for product highlights sheet, where relevant

240AA.—(1) A person must not make an offer of any relevant securities or securities-based derivatives contracts, being an offer that is made in or accompanied by a prospectus or profile statement that complies with section 240, unless the prospectus or profile statement is accompanied by a product highlights sheet in respect of the offer —

(*a*) that complies with such requirements as the Authority may prescribe by regulations made under section 341; and

(*b*) a copy of which is lodged with the Authority.

[34/2012; 4/2017]

(2) A person must not publish or disseminate, whether in Singapore or elsewhere, any document relating to any offer or intended offer of any relevant securities or securities-based derivatives contracts, being an offer that is, or an intended offer that will be, made in or accompanied by a prospectus or profile statement that complies with section 240, if the document resembles or may otherwise be confused with a product highlights sheet, unless the person is required to do so —

(*a*) under any written law or rule of law, or by any court, in Singapore;

(*b*) under the laws and practices of, or by any court in, any foreign jurisdiction; or

(*c*) by any listing rules or other requirements of any approved exchange or overseas exchange.

[34/2012; 4/2017]

(3) The Authority may, for public information, publish —

(*a*) a product highlights sheet lodged with the Authority under this section; and

(*b*) where applicable, the translation thereof in the English language lodged with the Authority under section 318A(1).

[34/2012]

(4) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for

a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

(5) In this section —

"asset-backed securities" has the meaning given by section 262(3);

"relevant securities or securities-based derivatives contracts" means —

(*a*) asset-backed securities;

(*b*) structured notes; or

(*c*) such other securities or securities-based derivatives contracts as the Authority may prescribe by regulations made under section 341;

"single purpose vehicle" means an entity that is established solely in order to, or a trust that is established solely in order for its trustee to, do either or both of the following:

(*a*) act as counterparty to arrangements which involve the use of derivatives to create exposure to assets from which payments to holders of any structured notes are or will be primarily derived;

(*b*) issue any structured notes;

"specified financial institution" means —

(*a*) any bank licensed under the Banking Act 1970; or

(*b*) any entity that is, or that belongs to a class of entities that is, specified by the Authority, by notification in the *Gazette*, to be an entity, or a class of entities, for the purposes of this definition;

"structured notes" means any type of debentures or units of debentures —

(*a*) which is issued —

(i) in relation to —

(A) a synthetic securitisation transaction; or

(B) such other arrangement or transaction as the Authority may prescribe by regulations made under section 341; or

(ii) by a specified financial institution; and

(*b*) for which —

(i) the principal sum or any interest is, or both are, payable;

(ii) such other sum or sums as the Authority may prescribe by regulations made under section 341, is or are payable;

(iii) one or more underlying assets, being securities or securities-based derivatives contracts, equity interests, commodities, currencies or such other assets as the Authority may prescribe by regulations made under section 341, are to be physically delivered; or

(iv) 2 or more of sub-paragraphs (i), (ii) and (iii) apply,

in accordance with a formula based on one or more of the following:

(v) the performance of any type of securities or securities-based derivatives contracts, equity interest, commodity or index, or of a basket of 2 or more types of securities or securities-based derivatives contracts, equity interests, commodities or indices;

(vi) the credit risk or performance of any entity or a basket of entities;

(vii) the movement of interest rates or currency exchange rates;

(viii) such other variables as the Authority may prescribe by regulations made under section 341;

"synthetic securitisation transaction" means an arrangement involving the use of derivatives to create or replicate exposure to assets that are not transferred to, or are not a part of an asset pool held by, a single purpose vehicle.

[34/2012; 4/2017]

Exemption from requirement for product highlights sheet

240AB.—(1) Despite section 337(1), the Authority may, by regulations made under section 341, exempt any person or class of persons from all or any of the requirements in section 240AA, subject to such conditions or restrictions as the Authority may specify.

[4/2017]

(2) The Authority may, by written notice, exempt any person from all or any of the

requirements in section 240AA, subject to such conditions or restrictions as the Authority may specify by written notice.

[4/2017]

(3) The Authority may at any time add to, vary or revoke any condition or restriction imposed under subsection (1) or (2).

[4/2017]

(4) It is not necessary to publish any exemption granted under subsection (2) in the *Gazette*.

[4/2017]

(5) Any person who contravenes any condition or restriction imposed under subsection (1), (2) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

Debenture issuance programme

240A.—(1) A prospectus for every offer of debentures or units of debentures that is part of a debenture issuance programme must comprise —

(*a*) a base prospectus applicable to every offer under the debenture issuance programme; and

(*b*) a pricing statement applicable to that particular offer.

(2) A profile statement for every offer of debentures or units of debentures that is part of a debenture issuance programme must comprise —

(*a*) an extract from, or an abridged version of, a base prospectus referred to in subsection (1)(*a*) (called in this section a base profile statement); and

(*b*) a pricing statement applicable to that particular offer.

(3) In respect of an offer referred to in subsection (1), the requirements of section 240(1)(*a*)(ii) and (iii) are satisfied if a copy of the base prospectus and a copy of the pricing statement, each of which is signed in accordance with section 240(4A), have been lodged with and registered by the Authority, either separately, whether on the same date or on different dates, or as a single document.

(4) In respect of an offer referred to in subsection (2), the requirements of section 240(4)(*b*) and (*c*) are satisfied if a copy of the base profile statement and a copy of the pricing statement, each of which is signed in accordance with section 240(4A), have been lodged with and registered by the Authority, either separately, whether on the

same date or on different dates, or as a single document.

(5) To avoid doubt, where the base prospectus or base profile statement in relation to a debenture issuance programme has been lodged with and registered by the Authority, it is treated as having been lodged with and registered by the Authority in respect of every offer under that programme.

(6) For the purposes of the application of the provisions of this Subdivision to an offer referred to in subsection (1), a reference to a prospectus is, unless the context otherwise requires or the Authority has prescribed otherwise, to be read as a reference to both the base prospectus and the pricing statement.

(7) For the purposes of the application of the provisions of this Subdivision to an offer referred to in subsection (2), a reference to a profile statement is, unless the context otherwise requires or the Authority has prescribed otherwise, to be read as a reference to both the base profile statement and the pricing statement.

(8) The Authority may, by regulations, prescribe how the provisions of this Subdivision apply to an offer referred to in subsection (1) or (2).

(9) To avoid doubt, a pricing statement may be registered by the Authority at any time after its lodgment with the Authority.

Lodging supplementary document or replacement document

241.—(1) If, after a prospectus or profile statement is registered but before the close of the offer of securities or securities-based derivatives contracts, the person making that offer becomes aware of —

(*a*) a false or misleading statement in the prospectus or profile statement;

(*b*) an omission from the prospectus of any information that should have been included in it under section 243, or an omission from the profile statement of any information that should have been included in it under section 246, as the case may be; or

(*c*) a new circumstance that —

(i) has arisen since the prospectus or profile statement was lodged with the Authority; and

(ii) would have been required by —

(A) section 243 to be included in the prospectus; or

(B) section 246 to be included in the profile statement,

if it had arisen before the prospectus or the profile statement (as the case may be) was lodged,

and that is materially adverse from the point of view of an investor, the person may lodge a supplementary or replacement prospectus, or a supplementary or replacement profile statement (called in this section a supplementary or replacement document, as the case may be), with the Authority.

[4/2017]

(1A) If, after a base prospectus or a base profile statement referred to in section 240A is registered but before the expiration of 24 months from the registration of the base prospectus by the Authority, the person making that offer intends to update any information or include any new information in the base prospectus or base profile statement, the person may lodge a supplementary or replacement document with the Authority, provided that no offer to which the base prospectus or base profile statement relates is subsisting at the time of the lodgment.

(1B) Subsections (7) to (16) do not apply to a supplementary or replacement document which is lodged under subsection (1A).

(1C) For the purposes of subsection (1A), an offer is not treated as subsisting if —

(*a*) a pricing statement in respect of the offer of debentures or units of debentures has not been registered by the Authority under section 240A; or

(*b*) a pricing statement in respect of the offer of debentures or units of debentures has been registered by the Authority under section 240A, and —

(i) the offer has closed with no application to subscribe for or purchase the debentures or units of debentures having been received or accepted; or

(ii) one or more applications to subscribe for or purchase the debentures or units of debentures have been received or accepted, and —

(A) in a case where the debentures or units of debentures are or will be listed for quotation on an approved exchange, trading in them has commenced; or

(B) in any other case, all of those debentures or units of debentures have been issued or sold.

[4/2017]

(2) At the beginning of a supplementary document, there must be —

(*a*) a statement that it is a supplementary prospectus or a supplementary profile statement, as the case may be;

(*b*) an identification of the prospectus or profile statement it supplements;

(*c*) an identification of any previous supplementary document lodged with the Authority in relation to the offer; and

(*d*) a statement that it is to be read together with the prospectus or profile statement it supplements and any previous supplementary document in relation to the offer.

(3) At the beginning of a replacement document, there must be —

(*a*) a statement that it is a replacement prospectus or a replacement profile statement, as the case may be; and

(*b*) an identification of the prospectus or profile statement it replaces.

(4) The supplementary document and the replacement document must be dated with the date on which they are lodged with the Authority.

(5) The person making the offer must take reasonable steps —

(*a*) to inform potential investors of the lodgment of any supplementary or replacement document under subsection (1) or (1A); and

(*b*) to make available to them the supplementary document or replacement document.

(6) For the purposes of the application of this Division to events that occur after the lodgment of the supplementary document —

(*a*) where the supplementary document is a supplementary prospectus, the prospectus in relation to the offer is taken to be the original prospectus together with the supplementary prospectus and any previous supplementary prospectus in relation to the offer; and

(*b*) where the supplementary document is a supplementary profile statement, the profile statement in relation to the offer is taken to be the original profile statement together with the supplementary profile statement and any previous supplementary profile statement in relation to the offer.

(6A) [*Deleted by Act 1 of 2005*]

(6B) For the purposes of the application of this Division to events that occur after the

lodgment of the replacement document —

(*a*) where the replacement document is a replacement prospectus, the prospectus in relation to the offer is taken to be the replacement prospectus; and

(*b*) where the replacement document is a replacement profile statement, the profile statement in relation to the offer is taken to be the replacement profile statement.

(7) If a supplementary document or replacement document is lodged with the Authority, the offer must be kept open for at least 14 days after the lodgment of the supplementary document or replacement document.

(8) Where, prior to the lodgment of the supplementary document or replacement document, applications have been made under the original prospectus or profile statement to subscribe for securities or securities-based derivatives contracts, then —

(*a*) where the securities or securities-based derivatives contracts have not been issued to the applicants, the person making the offer —

(i) must —

(A) within 2 days (excluding any Saturday, Sunday or public holiday) from the date of lodgment of the supplementary document or replacement document, give the applicants written notice of how to obtain, or arrange to receive, a copy of the supplementary document or replacement document (as the case may be) and provide the applicants with an option to withdraw their applications; and

(B) take all reasonable steps to make available within a reasonable period the supplementary document or replacement document (as the case may be) to the applicants who have indicated that they wish to obtain, or who have arranged to receive, a copy of the supplementary document or replacement document;

(ii) must, within 7 days from the date of lodgment of the supplementary document or replacement document, give the applicants the supplementary document or replacement document (as the case may be) and provide the applicants with an option to withdraw their applications; or

(iii) must —

(A) treat the applications as withdrawn and cancelled, in which case the applications are deemed to have been withdrawn and cancelled; and

(B) within 7 days from the date of lodgment of the supplementary document or replacement document, pay to the applicants all moneys the applicants have paid on account of their applications for the securities or securities-based derivatives contracts; or

(*b*) where the securities or securities-based derivatives contracts have been issued to the applicants, the person making the offer —

(i) must —

(A) within 2 days (excluding any Saturday, Sunday or public holiday) from the date of lodgment of the supplementary document or replacement document, give the applicants written notice of how to obtain, or arrange to receive, a copy of the supplementary document or replacement document (as the case may be) and provide the applicants with an option to return, to the person making the offer, those securities or securities-based derivatives contracts which they do not wish to retain title in; and

(B) take all reasonable steps to make available within a reasonable period the supplementary document or replacement document (as the case may be) to the applicants who have indicated that they wish to obtain, or who have arranged to receive, a copy of the supplementary document or replacement document;

(ii) must, within 7 days from the date of lodgment of the supplementary document or replacement document, give the applicants the supplementary document or replacement document (as the case may be) and provide the applicants with an option to return, to the person making the offer, those securities or securities-based derivatives contracts which they do not wish to retain title in; or

(iii) must —

(A) treat the issue of the securities or securities-based derivatives contracts as void, in which case the issue is deemed void; and

(B) within 7 days from the date of lodgment of the supplementary document or replacement document, pay to the applicants all moneys paid by them for the securities or securities-based derivatives contracts.

[4/2017]

(9) Subsections (8)(*b*) and (11) have effect despite sections 76 and 76A, and Division 3A of Part 4, of the Companies Act 1967.

(10) An applicant who wishes to exercise the applicant's option under subsection (8)(*a*)(i) or (ii) to withdraw the applicant's application must, within 14 days from the date of lodgment of the supplementary document or replacement document, notify the person making the offer of this, upon which that person must, within 7 days from the receipt of such notification, pay to the applicant all moneys paid by the applicant on account of the applicant's application for the securities or securities-based derivatives contracts.

[4/2017]

(11) An applicant who wishes to exercise the applicant's option under subsection (8)(*b*)(i) or (ii) to return securities or securities-based derivatives contracts issued to the applicant must, within 14 days from the date of lodgment of the supplementary document or replacement document, notify the person making the offer of this and return all documents (if any) purporting to be evidence of title to those securities or securities-based derivatives contracts to that person, upon which that person must, within 7 days from the receipt of such notification and documents (if any) pay to the applicant all moneys paid by the applicant for the securities or securities-based derivatives contracts, and the issue of those securities or securities-based derivatives contracts is deemed to be void.

[4/2017]

(12) Where, prior to the lodgment of the supplementary document or replacement document, applications have been made under the original prospectus or profile statement to purchase securities or securities-based derivatives contracts, then —

(*a*) where the securities or securities-based derivatives contracts have not been transferred to the applicants, the person making the offer —

(i) must —

(A) within 2 days (excluding any Saturday, Sunday or public holiday) from the date of lodgment of the supplementary document or replacement document, give the applicants written notice of how to obtain, or arrange to receive, a copy of the supplementary document or replacement document (as the case may be) and provide the applicants with an option to withdraw their applications; and

(B) take all reasonable steps to make available within a reasonable period the supplementary document or replacement document (as the case may be) to the applicants who have indicated that they wish to obtain, or who have arranged to receive, a copy of the supplementary document or replacement document;

(ii) must, within 7 days from the date of lodgment of the supplementary document or replacement document, give the applicants the supplementary document or replacement document (as the case may be) and provide the applicants with an option to withdraw their applications; or

(iii) must —

(A) treat the applications as withdrawn and cancelled, in which case the applications are deemed to have been withdrawn and cancelled; and

(B) within 7 days from the date of lodgment of the supplementary document or replacement document, pay to the applicants all moneys the applicants have paid on account of their applications for the securities or securities-based derivatives contracts; or

(*b*) where the securities or securities-based derivatives contracts have been transferred to the applicants, the person making the offer —

(i) must —

(A) within 2 days (excluding any Saturday, Sunday or public holiday) from the date of lodgment of the supplementary document or replacement document,

give the applicants written notice of how to obtain, or arrange to receive, a copy of the supplementary document or replacement document (as the case may be) and provide the applicants with an option to return, to the person making the offer, those securities or securities-based derivatives contracts which they do not wish to retain title in; and

(B) take all reasonable steps to make available within a reasonable period the supplementary document or replacement document (as the case may be) to the applicants who have indicated that they wish to obtain, or who have arranged to receive, a copy of the supplementary document or replacement document;

(ii) must, within 7 days from the date of lodgment of the supplementary document or replacement document, give the applicants the supplementary document or replacement document (as the case may be) and provide the applicants with an option to return, to the person making the offer, those securities or securities-based derivatives contracts which they do not wish to retain title in; or

(iii) must treat the sale of the securities or securities-based derivatives contracts as void, in which case the sale is deemed void, and must —

(A) if documents purporting to evidence title to the securities or securities-based derivatives contracts (called in this paragraph the title documents) have been issued to the applicants —

(AA) within 7 days from the date of lodgment of the supplementary document or replacement document, inform the applicants to return the title documents to the person making the offer within 14 days from the date of lodgment of the supplementary document or replacement document; and

(AB) within 7 days from the date of receipt of the

title documents or the date of lodgment of the supplementary document or replacement document, whichever is the later, pay to the applicants all moneys paid by them for the securities or securities-based derivatives contracts; or

(B) if no title documents have been issued to the applicants, within 7 days from the date of the lodgment of the supplementary document or replacement document, pay to the applicants all moneys paid by them for the securities or securities-based derivatives contracts.

[4/2017]

(13) An applicant who wishes to exercise the applicant's option under subsection (12)(*a*)(i) or (ii) to withdraw the applicant's application must, within 14 days from the date of lodgment of the supplementary document or replacement document, notify the person making the offer of this, upon which that person must, within 7 days of the receipt of such notification, pay to the applicant all moneys paid by the applicant on account of the applicant's application for the securities or securities-based derivatives contracts.

[4/2017]

(14) An applicant who wishes to exercise the applicant's option under subsection (12)(*b*)(i) or (ii) to return securities or securities-based derivatives contracts sold to the applicant must, within 14 days from the date of lodgment of the supplementary document or replacement document, notify the person making the offer of this and return all documents (if any) purporting to evidence title to those securities or securities-based derivatives contracts to the person making the offer, upon which that person must, within 7 days from the receipt of such notification and documents (if any) pay to the applicant all moneys paid by the applicant for the securities or securities-based derivatives contracts and the sale of the securities or securities-based derivatives contracts is deemed to be void.

[4/2017]

(15) Any person who contravenes subsection (8) or (12) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 and, in the case of a continuing offence, to a further fine not exceeding $10,000 for every day or part of a day during which the offence continues after conviction.

(16) Any person who contravenes any other provision of this section shall be guilty of

an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

(17) For the purposes of subsection (1)(*a*), the reference to a statement includes a reference to any information presented, regardless of whether such information is in text or otherwise.

Stop order for prospectus and profile statement

242.—(1) If a prospectus has been registered and —

(*a*) the Authority is of the opinion that the prospectus contains a false or misleading statement;

(*b*) there is an omission from the prospectus of any information that is required to be included in it under section 243;

(*c*) the Authority is of the opinion that the prospectus does not comply with the requirements of this Act; or

(*d*) the Authority is of the opinion that it is in the public interest to do so,

the Authority may by a written order (called in this section a stop order) served on the person making the offer of securities or securities-based derivatives contracts to which the prospectus relates direct that no or no further securities or securities-based derivatives contracts be allotted, issued or sold.

[4/2017]

(2) If a profile statement has been registered and —

(*a*) the Authority is of the opinion that the profile statement contains a false or misleading statement;

(*b*) there is an omission from the profile statement of any information that is required to be included in it under section 246;

(*c*) the Authority is of the opinion that the profile statement does not comply with the requirements of this Act; or

(*d*) the Authority is of the opinion that it is in the public interest to do so,

the Authority may by a written order (called in this section a stop order) served on the person making the offer of securities or securities-based derivatives contracts to which the profile statement relates direct that no or no further securities or securities-based derivatives contracts be allotted, issued or sold.

[4/2017]

(3) Despite subsections (1) and (2), the Authority must not serve a stop order if any of the securities or securities-based derivatives contracts to which the prospectus or profile statement relates has been issued or sold, and listed for quotation on an approved exchange and trading in them has commenced.

[4/2017]

(4) The Authority must not serve a stop order under subsection (1) or (2) without giving the person making the offer an opportunity to be heard, except that an opportunity to be heard need not be given if the stop order is served on the ground that it is in the public interest to do so on the basis of any of the following circumstances:

(*a*) the person making the offer (being an entity), the issuer or the trustee-manager of the business trust or, where applicable, the underlying entity or the business trust is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;

(*aa*) the person making the offer (being an individual) is an undischarged bankrupt, whether in Singapore or elsewhere;

(*b*) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of —

(i) any property of the person making the offer (being an entity), the issuer or, where applicable, the underlying entity;

(ii) any property of the trustee-manager of the business trust; or

(iii) the trust property of the business trust.

[4/2017]

(5) Where applications to subscribe for securities or securities-based derivatives contracts to which the prospectus or profile statement relates have been made prior to the stop order, then —

(*a*) where the securities or securities-based derivatives contracts have not been issued to the applicants —

(i) the applications are deemed to have been withdrawn and cancelled; and

(ii) the person making the offer must, within 14 days from the date of the stop order, pay to the applicants all moneys the applicants have paid on account of their applications for the securities or securities-based derivatives contracts; or

(*b*) where the securities or securities-based derivatives contracts have been issued to the applicants —

(i) the issue of the securities or securities-based derivatives contracts is deemed to be void; and

(ii) the person making the offer must, within 14 days from the date of the stop order, pay to the applicants all moneys paid by them for the securities or securities-based derivatives contracts.

[4/2017]

(6) Subsection (5)(*b*) has effect despite sections 76 and 76A, and Division 3A of Part 4, of the Companies Act 1967.

(7) Where applications to purchase securities or securities-based derivatives contracts to which the prospectus or profile statement relates have been made prior to the stop order, then —

(*a*) where the securities or securities-based derivatives contracts have not been transferred to the applicants —

(i) the applications are deemed to have been withdrawn and cancelled; and

(ii) the person making the offer must, within 14 days from the date of the stop order, pay to the applicants all moneys the applicants have paid on account of their applications for the securities or securities-based derivatives contracts; or

(*b*) where the securities or securities-based derivatives contracts have been transferred to the applicants, the sale is deemed to be void, and the person making the offer must —

(i) if documents purporting to evidence title to the securities or securities-based derivatives contracts have been issued to the applicants —

(A) within 7 days from the date of the stop order, inform the applicants to return such documents to the person making the offer within 14 days from that date; and

(B) within 7 days from the date of the receipt of those documents or the date of the stop order, whichever is the later, pay to the applicants all moneys paid by them

for the securities or securities-based derivatives contracts; or

(ii) if no such documents have been issued to the applicants, within 7 days from the date of the stop order, pay to the applicants all moneys paid by them for the securities or securities-based derivatives contracts.

[4/2017]

(8) If the Authority is of the opinion that any delay in serving a stop order pending the holding of a hearing required under subsection (4) is not in the interests of the public, the Authority may, without giving an opportunity to be heard, serve an interim stop order on the person making the offer directing that no or no further securities or securities-based derivatives contracts to which the prospectus or profile statement relates be allotted, issued or sold.

[4/2017]

(9) An interim stop order, unless revoked by the Authority, is in force —

(*a*) in a case where —

(i) it is served during a hearing under subsection (4); or

(ii) a hearing under subsection (4) is commenced while it is in force,

until the Authority makes an order under subsection (1) or (2); and

(*b*) in any other case, for a period of 14 days from the day on which the interim stop order is served.

(10) Subsections (5) and (7) do not apply where only an interim stop order has been served.

(11) Any person who fails to comply with a stop order served under subsection (1) or (2) or an interim stop order served under subsection (8) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

(12) Any person who contravenes subsection (5) or (7) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 and, in the case of a continuing offence, to a further fine not exceeding $10,000 for every day or part of a day during which the offence continues after conviction.

(13) For the purposes of subsections (1)(*a*) and (2)(*a*), any reference to a statement includes a reference to any information presented, regardless of whether such information is in text or otherwise.

Contents of prospectus

243.—(1) A prospectus for an offer of securities or securities-based derivatives contracts must contain —

(*a*) all the information that investors and their professional advisers would reasonably require to make an informed assessment of the matters specified in subsection (3); and

(*b*) the matters prescribed by the Authority.

[4/2017]

(2) The prospectus must, with respect to subsection (1)(*a*), contain such information —

(*a*) only to the extent to which it is reasonable for investors and their professional advisers to expect to find in the prospectus; and

(*b*) only to the extent that a person whose knowledge is relevant —

(i) actually knows the information; or

(ii) in the circumstances ought reasonably to have obtained the information by making enquiries.

(3) The matters referred to in subsection (1)(*a*) relate to —

(*a*) the rights and liabilities attaching to the securities or securities-based derivatives contracts;

(*b*) in the case of an offer of securities or securities-based derivatives contracts other than units or derivatives of units in a business trust, the assets and liabilities, profits and losses, financial position and performance, and prospects of the issuer;

(*c*) if the underlying entity is controlled by —

(i) the person making the offer;

(ii) one or more of the related parties of the person making the offer; or

(iii) the person making the offer and one or more of that person's

related parties,

the assets and liabilities, profits and losses, financial position and performance, and prospects of that entity;

(*d*) in the case of an offer of units of shares or debentures, where —

(i) the person making the offer is or will be required to issue or deliver the relevant units, or meet financial or contractual obligations to the holders of those units; or

(ii) an entity which is controlled by one of the following is or will be required to issue or deliver the relevant units, or meet financial or contractual obligations to the holders of those units:

(A) the person making the offer;

(B) one or more of the related parties of the person making the offer;

(C) the person making the offer and one or more of that person's related parties,

the capacity of that person or entity to issue or deliver the relevant securities, or the ability of that person or entity to meet those financial or contractual obligations;

(*e*) in the case of an offer of securities or securities-based derivatives contracts being units or derivatives of units in a business trust, where —

(i) the person making the offer is the trustee-manager of the business trust; or

(ii) the trustee-manager of the business trust is controlled by —

(A) the person making the offer;

(B) one or more of the related parties of the person making the offer; or

(C) the person making the offer and one or more of that person's related parties,

the assets and liabilities, profits and losses, financial position and performance of the business trust and of the trustee-manager, and the prospects of the business trust;

(*f*) in the case of an offer of securities or securities-based derivatives contracts being derivatives of units in a business trust issued by an entity (*A*) other than the trustee-manager of the business trust, where —

(i) the person making the offer is *A*; or

(ii) *A* is controlled by —

(A) the person making the offer;

(B) one or more of the related parties of the person making the offer; or

(C) the person making the offer and one or more of that person's related parties,

the assets and liabilities, profits and losses, financial position and performance, and prospects of *A*; and

(*g*) in the case of an offer of securities or securities-based derivatives contracts being derivatives of units in the business trust, where —

(i) the person making the offer is or will be required to issue or deliver the relevant units or derivatives of units, or meet financial or contractual obligations to the holders of those derivatives of units; or

(ii) an entity which is controlled by one of the following is or will be required to issue or deliver the relevant units or derivatives of units, or meet financial or contractual obligations to the holders of those derivatives of units:

(A) the person making the offer;

(B) one or more of the related parties of the person making the offer;

(C) the person making the offer and one or more of that person's related parties,

the capacity of that person or entity to issue or deliver the relevant units or derivatives of units in that business trust, or the ability of that person or entity to meet those financial or contractual obligations.

[4/2017]

(4) In deciding what information must be included under subsection (1)(*a*), regard must be had to —

(*a*) the nature of the securities or securities-based derivatives contracts and the nature of the entity concerned;

(*b*) the matters that likely investors may reasonably be expected to know; and

(*c*) the fact that certain matters may reasonably be expected to be known to the professional advisers of such investors.

[4/2017]

(4A) Subject to any condition or restriction as may be prescribed by regulations made under section 341, the information mentioned in subsection (1) may be incorporated in the prospectus by reference to a document (called in this subsection and subsection (4B) the reference document) lodged with the Authority together with the prospectus.

[4/2017]

(4B) For the purposes of this Division, the information contained in the reference document is to be regarded as part of the prospectus.

[4/2017]

(5) For the purposes of subsection (2)(*b*), a person's knowledge is relevant only if the person is one of the following:

(*a*) the person making the offer;

(*b*) if the person making the offer is an entity, a director or an equivalent person of the entity;

(*c*) the issuer;

(*d*) a director or an equivalent person, or a proposed director or an equivalent person, of the issuer;

(*da*) a person named in the prospectus with the person's consent as an underwriter to the issue or sale;

(*e*) a person named in the prospectus as a stockbroker to the issue or sale if the person participates in any way in the preparation of the prospectus;

(*f*) a person named in the prospectus with the person's consent as having made a statement —

(i) that is included in the prospectus; or

(ii) on which a statement made in the prospectus is based;

(*g*) a person named in the prospectus with the person's consent as having performed a particular professional or advisory function.

(6) A condition requiring or binding an applicant for securities or securities-based derivatives contracts to waive compliance with any requirement of this section, or purporting to affect the applicant with notice of any contract, document or matter not specifically referred to in the prospectus, is void.

[4/2017]

(7) This section does not affect any liability that a person has under any other law.

(8) In subsection (3)(*e*) —

"assets and liabilities, profits and losses, financial position and performance", in relation to a business trust, means the assets and liabilities, profits and losses, financial position and performance of that business trust derived from the accounting records and other records kept by the trustee-manager of that business trust;

"prospects", in relation to a business trust, means the business and financial prospects anticipated with respect to the operations of the trustee-manager of the business trust, in its capacity as trustee-manager of the business trust.

[4/2017]

244. [*Repealed by Act 16 of 2003*]

Retention of over-subscriptions and statement of asset-backing in debenture issues

245.—(1) An entity must not accept or retain subscriptions to a debenture issue in excess of the amount of the issue as disclosed in the prospectus unless the entity has specified in the prospectus —

(*a*) that it expressly reserves the right to accept or retain over-subscriptions; and

(*b*) a limit expressed as a specific sum of money on the amount of over-subscriptions that may be accepted or retained, being an amount not more than 25% in excess of the amount of the issue as disclosed in the prospectus.

(2) Subject to regulations made by the Authority for the purposes of this subsection, where an entity specifies in a prospectus relating to a debenture issue that it reserves the right to accept or retain over-subscriptions —

(*a*) the entity must not make, authorise or permit any statement of or reference as to the asset-backing for the issue to be made or contained in any prospectus relating to the issue, other than a statement or reference to the total tangible assets and the total liabilities of the entity and of its guarantor entities; and

(*b*) the prospectus must contain a statement or reference as to what the total assets and total liabilities of the entity would be if over-subscriptions to the limit specified in the prospectus were accepted or retained.

(3) Every entity or other person that contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

Contents of profile statement

246.—(1) A profile statement for an offer of securities or securities-based derivatives contracts must contain —

(*a*) the following particulars:

(i) identification of the person making the offer;

(i*a*) where the person making the offer is not the issuer, identification of the issuer and, where applicable, the underlying entity;

(i*b*) in the case of an offer of securities or securities-based derivatives contracts being units or derivatives of units in a business trust, identification of the business trust, the trustee-manager of the business trust and the issuer;

(ii) identification of the persons signing the profile statement;

(iii) the nature of the securities or securities-based derivatives contracts;

(iv) the nature of the risks involved in investing in the securities or securities-based derivatives contracts;

(v) details of all amounts payable in respect of the securities or securities-based derivatives contracts (including any amount by way of fee, commission or charge);

(*b*) a statement that copies of the prospectus are available for collection at the times and places specified in the profile statement; and

(*c*) a statement that the persons referred to in section 240(4A) who have signed the profile statement are satisfied that the profile statement contains a fair

summary of the key information in the prospectus.

[4/2017]

(2) A profile statement must not contain —

(*a*) any statement that is false or misleading in the form and context in which it is included;

(*b*) any material information that is not contained in the prospectus; and

(*c*) any material information that differs in any material particular from that set out in the prospectus.

(3) For the purposes of subsection (2)(*a*), the reference to a statement includes a reference to any information presented, regardless of whether such information is in text or otherwise.

Exemption from requirements as to form or content of prospectus or profile statement

247.—(1) The Authority may exempt any person or any prospectus or profile statement from any requirement of this Act relating to the form or content of a prospectus or profile statement, subject to such conditions or restrictions as the Authority may determine.

(2) The Authority must not grant an exemption under subsection (1) unless it is of the opinion that —

(*a*) the cost of complying with the requirement in respect of which exemption has been applied for outweighs the resulting protection to investors; or

(*b*) it would not be prejudicial to the public interest if the requirement in respect of which exemption has been applied for were dispensed with.

(3) The Authority may exempt any class of persons, or any class or description of prospectuses or profile statements, from any requirement of this Act relating to the form or content of a prospectus or profile statement, subject to such conditions or restrictions as the Authority may determine.

(4) [*Deleted by Act 16 of 2003*]

(5) Any person who contravenes any of the conditions or restrictions imposed under subsection (1) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

Exemption for certain governmental and international entities as regards signing of copy of prospectus or profile statement by all directors or equivalent persons

248.—(1) This section applies only to entities that are both of a governmental and international character.

(2) An entity to which this section applies may apply in writing to the Authority for an exemption from the requirements of section 240(1)(*a*)(ii), (4)(*b*), (4A), (13)(*c*) and (14)(*c*) and the Authority may, if it considers those requirements unduly burdensome on the entity, exempt such entity from complying therewith.

(3) The Authority may subject such exemption to a requirement that such minimum number of directors or equivalent persons who are resident in Singapore as the Authority may, in that case, decide must sign the copy of the prospectus or profile statement.

(4) In the event that no director or equivalent person is resident in Singapore, the Authority may permit a duly authorised agent to sign the prospectus or profile statement so long as such authorisation is supported by a resolution of the board of the entity.

(5) The Authority may, if satisfied that a particular entity cannot comply with any of the requirements in subsection (3) or (4), grant the exemption applied for.

(6) Any prospectus or profile statement that complies with the terms of exemption granted by the Authority is deemed to be a prospectus or profile statement for the purposes of this Division and a copy of such prospectus or profile statement must be registered by the Authority.

Expert's consent to issue of prospectus or profile statement containing statement by him or her

249.—(1) Where an offer of securities or securities-based derivatives contracts is made in or accompanied by a prospectus or profile statement which includes a statement purporting to be made by, or based on a statement made by, an expert, the prospectus or profile statement must not be issued unless —

(*a*) the expert has given, and has not before the registration of the prospectus or profile statement (as the case may be) withdrawn his or her written consent to the issue thereof with the statement included in the form and context in which it is included; and

(*b*) there appears in the prospectus or profile statement (as the case may be) a statement that the expert has given and has not withdrawn his or her consent.

[4/2017]

(1A) Every person making the offer must cause a true copy of every written consent

referred to in subsection (1) to be deposited, within 7 days after the registration of the prospectus or profile statement, at the registered office of the issuer in Singapore or, if the issuer has no registered office in Singapore, at the address in Singapore specified in the prospectus for that purpose.

(1B) Every issuer must keep, and make available for inspection by its members and creditors and persons who have subscribed for or purchased the securities or securities-based derivatives contracts to which the prospectus or profile statement relates, without payment of any fee, a true copy of every written consent deposited in accordance with subsection (1A) for a period of at least 6 months after the registration of the prospectus or profile statement.

[4/2017]

(2) If any prospectus or profile statement is issued in contravention of subsection (1), the person making the offer and every person who is knowingly a party to the issue thereof shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

(3) The Authority may exempt any person or class of persons, or any prospectus or profile statement or class or description of prospectuses or profile statements, from this section, subject to such conditions or restrictions as the Authority may determine.

(4) Any person who contravenes any of the conditions or restrictions imposed under subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

Consent of issue manager and underwriter to being named in prospectus or profile statement

249A.—(1) Where an offer of securities or securities-based derivatives contracts is made in or accompanied by a prospectus or profile statement in which a person is named as the issue manager to the offer, the prospectus or profile statement must not be issued unless —

(*a*) the person has given, and has not before the registration of the prospectus or profile statement (as the case may be) withdrawn the person's written consent to being named in the prospectus or profile statement as issue manager to that offer; and

(*b*) there appears in the prospectus or profile statement (as the case may be) a

statement that the person has given and has not withdrawn the person's consent.

[4/2017]

(2) Where an offer of securities or securities-based derivatives contracts is made in or accompanied by a prospectus or profile statement in which a person is named as the underwriter (but not a sub-underwriter) to the offer, the prospectus or profile statement must not be issued unless —

(*a*) the person has given, and has not before the registration of the prospectus or profile statement (as the case may be) withdrawn the person's written consent to being named in the prospectus or profile statement as underwriter to that offer; and

(*b*) there appears in the prospectus or profile statement (as the case may be) a statement that the person has given and has not withdrawn such consent.

[4/2017]

(3) If any prospectus or profile statement is issued in contravention of subsection (1) or (2), the person making the offer and every person who is knowingly a party to the issue thereof shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

(4) Every person making the offer must cause a true copy of every written consent referred to in subsections (1) and (2) to be deposited, within 7 days after the registration of the prospectus or profile statement, at the registered office of the issuer in Singapore or, if it has no registered office in Singapore, at the address in Singapore specified in the prospectus for that purpose.

(5) Every issuer must keep, and make available for inspection by its members and creditors and persons who have subscribed for or purchased the securities or securities-based derivatives contracts to which the prospectus or profile statement relates, without payment of any fee, a true copy of every written consent deposited in accordance with subsection (4) for a period of at least 6 months after the registration of the prospectus or profile statement.

[4/2017]

Duration of validity of prospectus and profile statement

250.—(1) A person must not make an offer of securities or securities-based derivatives contracts, or allot, issue or sell any securities or securities-based derivatives contracts, on the basis of a prospectus or profile statement after the expiration of the period referred to in subsection (3).

[4/2017]

(2) In a case where an entity makes an offer of securities or securities-based derivatives contracts or where the securities or securities-based derivatives contracts being offered are those issued by an entity or a proposed entity, an officer or equivalent person or a promoter of the entity or proposed entity must not authorise or permit —

(*a*) the offer of those securities or securities-based derivatives contracts; or

(*b*) the allotment, issue or sale of those securities or securities-based derivatives contracts,

on the basis of a prospectus or profile statement after the expiration of the period referred to in subsection (3).

[4/2017]

(3) The period under subsection (1) or (2) is —

(*a*) in a case where the securities or securities-based derivatives contracts are debentures or units of debentures issued under a debenture issuance programme under section 240A, 24 months from the date of registration by the Authority of the base prospectus in relation to such offer, allotment, issue or sale; or

(*b*) in any other case, 6 months from the date of registration by the Authority of the prospectus in relation to such offer, allotment, issue or sale.

[4/2017]

(4) If default is made in complying with subsection (1) or (2), the person and, in the case of an entity or a proposed entity, every officer or equivalent person or promoter of the entity or proposed entity shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

(5) An allotment, an issue or a sale of securities or securities-based derivatives contracts that is made in contravention of subsection (1) or (2) is not, by reason only of that fact, voidable or void.

[4/2017]

Restrictions on advertisements, etc.

251.—(1) If a prospectus is required for an offer or intended offer of securities or securities-based derivatives contracts, a person must not —

(*a*) advertise the offer or intended offer; or

(*b*) publish a statement that —

(i) directly or indirectly refers to the offer or intended offer; or

(ii) is reasonably likely to induce persons to subscribe for or purchase the securities or securities-based derivatives contracts,

unless the advertisement or publication is authorised by this section.

[4/2017]

(2) In determining whether a statement —

(*a*) indirectly refers to an offer or intended offer of securities or securities-based derivatives contracts; or

(*b*) is reasonably likely to induce persons to subscribe for or purchase securities or securities-based derivatives contracts,

regard must be had to whether the statement —

(*c*) forms part of the normal advertising —

(i) of an entity's products or services and is genuinely directed at maintaining its existing customers, or attracting new customers, for those products or services; or

(ii) by a trustee-manager of a business trust on behalf of the business trust in respect of the products or services offered by the trustee-manager on behalf of the business trust, and is genuinely directed at maintaining existing customers, or attracting new customers, for those products or services;

(*d*) communicates information that materially deals with the affairs of the entity or the business trust; and

(*e*) is likely to encourage investment decisions being made on the basis of the statement rather than on the basis of information contained in a prospectus or profile statement.

[4/2017]

(3) Despite subsection (6), a person may, before a prospectus or profile statement is registered by the Authority, disseminate a preliminary document which has been lodged with the Authority to institutional investors, relevant persons as defined in section 275(2) or persons to whom an offer referred to in section 275(1A) is to be made without contravening subsection (1), if —

(*a*) the front page of the preliminary document contains —

(i) the following statement:

"This is a preliminary document and is subject to further amendments and completion in the prospectus to be registered by the Monetary Authority of Singapore.";

(ii) a statement that a person to whom a copy of the preliminary document has been issued must not circulate it to any other person; and

(iii) a statement in bold lettering that no offer or agreement may be made on the basis of the preliminary document to purchase or subscribe for any securities or securities-based derivatives contracts to which the preliminary document relates;

(*b*) the preliminary document does not contain or have attached to it any form of application that will facilitate the making by any person of an offer of the securities or securities-based derivatives contracts to which the preliminary document relates, or the acceptance of such an offer by any person; and

(*c*) when the prospectus is registered by the Authority, the person takes reasonable steps to notify the persons to whom the preliminary document was issued that the registered prospectus is available for collection.

[4/2017]

(4) Despite subsection (6), a person does not contravene subsection (1) —

(*a*) by presenting, before a prospectus or profile statement is registered by the Authority, oral or written material on matters contained in a preliminary document which has been lodged with the Authority, to institutional investors, relevant persons as defined in section 275(2) or persons to whom an offer referred to in section 275(1A) is to be made; or

(*b*) by presenting oral or written material on matters contained in a prospectus, profile statement or product highlights sheet which has been lodged with the Authority in respect of an offer of securities or securities-based derivatives contracts, before the prospectus or profile statement is registered by the Authority, for the sole purpose of equipping any of the following persons with knowledge of the securities or securities-based derivatives contracts in order to enable the person to carry on the regulated activity of dealing in capital markets products that are securities or

securities-based derivatives contracts, or to provide any financial advisory service in relation to the securities or securities-based derivatives contracts:

(i) a person licensed under this Act in respect of dealing in capital markets products that are securities or securities-based derivatives contracts;

(ii) an exempt person;

(iii) a person who is a representative in respect of dealing in capital markets products that are securities or securities-based derivatives contracts under this Act;

(iv) a representative of an exempt person;

(v) a person licensed under the Financial Advisers Act 2001 in respect of advising on any investment product;

(vi) an exempt financial adviser;

(vii) a person who is a representative in respect of advising on any investment product under the Financial Advisers Act 2001;

(viii) a representative of an exempt financial adviser.

[34/2012; 4/2017]

(5) To avoid doubt, a person may disseminate any of the following without contravening subsection (1):

(*a*) a prospectus or profile statement that has been registered by the Authority under section 240;

(*b*) a product highlights sheet in respect of which section 240AA(1)(*a*) and (*b*) has been complied with and which is disseminated with a prospectus or profile statement that has been registered by the Authority under section 240.

[4/2017]

(6) Before a prospectus or profile statement is registered, an advertisement or publication does not contravene subsection (1) if it contains only the following:

(*a*) a statement that identifies —

(i) in the case of an offer of securities or securities-based derivatives contracts being units or derivatives of units in a

business trust, the units or derivatives of units, the person making the offer, the issuer, the business trust and the trustee-manager of the business trust; and

(ii) in any other case, the securities, securities-based derivatives contracts, the person making the offer, the issuer and, where applicable, the underlying entity;

(*b*) a statement that a prospectus or profile statement for the offer will be made available when the offer is made;

(*c*) a statement that anyone wishing to acquire the securities or securities-based derivatives contracts will need to make an application in the manner set out in the prospectus or profile statement;

(*d*) a statement of how to obtain, or arrange to receive, a copy of the prospectus or profile statement.

[4/2017]

(7) To satisfy subsection (6), the advertisement or publication must include all of the statements referred to in paragraphs (*a*), (*b*) and (*c*) of that subsection, and may include the statement referred to in paragraph (*d*) of that subsection.

(8) After a prospectus or profile statement is registered with the Authority, an advertisement or a publication does not contravene subsection (1) if —

(*a*) it includes a statement that the prospectus or profile statement in respect of the offer of securities or securities-based derivatives contracts is available for collection at the times and places specified in the statement;

(*b*) it includes a statement that anyone wishing to acquire the securities or securities-based derivatives contracts will need to make an application in the manner set out in the prospectus or profile statement;

(*c*) it does not contain any information that is not included in the prospectus or profile statement; and

(*d*) it complies with such requirements as the Authority may prescribe by regulations made under section 341.

[34/2012]

(9) An advertisement or a publication does not contravene subsection (1) if it —

(*a*) consists solely of a disclosure, notice or report required under this Act, or any listing rules or other requirements of an approved exchange or

overseas exchange made by any person;

(*b*) consists solely of a notice or report of a general meeting or proposed general meeting of the person making the offer, the issuer, the trustee-manager of the business trust, the underlying entity, the unitholders of the business trust or any entity, or a presentation of oral or written material on matters so contained in the notice or report at the general meeting;

(*c*) consists solely of a report about the issuer, the business trust or the underlying entity that is published by the person making the offer, the issuer, the trustee-manager of the business trust or the underlying entity (as the case may be), which —

(i) does not contain information that materially affects the affairs of the issuer, the business trust or the underlying entity other than information previously made available in a prospectus that has been registered by the Authority, an annual report or a disclosure, notice or report mentioned in paragraph (*a*) or (*b*); and

(ii) does not refer (directly or indirectly) to the offer or intended offer;

(*d*) consists solely of a statement made by the person making the offer, the issuer, the trustee-manager of the business trust or the underlying entity that a prospectus or profile statement in respect of the offer or intended offer has been lodged with the Authority;

(*e*) is a news report, or a genuine comment, by a person other than any person referred to in paragraph (*f*)(i), (ii), (iii) or (iv), in a newspaper, periodical or magazine or on radio, television or any other means of broadcasting or communication, relating to —

(i) a prospectus or profile statement that has been lodged with the Authority or information contained in such a prospectus or profile statement;

(ii) a disclosure, notice or report referred to in paragraph (*a*);

(iii) a notice, report, presentation, general meeting or proposed general meeting referred to in paragraph (*b*);

(iv) a report referred to in paragraph (*c*); or

(v) a product highlights sheet;

(*f*) is a report about the securities or securities-based derivatives contracts which are the subject of the offer or intended offer, published by someone who is not —

(i) the person making the offer, the issuer, the underlying entity or (where the securities or securities-based derivatives contracts are units or derivatives of units in a business trust) the trustee-manager of the business trust;

(ii) a director or an equivalent person of the person making the offer, the issuer, the underlying entity or (where the securities or securities-based derivatives contracts are units or derivatives of units in a business trust) the trustee-manager of the business trust;

(iii) a person who has an interest in the success of the issue or sale of the securities or securities-based derivatives contracts; or

(iv) a person acting at the instigation of, or by arrangement with, any person mentioned in sub-paragraph (i), (ii) or (iii);

(*g*) is a disclosure, notice, report or publication of a description prescribed by the Authority, and such other conditions as the Authority may prescribe are satisfied; or

(*h*) is a publication made by the person making the offer, the issuer, the underlying entity or (where the offer is of units or derivatives of units in a business trust) the trustee-manager of the business trust solely to correct or provide clarification on any erroneous or inaccurate information or comment contained in —

(i) an earlier news report or a genuine comment referred to in paragraph (*e*); or

(ii) an earlier publication published in the ordinary course of business of publishing a newspaper, periodical or magazine, or of broadcasting by radio, television or any other means of broadcasting or communication, referred to in subsection (10),

provided that the firstmentioned publication does not contain any material information that is not included in the prospectus.

[2/2009; 34/2012; 4/2017]

(10) A person does not contravene subsection (1) if —

(*a*) the person publishes any advertisement or publication in the ordinary course of a business of —

(i) publishing a newspaper, periodical or magazine; or

(ii) broadcasting by radio, television, or any other means of broadcasting or communication; and

(*b*) the person did not know and had no reason to suspect that its publication would constitute a contravention of subsection (1).

(11) Subsection (9)(*e*) and (*f*) does not apply to an advertisement or statement if any person gives consideration or any other benefit for the publication of the advertisement or statement.

(12) Any person who —

(*a*) contravenes subsection (1); or

(*b*) knowingly authorises or permits the publication or dissemination of any advertisement or statement mentioned in subsection (1),

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(13) This section does not affect any liability that a person has under any other law.

(14) The Authority may exempt any person or class of persons from this section, subject to such conditions or restrictions as the Authority may determine.

(15) Any person who contravenes any of the conditions or restrictions imposed under subsection (14) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

(16) For the purposes of this section, any reference to publishing a statement includes a reference to making a statement, whether oral or written, which is reasonably likely to be published.

(17) For the purposes of subsections (1) and (2), any reference to a statement includes a reference to any information presented, regardless of whether such information is in

text or otherwise.

(18) For the purposes of subsection (2)(*d*), the reference to affairs of the entity or the business trust —

(*a*) in the case where the entity is a corporation, includes a reference to the matters referred to in section 2(2); and

(*b*) in any other case, is a reference to such matters as the Authority may prescribe.

[4/2017]

(18A) In subsection (4) —

"exempt financial adviser" and "financial advisory service" have the meanings given by section 2(1) of the Financial Advisers Act 2001;

"representative" —

(*a*) in relation to dealing in capital markets products that are securities or securities-based derivatives contracts under this Act or an exempt person, has the meaning given by section 2(1); or

(*b*) in relation to advising on any investment product under the Financial Advisers Act 2001 or an exempt financial adviser, has the meaning given by section 2(1) of that Act.

[34/2012; 4/2017]

(19) For the purposes of subsection (9)(*c*)(i), the reference to affairs of the issuer, underlying entity or business trust —

(*a*) in the case where the issuer or underlying entity is a corporation, includes a reference to the matters referred to in section 2(2); and

(*b*) in any other case, is a reference to such matters as the Authority may prescribe.

[4/2017]

Persons liable on prospectus or profile statement to inform person making offer about certain deficiencies

252.—(1) A person referred to in section 254(3) (other than paragraph (*a*)) must notify in writing the person making the offer of securities or securities-based derivatives contracts, as soon as practicable, if the firstmentioned person becomes aware at any time after the prospectus or profile statement is registered by the Authority but before the close of the offer that —

(*a*) a statement in the prospectus or the profile statement is false or misleading;

(*b*) there is an omission to state any information required to be included in the prospectus under section 243 or there is an omission to state any information required to be included in the profile statement under section 246, as the case may be; or

(*c*) a new circumstance —

(i) has arisen since the prospectus or the profile statement was lodged with the Authority; and

(ii) would have been required to be included in the prospectus under section 243, or required to be included in the profile statement under section 246 (as the case may be) if it had arisen before the prospectus or the profile statement was lodged with the Authority,

and the failure to so notify would have been materially adverse from the point of view of an investor.

[4/2017]

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000.

(3) For the purposes of subsection (1)(*a*), any reference to a statement includes a reference to any information presented, regardless of whether such information is in text or otherwise.

Criminal liability for false or misleading statements

253.—(1) Where an offer of securities or securities-based derivatives contracts is made in or accompanied by a prospectus or profile statement, or, in the case of an offer referred to in section 280, where a prospectus or profile statement is prepared and issued in relation to the offer, and —

(*a*) a false or misleading statement is contained in —

(i) the prospectus or the profile statement; or

(ii) any application form for the securities or securities-based derivatives contracts;

(*b*) there is an omission to state any information required to be included in the prospectus under section 243 or there is an omission to state any information required to be included in the profile statement under section 246, as the case may be; or

(*c*) there is an omission to state a new circumstance that —

(i) has arisen since the prospectus or the profile statement was lodged with the Authority; and

(ii) would have been required to be included in the prospectus under section 243, or required to be included in the profile statement under section 246 (as the case may be) if it had arisen before the prospectus or the profile statement was lodged with the Authority,

the persons referred to in subsection (4) shall be guilty of an offence even if such persons, unless otherwise specified, were not involved in the making of the false or misleading statement or the omission, and shall be liable on conviction to a fine not exceeding $150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(2) For the purposes of subsection (1), a false or misleading statement about a future matter (including the doing of, or the refusal to do, an act) is taken to have been made if a person made the statement without having reasonable grounds for making the statement.

(3) A person does not contravene subsection (1) if the false or misleading statement, or the omission to state any information or new circumstance, is not materially adverse from the point of view of the investor.

(4) The persons guilty of the offence are —

(*a*) the person making the offer;

(*b*) where the person making the offer is an entity —

(i) each director or equivalent person of the entity; and

(ii) if the entity is also the issuer, each person who is, and who has consented to be, named in the prospectus or profile statement as a proposed director or an equivalent person of the entity;

(*c*) where the issuer is controlled by the person making the offer, one or more of the related parties of the person making the offer, or the person making the offer and one or more of that person's related parties —

(i) the issuer;

(ii) each director or equivalent person of the issuer; and

(iii) each person who is, and who has consented to be, named in the prospectus or profile statement as a proposed director or an equivalent person of the issuer;

(*d*) an issue manager to the offer of the securities or securities-based derivatives contracts who is, and who has consented to be, named in the prospectus or profile statement, if —

(i) the issue manager intentionally or recklessly makes the false or misleading statement or omits to state the information or circumstance;

(ii) knowing that the statement in the prospectus or profile statement is false or misleading or that the information or circumstance has been omitted, the issue manager fails to take such remedial action as is appropriate in the circumstances without delay; or

(iii) the issue manager is reckless as to whether the statement is false or misleading or whether the information or circumstance has been included;

(*e*) an underwriter (but not a sub-underwriter) to the issue or sale of the securities or securities-based derivatives contracts who is, and who has consented to be, named in the prospectus or profile statement, if —

(i) the underwriter intentionally or recklessly makes the false or misleading statement or omits to state the information or circumstance;

(ii) knowing that the statement is false or misleading or that the information or circumstance has been omitted, the underwriter fails to take such remedial action as is appropriate in the circumstances without delay; or

(iii) the underwriter is reckless as to whether the statement is false or misleading or whether the information or circumstance has been included;

(*f*) a person named in the prospectus or the profile statement with the person's consent as having made —

(i) the statement that is false or misleading, if the person intentionally or recklessly makes that statement; or

(ii) a statement on which the false or misleading statement is based, if the person knows that the second-mentioned statement is false or misleading and fails to take immediate steps to withdraw the person's consent,

but only in respect of the inclusion of the false or misleading statement; and

(*g*) any other person who intentionally or recklessly makes the false or misleading statement, or omits to state the information or circumstance (as the case may be) but only in respect of the inclusion of the statement or the omission to state the information or circumstance, as the case may be.

[4/2017]

(5) For the purposes of subsection (4) and this subsection —

(*a*) remedial action includes any of the following:

(i) preventing the statement from being included, or having the information or circumstance included, in the prospectus or profile statement, as the case may be;

(ii) procuring the lodgment of a supplementary or replacement prospectus under section 241; and

(*b*) a person is reckless as to the matter referred to in subsection (4)(*d*)(iii) or (*e*)(iii) if, having been put upon inquiry that the statement to be, or which has been, included in the prospectus or profile statement is likely to be false or misleading, that the information or circumstance is likely to be required to be included in that document, or that there is likely to be an omission to state the information or circumstance in that document, the person fails to —

(i) make all inquiries as are reasonable in the circumstances to verify this; and

(ii) take such remedial action as is appropriate in the circumstances without delay, if such action is warranted by the outcome of the inquiries.

(6) For the purposes of this section, any reference to a statement includes a reference

to any information presented, regardless of whether such information is in text or otherwise.

Civil liability for false or misleading statements

254.—(1) Where an offer of securities or securities-based derivatives contracts is made in or accompanied by a prospectus or profile statement, or, in the case of an offer referred to in section 280, where a prospectus or profile statement is prepared and issued in relation to the offer, and —

(*a*) a false or misleading statement is contained in —

(i) the prospectus or the profile statement; or

(ii) any application form for the securities or securities-based derivatives contracts;

(*b*) there is an omission to state any information required to be included in the prospectus under section 243 or there is an omission to state any information required to be included in the profile statement under section 246, as the case may be; or

(*c*) there is an omission to state a new circumstance that —

(i) has arisen since the prospectus or the profile statement was lodged with the Authority; and

(ii) would have been required by section 243 to be included in the prospectus, or required to be included in the profile statement under section 246 (as the case may be) if it had arisen before the prospectus or the profile statement was lodged with the Authority,

the persons referred to in subsection (3) are liable to compensate any person who suffers loss or damage as a result of the false or misleading statement in or omission from the prospectus or the profile statement, even if such persons, unless otherwise specified, were not involved in the making of the false or misleading statement or the omission.

[4/2017]

(2) For the purposes of subsection (1), a false or misleading statement about a future matter (including the doing of, or the refusal to do, an act) is taken to have been made if a person makes the statement without having reasonable grounds for making the statement.

(3) The persons liable are —

(*a*) the person making the offer;

(*b*) where the person making the offer is an entity —

(i) each director or equivalent person of the entity; and

(ii) if the entity is also the issuer, each person who is, and who has consented to be, named in the prospectus or profile statement as a proposed director or an equivalent person of the entity;

(*c*) where the issuer is controlled by the person making the offer, one or more of the related parties of the person making the offer, or the person making the offer and one or more of that person's related parties —

(i) the issuer;

(ii) each director or equivalent person of the issuer; and

(iii) each person who is, and who has consented to be, named in the prospectus or the profile statement as a proposed director or an equivalent person of the issuer;

(*d*) an issue manager to the offer of the securities or securities-based derivatives contracts who is, and who has consented to be, named in the prospectus or the profile statement;

(*da*) an underwriter (but not a sub-underwriter) to the issue or sale of the securities or securities-based derivatives contracts who is, and who has consented to be, named in the prospectus or the profile statement;

(*e*) a person named in the prospectus or the profile statement with the person's consent as having made a statement —

(i) that is included in the prospectus or the profile statement; or

(ii) on which a statement made in the prospectus or the profile statement is based,

but only in respect of the inclusion of that statement; and

(*f*) any other person who made the false or misleading statement or omitted to state the information or circumstance (as the case may be) but only in respect of the inclusion of the statement or the omission to state the information or circumstance.

[4/2017]

(4) A person who acquires securities or securities-based derivatives contracts as a result of an offer that was made in or accompanied by a profile statement is taken to have acquired the securities or securities-based derivatives contracts in reliance on both the profile statement and the prospectus for the offer.

[4/2017]

(4A) For the purposes of this section, any reference to a statement includes a reference to any information presented, regardless of whether such information is in text or otherwise.

(5) No action under subsection (1) may be commenced after the expiration of 6 years from the date on which the cause of action arose.

(6) This section does not affect any liability that a person has under any other law.

Defences

255.—(1) A person referred to in section 253(4)(*a*), (*b*) or (*c*) is not liable under section 253(1), and a person referred to in section 254(3) is not liable under section 254(1), only because of a false or misleading statement in a prospectus or a profile statement if the person proves that the person —

(*a*) made all inquiries (if any) that were reasonable in the circumstances; and

(*b*) after doing so, believed on reasonable grounds that the statement was not false or misleading.

(2) A person referred to in section 253(4)(*a*), (*b*) or (*c*) is not liable under section 253(1), and a person referred to in section 254(3) is not liable under section 254(1), only because of an omission from a prospectus or a profile statement in relation to a particular matter if the person proves that the person —

(*a*) made all inquiries (if any) that were reasonable in the circumstances; and

(*b*) after doing so, believed on reasonable grounds that there was no omission from the prospectus or profile statement in relation to that matter.

(3) A person is not liable under section 253(1) or 254(1) only because of a false or misleading statement in, or an omission from, a prospectus or a profile statement if the person proves that the person placed reasonable reliance on information given to the person by —

(*a*) if the person is an entity, someone other than —

(i) a director or an equivalent person; or

(ii) an employee or agent,

of the entity; or

(*b*) if the person is an individual, someone other than an employee or agent of the individual.

(4) For the purposes of subsection (3), a person is not the agent of an entity or individual merely because that person performs a particular professional or advisory function for the entity or individual.

(5) A person who is named in a prospectus or a profile statement as —

(*a*) a proposed director or an equivalent person of the issuer, or an issue manager or underwriter;

(*b*) having made a statement included in the prospectus or the profile statement; or

(*c*) having made a statement on the basis of which a statement is included in the prospectus or the profile statement,

is not liable under section 253(1) or 254(1) only because of a false or misleading statement in, or an omission from, the prospectus or the profile statement if the person proves that the person publicly withdrew the person's consent to being named in the prospectus or the profile statement in that way.

(6) A person is not liable under section 253(1) or 254(1) only because of a new circumstance that has arisen since the prospectus or the profile statement was lodged with the Authority if the person proves that the person was not aware of the matter.

(7) For the purposes of this section, any reference to a statement includes a reference to any information presented, regardless of whether such information is in text or otherwise.

256. [*Repealed by Act 1 of 2005*]

Document containing offer of securities or securities-based derivatives contracts for sale deemed prospectus

257.—(1) Subsection (2) applies where —

(*a*) an entity allots or agrees to allot to any person any securities or securities-based derivatives contracts of the entity or a business trust (as the case may be) with a view to all or any of them being subsequently offered for sale to another person; and

(*b*) such offer (called in this section a subsequent offer) does not qualify for an

exemption under Subdivision (4) of this Division (other than section 280).

[4/2017]

(2) Any document by which the subsequent offer is made is for all purposes deemed to be a prospectus issued by the entity, and the entity is for all purposes deemed to be the person making the offer, and all written laws and rules of law as to the contents of prospectuses and to liability in respect of statements and non-disclosure in prospectuses, or otherwise relating to prospectuses, apply and have effect accordingly as if —

(*a*) an offer of securities or securities-based derivatives contracts has been made; and

(*b*) persons accepting the subsequent offer in respect of any securities or securities-based derivatives contracts were subscribers therefor,

but without affecting the liability (if any) of the persons making the subsequent offer, in respect of statements or non-disclosures in the document or otherwise.

[4/2017]

(3) For the purposes of this Act, unless the contrary is proved, it is sufficient evidence that an allotment of, or an agreement to allot, securities or securities-based derivatives contracts was made with a view to the securities or securities-based derivatives contracts being subsequently offered for sale if it is shown —

(*a*) that an offer of the securities or securities-based derivatives contracts or of any of them for sale was made within 6 months after the allotment or agreement to allot; or

(*b*) that at the date when the offer was made the whole consideration to be received by the entity in respect of the securities or securities-based derivatives contracts had not been so received.

[4/2017]

(4) The requirements of this Division as to prospectuses have effect as though the persons making the subsequent offer were persons named in the prospectus as directors or equivalent persons of the entity.

(5) In addition to complying with the other requirements of this Division, the document making the subsequent offer must state —

(*a*) the net amount of the consideration received or to be received by the entity in respect of the securities or securities-based derivatives contracts being offered; and

(*b*) the place and time at which a copy of the contract under which the securities or securities-based derivatives contracts have been or are to be allotted may be inspected.

[4/2017]

Application and moneys to be held in trust in separate bank account until allotment

258.—(1) All application and other moneys paid prior to allotment by any applicant on account of securities or securities-based derivatives contracts offered to the applicant must, until the allotment of the securities or securities-based derivatives contracts, be held by the person making the offer of the securities or securities-based derivatives contracts upon trust for the applicant in a separate bank account, being a bank account that is established and kept by the person solely for the purpose of depositing the application and other moneys that are paid by applicants for those securities or securities-based derivatives contracts.

[4/2017]

(2) There is no obligation or duty on any bank with which any such moneys have been deposited to enquire into or see to the proper application of those moneys, so long as the bank acts in good faith.

(3) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

Allotment of securities or securities-based derivatives contracts where prospectus indicates application to list on approved exchange

259.—(1) Where a prospectus states or implies that application has been or will be made for permission for the securities or securities-based derivatives contracts offered thereby to be listed for quotation on any approved exchange, and —

(*a*) the permission is not applied for in the form required by the approved exchange within 3 days from the date of the issue of the prospectus; or

(*b*) the permission is not granted before the expiration of 6 weeks from the date of the issue of the prospectus or such longer period not exceeding 12 weeks from the date of the issue as is, within those 6 weeks, notified to the applicant by or on behalf of the approved exchange,

then —

(*c*) any allotment whenever made of securities or securities-based derivatives contracts made on an application pursuant to the prospectus is, subject to subsection (3), void; and

(*d*) any person who continues to allot such securities or securities-based derivatives contracts after the period specified in paragraph (*a*) or (*b*), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(2) Where the permission has not been applied for, or has not been granted as mentioned under subsection (1), the person making the offer must, subject to subsection (3), immediately repay without interest all moneys received from applicants pursuant to the prospectus, and if any such moneys is not repaid within 14 days after the person making the offer so becomes liable to repay them, then —

(*a*) the person making the offer is liable to repay those moneys with interest at the rate of 10% per annum from the expiration of such 14 days; and

(*b*) where the person making the offer is an entity, in addition to the liability of the entity, the directors or equivalent persons of the entity are jointly and severally liable to repay those moneys with interest at the rate of 10% per annum from the expiration of such 14 days.

(3) Where in relation to any securities or securities-based derivatives contracts —

(*a*) permission is not applied for as mentioned in subsection (1)(*a*); or

(*b*) permission is not granted as mentioned in subsection (1)(*b*),

the Authority may, on the application of the issuer made before any of the securities or securities-based derivatives contracts is purported to be allotted, exempt the allotment of the securities or securities-based derivatives contracts from the provisions of this section, and the Authority must give notice of such exemption in the *Gazette*.

[4/2017]

(4) A director or an equivalent person is not liable under subsection (2) if he or she proves that the default in the repayment of the money was not due to any misconduct or negligence on his or her part.

(5) Any condition requiring or binding any applicant for securities or securities-based derivatives contracts to waive compliance with any requirement of this section or purporting to do so is void.

[4/2017]

(6) Without limiting the application of any of its provisions, this section has effect —

(*a*) in relation to any securities or securities-based derivatives contracts agreed

to be taken by a person underwriting an offer thereof contained in a prospectus as if the person had applied therefor pursuant to the prospectus; and

(*b*) in relation to a prospectus offering securities or securities-based derivatives contracts for sale as if a reference to sale were substituted for a reference to allotment.

[4/2017]

(7) All moneys received from applicants pursuant to the prospectus must be kept in a separate bank account so long as the person making the offer may become liable to repay it under subsection (2).

(8) Any person who contravenes subsection (7) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

(9) Where the approved exchange has within the time specified in subsection (1)(*b*) granted permission subject to compliance with any requirements specified by the approved exchange, permission is deemed to have been granted by the approved exchange if the directors or equivalent persons have given to the approved exchange an undertaking in writing to comply with the requirements of the approved exchange.

[4/2017]

(10) If any such undertaking referred to in subsection (9) is not complied with, each director or equivalent person who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

(11) A person must not issue a prospectus inviting persons to subscribe for securities or securities-based derivatives contracts of an entity if it includes —

(*a*) a false or misleading statement that permission has been granted for those securities or securities-based derivatives contracts to be listed for quotation on, dealt in or quoted on any approved exchange; or

(*b*) any statement in any way referring to any such permission or to any application or intended application for any such permission, or to listing for quotation, dealing in or quoting the securities or securities-based derivatives contracts on any approved exchange, or to any requirement of an approved exchange, unless —

(i) that statement is or is to the effect that permission has been granted, or that application has been or will be made to the approved exchange within 3 days after the date of the issue of the prospectus; or

(ii) that statement has been approved by the Authority for inclusion in the prospectus.

[4/2017]

(12) Any person who contravenes subsection (11) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

(13) Where a prospectus contains a statement to the effect that the memorandum and articles or other constituent document or documents of the issuer comply, or have been drawn so as to comply, with the requirements of any approved exchange, the prospectus is, unless the contrary intention appears from the prospectus, deemed for the purposes of this section to imply that application has been, or will be, made for permission for the securities or securities-based derivatives contracts to which the prospectus relates to be listed for quotation on the approved exchange.

[4/2017]

Prohibition of allotment unless minimum subscription received

260.—(1) A person must not make an allotment of any securities or securities-based derivatives contracts of a company or business trust unless —

(*a*) the minimum subscription has been subscribed; and

(*b*) the sum payable on application for the securities or securities-based derivatives contracts so subscribed has been received by the company or the trustee-manager, as the case may be.

[4/2017]

(1A) Despite subsection (1), if a cheque for the sum payable mentioned in subsection (1) has been received by the company or the trustee-manager of the business trust (as the case may be), the sum is treated as not having been received by the company or the trustee-manager (as the case may be) until the cheque is paid by the bank on which the cheque is drawn.

[4/2017]

(2) The minimum subscription must —

(*a*) be calculated based on the price at which each share or debenture, each unit of share or debenture, or each unit or derivative of a unit in a business trust, is or will be offered; and

(*b*) be reckoned exclusively of any amount payable otherwise than in cash.

[4/2017]

(3) The amount payable on application on each share or debenture, or each unit of share or debenture, or each unit or derivative of a unit in a business trust, offered must not be less than 5% of the price at which the share or debenture, or unit of share or debenture, or unit or derivative of a unit in a business trust, is or will be offered.

[4/2017]

(4) If the conditions referred to in subsection (1)(*a*) and (*b*) have not been satisfied on the expiration of 4 months after the first issue of the prospectus, all moneys received from applicants for securities or securities-based derivatives contracts must be immediately repaid to them without interest.

[4/2017]

(5) If any money mentioned in subsection (4) is not repaid within 5 months after the issue of the prospectus, the directors of the company or the directors of the trustee-manager of the business trust (as the case may be) are jointly and severally liable to repay that money with interest at the rate of 10% per annum from the expiration of the period of 5 months.

[4/2017]

(6) A director is not liable under subsection (5) if the director proves that the default in the repayment of the money was not due to any misconduct or negligence on the part of the director.

[4/2017]

(7) An allotment made by a company or a trustee-manager of a business trust to an applicant in contravention of this section is voidable at the option of the applicant, which option may be exercised by written notice served —

(*a*) if the allotment is made by a company, on the company —

(i) within one month after the holding of the statutory meeting of the company; or

(ii) where the company is not required to hold a statutory meeting, or where the allotment is made after the holding of the statutory meeting, within one month after the date of the allotment; or

(*b*) if the allotment is made by a trustee-manager of a business trust, on the trustee-manager of the business trust within one month after the date of the

allotment.

[4/2017]

(7A) The allotment mentioned in subsection (7) is voidable even if the company or business trust is in the course of being wound up.

[4/2017]

(7B) A trustee-manager of a business trust which contravenes any of the provisions of this section shall be guilty of an offence and shall be liable, in addition to the penalty or punishment for the offence —

(*a*) to pay into the trust property of the business trust any loss, damages or costs which the business trust (represented by any diminishment in value to the trust property of the business trust) has sustained or incurred as a consequence of such contravention; and

(*b*) to compensate the allottee for any loss, damages or costs which the allottee has sustained or incurred as a consequence of such contravention.

[4/2017]

(7C) Every director of a trustee-manager of a business trust who knowingly contravenes or permits or authorises the contravention of any of the provisions of this section shall be guilty of an offence and shall be liable, in addition to the penalty or punishment for the offence —

(*a*) to pay into the trust property of the business trust any loss, damages or costs which the business trust (represented by any diminishment in value to the trust property of the business trust) has sustained or incurred as a consequence of such contravention; and

(*b*) to compensate the allottee for any loss, damages or costs which the allottee has sustained or incurred as a consequence of such contravention.

[4/2017]

(7D) Every director of a company who knowingly contravenes or permits or authorises the contravention of any of the provisions of this section shall be guilty of an offence and shall be liable, in addition to the penalty or punishment for the offence —

(*a*) to compensate the company for any loss, damages or costs which the company has sustained or incurred as a consequence of such contravention; and

(*b*) to compensate the allottee for any loss, damages or costs which the allottee has sustained or incurred as a consequence of such contravention.

[4/2017]

(8) No proceedings for the recovery of any compensation under subsection (7) may

be commenced after the expiration of 2 years from the date of the allotment.

(9) Any condition requiring or binding any applicant for securities or securities-based derivatives contracts to waive compliance with any requirement of this section is void.
[4/2017]

Subdivision (3) — Debentures

Preliminary provisions

261.—(1) Subject to subsection (1A), this Subdivision applies where an entity makes an offer of debentures.

(1A) Sections 268, 269 and 270 do not apply if the borrowing entity is a prescribed entity.

(1B) In subsections (1A) and (1C), "prescribed entity" means —

(*a*) any bank licensed under the Banking Act 1970; or

(*b*) any entity or entity of a class which has been declared by the Authority, by order in the *Gazette*, to be a prescribed entity for the purposes of this section.

(1C) The Authority may, by written notice —

(*a*) impose such conditions or restrictions on a prescribed entity as it thinks fit; and

(*b*) at any time vary or revoke any condition or restriction so imposed,

and the prescribed entity must comply with every such condition or restriction imposed on it by the Authority that has not been revoked by the Authority.

(1D) Any person who contravenes any condition or restriction imposed under subsection (1C)(*a*) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

(2) [*Deleted by Act 1 of 2005*]

(3) In this Subdivision, a corporation is related to another corporation if it is deemed to be related to that other corporation by virtue of section 6 of the Companies Act 1967.

Offer of asset-backed securities

262.—(1) An offer of asset-backed securities is made only if they are issued by —

(*a*) a special purpose vehicle other than a trust; or

(*b*) the trustee of a trust that is a special purpose vehicle.

(2) The Authority may exempt any person or class of persons from this section, subject to such conditions or restrictions as the Authority may determine.

(3) In this section —

"asset-backed securities" means debentures or units of debentures issued pursuant to a securitisation transaction;

"securitisation transaction" means an arrangement that involves the sale, transfer or assignment of assets to a special purpose vehicle where —

(*a*) such sale, transfer or assignment is funded by the issue of debentures or units of debentures (whether by that special purpose vehicle or another special purpose vehicle); and

(*b*) payments in respect of such debentures or units of debentures are or will be principally derived, directly or indirectly, from the cash flows generated by the assets;

"special purpose vehicle" means an entity that is established solely in order to, or a trust that is established solely in order for its trustee to, do either or both of the following:

(*a*) hold (whether as a legal or equitable owner) the assets from which payments to holders of any asset-backed securities are or will be primarily derived;

(*b*) issue any asset-backed securities.

263. [*Repealed by Act 16 of 2003*]

264. [*Repealed by Act 16 of 2003*]

Power of court in relation to certain irredeemable debentures

265.—(1) Despite anything in any debenture or trust deed, the security for any debentures which are irredeemable or redeemable only on the happening of a contingency is, if the court so orders, enforceable, immediately or at such other time as the court directs if, on the application of the trustee for the holders of the debentures or (where there is no trustee) on the application of any holder of the debentures, the court is satisfied that —

(*a*) at the time of the issue of the debentures the assets of the borrowing entity which constituted or were intended to constitute the security therefor were sufficient or likely to become sufficient to discharge the principal debt and any interest thereon;

(*b*) the security, if realised under the circumstances existing at the time of the application, would be likely to bring not more than 60% of the principal sum of moneys outstanding (regard being had to all prior charges and charges ranking pari passu, if any); and

(*c*) the assets covered by the security, on a fair valuation on the basis of a going concern after allowing a reasonable amount for depreciation are worth less than the principal sum and the borrowing entity is not making sufficient profit to pay the interest due on the principal sum or (where no definite rate of interest is payable) interest thereon at such rate as the court considers would be a fair rate to expect from a similar investment.

(2) Subsection (1) does not affect any power to vary rights or accept any compromise or arrangement created by the terms of the debentures or the relevant trust deed or under a compromise or arrangement between the borrowing entity and creditors.

Requirement for trustees

265A.—(1) Where an offer of debentures is made in or accompanied by a prospectus, the borrowing entity must appoint a trustee for the holders of debentures (called in this section the appointed trustee) for the entire tenure of the debentures.

[34/2012]

(2) The borrowing entity must ensure that —

(*a*) where the debentures are asset-backed securities or structured notes, the appointed trustee is any of the following persons:

(i) a holder of a trust business licence under the Trust Companies Act 2005 that is carrying on business in Singapore in that capacity;

(ii) a bank licensed under the Banking Act 1970 that is carrying on business in Singapore in that capacity;

(iii) an approved trustee referred to in section 289 that is carrying on business in Singapore in that capacity;

(iv) such other person as the Authority may prescribe by regulations made under section 341;

(*b*) where the debentures are not asset-backed securities or structured notes, the appointed trustee is any of the following persons:

(i) a holder of a trust business licence under the Trust Companies Act 2005 that is carrying on business in Singapore in that capacity;

(ii) a bank licensed under the Banking Act 1970 that is carrying on business in Singapore in that capacity;

(iii) an approved trustee referred to in section 289 that is carrying on business in Singapore in that capacity;

(iv) any other person whom the borrowing entity is satisfied, on reasonable grounds, is, and will be, able to take timely and appropriate action on behalf of the holders of debentures, in the event of a default or as required by the trust deed;

(v) such other person as the Authority may prescribe by regulations made under section 341;

(*c*) the appointed trustee is independent of the borrowing entity, guarantor entity, arranger and counterparty of the debentures; and

(*d*) the appointed trustee meets such requirements as the Authority may prescribe by regulations made under section 341.

[34/2012]

(3) For the purposes of subsection (2)(*b*)(iv), the borrowing entity must, before being satisfied that a person is, and will be, able to take timely and appropriate action on behalf of the holders of debentures, in the event of a default or as required by the trust deed, consider the following matters:

(*a*) whether the person is licensed or regulated in the jurisdiction —

(i) in which the person was incorporated or formed; or

(ii) of the person's principal place of business;

(*b*) the contractual arrangements between the borrowing entity and the person;

(*c*) whether, if the person is the appointed trustee, the duties which will be imposed on the person by way of the trust deed, or under the laws and practices of the jurisdiction referred to in paragraph (*a*), are at least equivalent to those imposed under section 266(1);

(*d*) such other matters as the Authority may prescribe by regulations made under section 341.

[34/2012]

(4) Any person who contravenes subsection (1), (2) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

(5) In this section —

"asset-backed securities" has the meaning given by section 262(3);

"structured notes" has the meaning given by section 240AA(5).

[34/2012]

Duties of trustees

266.—(1) A trustee for the holders of debentures must —

(*a*) at all times exercise due diligence and vigilance in carrying out its functions and duties, and in safeguarding the rights and interests of the holders of debentures;

(*b*) ensure that it has the ability and powers to perform all of its duties as set out in the trust deed;

(*c*) ensure that any trustee appointed for the holders of any collateral upon which the debentures are secured is subject to duties that are at least equivalent to those imposed under paragraphs (*a*) and (*b*); and

(*d*) comply with such other requirements as the Authority may prescribe by regulations made under section 341, or as the Authority may impose in respect of any particular offer or transaction relating to the debentures.

[34/2012]

(2) Where, after due inquiry, the trustee for the holders of debentures at any time is of the opinion that the assets of the borrowing entity and of any of its guarantor entities which are or should be available whether by way of security or otherwise, are insufficient, or likely to become insufficient, to discharge the principal debt as and when it becomes due, the trustee may apply to the Authority for an order under this subsection.

(3) The Authority, on such application —

(*a*) after giving the borrowing entity an opportunity of making representations in relation to that application, by written order served on the entity at its

registered office in Singapore, may impose such restrictions on the activities of the borrowing entity, including restrictions on advertising for deposits or loans and on borrowing by the entity as the Authority thinks necessary for the protection of the interests of the holders of the debentures; or

(*b*) may, and if the borrowing entity so requires, must direct the trustee to apply to the court for an order under subsection (5); and the trustee must apply accordingly.

(4) Where —

(*a*) after due inquiry, the trustee at any time is of the opinion that the assets of the borrowing entity and of any of its guarantor entities which are or should be available, whether by way of security or otherwise, are insufficient or likely to become insufficient, to discharge the principal debt as and when it becomes due; or

(*b*) the borrowing entity has contravened an order made by the Authority under subsection (2),

the trustee may, and where the borrowing entity has requested the trustee to do so, must apply to the court for an order under subsection (5).

(5) Where an application is made to the court under subsection (3) or (4), the court may, after giving the borrowing entity an opportunity to be heard, by order, do all or any of the following things:

(*a*) direct the trustee to convene a meeting of the holders of the debentures for the purpose of placing before them such information relating to their interests and such proposals for the protection of their interests as the trustee considers necessary or appropriate, and of obtaining their directions in relation thereto and give such directions in relation to the conduct of the meeting as the court thinks fit;

(*b*) stay all or any actions or proceedings before any court by or against the borrowing entity;

(*c*) restrain the payment of any moneys by the borrowing entity to the holders of debentures of the borrowing entity or to any class of such holders;

(*d*) appoint a receiver of such of the property as constitutes the security (if any) for the debentures;

(*e*) give such further directions from time to time as may be necessary to

protect the interests of the holders of the debentures, the members of the borrowing entity or any of its guarantor entities or the public,

but in making any such order the court must have regard to the rights of all creditors of the borrowing entity.

(6) The court may vary or rescind any order made under subsection (5) as the court thinks fit.

(7) A trustee in making any application to the Authority or to the court must have regard to the nature and kind of the security given when the offer of the debentures was made, and if no security was given must have regard to the position of the holders of the debentures as unsecured creditors of the borrowing entity.

(8) A trustee may rely upon any certificate or report given or statement made by any advocate and solicitor, auditor or officer of the borrowing entity or guarantor entity if it has reasonable grounds for believing that such advocate and solicitor, auditor or officer was competent to give or make the certificate, report or statement.

Powers of trustee to apply to court for directions, etc.

267.—(1) A trustee for the holders of debentures may apply to the court —

(*a*) for directions in relation to any matter arising in connection with the performance of the functions of the trustee; or

(*b*) to determine any question in relation to the interests of the holders of debentures.

(2) The court may —

(*a*) give such directions to the trustee as the court thinks fit; and

(*b*) if satisfied that the determination of the question will be just and beneficial, accede wholly or partially to any such application on such terms and conditions as the court thinks fit or make such other order on the application as the court thinks just.

(3) The court may, on an application under this section, order a meeting of all or any of the holders of debentures to be called to consider any matters in which they are concerned and to advise the trustee on those matters and may give such ancillary or consequential directions as the court thinks fit.

(4) The meeting must be held and conducted in such manner as the court directs, by a chairperson nominated by the trustee or such other person as the meeting appoints.

Right of Authority, approved exchange and holders of debentures to apply to court for order

267A. Without affecting any other right of action or remedy in any written law or rule of law, a holder of debentures, the Authority or an approved exchange (in a case where the debentures are quoted or listed for quotation on that approved exchange) may apply to the court for an order to compel the trustee for the holders of such debentures to perform the trustee's duties as set out in the trust deed relating to those debentures, and the court may either make the order on such terms as it considers appropriate, or dismiss the application.

[4/2017]

Obligations of borrowing entity

268.—(1) [*Deleted by Act 34 of 2012*]

(2) [*Deleted by Act 34 of 2012*]

(3) [*Deleted by Act 34 of 2012*]

(4) Where there is a trustee for the holders of any debentures issued by a borrowing entity, the borrowing entity and each of its guarantor entities which has guaranteed the repayment of the moneys raised by the issue of those debentures must, whether or not any demand therefor has been made —

(*a*) in writing provide the trustee, within 21 days after the creation of the charge, with the particulars of any charge created by the entity or the guarantor entity, as the case requires; and

(*b*) when the amount to be advanced on the security of the charge is indeterminate, in writing provide the trustee, within 7 days after the advance, with particulars of the amount or amounts in fact advanced.

(5) Where any such advance referred to in subsection (4)(*b*) is merged in a current account with bankers or trade creditors, it is sufficient for particulars of the net amount outstanding in respect of any such advance to be provided every 3 months.

(6) The directors or equivalent persons of every borrowing entity and of every guarantor entity must cause to be made out and lodged with the trustee for the holders of the debentures, if any —

(*a*) a profit and loss account for the first 6 months of every financial year of the entity and a balance sheet as at the end of that period, not later than 3 months after the expiration of the period of 6 months; and

(*b*) a profit and loss account for every financial year of the entity and a balance sheet as at the end of that period, not later than 5 months after the

expiration of that financial year.

[34/2012]

(6A) Any person who provides any information contained in a profit and loss account or balance sheet required under subsection (6) must use due care to ensure that the information is not false or misleading in any material particular.

[34/2012]

(7) Any person who fails to comply with subsection (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $15,000 and, in the case of a continuing offence, to a further fine not exceeding $1,000 for every day or part of a day during which the offence continues after conviction.

(7A) Any person who contravenes subsection (6A) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 2 years or to both.

[34/2012]

(8) Sections 201(8), (9), (10), (12), (13), (14), (15) and (16) and 207(1), (2) and (7) of the Companies Act 1967 are, with such adaptations as are necessary, applicable to every profit and loss account and balance sheet made out and lodged under subsection (6) as if that profit and loss account and balance sheet were financial statements referred to in those sections.

[35/2014]

(9) Where the directors or equivalent persons of a borrowing entity, or the directors or equivalent persons of a guarantor entity, do not lodge with the trustee the profit and loss accounts and balance sheets as required under subsection (6) within the time prescribed under that subsection, the trustee must immediately lodge notice of that fact with the Authority.

[34/2012]

(10) Despite anything in subsection (8) —

(*a*) a profit and loss account and balance sheet of a borrowing entity or its guarantor entity required to be made out and lodged in accordance with subsection (6)(*a*) need not be audited; and

(*b*) a profit and loss account and balance sheet of a borrowing entity or its guarantor entity required to be made out and lodged in accordance with subsection (6)(*b*) need not be audited, or the audit thereof may be of a limited nature or extent, if the trustee for the holders of the debentures of the borrowing entity has, by written notice, consented to the audit being dispensed with or being of a limited nature or extent, as the case may be.

[2/2009]

(11) Where the trustee has by written notice given the trustee's consent under subsection (10), the directors or equivalent persons of the borrowing entity, or the directors or equivalent persons of the guarantor entity, in respect of whose profit and loss account and balance sheet the notice was given, must lodge with the Authority a copy of the notice at the time when the profit and loss account and balance sheet to which the notice relates are lodged with the Authority.

(12) Despite anything in this section, a profit and loss account and balance sheet of a borrowing entity or its guarantor entity required to be made out and lodged in accordance with subsection (6) may, unless the trustee for the holders of the debentures of the borrowing entity otherwise requires in writing, be based upon the value of the stock in trade of the borrowing entity or the guarantor entity (as the case may be) as reasonably estimated by the directors or equivalent persons of the borrowing entity or guarantor entity.

(13) The estimation of the directors or equivalent persons referred to in subsection (12) must be made on the basis of the values of such stock in trade as adopted for the purpose of the profit and loss account and balance sheet of that entity laid before the entity at its last preceding annual general meeting and certified in writing by the directors or equivalent persons as such.

Additional obligations of borrowing entity, where debentures are not listed on approved exchange

268A.—(1) A borrowing entity that issues any debentures which are not listed on an approved exchange (called in this section unlisted debentures) must, if the unlisted debentures have a tenure of 12 months or longer, prepare and make available to the holders of the debentures, in respect of the period of 6 months beginning on the date of issuance of the debentures and each subsequent period of 6 months, a report covering the period of 6 months (called in this section a semi-annual report), in accordance with this section and such other requirements as the Authority may prescribe by regulations made under section 341.

[34/2012; 4/2017]

(2) The borrowing entity must ensure that each semi-annual report covering a period of 6 months is lodged with the trustee for the holders of the unlisted debentures, not later than 2 months after the end of that period.

[34/2012]

(3) Where the borrowing entity does not lodge with the trustee for the holders of unlisted debentures a semi-annual report as required under subsection (2), the trustee must immediately lodge notice of that fact with the Authority.

[34/2012]

(4) A borrowing entity must immediately disclose, in such form and manner as the Authority may prescribe by regulations made under section 341, to holders of unlisted debentures any information which may materially affect —

(*a*) the risks and returns of the unlisted debentures; or

(*b*) the price or value of the unlisted debentures.

[34/2012]

(5) Any person who contravenes subsection (1), (2) or (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $20,000 and, in the case of a continuing offence, to a further fine not exceeding $2,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

(6) Where the terms of any unlisted debentures provide for redemption at the option of the holder of the unlisted debentures, the borrowing entity must —

(*a*) make available bid or redemption prices of the unlisted debentures, at the frequency at which the borrowing entity has committed to buying back the unlisted debentures or once every fortnight, whichever is more frequent, in such form and manner as the Authority may prescribe by regulations made under section 341;

(*b*) if the published bid prices are indicative and may not be the actual bid prices, clearly state this fact, wherever the published bid prices appear, in such form and manner as the Authority may prescribe by regulations made under section 341; and

(*c*) ensure that the bid or redemption prices are determined in an independent and fair manner.

[34/2012]

(7) A borrowing entity must ensure that each profit and loss account or balance sheet that its directors or equivalent persons are required to lodge under section 268(6) is made available, in such form and manner as the Authority may prescribe by regulations made under section 341, to holders of unlisted debentures, on the day of lodgment of the profit and loss account or balance sheet (as the case may be) with the trustee for the holders of the unlisted debentures.

[34/2012]

(8) Any person who contravenes subsection (6) or (7) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $15,000 and, in the case of a continuing offence, to a further fine not exceeding $1,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

(9) Any person who provides any information contained in a semi-annual report required under subsection (2) must use due care to ensure that the information is not false or misleading in any material particular.

[34/2012]

(10) Any person who contravenes subsection (9) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 2 years or to both.

[34/2012]

Obligation of guarantor entity to provide information

269.—(1) For the purpose of the preparation of a report that, by this Subdivision, is required to be signed by or on behalf of the directors or equivalent persons, or persons approved by the Authority, of a borrowing entity or any of them, that borrowing entity may, by written notice, require any of its guarantor entities to provide it with any information relating to that guarantor entity which is, by this Subdivision, required to be contained in that report.

(2) The guarantor entity must provide the borrowing entity with the information required under subsection (1) before such date, being a date not earlier than 14 days after the notice is given, as may be specified in that behalf in the notice.

(3) A guarantor entity which fails to comply with a requirement contained in a notice given under subsection (1) and every officer or equivalent person of that entity who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $20,000 and, in the case of a continuing offence, to a further fine not exceeding $2,000 for every day or part of a day during which the offence continues after conviction.

Loans and deposits to be immediately repayable on certain events

270.—(1) Where there is, in any prospectus issued in connection with an offer of debentures, a statement as to any particular purpose or project for which the moneys received by the borrowing entity in response to the offer are to be applied, the borrowing entity must, where there is a trustee for the holders of those debentures, from time to time make reports to the trustee as to the progress that has been made towards achieving such purpose or completing such project.

(2) Each such report must be included in the report required to be provided to the trustee for the holders of the debentures under section 268(1).

(3) When it appears to the trustee for the holders of the debentures that such purpose or project has not been achieved or completed —

(*a*) within the time stated in the prospectus within which the purpose or project is to be achieved or completed; or

(*b*) where no such time was stated, within a reasonable time,

the trustee may and, if in the trustee's opinion it is necessary for the protection of the interests of the holders of the debentures, must give written notice to the borrowing entity requiring it to repay the moneys so received by the borrowing entity and, within one month after such notice is given, lodge with the Authority a copy thereof.

(4) The trustee must not give notice under subsection (3) if the trustee is satisfied —

(*a*) that the purpose or project has been substantially achieved or completed;

(*b*) that the interests of the holders of debentures have not been materially prejudiced by the failure to achieve or complete the purpose or project within the time stated in the prospectus or within a reasonable time; or

(*c*) that the failure to achieve the purpose or project was due to circumstances beyond the control of the borrowing entity that could not reasonably have been foreseen by the borrowing entity at the time that the prospectus was issued.

(5) Upon receipt by the borrowing entity of a notice referred to in subsection (3), the borrowing entity is liable to repay, and on demand in writing by a person entitled thereto must immediately repay to the person any moneys owing to the person as the result of a loan or deposit made in response to the offer unless —

(*a*) before the moneys were accepted by the borrowing entity, the borrowing entity had given written notice to the persons from whom the moneys were received specifying the purpose or project for which the moneys would in fact be used and the moneys were accepted by the borrowing entity accordingly; or

(*b*) the borrowing entity by written notice served on the holders of the debentures —

(i) had specified the purpose or project for which the moneys would in fact be applied by the borrowing entity; and

(ii) had offered to repay the moneys to the holders of the debentures, and that person had not within 14 days after the receipt of the notice, or such longer time as was specified in the notice, in writing demanded from the borrowing entity repayment of the money.

(6) Where the borrowing entity has given written notice as provided in subsection (5), specifying the purpose or project for which the moneys will in fact be applied by the borrowing entity, this section applies and has effect as if the purpose or project so specified in the notice was the particular purpose or project specified in the prospectus as the purpose or project for which the moneys were to be applied.

Liability of trustees for debenture holders

271.—(1) Subject to this section, any provision contained in a trust deed relating to or securing an issue of debentures, or in any contract with the holders of debentures secured by a trust deed, is void insofar as it would have the effect of exempting a trustee thereof from or indemnifying the trustee against liability for breach of trust where the trustee fails to show the degree of care and diligence required as trustee.

(2) Subsection (1) does not invalidate —

(*a*) any release otherwise validly given in respect of anything done or omitted to be done by a trustee before the giving of the release; or

(*b*) any provision enabling such a release to be given —

(i) on the agreement thereto of a majority of not less than three fourths in nominal value of the debenture holders present and voting in person or, where proxies are permitted, by proxy at a meeting summoned for the purpose; and

(ii) either with respect to specific acts or omissions or on the dissolution of the trustee or on the trustee's ceasing to act.

(3) Subsection (1) does not operate —

(*a*) to invalidate any provision in force on 29 December 1967 so long as any trustee then entitled to the benefit of that provision remains a trustee of the deed in question; or

(*b*) to deprive any trustee of any exemption or right to be indemnified in respect of anything done or omitted to be done by the trustee while any such provision was in force.

Subdivision (4) — Exemptions

Issue or transfer of securities or securities-based derivatives contracts for no consideration

272.—(1) Subdivisions (2) and (3) of this Division (other than section 257) do not apply to an offer of securities being shares or debentures of an entity, or units in a business trust, if no consideration is or will be given for the issue or transfer of the shares or debentures, or units in a business trust (as the case may be).

[4/2017]

(2) Subdivisions (2) and (3) of this Division (other than section 257) do not apply to an offer of securities-based derivatives contracts being units of shares or debentures of an entity, or derivatives of units in a business trust, if —

(*a*) no consideration is or will be given for the issue or transfer of the units of shares or debentures of the entity, or derivatives of units in the business trust; and

(*b*) no consideration is or will be given for the underlying shares or debentures of the entity, or units in the business trust (as the case may be) on the exercise or conversion of the units of shares or debentures of the entity, or derivatives of units in the business trust (as the case may be).

[4/2017]

Small offers

272A.—(1) Subdivisions (2) and (3) of this Division (other than section 257) do not apply to personal offers of securities or securities-based derivatives contracts of an entity or a business trust by a person if —

(*a*) the total amount raised by the person from such offers within any period of 12 months does not exceed —

(i) $5 million (or its equivalent in a foreign currency); or

(ii) such other amount as the Authority may prescribe in substitution for the amount specified in sub-paragraph (i);

(*b*) in respect of each offer, the person making the offer gives the person to whom the offer is made —

(i) a statement in writing that states —

(A) where units or derivatives of units in a business trust are being offered and the business trust is not registered under the Business Trusts Act 2004 —

"This offer is made in reliance on the exemption under section 272A(1) of the Securities and Futures Act 2001. It is not made in or

accompanied by a prospectus that is registered by the Monetary Authority of Singapore and the business trust is not registered under the Business Trusts Act 2004."; and

(B) in any other case —

"This offer is made in reliance on the exemption under section 272A(1) of the Securities and Futures Act 2001. It is not made in or accompanied by a prospectus that is registered by the Monetary Authority of Singapore."; and

(ii) a notification in writing that the securities or securities-based derivatives contracts to which the offer (called in this sub-paragraph the initial offer) relates must not be subsequently sold to any person, unless the offer resulting in such subsequent sale is made —

(A) in compliance with Subdivisions (2) and (3) of this Division;

(B) in reliance on subsection (8)(*c*) or any other exemption under any provision of this Subdivision (other than this subsection); or

(C) where at least 6 months have elapsed from the date the securities or securities-based derivatives contracts were acquired under the initial offer, in reliance on the exemption under this subsection;

(*c*) none of the offers is accompanied by an advertisement making an offer or calling attention to the offer or intended offer;

(*d*) no selling or promotional expenses are paid or incurred in connection with each offer other than those incurred for administrative or professional services, or by way of commission or fee for services rendered by —

(i) the holder of a capital markets services licence to deal in capital markets products that are securities or securities-based derivatives contracts;

(ii) an exempt person in respect of dealing in capital markets products that are securities or securities-based derivatives contracts; or

(iii) a person —

(A) who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in capital markets products that are securities or securities-based derivatives contracts; or

(B) who is exempted from the laws, codes or requirements mentioned in sub-paragraph (A) in respect of dealing in capital markets products that are securities or securities-based derivatives contracts; and

(*e*) no prospectus in respect of any of the offers has been registered by the Authority or, where a prospectus has been registered —

(i) the prospectus has expired pursuant to section 250; or

(ii) the person making the offer has before making the offer informed the Authority by written notice of its intent to make the offer in reliance on the exemption under this subsection.

[2/2009; 4/2017]

(2) For the purposes of subsection (1)(*b*), where any notice, circular, material, publication or other document is issued in connection with the offer, the person making the offer is deemed to have given the statement and notification to the person to whom the offer is made in accordance with that provision if such statement or notification is contained in the first page of that notice, circular, material, publication or document.

(3) For the purposes of subsection (1), a personal offer of securities or securities-based derivatives contracts is one that —

(*a*) may be accepted only by the person to whom it is made; and

(*b*) is made to a person who is likely to be interested in that offer, having regard to —

(i) any previous contact before the date of the offer between the person making the offer and that person;

(ii) any previous professional or other connection established before

that date between the person making the offer and that person; or

(iii) any previous indication (whether through statements made or actions carried out) before that date by that person that indicate to any of the following persons that that person is interested in offers of that kind:

(A) the person making the offer;

(B) the holder of a capital markets services licence to deal in capital markets products that are securities or securities-based derivatives contracts;

(C) an exempt person in respect of dealing in capital markets products that are securities or securities-based derivatives contracts;

(D) a person licensed under the Financial Advisers Act 2001 in respect of the provision of financial advisory services concerning investment products;

(E) an exempt financial adviser as defined in section 2(1) of the Financial Advisers Act 2001;

(F) a person —

(FA) who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in capital markets products that are securities or securities-based derivatives contracts;

(FB) who is exempted from the laws, codes or requirements mentioned in sub-paragraph (FA) in respect of dealing in capital markets products that are securities or securities-based derivatives contracts;

(FC) who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of the provision of financial advisory services concerning investment

products; or

(FD) who is exempted from the laws, codes or requirements mentioned in sub-paragraph (FC) in respect of the provision of financial advisory services concerning investment products.

[4/2017]

(4) In determining the amount raised by an offer, the following must be included:

(*a*) the amount payable for the securities or securities-based derivatives contracts at the time they are allotted, issued or sold;

(*b*) if the securities or securities-based derivatives contracts are issued partly-paid, any amount payable at a future time if a call is made;

(*c*) if the securities or securities-based derivatives contracts carry a right (by whatever name called) to be converted into other securities or securities-based derivatives contracts or to acquire other securities or securities-based derivatives contracts, any amount payable on the exercise of the right to convert them into, or to acquire, other securities or securities-based derivatives contracts.

[4/2017]

(5) In determining whether the amount raised by a person from offers within a period of 12 months exceeds the applicable amount mentioned in subsection (1)(*a*), each amount raised —

(*a*) by that person from any offer of securities or securities-based derivatives contracts issued by the same entity; or

(*b*) by that person or another person from any offer of securities or securities-based derivatives contracts of an entity or a business trust, or units in a collective investment scheme, which is a closely related offer,

if any, within that period in reliance on the exemption under subsection (1) or section 302B(1) must be included.

[4/2017]

(6) Whether an offer is a closely related offer under subsection (5) is determined by considering such factors as the Authority may prescribe.

(7) For the purpose of this section, an offer of securities or securities-based

derivatives contracts made by a person acting as an agent of another person is treated as an offer made by that other person.

[4/2017]

(8) Where securities or securities-based derivatives contracts acquired through an offer made in reliance on the exemption under subsection (1) (called in this subsection an initial offer) are subsequently sold by the person who acquired the securities or securities-based derivatives contracts to another person, Subdivisions (2) and (3) of this Division apply to the offer from the firstmentioned person to the second-mentioned person which resulted in that sale, unless —

(*a*) such offer is made in reliance on an exemption under any provision of this Subdivision (other than this section);

(*b*) such offer is made in reliance on an exemption under subsection (1) and at least 6 months have elapsed from the date the securities or securities-based derivatives contracts were acquired under the initial offer; or

(*c*) such offer is one —

(i) that may be accepted only by the person to whom it is made;

(ii) that is made to a person who is likely to be interested in the offer having regard to —

(A) any previous contact before the date of the offer between the person making the initial offer and that person;

(B) any previous professional or other connection established before that date between the person making the initial offer and that person; or

(C) any previous indication (whether through statements made or actions carried out) before that date by that person that indicate to any of the following persons that that person is interested in offers of that kind:

(CA) the person making the initial offer;

(CB) the holder of a capital markets services licence to deal in capital markets products that are securities or securities-based derivatives contracts;

(CC) an exempt person in respect of dealing in

capital markets products that are securities or securities-based derivatives contracts;

(CD) a person licensed under the Financial Advisers Act 2001 in respect of the provision of financial advisory services concerning investment products;

(CE) an exempt financial adviser as defined in section 2(1) of the Financial Advisers Act 2001;

(CF) a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in capital markets products that are securities or securities-based derivatives contracts;

(CG) a person who is exempt from the laws, codes or requirements mentioned in sub-paragraph (CF) in respect of dealing in capital markets products that are securities or securities-based derivatives contracts;

(CH) a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of the provision of financial advisory services concerning investment products;

(CI) a person who is exempt from the laws, codes or requirements mentioned in sub-paragraph (CH) in respect of the provision of financial advisory services concerning investment products;

(iii) in respect of which the firstmentioned person has given the second-mentioned person —

(A) a statement in writing that states —

(AA) where units or derivatives of units in a business trust are being offered and the business trust is not registered under the Business Trusts Act 2004 —

"This offer is made in reliance on the exemption under section 272A(8)(*c*) of the Securities and Futures Act 2001. It is not made in or accompanied by a prospectus that is registered by the Monetary Authority of Singapore and the business trust is not registered under the Business Trusts Act 2004."; and

(AB) in any other case —

"This offer is made in reliance on the exemption under section 272A(8)(*c*) of the Securities and Futures Act 2001. It is not made in or accompanied by a prospectus that is registered by the Monetary Authority of Singapore.";

(B) a notification in writing that the securities or securities-based derivatives contracts being offered must not be subsequently sold to any person unless the offer resulting in such subsequent sale is made —

(BA) in compliance with Subdivisions (2) and (3) of this Division;

(BB) in reliance on this subsection or any other exemption under any provision of this Subdivision (other than subsection (1)); or

(BC) where at least 6 months have elapsed from the date the securities or securities-based derivatives contracts were acquired under the initial offer, in reliance on the exemption under subsection (1);

(iv) that is not accompanied by an advertisement making an offer or calling attention to the offer or intended offer; and

(v) in respect of which no selling or promotional expenses are paid or incurred in connection with the offer other than those incurred for administrative or professional services, or by way of commission or fee for services rendered by —

(A) the holder of a capital markets services licence to deal in capital markets products that are securities or securities-based derivatives contracts;

(B) an exempt person in respect of dealing in capital markets products that are securities or securities-based derivatives contracts;

(C) a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in capital markets products that are securities or securities-based derivatives contracts; or

(D) a person who is exempt from the laws, codes or requirements mentioned in sub-paragraph (C) in respect of dealing in capital markets products that are securities or securities-based derivatives contracts.

[4/2017]

(9) Subsection (2) applies, with the necessary modifications, in relation to the statement and notification referred to in subsection (8)(*c*)(iii).

(10) In subsections (1)(*c*) and (8)(*c*)(iv), "advertisement" means —

(*a*) a written or printed communication;

(*b*) a communication by radio, television or other medium of communication; or

(*c*) a communication by means of a recorded telephone message,

that is published in connection with an offer of securities or securities-based derivatives contracts, but does not include —

(*d*) a document —

(i) purporting to describe the securities or securities-based derivatives contracts being offered, or the business and affairs of the person making the offer, the issuer or (where applicable) the underlying entity, or (where the securities or securities-based derivatives contracts being offered are units or derivatives of units in a business trust) the business trust; and

(ii) purporting to have been prepared for delivery to and review by persons to whom the offer is made so as to assist them in making an investment decision in respect of the securities or securities-based derivatives contracts being offered;

(*e*) a publication which consists solely of a disclosure, notice or report required under this Act, or any listing rules or other requirements of an approved exchange or overseas exchange, which is made by any person; or

(*f*) a publication which consists solely of a notice or report of a general meeting or proposed general meeting of the person making the offer, the issuer, the unitholders of the business trust, the underlying entity or any entity, or a presentation of oral or written material on matters so contained in the notice or report at the general meeting.

[2/2009; 4/2017]

(11) In subsection (10)(*d*)(i), the reference to the affairs of the person making the offer, the issuer, the underlying entity or the business trust includes —

(*a*) in the case where the person making the offer, the issuer or the underlying entity is a corporation, a reference to the matters mentioned in section 2(2);

(*b*) in any other case, a reference to such matters as may be prescribed by regulations made under section 341.

[4/2017]

Private placement

272B.—(1) Subdivisions (2) and (3) of this Division (other than section 257) do not apply to offers of securities or securities-based derivatives contracts of an entity or of a business trust that are made by a person if —

(*a*) the offers are made to no more than 50 persons within any period of 12 months;

(*b*) none of the offers is accompanied by an advertisement making an offer or calling attention to the offer or intended offer;

(*c*) no selling or promotional expenses are paid or incurred in connection with each offer other than those incurred for administrative or professional services, or by way of commission or fee for services rendered by —

(i) the holder of a capital markets services licence to deal in capital markets products that are securities or securities-based derivatives contracts;

(ii) an exempt person in respect of dealing in capital markets products that are securities or securities-based derivatives contracts;

(iii) a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in capital markets products that are securities or securities-based derivatives contracts; or

(iv) a person who is exempt from the laws, codes or requirements mentioned in sub-paragraph (iii) in respect of dealing in capital markets products that are securities or securities-based derivatives contracts; and

(*d*) no prospectus in respect of any of the offers has been registered by the Authority or, where a prospectus has been registered —

(i) the prospectus has expired pursuant to section 250; or

(ii) the person making the offer has before making the offer —

(A) informed the Authority by written notice of its intent to make the offer in reliance on the exemption under this subsection; and

(B) taken reasonable steps to inform in writing the person to whom the offer is made that the offer is made in reliance on the exemption under this subsection.

[2/2009; 4/2017]

(2) The Authority may prescribe such other number of persons in substitution for the number specified in subsection (1)(*a*).

(3) In determining whether offers of securities or securities-based derivatives contracts by a person are made to no more than the applicable number of persons specified in subsection (1)(*a*) within a period of 12 months, the following persons must

be included:

(*a*) each person to whom an offer of securities or securities-based derivatives contracts issued by the same entity is made by the firstmentioned person within that period in reliance on the exemption under this section;

(*b*) each person to whom an offer of securities or securities-based derivatives contracts of an entity or a business trust, or units in a collective investment scheme, is made by the firstmentioned person or another person where such offer is a closely related offer, within that period in reliance on the exemption under this section or section 302C.

[4/2017]

(4) Whether an offer is a closely related offer under subsection (3) is determined by considering such factors as the Authority may prescribe.

(5) For the purposes of subsection (1) —

(*a*) an offer of securities or securities-based derivatives contracts to an entity or to a trustee is treated as an offer to a single person, provided that the entity or trust is not formed primarily for the purpose of acquiring the securities or securities-based derivatives contracts which are the subject of the offer;

(*b*) an offer of securities or securities-based derivatives contracts to an entity or to a trustee is treated as an offer to the equity owners, partners or members of that entity, or to the beneficiaries of the trust (as the case may be) if the entity or trust is formed primarily for the purpose of acquiring the securities or securities-based derivatives contracts which are the subject of the offer;

(*c*) an offer of securities or securities-based derivatives contracts to 2 or more persons who will own the securities or securities-based derivatives contracts acquired as joint owners is treated as an offer to a single person;

(*d*) an offer of securities or securities-based derivatives contracts to a person acting on behalf of another person (whether as an agent or otherwise) is treated as an offer made to that other person;

(*e*) offers of securities or securities-based derivatives contracts made by a person as an agent of another person is treated as offers made by that other person;

(*f*) where an offer is made to a person with a view to another person acquiring an interest in those securities or securities-based derivatives contracts by virtue of section 4, only the second-mentioned person is counted for the

purposes of determining whether offers of the securities or securities-based derivatives contracts are made to no more than the applicable number of persons specified in subsection (1)(*a*); and

(*g*) where —

(i) an offer of securities or securities-based derivatives contracts is made to a person in reliance on the exemption under subsection (1) with a view to those securities or securities-based derivatives contracts being subsequently offered for sale to another person; and

(ii) that subsequent offer —

(A) is not made in reliance on an exemption under any provision of this Subdivision; or

(B) is made in reliance on an exemption under subsection (1) or section 280,

both persons are counted for the purposes of determining whether offers of the securities or securities-based derivatives contracts are made to no more than the applicable number of persons specified in subsection (1)(*a*).

[4/2017]

(6) In subsection (1)(*b*), "advertisement" has the meaning given by section 272A(10).

Offer made under certain circumstances

273.—(1) Subject to subsection (5), Subdivisions (2) and (3) of this Division (other than section 257) do not apply to an offer of securities or securities-based derivatives contracts if —

(*a*) it is made in connection with a take-over offer which is in compliance with the Take-over Code;

(*b*) it is made in connection with an offer for the acquisition by or on behalf of a person of some or all of the shares in an unlisted corporation or some or all of the shares of a particular class in an unlisted corporation —

(i) to all members of the corporation or all members of the corporation holding shares of that class; or

(ii) where the person already holds shares in the corporation, to all other members of the corporation or all other members of the corporation holding shares of that class,

where such offer is in compliance with the laws, codes and other requirements (whether or not having the force of law) relating to take-overs of the country in which the corporation was incorporated;

(*c*) it is made in connection with a proposed compromise or arrangement between —

(i) an unlisted corporation and its creditors or a class of them; or

(ii) an unlisted corporation and its members or a class of them,

and such proposed compromise or arrangement and the execution thereof is in compliance with the laws, codes and other requirements (whether or not having the force of law) relating to take-overs, compromises and arrangements of the country in which the corporation was incorporated;

(*ca*) it is made in connection with an offer for the acquisition by or on behalf of a person of some or all of the shares in a corporation or some or all of the shares of a particular class in a corporation —

(i) to all members of the corporation or all members of the corporation holding shares of that class; or

(ii) where the person already holds shares in the corporation, to all other members of the corporation or all other members of the corporation holding shares of that class,

and such offer complies with the Take-over Code as though the Take-over Code is applicable to it;

(*cb*) it is made in connection with a proposed compromise or arrangement between —

(i) a corporation and its creditors or a class of them; or

(ii) a corporation and its members or a class of them,

and such proposed compromise or arrangement and the execution thereof complies with the Take-over Code as though the Take-over Code is applicable to it;

(*cc*) it is an offer to enter into an underwriting agreement relating to securities or securities-based derivatives contracts;

(*cd*) it is an offer of securities or securities-based derivatives contracts of an entity —

(i) being an entity which is formed or constituted in Singapore or otherwise, whose securities or securities-based derivatives contracts are not listed for quotation on an approved exchange; or

(ii) being an entity which is not formed or constituted in Singapore, whose securities or securities-based derivatives contracts are listed for quotation on an approved exchange and such listing is not a primary listing,

that is made to existing members or debenture holders of that entity (whether or not it is renounceable in favour of persons other than existing members or debenture holders);

(*ce*) it is an offer of shares or debentures of an entity made to any existing member or debenture holder of the entity whose shares are listed for quotation on an approved exchange;

(*cf*) it is an offer of debentures of an entity made to any existing debenture holder of the entity whose debentures are listed for quotation on an approved exchange;

(*cg*) it is an offer of units of shares or debentures of an entity made to any existing member or debenture holder of the entity whose shares are listed for quotation on an approved exchange, where such units may only be exercised or converted by any existing member or debenture holder into shares or debentures (as the case may be) of the entity;

(*ch*) it is an offer of units of debentures of an entity made to any existing debenture holder of the entity whose debentures are listed on an approved exchange, where such units may only be exercised or converted by any existing debenture holder into debentures of the entity;

(*ci*) it is an offer of securities or securities-based derivatives contracts of a corporation made in the circumstances specified under section 178 of the Insolvency, Restructuring and Dissolution Act 2018;

(*cj*) it is an offer of units in a business trust, whose units are listed for quotation on an approved exchange, made to —

(i) any existing unitholder of the business trust; or

(ii) any holder of any debenture of the trustee-manager of the business trust that is issued by the trustee-manager of the business trust in its capacity as trustee-manager of the business

trust;

(*ck*) it is an offer of derivatives of units in a business trust, whose units are listed for quotation on an approved exchange, made to —

(i) any existing unitholder of the business trust, where such derivatives of units may only be exercised or converted by the existing unitholder into units of the business trust; or

(ii) any holder of any debenture of the trustee-manager of the business trust that is issued by the trustee-manager of the business trust in its capacity as trustee-manager of the business trust, where such derivatives of units may only be exercised or converted by the holder of debentures into units of the business trust;

(*d*) it is an offer of shares or debentures (not being such excluded shares or excluded debentures as the Authority may prescribe) that have been previously issued, are listed for quotation or quoted on an approved exchange, and are traded on the exchange;

(*da*) it is an offer of units in a business trust (not being such excluded units in a business trust as may be prescribed by regulations made under section 341) that —

(i) have been previously issued;

(ii) are listed for quotation or quoted on an approved exchange; and

(iii) are traded on the approved exchange;

(*e*) it is an offer of securities-based derivatives contracts (not being such excluded securities-based derivatives contracts as may be prescribed by regulations made under section 341) that —

(i) have been previously issued;

(ii) are listed for quotation or quoted on an approved exchange; and

(iii) are traded on the approved exchange;

(*f*) it is an offer of securities-based derivatives contracts (not being such excluded securities-based derivatives contracts as may be prescribed by regulations made under section 341) where —

(i) the discharge of the obligations under, or the value of, the securities-based derivatives contracts is determined wholly (whether directly or indirectly) by reference to, is derived from, or varies by reference to the value or amount of one or more securities indices; and

(ii) an application has been or will be made for permission for the securities-based derivatives contracts to be listed for quotation or quoted on an approved exchange;

(*g*) it is an offer of securities-based derivatives contracts (not being such excluded securities-based derivatives contracts as may be prescribed by regulations made under section 341) where —

(i) the obligations under the securities-based derivatives contracts are to be discharged by one party to the other at some future time by cash settlement only;

(ii) all underlying securities of the securities-based derivatives contracts have been previously issued and are listed for quotation on an organised market (not being such excluded organised market as may be prescribed by regulations made under section 341); and

(iii) either of the following is satisfied:

(A) an application has been or will be made for permission for the securities-based derivatives contracts to be listed for quotation or quoted on an approved exchange;

(B) the offer complies with such disclosure requirements prescribed by regulations made under section 341;

(*h*) it is an offer of securities-based derivatives contracts (not being such excluded securities-based derivatives contracts as may be prescribed by regulations made under section 341) where —

(i) the obligations under the securities-based derivatives contracts are to be discharged by one party to the other at some future time other than by cash settlement only;

(ii) all underlying securities of the securities-based derivatives

contracts have been previously issued and are listed for quotation on an approved exchange or a recognised securities exchange; and

(iii) an application has been or will be made for permission for the securities-based derivatives contracts to be listed for quotation or quoted on an approved exchange;

(*i*) it is made (whether or not in relation to securities or securities-based derivatives contracts that have been previously issued) by an entity to a qualifying person, where the securities or securities-based derivatives contracts are to be held by or for the benefit of the qualifying person and are the securities or securities-based derivatives contracts of the entity or any of its related parties; or

(*j*) it is made (whether or not in relation to securities or securities-based derivatives contracts that have been previously issued) by a trustee-manager of a business trust to a qualifying person, where the securities or securities-based derivatives contracts are to be held by or for the benefit of the qualifying person and are the securities or securities-based derivatives contracts of the business trust or any of its related parties.

[2/2009; 4/2017; 40/2018]

(1A) An offer of securities or securities-based derivatives contracts does not come within subsection (1)(*d*), (*da*) or (*e*) if —

(*a*) the securities or securities-based derivatives contracts being offered are borrowed by the issuer from any of the following persons solely for the purpose of facilitating the offer of securities or securities-based derivatives contracts by the issuer:

(i) an existing shareholder of the issuer;

(ii) a holder of a debenture of the issuer;

(iii) (where the securities or securities-based derivatives contracts offered are units or derivatives of units in a business trust) an existing holder of units or holder of derivatives of units in the business trust;

(iv) a holder of units of shares or debentures of the issuer; and

(*b*) such borrowing is made under an agreement or arrangement between the

issuer and the person mentioned in paragraph (*a*) which promises the issue or allotment of securities or securities-based derivatives contracts by the issuer to the person at the same time or shortly after the offer.

[4/2017]

(2) An offer of securities or securities-based derivatives contracts comes within subsection (1)(*i*) or (*j*) only if no selling or promotional expenses are paid or incurred in connection with the offer other than those incurred —

(*a*) for administrative or professional services; or

(*b*) by way of commission or fee for services rendered by —

(i) the holder of a capital markets services licence to deal in capital markets products that are securities or securities-based derivatives contracts;

(ii) an exempt person in respect of dealing in capital markets products that are securities or securities-based derivatives contracts;

(iii) a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in capital markets products that are securities or securities-based derivatives contracts; or

(iv) a person who is exempt from the laws, codes or requirements mentioned in sub-paragraph (iii) in respect of dealing in capital markets products that are securities or securities-based derivatives contracts.

[4/2017]

(3) [*Deleted by Act 1 of 2005*]

(4) For the purposes of subsection (1)(*i*) and (*j*) —

(*a*) a person is a qualifying person in relation to an entity if the person is —

(i) a bona fide director or equivalent person, former director or equivalent person, consultant, adviser, employee or former employee of the entity or a related corporation of that entity (being a corporation); or

(ii) the spouse, widow, widower or a child, adopted child or

stepchild below the age of 18, of such director or equivalent person, former director or equivalent person, employee or former employee; and

(*b*) a person is a qualifying person in relation to a business trust if the person is —

(i) a bona fide director or equivalent person, former director or equivalent person, consultant, adviser, employee or former employee of the trustee-manager of the business trust or a related corporation of that trustee-manager (being a corporation); or

(ii) the spouse, widow, widower or a child, adopted child or stepchild below the age of 18, of such director or equivalent person, former director or equivalent person, employee or former employee.

[4/2017]

(5) Where, on the application of any person interested, the Authority declares that circumstances exist whereby —

(*a*) the cost of providing a prospectus for an offer of securities or securities-based derivatives contracts outweighs the resulting protection to investors; or

(*b*) it would not be prejudicial to the public interest if a prospectus were dispensed with for an offer of securities or securities-based derivatives contracts,

then Subdivisions (2) and (3) of this Division (other than section 257) do not apply to such an offer for a period of 6 months from the date of the declaration.

[4/2017]

(6) The Authority may, on making a declaration under subsection (5), impose such conditions or restrictions on the offer as it may determine.

(7) A declaration made under subsection (5) is final.

(8) Any person who contravenes any of the conditions or restrictions specified in the declaration made under subsection (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

(8A) A person must not —

(*a*) advertise an offer or intended offer of any securities or securities-based derivatives contracts mentioned in subsection (1)(*d*), (*da*) or (*e*); or

(*b*) publish a statement that —

(i) directly or indirectly, refers to an offer or intended offer of any securities or securities-based derivatives contracts mentioned in subsection (1)(*d*), (*da*) or (*e*); or

(ii) is reasonably likely to induce persons to subscribe for or purchase the securities or securities-based derivatives contracts to which the offer relates,

unless the advertisement or publication complies with such requirements as may be prescribed by regulations made under section 341.

[4/2017]

(8B) Any person who contravenes subsection (8A), or who knowingly authorises or permits the publication or dissemination of any advertisement or statement referred to in that subsection, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

(9) In subsection (1)(*b*) and (*c*), "unlisted corporation" means a corporation —

(*a*) that is not a company; and

(*b*) the shares or debentures, or units of shares or debentures, of which are not listed for quotation on any approved exchange.

[4/2017]

(10) In subsection (1)(*ca*) and (*cb*), "corporation" means a corporation that is not a company.

Offer made to institutional investors

274. Subdivisions (2) and (3) of this Division (other than section 257) do not apply to an offer of securities or securities-based derivatives contracts (whether or not they have been previously issued) made to an institutional investor.

[4/2017]

Offer made to accredited investors and certain other persons

275.—(1) Subdivisions (2) and (3) of this Division (other than section 257) do not apply to an offer of securities or securities-based derivatives contracts, whether or not they have been previously issued, where the offer is made to a relevant person, if —

(*a*) the offer is not accompanied by an advertisement making an offer or calling attention to the offer or intended offer;

(*b*) no selling or promotional expenses are paid or incurred in connection with the offer other than those incurred for administrative or professional services, or by way of commission or fee for services rendered by —

(i) the holder of a capital markets services licence to deal in capital markets products that are securities or securities-based derivatives contracts;

(ii) an exempt person in respect of dealing in capital markets products that are securities or securities-based derivatives contracts;

(iii) a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in capital markets products that are securities or securities-based derivatives contracts; or

(iv) a person who is exempt from the laws, codes or requirements mentioned in sub-paragraph (iii) in respect of dealing in capital markets products that are securities or securities-based derivatives contracts; and

(*c*) no prospectus in respect of the offer has been registered by the Authority or, where a prospectus has been registered —

(i) the prospectus has expired pursuant to section 250; or

(ii) the person making the offer has before making the offer —

(A) informed the Authority by written notice of its intent to make the offer in reliance on the exemption under this subsection; and

(B) taken reasonable steps to inform in writing the person to whom the offer is made that the offer is made in reliance on the exemption under this subsection.

[2/2009; 4/2017]

(1A) Subdivisions (2) and (3) of this Division (other than section 257) do not apply to an offer of securities or securities-based derivatives contracts to a person who acquires the securities or securities-based derivatives contracts as principal, whether or not the securities or securities-based derivatives contracts have been previously issued, if —

(*a*) the offer is on terms that the securities or securities-based derivatives contracts may only be acquired at a consideration of not less than $200,000 (or its equivalent in a foreign currency) for each transaction, whether such amount is to be paid for in cash or by exchange of securities, securities-based derivatives contracts or other assets;

(*b*) the offer is not accompanied by an advertisement making an offer or calling attention to the offer or intended offer;

(*c*) no selling or promotional expenses are paid or incurred in connection with the offer other than those incurred for administrative or professional services, or by way of commission or fee for services rendered by —

(i) the holder of a capital markets services licence to deal in capital markets products that are securities or securities-based derivatives contracts;

(ii) an exempt person in respect of dealing in capital markets products that are securities or securities-based derivatives contracts;

(iii) a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in capital markets products that are securities or securities-based derivatives contracts; or

(iv) a person who is exempt from the laws, codes or requirements mentioned in sub-paragraph (iii) in respect of dealing in capital markets products that are securities or securities-based derivatives contracts; and

(*d*) no prospectus in respect of the offer has been registered by the Authority or, where a prospectus has been registered —

(i) the prospectus has expired pursuant to section 250; or

(ii) the person making the offer has before making the offer —

(A) informed the Authority by written notice of its intent to

make the offer in reliance on the exemption under this subsection; and

(B) taken reasonable steps to inform in writing the person to whom the offer is made that the offer is made in reliance on the exemption under this subsection.

[2/2009; 4/2017]

(2) In this section —

"advertisement" means —

(*a*) a written or printed communication;

(*b*) a communication by radio, television or other medium of communication; or

(*c*) a communication by means of a recorded telephone message,

that is published in connection with an offer in respect of securities or securities-based derivatives contracts, but does not include —

(*d*) an information memorandum;

(*e*) a publication which consists solely of a disclosure, notice or report required under this Act, or any listing rules or other requirements of an approved exchange or overseas exchange, which is made by any person; or

(*f*) a publication which consists solely of a notice or report of a general meeting or proposed general meeting of the unitholders of the business trust, the person making the offer, the issuer, the underlying entity or any entity, or a presentation of oral or written material on matters so contained in the notice or report at the general meeting;

"information memorandum" means a document —

(*a*) purporting to describe —

(i) the securities or securities-based derivatives contracts being offered; or

(ii) the business and affairs of the person making the offer, the issuer or (where applicable) the underlying entity, or (where the securities or securities-based derivatives contracts being

offered are units or derivatives of units in a business trust) the trustee-manager of the business trust or the business trust; and

(*b*) purporting to have been prepared for delivery to, and review by, relevant persons and persons to whom an offer mentioned in subsection (1A) is to be made, so as to assist them in making an investment decision in respect of the securities or securities-based derivatives contracts being offered;

"relevant person" means —

(*a*) an accredited investor;

(*b*) a corporation the sole business of which is to hold investments and the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor;

(*c*) a trustee of a trust the sole purpose of which is to hold investments and each beneficiary of which is an individual who is an accredited investor;

(*d*) an officer or equivalent person of the person making the offer (such person being an entity) or a spouse, parent, brother, sister, son or daughter of that officer or equivalent person; or

(*e*) a spouse, parent, brother, sister, son or daughter of the person making the offer (such person being an individual).

[4/2017]

(2A) In the definition of "information memorandum" in subsection (2), the reference to the affairs of the person making the offer, the issuer, the underlying entity, the trustee-manager of the business trust or the business trust includes —

(*a*) where the person making the offer, the issuer, the underlying entity or the trustee-manager is a corporation, a reference to the matters mentioned in section 2(2); and

(*b*) in any other case, a reference to such matters as may be prescribed by regulations made under section 341.

[4/2017]

(3) Despite any condition in section 99 or any regulation made for the purposes of that section that a person has to deal in capital markets products that are securities or securities-based derivatives contracts for the person's own account with or through a

person prescribed by the Authority so that the firstmentioned person can qualify as an exempt person, a person who acquires securities or securities-based derivatives contracts under an offer made in reliance on an exemption under section 274 or subsection (1) or (1A) for the person's own account is treated as an exempt person even though the person does not comply with that condition.

[4/2017]

(4) The Authority may, by order in the *Gazette*, specify an amount in substitution of any amount specified in subsection (1A)(*a*).

Offer of securities acquired pursuant to section 274 or 275

276.—(1) Despite sections 272A, 272B, 273(1)(*d*), (*e*) and (*f*), 277, 278 and 279 but subject to subsection (7), where securities or securities-based derivatives contracts initially acquired pursuant to an offer made in reliance on an exemption under section 274 or 275 are sold within the period of 6 months from the date of the initial acquisition to any person other than —

(*a*) an institutional investor;

(*b*) a relevant person as defined in section 275(2); or

(*c*) any person pursuant to an offer referred to in section 275(1A),

then Subdivisions (2) and (3) of this Division apply to the offer resulting in that sale.

[2/2009; 4/2017]

(1A) The reference to the sale of securities or securities-based derivatives contracts under subsection (1) includes —

(*a*) where the securities or securities-based derivatives contracts initially acquired are debentures, or units of shares or debentures, with an attached right of conversion into shares or debentures, a reference to the sale of the converted shares or debentures; and

(*b*) where the securities or securities-based derivatives contracts initially acquired are derivatives of units in a business trust, with an attached right of conversion into units in the business trust, a reference to the sale of the units in the business trust.

[4/2017]

(2) Where securities or securities-based derivatives contracts initially acquired pursuant to an offer made in reliance on an exemption under section 274 or 275 are sold to —

(*a*) an institutional investor;

(*b*) a relevant person as defined in section 275(2); or

(*c*) any person pursuant to an offer referred to in section 275(1A),

Subdivisions (2) and (3) of this Division do not apply to the offer resulting in that sale.

[4/2017]

(3) Subject to subsection (7), securities or securities-based derivatives contracts of a corporation (other than a corporation that is an accredited investor) —

(*a*) the sole business of which is to hold investments; and

(*b*) the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor,

must not be transferred within 6 months after the corporation has acquired any securities or securities-based derivatives contracts pursuant to an offer made in reliance on an exemption under section 275 unless —

(*c*) that transfer —

(i) is made only to institutional investors or relevant persons as defined in section 275(2); or

(ii) arises from an offer referred to in section 275(1A);

(*d*) no consideration is or will be given for the transfer; or

(*e*) the transfer is by operation of law.

[2/2009; 4/2017]

(4) Subject to subsection (7), where —

(*a*) the sole purpose of a trust (other than a trust the trustee of which is an accredited investor) is to hold investments; and

(*b*) each beneficiary of the trust is an individual who is an accredited investor,

the beneficiaries' rights and interest (howsoever described) in the trust must not be transferred within 6 months after securities or securities-based derivatives contracts are acquired for the trust pursuant to an offer made in reliance on an exemption under section 275 unless —

(*c*) that transfer —

(i) is made only to institutional investors or relevant persons as defined in section 275(2); or

(ii) arises from an offer that is made on terms that such rights or interest are acquired at a consideration of not less than $200,000 (or its equivalent in a foreign currency) for each transaction, whether such amount is to be paid for in cash or by exchange of securities or securities-based derivatives contracts or other assets;

(*d*) no consideration is or will be given for the transfer; or

(*e*) the transfer is by operation of law.

[2/2009; 4/2017]

(5) To avoid doubt, the reference to beneficiaries in subsection (4) includes a reference to unitholders of a business trust and participants of a collective investment scheme.

(6) To avoid doubt, where any securities or securities-based derivatives contracts are acquired pursuant to an offer made in reliance on an exemption under section 274 or 275, an offer to sell those securities or securities-based derivatives contracts may be made in reliance on an exemption under section 273(1)(*d*) or (*e*) after 6 months have elapsed from the date of the firstmentioned offer.

[4/2017]

(7) Subsections (1), (3) and (4) do not apply where the securities or securities-based derivatives contracts of the corporation that are acquired are of the same class as other securities or securities-based derivatives contracts of the corporation —

(*a*) that are listed for quotation on an approved exchange; and

(*b*) in respect of which any offer information statement, introductory document, shareholders' circular for a reverse take-over, document issued for the purposes of a scheme of arrangement, or any other similar document approved by an approved exchange, was issued in connection with —

(i) an offer of those securities or securities-based derivatives contracts; or

(ii) the listing for quotation of those securities or securities-based derivatives contracts.

Offer made using offer information statement

277.—(1) Subject to subsection (1A), Subdivisions (2) and (3) of this Division (other

than section 257) do not apply to an offer of securities or securities-based derivatives contracts (not being such securities or securities-based derivatives contracts as may be prescribed by regulations made under section 341) if the following conditions are satisfied:

(*a*) where the securities or securities-based derivatives contracts offered —

(i) are units of shares or debentures, those units of shares or debentures are issued by an entity whose shares are listed for quotation on an approved exchange, whether by means of a rights issue or otherwise; and

(ii) are units or derivatives of units in a business trust, the units or derivatives of units in the business trust are issued by a trustee-manager acting in its capacity as the trustee-manager of the business trust, where units of the business trust which have been previously issued are listed for quotation on an approved exchange, whether by means of a rights issue or otherwise;

(*b*) an offer information statement relating to the offer which complies with such requirements as to form and content as may be prescribed by regulations made under section 341 is lodged with the Authority;

(*c*) either —

(i) the offer is made in, or accompanied by, the offer information statement mentioned in paragraph (*b*); or

(ii) all the conditions in subsection (1B) are satisfied.

[4/2017]

(1A) Subsection (1) only applies to an offer of securities or securities-based derivatives contracts referred to in that subsection made within a period of 6 months from the date the offer information statement relating to that offer is lodged with the Authority.

[2/2009; 4/2017]

(1AB) In relation to an offer of securities —

(*a*) where the securities are issued, whether by means of a rights issue or otherwise, by a subsidiary (called in this section the subsidiary) of an entity whose shares are listed for quotation on an approved exchange (called in this section the listed entity); and

(*b*) where the listed entity has guaranteed, or has agreed to guarantee, unconditionally and irrevocably, all payment obligations (whether in cash,

in kind or otherwise) of the subsidiary arising from the securities,

the Authority may, on the application of the subsidiary or the listed entity, declare by written notice to the applicant that the provision of an offer information statement in lieu of a prospectus relating to an offer of securities would not be prejudicial to investors of such securities.

[4/2017]

(1AC) Where the Authority makes a declaration mentioned in subsection (1AB) in relation to an offer of securities, Subdivisions (2) and (3) of this Division (other than section 257) do not apply to the offer of securities for a period of 6 months starting on the date of the declaration if all of the following conditions are satisfied:

(*a*) the offer information statement relating to the offer of securities —

(i) complies with such requirements as to form and content as may be prescribed by regulations made under section 341;

(ii) is signed by every director, or equivalent person, of the subsidiary and the listed entity; and

(iii) is lodged by the subsidiary or the listed entity, with the Authority;

(*b*) either —

(i) the offer of securities is made in, or accompanied by, the offer information statement mentioned in paragraph (*a*); or

(ii) all the conditions in subsection (1B) are satisfied.

[4/2017]

(1AD) The Authority may, on making a declaration under subsection (1AB), provide that the offer of securities may only be made subject to such conditions or restrictions as the Authority may impose.

[4/2017]

(1B) The conditions mentioned in subsections (1)(*c*)(ii) and (1AC)(*b*)(ii) are —

(*a*) the offer is made using any automated teller machine or such other electronic means as the Authority may prescribe;

(*b*) the automated teller machine or prescribed electronic means indicates to a prospective subscriber or buyer —

(i) how the prospective subscriber or buyer can obtain, or arrange to

receive, a copy of the offer information statement in respect of the offer; and

(ii) that the prospective subscriber or buyer should read the offer information statement before submitting an application,

before enabling the prospective subscriber or buyer to submit any application to subscribe for or purchase securities or securities-based derivatives contracts; and

(*c*) the person making the offer complies with such other requirements as the Authority may prescribe.

[4/2017]

(2) The Authority may, on the application of any person interested, modify the prescribed form and content of the offer information statement in such manner as is appropriate, subject to such conditions or restrictions as the Authority may determine.

(3) Sections 249, 249A, 253, 254 and 255 apply in relation to an offer information statement referred to in subsection (1) or (1AC) as they apply in relation to a prospectus.

[4/2017]

(4) For the purposes of subsection (3) —

(*a*) a reference in section 249 or 249A to the registration of the prospectus is to be read as a reference to the lodgment of the offer information statement;

(*b*) a reference in section 253 or 254 to any information or new circumstance required to be included in a prospectus under section 243 is to be read as a reference to any information prescribed under subsection (1)(*b*); and

(*c*) in relation to an offer information statement mentioned in subsection (1AC), a reference in section 253(4)(*a*), (*b*) or (*c*) or 254(3)(*a*), (*b*) or (*c*) to the person making the offer is to be read as a reference to the subsidiary and the listed entity.

[4/2017]

(5) Where the written consent of an expert is required to be given under section 249 (as applied in relation to an offer information statement under subsection (3)), that written consent must be lodged with the Authority at the same time as the lodgment of the statement.

(6) Where the written consent of an issue manager or underwriter is required to be given under section 249A (as applied in relation to an offer information statement under subsection (3)), that written consent must be lodged with the Authority at the same time as the lodgment of the statement.

(7) A person must not advertise an offer or intended offer of any securities or securities-based derivatives contracts referred to in subsection (1), or publish a statement that directly or indirectly refers to the offer or intended offer, or that is reasonably likely to induce persons to subscribe for or purchase the securities or securities-based derivatives contracts, unless the advertisement or publication complies with such requirements as the Authority may prescribe by regulations made under section 341.

[34/2012; 4/2017]

(8) Any person who contravenes subsection (7), or who knowingly authorises or permits the publication or dissemination of any advertisement or statement referred to in that subsection, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

Offer in respect of international debentures

278.—(1) Subdivisions (2) and (3) of this Division (other than section 257) do not apply to an offer of debentures, or units of debentures, by a body incorporated in a country outside Singapore where the offer —

(*a*) is made by the holder of a capital markets services licence to deal in capital markets products that are securities or securities-based derivatives contracts or an exempt person under section 99(1)(*a*) or (*b*), to such institutional, professional or business investors as the Authority may, by order in the *Gazette*, specify, being persons or bodies that appear to the Authority to have sufficient expertise to understand any risk involved in buying or selling those debentures, or units of debentures (whether as principal or agent); and

(*b*) complies with the conditions specified in subsection (2).

[4/2017]

(2) The conditions referred to in subsection (1)(*b*) are that —

(*a*) the debentures, or units of debentures, are denominated in a currency, other than the Singapore dollar, and each debenture, or each unit of debenture, has a face value of at least US$5,000 or its equivalent in another currency; and

(*b*) the shares of the issuing corporation are listed on a recognised securities exchange or the offer is guaranteed by a corporation whose shares are listed on a recognised securities exchange.

(3) The Authority may by order in the *Gazette* add to, vary or amend the conditions specified in subsection (2).

Offer of debentures made by Government or international financial institutions

279. Subdivisions (2) and (3) of this Division do not apply to an offer of debentures, or units of debentures, made by or guaranteed by —

(*a*) the Government; or

(*b*) an international financial institution in which Singapore holds membership of any class or description, whether or not it holds any share in the share capital of that institution.

Making offer using automated teller machine or electronic means

280.—(1) Subject to subsection (3) and such requirements as the Authority may prescribe, a person making an offer of securities or securities-based derivatives contracts using —

(*a*) any automated teller machine; or

(*b*) such other electronic means as the Authority may prescribe,

is exempted from the requirement under section 240(1)(*a*) that the offer be made in or accompanied by a prospectus in respect of the offer or, where applicable, the requirement under section 240(4) that the offer be made in or accompanied by a profile statement in respect of the offer.

[4/2017]

(2) To avoid doubt, a prospectus which complies with all other requirements of section 240(1)(*a*) or, where applicable, a profile statement which complies with all other requirements of section 240(4) must still be prepared and issued in respect of any offer referred to in subsection (1).

(3) Subsection (1) does not apply unless the automated teller machine or prescribed electronic means indicates to a prospective subscriber or buyer —

(*a*) how the prospective subscriber or buyer can obtain, or arrange to receive, a copy of the prospectus or, where applicable, profile statement in respect of the offer; and

(*b*) that the prospective subscriber or buyer should read the prospectus or, where applicable, profile statement before submitting an application,

before enabling the prospective subscriber or buyer to submit any application to subscribe for or purchase securities or securities-based derivatives contracts.

[4/2017]

Information relating to certain offers

280A. The Authority may, by regulations made under section 341, require any person or class of persons to provide the Authority with such information relating to an offer of securities or securities-based derivatives contracts made or proposed to be made in reliance on an exemption under any provision of this Subdivision.

[4/2017]

Revocation of exemption

281.—(1) Where the Authority considers that a person is contravening, or is likely to contravene, or has contravened any condition or restriction imposed under section 273(6), or that it is necessary in the public interest or for the protection of investors, it may revoke any exemption under this Subdivision, subject to such conditions as it thinks fit.

(2) The Authority may revoke an exemption under subsection (1) without giving the person affected by the revocation an opportunity to be heard, but the person may, within 14 days of the revocation, apply to the Authority for the revocation to be reviewed by the Authority, and the revocation remains in effect unless it is withdrawn by the Authority.

(3) A revocation made under this section is final and there is no appeal from the revocation.

Transactions under exempted offers subject to Division 2 of Part 12 of Companies Act 1967 and Part 12 of this Act

282. To avoid doubt, it is declared that in relation to any transaction carried out under an exempted offer under this Part, nothing in this Part limits or diminishes any liability which any person may incur in respect of any relevant offence under Division 2 of Part 12 of the Companies Act 1967 or Part 12 of this Act or any penalty, award of compensation or punishment in respect of any such offence.

Subdivision (5) — General

Power of Authority to issue directions

282AA.—(1) The Authority may, where it thinks it necessary or expedient in the interests of the public or a section of the public or for the protection of investors, issue directions, whether of a general or specific nature, by written notice —

(*a*) to a person making an offer of securities, being an offer made in or

accompanied by a prospectus or profile statement or an offer referred to in section 280, on matters in connection with the offer;

(*b*) to a person referred to in paragraph (*a*) who is a borrowing entity, on matters in connection with the requirements and obligations under Subdivision (3) of this Division, in addition to the matters referred to in paragraph (*a*); or

(*c*) to a trustee appointed under section 265A(1).

[34/2012]

(2) Any person to whom a notice is given under subsection (1) must comply with every direction contained in the notice.

[34/2012]

(3) It is not necessary to publish any direction issued under subsection (1) in the *Gazette*.

[34/2012]

(4) Any person who contravenes a direction issued to the person under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

(5) No criminal or civil liability shall be incurred by a trustee appointed under section 265A(1), or by any person acting on behalf of such a trustee, for any thing done (including any statement made) or omitted to be done with reasonable care and in good faith in the course of, or in connection with, the compliance or purported compliance with a direction issued to the trustee under subsection (1).

[34/2012]

Division 2 — Collective Investment Schemes

Subdivision (1) — Interpretation

Interpretation of this Division

283.—(1) In this Division, unless the context otherwise requires —

"authorised real estate investment trust" means a real estate investment trust that is a collective investment scheme authorised under section 286;

"control", in relation to an entity, means the capacity of a person to determine the

outcome of decisions on the financial and operating policies of the entity, having regard to —

(*a*) the influence which the person can, in practice, exert on the entity (as opposed to the rights which the person can exercise in the entity); and

(*b*) any practice or pattern of behaviour of the person affecting the financial or operating policies of the entity (even if such practice or pattern of behaviour involves a breach of an agreement or a breach of trust),

but does not include any capacity of a person to influence decisions on the financial and operating policies of the entity if such influence is required by law or under any contract or order of court to be exercised for the benefit of other persons;

"immediate family", in relation to an individual, means the individual's spouse, son, adopted son, stepson, daughter, adopted daughter, stepdaughter, father, stepfather, mother, stepmother, brother, stepbrother, sister or stepsister;

"preliminary document" means a document which has been lodged with the Authority and is issued for the purpose of determining the appropriate issue or sale price of, and the number of, units in a collective investment scheme to be issued or sold and which contains the information required to be included in a prospectus as may be prescribed under section 296(1)(*a*)(i), except for such information as the Authority may prescribe;

"product highlights sheet" means a product highlights sheet referred to in section 296A(1);

"profile statement" means a profile statement referred to in section 296(2);

"prospectus" means any prospectus, notice, circular, material, advertisement, publication or other document used to make an offer of units in a collective investment scheme or proposed collective investment scheme, but does not include —

(*a*) a profile statement;

(*b*) any material, advertisement or publication which is authorised by section 300 (other than subsection (3)); or

(*c*) a product highlights sheet;

"recognised real estate investment trust" means a real estate investment trust that is a collective investment scheme recognised under section 287;

"recognised securities exchange" means a corporation which has been declared by the Authority, by order in the *Gazette*, to be a recognised securities exchange for the purposes of this Division;

"related party" means —

(*a*) in relation to an entity —

(i) a director or an equivalent person of the entity;

(ii) the chief executive officer or an equivalent person of the entity;

(iii) a person who controls the entity;

(iv) a related corporation;

(v) any other entity controlled by it;

(vi) any other entity controlled by the person referred to in sub-paragraph (iii); and

(vii) a related party of any individual referred to in sub-paragraph (i), (ii) or (iii); and

(*b*) in relation to an individual —

(i) his or her immediate family;

(ii) a trustee of any trust of which the individual or any member of the individual's immediate family is —

(A) a beneficiary; or

(B) where the trust is a discretionary trust, a discretionary object,

when the trustee acts in that capacity; and

(iii) any corporation in which the individual and his or her immediate family (whether directly or indirectly) have interests in voting shares of an aggregate of not less than 30% of the total votes attached to all voting shares;

"replacement document" means a replacement prospectus or a replacement profile statement referred to in section 298(1), as the case may be;

"supplementary document" means a supplementary prospectus or a supplementary profile statement referred to in section 298(1), as the case may be;

"unit trust" means a collective investment scheme under which the property is held on trust for the participants.

[2/2009; 34/2012; 4/2017]

(2) For the purposes of this Division, a statement is deemed to be included in a prospectus or profile statement if it is contained in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

(3) For the purposes of this Division, a person makes an offer of units in a collective investment scheme if, and only if, as principal —

(*a*) the person makes (either personally or by an agent) an offer to any person in Singapore which upon acceptance would give rise to a contract for the issue or sale of those units by the firstmentioned person or another person with whom the firstmentioned person has made arrangements for that issue or sale; or

(*b*) the person invites (either personally or by an agent) any person in Singapore to make an offer which upon acceptance would give rise to a contract for the issue or sale of those units by the firstmentioned person or another person with whom the firstmentioned person has made arrangements for that issue or sale.

(4) In subsection (3), "sale" includes any disposal for valuable consideration.

Use of term "real estate investment trust"

283A.—(1) A person must not, when describing or referring to any arrangement the rights or interests of which are, will be or have been the subject of an offer or intended offer, use the term "real estate investment trust" or any of its derivatives in any language in the name or description or any representation of that arrangement, unless —

(*a*) the arrangement is authorised under section 286 or is one for which an application for authorisation has been made and has not been refused by the Authority under that section;

(*b*) the arrangement is recognised under section 287 or is one for which an application for recognition has been made and has not been refused by the Authority under that section; or

(*c*) the Authority has given its consent in writing to that person to use that term or derivative, or that person belongs to a class of persons declared by the Authority by order in the *Gazette* as persons who may use such term or

derivative.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

(3) To avoid doubt, in subsection (1) —

(*a*) "offer" or "intended offer", in relation to any rights or interests in an arrangement, includes an offer or intended offer in relation to any such rights or interests that have previously been issued; and

(*b*) "representation", in relation to an arrangement, includes a representation of the arrangement in any bill head, letter paper, notice, advertisement, publication or writing, whether in electronic, print or other form.

Code on Collective Investment Schemes

284.—(1) For the more effective administration, supervision and control of collective investment schemes, the Authority may, under section 321, issue a code, to be known as the Code on Collective Investment Schemes.

(2) The Authority may revise the Code on Collective Investment Schemes by deleting, amending or adding to the provisions thereof.

(3) The Code on Collective Investment Schemes is deemed not to be subsidiary legislation.

Authority may disapply this Division to certain offers and invitations

284A. Despite any provision to the contrary in this Division, where —

(*a*) an offer of units in a collective investment scheme is one to which (but for this section) both this Division and Division 1 apply; and

(*b*) the Authority has by order in the *Gazette* declared that this Division does not apply to that offer or a class of offers to which that offer belongs,

then this Division (other than section 283A) does not apply to that offer.

[2/2009]

Division not to apply to certain collective investment schemes which are business trusts

284B. This Division (other than section 283A) does not apply to an offer of units in a

collective investment scheme, where —

(*a*) the collective investment scheme is also a registered business trust; or

(*b*) the collective investment scheme is also a business trust and the offer is made in reliance on an exemption under Subdivision (3) of Division 1A.

[2/2009]

Modification of provisions to certain offers

284C. The Authority may, if it thinks it necessary in the interests of the public or a section of the public or for the protection of investors, by regulations modify or adapt the provisions of this Division in their application to such offer of units in a collective investment scheme as may be prescribed, and the provisions of this Division apply to such offer subject to such modifications or adaptations.

[2/2009]

Subdivision (2) — Authorisation and recognition

Requirement for authorisation or recognition

285.—(1) A person must not make an offer of units in a collective investment scheme if the collective investment scheme has not been authorised under section 286 or recognised under section 287.

[2/2009]

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

Authorised schemes

286.—(1) The Authority may, upon an application made to the Authority in such form and manner as may be prescribed by regulations made under section 341, authorise a collective investment scheme constituted in Singapore, subject to —

(*a*) subsection (2) or (2A), as the case may be;

(*b*) the conditions specified in subsection (3); and

(*c*) such conditions or restrictions as the Authority thinks fit to impose by written notice.

[34/2012; 44/2018]

(1A) The Authority may, at any time, by written notice to the responsible person for a collective investment scheme authorised under subsection (1), vary or revoke any condition or restriction imposed by the Authority under subsection (1)(*c*) or impose such further condition or restriction as the Authority thinks fit.

[34/2012]

(2) The Authority may authorise, under subsection (1), a collective investment scheme which is constituted as a unit trust if and only if the Authority is satisfied that —

(*a*) there is a manager for the scheme which satisfies the requirements in subsection (3);

(*b*) there is a trustee for the scheme approved under section 289;

(*c*) there is a trust deed in respect of the scheme entered into by the manager and the trustee for the scheme that complies with prescribed requirements; and

(*d*) the scheme, the manager for the scheme and the trustee for the scheme comply with this Act and the Code on Collective Investment Schemes.

(2A) The Authority may authorise under subsection (1) a collective investment scheme constituted as a VCC or a sub-fund, if and only if the Authority is satisfied that —

(*a*) there is a manager for the scheme that satisfies the requirements in subsection (3);

(*b*) there is a custodian for the scheme that is a trustee approved under section 289;

(*c*) the constitution of the VCC and contractual arrangements in respect of the scheme comply with prescribed requirements and the Variable Capital Companies Act 2018;

(*d*) there are at least 3 directors of the VCC, at least one of whom is independent in accordance with the criteria set out in the Code on Collective Investment Schemes; and

(*e*) the VCC, the scheme, the manager for the scheme and the custodian for the scheme comply with this Act and the Code on Collective Investment Schemes.

[44/2018]

(3) It is a condition for the authorisation of a collective investment scheme under subsection (1) that —

(*a*) the manager of the scheme is —

(i) in the case of a collective investment scheme —

(A) that is a trust;

(B) that invests primarily in real estate and real estate-related assets specified by the Authority in the Code on Collective Investment Schemes; and

(C) all or any units of which are listed for quotation on an approved exchange,

the holder of a capital markets services licence for real estate investment trust management; and

(ii) in all other cases, the holder of a capital markets services licence for fund management or a person exempted under section 99(1)(*a*), (*b*), (*c*) or (*d*) in respect of fund management; and

(*b*) the manager for the scheme is a fit and proper person, in the opinion of the Authority, and in considering if a person satisfies this requirement, the Authority may take into account any matter relating to —

(i) any person who is or will be employed by or associated with the manager;

(ii) any person exercising influence over the manager; or

(iii) any person exercising influence over a related corporation of the manager.

[2/2009; 4/2017; S 376/2008]

(4) The Authority may authorise, under subsection (1), a collective investment scheme which is not constituted as a unit trust, a VCC or a sub-fund if and only if the Authority is satisfied that the scheme and the manager for the scheme comply with such requirements as may be prescribed.

[44/2018]

(5) Without affecting subsection (2) or (2A), the Authority may refuse to authorise any collective investment scheme under subsection (1) where it appears to the Authority that it is not in the public interest to do so.

[2/2009; 44/2018]

(6) The Authority must not refuse to authorise a collective investment scheme under

subsection (1) without giving the person who made the application an opportunity to be heard, except that an opportunity to be heard need not be given if the refusal is on the ground that it is not in the public interest to authorise the collective investment scheme on the basis of any of the following circumstances:

(*a*) the person making the offer (being an entity), the responsible person or the collective investment scheme itself, is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;

(*b*) the person making the offer (being an individual) is an undischarged bankrupt, whether in Singapore or elsewhere;

(*c*) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the person making the offer (being an entity), the responsible person or the collective investment scheme.

(7) The responsible person for a collective investment scheme may, within 30 days after the responsible person is notified that the Authority has refused to authorise that scheme under subsection (1), appeal to the Minister whose decision is final.

(8) An application made under subsection (1) must be accompanied by such information or record as the Authority may require.

(9) The Authority may publish for public information, in such manner as it considers appropriate, particulars of any collective investment scheme authorised under subsection (1).

(10) The responsible person for a collective investment scheme authorised under subsection (1) and either —

(*a*) the approved trustee for the scheme if it is one constituted as a unit trust; or

(*b*) the custodian for the scheme if it is one constituted as a VCC or sub-fund,

to the extent applicable, must ensure that —

(*c*) every condition or requirement set out in subsection (2) or (2A) (as the case may be), and subsections (3) and (4); and

(*d*) every condition or restriction imposed by the Authority under subsection (1)(*c*) or (1A),

as applicable to that scheme, continue to be satisfied.

[44/2018]

(10A) The manager of an authorised real estate investment trust must —

(*a*) act in the best interests of all the participants of the authorised real estate investment trust as a whole; and

(*b*) give priority to the interests of all the participants of the authorised real estate investment trust as a whole over the manager's own interests and the interests of the shareholders of the manager in the event of a conflict between the interests of all the participants as a whole and the manager's own interests or the interests of the shareholders of the manager.

[4/2017]

(10B) A director of the manager of an authorised real estate investment trust must —

(*a*) take all reasonable steps to ensure that the manager discharges its duties under subsection (10A); and

(*b*) give priority to the interests of all the participants of the authorised real estate investment trust as a whole over the interests of the manager and the shareholders of the manager in the event of a conflict between the interests of all the participants as a whole and the interests of the manager or the shareholders of the manager.

[4/2017]

(10C) The duty of a director of the manager mentioned in subsection (10B) overrides any conflicting duty of such director under section 157 of the Companies Act 1967.

[4/2017]

(10D) Civil or criminal proceedings may not be brought against a director of the manager of an authorised real estate investment trust for a breach of section 157 of the Companies Act 1967, any fiduciary duty or any other duty under common law, in relation to any act or omission if such act or omission was required by subsection (10B).

[4/2017]

(10E) To avoid doubt, no action or proceedings of any kind may be brought by or on behalf of all or any of the participants of an authorised real estate investment trust against a director of the manager of that authorised real estate investment trust for any breach or alleged breach of the duties imposed by subsection (10B) except to the extent and in the manner provided for under section 295C.

[4/2017]

(11) Despite subsection (10), a failure by any person to comply with the Code on Collective Investment Schemes does not of itself render that person liable to criminal proceedings but such failure may, in any proceedings whether civil or criminal, be relied upon by any party to the proceedings as tending to establish or to negate any liability which is in question in the proceedings.

(12) If any person fails to comply with the Code on Collective Investment Schemes,

the Authority may, in addition to, or as an alternative to any action under section 288, take such other action as it deems fit.

(13) The responsible person for a collective investment scheme which is authorised under subsection (1) must provide such information or record regarding the scheme as the Authority may, at any time, require for the proper administration of this Act.

(14) Where the manager for a collective investment scheme which is constituted as a unit trust and authorised under subsection (1) fails to comply with this Act or the Code on Collective Investment Schemes, the Authority may direct the trustee for the scheme to remove that person and appoint a new manager for the scheme.

(14A) Where the manager for a collective investment scheme that is constituted as a VCC or a sub-fund, and authorised under subsection (1), fails to comply with this Act or the Code on Collective Investment Schemes, the Authority may direct the VCC to remove that person and appoint a new manager for the scheme.

[44/2018]

(15) Any person who contravenes subsection (10) or (13) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 and, in the case of a continuing offence, to a further fine not exceeding $10,000 for every day or part of a day during which the offence continues after conviction.

(16) A manager of an authorised real estate investment trust which contravenes subsection (10A) —

(*a*) shall be liable to all the participants of the authorised real estate investment trust as a whole —

(i) for any profit or financial gain directly or indirectly made by the manager or any of its related corporations; or

(ii) for any damage suffered by all the participants of the authorised real estate investment trust as a whole,

as a result of the contravention; and

(*b*) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000.

[4/2017]

(17) A director of the manager of an authorised real estate investment trust who contravenes subsection (10B) —

(*a*) shall be liable to all the participants of the authorised real estate investment trust as a whole —

(i) for any profit or financial gain directly or indirectly made by the director or the manager or any related corporation of the manager; or

(ii) for any damage suffered by all the participants of the authorised real estate investment trust as a whole,

as a result of the contravention; and

(*b*) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 or to imprisonment for a term not exceeding 2 years or to both.

[4/2017]

Recognised schemes

287.—(1) The Authority may, upon an application made to the Authority in such form and manner as may be prescribed by regulations made under section 341, recognise a collective investment scheme constituted outside Singapore, subject to —

(*a*) subsection (2);

(*b*) the conditions specified in subsection (3); and

(*c*) such conditions or restrictions as the Authority thinks fit to impose by written notice.

[34/2012]

(1A) The Authority may, at any time, by written notice to the responsible person for a collective investment scheme recognised under subsection (1), vary or revoke any condition or restriction imposed by the Authority under subsection (1)(*c*) or impose such further condition or restriction as the Authority thinks fit.

[34/2012]

(2) In determining whether to recognise a collective investment scheme under subsection (1), the Authority may have regard to the following factors:

(*a*) whether the laws and practices of the jurisdictions under which the scheme is constituted and regulated affords to investors in Singapore protection at least equivalent to that provided to them by or under this Division in the case of comparable authorised schemes;

(*b*) such other criteria as may be prescribed by regulations made under section 341.

[4/2017]

(3) Unless otherwise notified in writing by the Authority to the responsible person of the collective investment scheme, the following conditions must be satisfied for the recognition of every collective investment scheme under subsection (1):

(*a*) there is a manager for the scheme that —

(i) is licensed or regulated in the jurisdiction of its principal place of business; and

(ii) is a fit and proper person in the opinion of the Authority, and in considering if a person is a fit and proper person, the Authority may take into account any matter relating to —

(A) any person who is or will be employed by or associated with the manager;

(B) any person exercising influence over the manager; or

(C) any person exercising influence over a related corporation of the manager;

(*b*) there is a representative for the scheme for the functions set out in subsection (13) who is —

(i) an individual resident in Singapore; or

(ii) a company, or a foreign company registered under Division 2 of Part 11 of the Companies Act 1967;

(*c*) the scheme, the manager for the scheme and (where applicable) the trustee for the scheme comply with this Act and the Code on Collective Investment Schemes; and

(*d*) the responsible person for the collective investment scheme furnishes to the Authority —

(i) the name of the representative mentioned in paragraph (*b*) and the representative's address (where such representative is a corporation) or contact particulars (where such representative is an individual); and

(ii) any information prescribed by regulations made under section 341.

[4/2017]

(4) Without affecting subsection (2), the Authority may refuse to recognise any

collective investment scheme under subsection (1) where it appears to the Authority that it is not in the public interest to do so.

[2/2009]

(5) The Authority must not refuse to recognise a collective investment scheme under subsection (1) without giving the person who made the application an opportunity to be heard, except that an opportunity to be heard need not be given if the refusal is on the ground that it is not in the public interest to recognise the collective investment scheme on the basis of any of the following circumstances:

(*a*) the person making the offer (being an entity), the responsible person or the collective investment scheme itself, is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;

(*b*) the person making the offer (being an individual) is an undischarged bankrupt, whether in Singapore or elsewhere;

(*c*) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the person making the offer (being an entity), the responsible person or the collective investment scheme.

(6) The responsible person for a collective investment scheme may, within 30 days after the responsible person is notified that the Authority has refused to recognise that scheme under subsection (1), appeal to the Minister whose decision is final.

(7) An application made under subsection (1) must be accompanied by such information or record as the Authority may require.

(8) The Authority may publish for public information, in such manner as it considers appropriate, particulars of any collective investment scheme recognised under subsection (1).

(9) The responsible person for a recognised real estate investment trust must ensure that the conditions set out in subsection (3), and every condition or restriction imposed by the Authority under subsection (1)(*c*) or (1A), as applicable to that scheme continues to be satisfied.

[4/2017]

(9A) The manager of a recognised real estate investment trust must —

(*a*) act in the best interests of all the participants of the recognised real estate investment trust as a whole; and

(*b*) give priority to the interests of all the participants of the recognised real estate investment trust as a whole over the manager's own interests and the

interests of the shareholders of the manager in the event of a conflict between the interests of all the participants as a whole and the manager's own interests or the interests of the shareholders of the manager.

[4/2017]

(9B) A director of the manager of a recognised real estate investment trust must —

(*a*) take all reasonable steps to ensure that the manager discharges its duties under subsection (9A); and

(*b*) give priority to the interests of all the participants of the recognised real estate investment trust as a whole over the interests of the manager and the shareholders of the manager in the event of a conflict between the interests of all the participants as a whole and the interests of the manager or the shareholders of the manager.

[4/2017]

(9C) A duty of a director of the manager under subsection (9B) overrides any conflicting duty of such director under section 157 of the Companies Act 1967.

[4/2017]

(9D) Civil or criminal proceedings may not be brought against a director of the manager of a recognised real estate investment trust for a breach of section 157 of the Companies Act 1967, any fiduciary duty or any other duty under common law, in relation to any act or omission if such act or omission was required by subsection (9B).

[4/2017]

(9E) To avoid doubt, no action or proceedings whatsoever may be brought by or on behalf of all or any of the participants of a recognised real estate investment trust against a director of the manager of that recognised real estate investment trust for any breach or alleged breach of the duties imposed by subsection (9B) except to the extent and in the manner provided for under section 295C.

[4/2017]

(10) Despite subsection (9), a failure by any person to comply with the Code on Collective Investment Schemes does not of itself render that person liable to criminal proceedings but may, in any proceedings whether civil or criminal, be relied upon by any party to the proceedings as tending to establish or to negate any liability which is in question in the proceedings.

(11) If any person fails to comply with the Code on Collective Investment Schemes, the Authority may in addition to, or as an alternative to any action under section 288, take such other action as it deems fit.

(12) The responsible person for a collective investment scheme which is recognised under subsection (1) must provide such information or record regarding the scheme as

the Authority may, at any time, require for the proper administration of this Act.

(13) The representative for a collective investment scheme which is recognised under subsection (1) must carry out, or procure the carrying out of the following functions:

(*a*) facilitate —

(i) the issuing and redeeming of units in the scheme;

(ii) the publishing of sale and purchase prices of units in the scheme;

(iii) the sending of reports of the scheme to participants;

(iv) the provision of such books relating to the sale and redemption of units as the Authority may require; and

(v) the inspection of the instruments constituting the scheme;

(*b*) either maintain for inspection in Singapore a subsidiary register of participants who subscribed for or purchased their units in Singapore, or maintain in Singapore any facility that enables the inspection or extraction of the equivalent information;

(*c*) within 14 days after any change in the particulars referred to in subsection (3)(*d*), give written notice of such change to the Authority;

(*d*) provide such information or record regarding the scheme as the Authority may, at any time, require for the proper administration of this Act;

(*e*) such other functions as the Authority may prescribe.

[4/2017]

(13A) In carrying out or procuring the carrying out of the functions referred to in subsection (13), the representative must ensure that —

(*a*) for the purposes of subsection (13)(*a*)(ii), the sale and purchase prices of units in the collective investment scheme are published in the language of the prospectus;

(*b*) for the purposes of subsection (13)(*a*)(iii), the reports of the scheme sent to participants are prepared in the language of the prospectus, except in relation to any participant who has consented to being sent a report in a language other than the language of the prospectus;

(*c*) for the purposes of subsection (13)(*a*)(v), if the instruments constituting the scheme are not in the language of the prospectus, an accurate translation of the instruments in the language of the prospectus is made available to a

participant for inspection, unless the participant has consented to the making available to that participant for inspection of the instruments in a language other than the language of the prospectus; and

(*d*) for the purposes of subsection (13)(*b*), if the subsidiary register of participants or equivalent information is not in the language of the prospectus, an accurate translation of the register or equivalent information in the language of the prospectus is made available to a participant for inspection or extraction, unless the participant has consented to the making available to that participant for inspection or extraction of the register or equivalent information in a language other than the language of the prospectus.

(13B) In subsection (13A), "language of the prospectus" means the language of the prospectus accompanying or making the offer of units in the collective investment scheme.

(13C) Section 318A(2) does not apply to the instruments constituting the scheme referred to in subsection (13)(*a*)(v) or to the subsidiary register of participants or equivalent information referred to in subsection (13)(*b*).

(14) Any person who contravenes subsection (9), (12) or (13) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 and, in the case of a continuing offence, to a further fine not exceeding $10,000 for every day or part of a day during which the offence continues after conviction.

(15) A manager of a recognised real estate investment trust which contravenes subsection (9A) —

(*a*) shall be liable to all the participants of the recognised real estate investment trust as a whole —

(i) for any profit or financial gain directly or indirectly made by the manager or any of its related corporations; or

(ii) for any damage suffered by all the participants of the recognised real estate investment trust as a whole,

as a result of the contravention; and

(*b*) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000.

[4/2017]

(16) A director of the manager of a recognised real estate investment trust who

contravenes subsection (9B) —

(*a*) shall be liable to all the participants of the recognised real estate investment trust as a whole —

(i) for any profit or financial gain directly or indirectly made by the director or the manager or any related corporation of the manager; or

(ii) for any damage suffered by all the participants of the recognised real estate investment trust as a whole,

as a result of the contravention; and

(*b*) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 or to imprisonment for a term not exceeding 2 years or to both.

[4/2017]

Revocation, suspension or withdrawal of authorisation or recognition

288.—(1) The Authority may revoke the authorisation of a collective investment scheme granted under section 286 or the recognition of a collective investment scheme granted under section 287 if —

(*a*) the application for authorisation or recognition, or any related information or record submitted to the Authority whether at the same time as or subsequent to the application, was false or misleading in a material particular or omitted a material particular which, had it been known to the Authority at the time of submission, would have resulted in the Authority not granting the authorisation or recognition;

(*aa*) the Authority is of the opinion that the continued authorisation or recognition of the scheme is or will be against the public interest;

(*b*) the Authority is of the opinion that the continued authorisation or recognition of the scheme is or will be prejudicial to its participants or potential participants;

(*ba*) in the case of a scheme recognised under section 287, the Authority is of the opinion that it is necessary to revoke the recognition of the scheme to give effect to the provisions of any arrangement relating to cross-border offers of collective investment schemes to which Singapore or the Authority is a party; or

(*c*) in the case of —

(i) a scheme authorised under section 286 that is constituted as a unit trust, the responsible person for the scheme or the trustee for the scheme (where applicable) fails to comply with section 286(10) or (13);

(i*a*) a scheme authorised under section 286 that is constituted as a VCC or as a sub-fund, the responsible person for the scheme, the manager for the scheme, or the custodian for the scheme (where applicable), fails to comply with section 286(10) or (13); or

(ii) a scheme recognised under section 287, the responsible person for the scheme or the representative for the scheme, where applicable, fails to comply with section 287(9), (12) or (13).

[4/2017; 44/2018]

(2) Where the Authority revokes the authorisation or recognition of a collective investment scheme under subsection (1), the Authority may issue such directions as it deems fit to the responsible person for the scheme, including a direction that the responsible person —

(*a*) refund all moneys contributed by the participants of the scheme; or

(*b*) provide the participants with an option, on such terms as the Authority may approve, to obtain from the responsible person a refund of all moneys contributed by them or to redeem their units in accordance with the scheme.

(3) In determining whether to issue a direction under subsection (2), the Authority must consider whether the responsible person for the collective investment scheme is able to liquidate the property of the scheme without material adverse financial effect to the participants, and for this purpose, the factors which the Authority may take into account include —

(*a*) whether a significant amount of the moneys contributed by the participants has been invested;

(*b*) the liquidity of the property of the scheme; and

(*c*) the penalties (if any) payable for liquidating the property.

(4) A responsible person who contravenes any of the directions issued by the Authority to the responsible person under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

(5) Despite subsection (1), the Authority may, if it considers it desirable to do so, instead of revoking the authorisation or recognition of a collective investment scheme, suspend the authorisation or recognition of that scheme for a specific period, and may at any time remove such suspension.

(6) Where the Authority revokes the authorisation or recognition of a collective investment scheme under subsection (1) or suspends the authorisation or recognition of a collective investment scheme under subsection (5), it must notify the responsible person for the scheme.

(7) Subject to subsection (8), the Authority may, upon an application in writing made to it by the responsible person for a collective investment scheme, in such form and manner as may be prescribed, withdraw the authorisation or recognition of that scheme.

(8) The Authority may refuse to withdraw the authorisation or recognition of a collective investment scheme under subsection (7) where the Authority is of the opinion that —

(*a*) there is any matter concerning the scheme which should be investigated before the authorisation or recognition is withdrawn; or

(*b*) the withdrawal of the authorisation or recognition would not be in the public interest.

(8A) The Authority must not —

(*a*) revoke the authorisation or recognition of a collective investment scheme under subsection (1);

(*b*) suspend the authorisation or recognition of a collective investment scheme under subsection (5); or

(*c*) refuse the withdrawal of the authorisation or recognition of a collective investment scheme under subsection (8),

without giving the responsible person of the scheme an opportunity to be heard, except that an opportunity to be heard need not be given if the revocation or suspension is on the ground that the continued authorisation or recognition of the scheme is against the public interest on the basis of any of the following circumstances:

(*d*) the person making the offer (being an entity), the responsible person or the collective investment scheme itself, is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;

(*e*) the person making the offer (being an individual) is an undischarged bankrupt, whether in Singapore or elsewhere;

(*f*) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the person making the offer (being an entity), the responsible person or the collective investment scheme.

(8B) The responsible person for a collective investment scheme may, within 30 days after the responsible person is notified that the Authority —

(*a*) has revoked the authorisation or recognition of that scheme under subsection (1);

(*b*) has suspended the authorisation or recognition of that scheme under subsection (5); or

(*c*) has refused to withdraw the authorisation or recognition of that scheme under subsection (8),

appeal to the Minister whose decision is final.

(9) Where the Authority revokes an authorisation or recognition under subsection (1), suspends an authorisation or recognition under subsection (5) or withdraws an authorisation or recognition under subsection (7), it may —

(*a*) impose such conditions on the revocation, suspension or withdrawal as it considers appropriate; and

(*b*) publish notice of the revocation, suspension or withdrawal, and the reason therefor, in such manner as it considers appropriate.

Approval of trustees

289.—(1) The Authority may, upon an application made to the Authority in such form and manner as may be prescribed by regulations made under section 341, approve a public company to act as a trustee for collective investment schemes which are authorised under section 286 and constituted as unit trusts (called in this Subdivision an approved trustee), subject to such conditions or restrictions as the Authority thinks fit to impose by written notice.

[34/2012]

(1A) The Authority may, at any time, by written notice to the approved trustee, vary or revoke any condition or restriction imposed by the Authority under subsection (1) or impose such further condition or restriction as the Authority thinks fit.

[34/2012]

(2) The Authority must not approve a public company to act as trustee under subsection (1) unless the company satisfies such financial requirements and other criteria

as the Authority may prescribe.

(3) An approved trustee must continue to satisfy the financial requirements and other criteria prescribed under subsection (2) and every condition or restriction imposed by the Authority under subsection (1) or (1A).

[34/2012]

(4) Where the Authority is of the opinion that an approved trustee —

(*a*) has failed to satisfy a financial requirement or other criterion prescribed under subsection (2), or any condition or restriction imposed by the Authority under subsection (1) or (1A);

(*b*) has not carried out its duties with due care and diligence;

(*c*) has acted in a manner which prejudices the participants of any authorised collective investment scheme; or

(*d*) has failed to comply with this Act or the Code on Collective Investment Schemes,

the Authority may —

(*e*) revoke an approval granted under this section and may direct the manager for the collective investment scheme or schemes which such approved trustee was acting for, to appoint a new trustee for the scheme or schemes;

(*f*) prohibit such approved trustee from acting as trustee for any new collective investment scheme; or

(*g*) issue such direction as it deems fit.

[34/2012]

(4A) Where, upon the Authority exercising any power under section 292D(2) or the Minister exercising any power under Division 2, 3, 4 or 4A of Part 4B of the Monetary Authority of Singapore Act 1970 in relation to an approved trustee, the Authority considers that it is in the public interest to do so, the Authority may —

(*a*) revoke the approval granted to the approved trustee under this section; and

(*b*) direct the manager for the collective investment scheme or schemes, which the approved trustee was acting for, to appoint a new trustee for the scheme or schemes.

[10/2013; 31/2017]

(5) An approved trustee must comply with any direction issued to it under subsection (4).

(6) It is not necessary to publish any direction issued under subsection (4) in the

Gazette.

[34/2012]

(7) Any approved trustee who contravenes subsection (3) or (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 and, in the case of a continuing offence, to a further fine not exceeding $10,000 for every day or part of a day during which the offence continues after conviction.

Inspection of approved trustees

290.—(1) The Authority may, from time to time, inspect the books of an approved trustee.

(2) For the purpose of an inspection under this section, the approved trustee under inspection must afford the Authority access to, and must produce, its books and must give such information and facilities as may be required to conduct the inspection.

(3) The Authority has the power to copy or take possession of the books of an approved trustee under inspection.

(4) An approved trustee which fails, without reasonable excuse, to produce any book or provide any information or facilities in accordance with subsection (2), or otherwise obstructs the Authority in the exercise of its powers under this section, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000.

Duty of trustees to furnish Authority with such return and information as Authority requires

291. An approved trustee must furnish such returns and provide such information relating to its business as the Authority may require.

Liability of trustees

292.—(1) Subject to subsection (2), any provision in a trust deed required under section 286(2)(*c*) or in any contract with the participants of a collective investment scheme to which such a trust deed relates, is void insofar as it would have the effect of exempting a trustee under the trust deed from, or indemnifying a trustee against, liability for breach of trust where the trustee fails to exercise the degree of care and diligence required of a trustee.

(2) Subsection (1) does not invalidate —

(*a*) any release otherwise validly given in respect of anything done or omitted to be done by a trustee before the giving of the release; or

(*b*) any provision enabling such a release to be given —

(i) on the agreement thereto of a majority of not less than three-fourths of the participants in a collective investment scheme voting in person or by proxy at a meeting summoned for the purpose; and

(ii) either with respect to specific acts or omissions or on the trustee ceasing to act.

Disqualification or removal of director or executive officer

292A.—(1) Despite the provisions of any other written law —

(*a*) an approved trustee must not, without the prior written consent of the Authority, permit a person to act as its executive officer; and

(*b*) an approved trustee which is incorporated in Singapore must not, without the prior written consent of the Authority, permit a person to act as its director,

if the person —

(*c*) has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after 18 April 2013, being an offence —

(i) involving fraud or dishonesty;

(ii) the conviction for which involved a finding that the person had acted fraudulently or dishonestly; or

(iii) that is specified in the Third Schedule to the Registration of Criminals Act 1949;

(*d*) is an undischarged bankrupt, whether in Singapore or elsewhere;

(*e*) has had an enforcement order against the person in respect of a judgment debt returned unsatisfied in whole or in part;

[Act 25 of 2021 wef 01/04/2022]

(*f*) has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with the person's creditors, being a compromise or scheme of arrangement that is still in operation;

(*g*) has had a prohibition order under section 68 of the Financial Advisers Act 2001, section 74 of the Insurance Act 1966, section 101A or 123ZZC made against the person that remains in force; or

(*h*) has been a director of, or directly concerned in the management of, a regulated financial institution, whether in Singapore or elsewhere —

(i) which is being or has been wound up by a court; or

(ii) the approval, authorisation, designation, recognition, registration or licence of which has been withdrawn, cancelled or revoked by the Authority or, in the case of a regulated financial institution in a foreign country or territory, by the regulatory authority in that foreign country or territory.

[10/2013; 4/2017]

(2) Despite the provisions of any other written law, where the Authority is satisfied that a director of an approved trustee which is incorporated in Singapore, or an executive officer of an approved trustee —

(*a*) has wilfully contravened or wilfully caused the approved trustee to contravene any provision of this Act;

(*b*) has, without reasonable excuse, failed to secure the compliance of the approved trustee with this Act, the Monetary Authority of Singapore Act 1970 or any of the written laws set out in the Schedule to that Act; or

(*c*) has failed to discharge any of the duties of his or her office,

the Authority may, if it thinks it necessary in the interests of the public or a section of the public or for the protection of investors, by written notice to the approved trustee, direct the approved trustee to remove the director or executive officer (as the case may be) from his or her office or employment within such period as the Authority may specify in the notice, and the approved trustee must comply with the notice.

[10/2013]

(3) Without affecting any other matter that the Authority may consider relevant, the Authority must, when determining whether a director or an executive officer of an approved trustee has failed to discharge the duties of his or her office for the purposes of subsection (2)(*c*), have regard to such criteria as may be prescribed.

[10/2013]

(4) Before directing an approved trustee to remove a person from his or her office or employment under subsection (2), the Authority must —

(*a*) give the approved trustee and the person written notice of its intention to do so; and

(*b*) in the notice referred to in paragraph (*a*), call upon the approved trustee and the person to show cause, within such time as may be specified in the

notice, why the person should not be removed.

[10/2013]

(5) If the approved trustee and the person referred to in subsection (4) —

(*a*) fail to show cause within the time specified under subsection (4)(*b*) or within such extended period of time as the Authority may allow; or

(*b*) fail to show sufficient cause,

the Authority may direct the approved trustee to remove the person under subsection (2).

[10/2013]

(6) Any approved trustee which, or any director or executive officer of an approved trustee who, is aggrieved by a direction of the Authority under subsection (2) may, within 30 days after receiving the direction, appeal in writing to the Minister, whose decision is final.

[10/2013]

(7) Any approved trustee which contravenes subsection (1) or fails to comply with a notice issued under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 and, in the case of a continuing offence, to a further fine not exceeding $10,000 for every day or part of a day during which the offence continues after conviction.

[10/2013]

(8) No criminal or civil liability shall be incurred by an approved trustee, or any person acting on behalf of the approved trustee, in respect of anything done or omitted to be done with reasonable care and in good faith in the discharge or purported discharge of the obligations of the approved trustee under this section.

[10/2013]

(9) In this section, unless the context otherwise requires —

"regulated financial institution" means a person who carries on a business, the conduct of which is regulated or authorised by the Authority or, if it is carried on in Singapore, would be regulated or authorised by the Authority;

"regulatory authority", in relation to a foreign country or territory, means an authority of the foreign country or territory exercising any function that corresponds to a regulatory function of the Authority under this Act, the Monetary Authority of Singapore Act 1970 or any of the written laws set out in the Schedule to that Act.

[10/2013]

Information of insolvency, etc.

292B.—(1) Any approved trustee which is or is likely to become insolvent, which is or is likely to become unable to meet its obligations, or which has suspended or is about to suspend payments, must immediately inform the Authority of that fact.

[10/2013]

(2) Any approved trustee which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 and, in the case of a continuing offence, to a further fine not exceeding $10,000 for every day or part of a day during which the offence continues after conviction.

[10/2013]

Interpretation of sections 292C to 292H

292C. In this section and sections 292D, 292E, 292F, 292G and 292H, unless the context otherwise requires —

"business" includes affairs and property;

"office holder", in relation to an approved trustee, means any person acting as the liquidator, the provisional liquidator, the receiver or the receiver and manager of the approved trustee, or acting in an equivalent capacity in relation to the approved trustee;

"relevant business" means any business of an approved trustee —

(*a*) which the Authority has assumed control of under section 292D; or

(*b*) in relation to which a statutory adviser or a statutory manager has been appointed under section 292D;

"statutory adviser" means a statutory adviser appointed under section 292D;

"statutory manager" means a statutory manager appointed under section 292D.

[10/2013]

Action by Authority if approved trustee unable to meet obligations, etc.

292D.—(1) The Authority may exercise any one or more of the powers specified in subsection (2) as appears to it to be necessary, where —

(*a*) an approved trustee informs the Authority that it is or is likely to become insolvent, or that it is or is likely to become unable to meet its obligations, or that it has suspended or is about to suspend payments;

(*b*) an approved trustee becomes unable to meet its obligations, or is insolvent, or suspends payments;

(*c*) the Authority is of the opinion that an approved trustee —

(i) is carrying on its business in a manner likely to be detrimental to the interests of the public or a section of the public or the protection of investors;

(ii) is or is likely to become insolvent, or is or is likely to become unable to meet its obligations, or is about to suspend payments;

(iii) has contravened any of the provisions of this Act; or

(iv) has failed to comply with any condition or restriction imposed on it under section 289(1) or (1A); or

(*d*) the Authority considers it in the public interest to do so.

[10/2013]

(2) Subject to subsections (1) and (3), the Authority may —

(*a*) require the approved trustee immediately to take any action or to do or not to do any act or thing whatsoever in relation to its business as the Authority may consider necessary;

(*b*) appoint one or more persons as statutory adviser, on such terms and conditions as the Authority may specify, to advise the approved trustee on the proper management of such of the business of the approved trustee as the Authority may determine; or

(*c*) assume control of and manage such of the business of the approved trustee as the Authority may determine, or appoint one or more persons as statutory manager to do so on such terms and conditions as the Authority may specify.

[10/2013]

(3) Where the Authority appoints 2 or more persons as the statutory manager of an approved trustee, the Authority must specify, in the terms and conditions of the appointment, which of the duties, functions and powers of the statutory manager —

(*a*) may be discharged or exercised by such persons jointly and severally;

(*b*) must be discharged or exercised by such persons jointly; and

(*c*) must be discharged or exercised by a specified person or such persons.

[10/2013]

(4) Where the Authority has exercised any power under subsection (2), it may, at any time and without affecting its power under section 289(4A), do one or more of the following:

(*a*) vary or revoke any requirement of, any appointment made by or any action taken by the Authority in the exercise of such power, on such terms and conditions as it may specify;

(*b*) further exercise any of the powers under subsection (2);

(*c*) add to, vary or revoke any term or condition specified by the Authority under this section.

[10/2013]

(5) No liability shall be incurred by a statutory manager or a statutory adviser for anything done (including any statement made) or omitted to be done with reasonable care and in good faith in the course of or in connection with —

(*a*) the exercise or purported exercise of any power under this Act;

(*b*) the performance or purported performance of any function or duty under this Act; or

(*c*) the compliance or purported compliance with this Act.

[10/2013]

(6) Any approved trustee that fails to comply with a requirement imposed by the Authority under subsection (2)(*a*) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 and, in the case of a continuing offence, to a further fine not exceeding $10,000 for every day or part of a day during which the offence continues after conviction.

[10/2013]

Effect of assumption of control under section 292D

292E.—(1) Upon assuming control of the relevant business of an approved trustee, the Authority or statutory manager (as the case may be) must take custody or control of the relevant business.

[10/2013]

(2) During the period when the Authority or statutory manager is in control of the relevant business of an approved trustee, the Authority or statutory manager —

(*a*) must manage the relevant business of the approved trustee in the name of and on behalf of the approved trustee; and

(*b*) is deemed to be an agent of the approved trustee.

[10/2013]

(3) In managing the relevant business of an approved trustee, the Authority or statutory manager —

(*a*) must consider the interests of the public or the section of the public referred to in section 292D(1)(*c*)(i), and the need to protect investors; and

(*b*) has all the duties, powers and functions of the members of the board of directors of the approved trustee (collectively and individually) under this Act, the Companies Act 1967 and the constitution of the approved trustee, including powers of delegation, in relation to the relevant business of the approved trustee; but nothing in this paragraph requires the Authority or statutory manager to call any meeting of the approved trustee under the Companies Act 1967 or the constitution of the approved trustee.

[10/2013]

(4) Despite any written law or rule of law, upon the assumption of control of the relevant business of an approved trustee by the Authority or statutory manager, any appointment of a person as the chief executive officer or a director of the approved trustee, which was in force immediately before the assumption of control, is deemed to be revoked, unless the Authority gives its approval, by written notice to the person and the approved trustee, for the person to remain in the appointment.

[10/2013]

(5) Despite any written law or rule of law, during the period when the Authority or statutory manager is in control of the relevant business of an approved trustee, except with the approval of the Authority, no person may be appointed as the chief executive officer or a director of the approved trustee.

[10/2013]

(6) Where the Authority has given its approval under subsection (4) or (5) to a person to remain in the appointment of, or to be appointed as, the chief executive officer or a director of an approved trustee, the Authority may at any time, by written notice to the person and the approved trustee, revoke that approval, and the appointment is deemed to be revoked on the date specified in the notice.

[10/2013]

(7) Despite any written law or rule of law, if any person, whose appointment as the chief executive officer or a director of an approved trustee is revoked under subsection (4) or (6), acts or purports to act after the revocation as the chief executive officer or a director of the approved trustee during the period when the Authority or statutory manager is in control of the relevant business of the approved trustee —

(*a*) the act or purported act of the person is invalid and of no effect; and

(*b*) the person shall be guilty of an offence.

[10/2013]

(8) Despite any written law or rule of law, if any person who is appointed as the chief

executive officer or a director of an approved trustee in contravention of subsection (5) acts or purports to act as the chief executive officer or a director of the approved trustee during the period when the Authority or statutory manager is in control of the relevant business of the approved trustee —

(*a*) the act or purported act of the person is invalid and of no effect; and

(*b*) the person shall be guilty of an offence.

[10/2013]

(9) During the period when the Authority or statutory manager is in control of the relevant business of an approved trustee —

(*a*) if there is any conflict or inconsistency between —

(i) a direction or decision given by the Authority or statutory manager (including a direction or decision to a person or body of persons referred to in sub-paragraph (ii)); and

(ii) a direction or decision given by any chief executive officer, director, member, executive officer, employee, agent or office holder, or the board of directors, of the approved trustee,

the direction or decision referred to in sub-paragraph (i), to the extent of the conflict or inconsistency, prevails over the direction or decision referred to in sub-paragraph (ii); and

(*b*) no person may exercise any voting or other right attached to any share in the approved trustee in any manner that may defeat or interfere with any duty, function or power of the Authority or statutory manager, and any such act or purported act is invalid and of no effect.

[10/2013]

(10) Any person who is guilty of an offence under subsection (7) or (8) shall be liable on conviction to a fine not exceeding $100,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding $10,000 for every day or part of a day during which the offence continues after conviction.

[10/2013]

(11) In this section, "constitution", in relation to an approved trustee, means the memorandum of association and articles of association of the approved trustee.

[10/2013]

Duration of control

292F.—(1) The Authority must cease to be in control of the relevant business of an

approved trustee when the Authority is satisfied that —

(*a*) the reasons for the Authority's assumption of control of the relevant business have ceased to exist; or

(*b*) it is no longer necessary in the interests of the public or the section of the public referred to in section 292D(1)(*c*)(i) or for the protection of investors.

[10/2013]

(2) A statutory manager is deemed to have assumed control of the relevant business of an approved trustee on the date of the statutory manager's appointment as such.

[10/2013]

(3) The appointment of a statutory manager in relation to the relevant business of an approved trustee may be revoked by the Authority at any time —

(*a*) if the Authority is satisfied that —

(i) the reasons for the appointment have ceased to exist; or

(ii) it is no longer necessary in the interests of the public or the section of the public referred to in section 292D(1)(*c*)(i) or for the protection of investors; or

(*b*) on any other ground,

and upon such revocation, the statutory manager ceases to be in control of the relevant business of the approved trustee.

[10/2013]

(4) The Authority must, as soon as practicable, publish in the *Gazette* the date, and such other particulars as the Authority thinks fit, of —

(*a*) the Authority's assumption of control of the relevant business of an approved trustee;

(*b*) the cessation of the Authority's control of the relevant business of an approved trustee;

(*c*) the appointment of a statutory manager in relation to the relevant business of an approved trustee; and

(*d*) the revocation of a statutory manager's appointment in relation to the relevant business of an approved trustee.

[10/2013]

Responsibilities of officers, member, etc., of approved trustee

292G.—(1) During the period when the Authority or statutory manager is in control

of the relevant business of an approved trustee —

(*a*) the General Division of the High Court may, on an application by the Authority or statutory manager, direct any person who has ceased to be or who is still any chief executive officer, director, member, executive officer, employee, agent, banker, auditor or office holder of, or trustee for, the approved trustee to pay, deliver, convey, surrender or transfer to the Authority or statutory manager, within such period as the General Division of the High Court may specify, any property or book of the approved trustee which is comprised in, forms part of or relates to the relevant business of the approved trustee, and which is in the person's possession or control; and

(*b*) any person who has ceased to be or who is still any chief executive officer, director, member, executive officer, employee, agent, banker, auditor or office holder of, or trustee for, the approved trustee must give to the Authority or statutory manager such information as the Authority or statutory manager may require for the discharge of the Authority's or statutory manager's duties or functions, or the exercise of the Authority's or statutory manager's powers, in relation to the approved trustee, within such time and in such manner as the Authority or statutory manager may specify.

[10/2013; 40/2019]

(2) Any person who —

(*a*) without reasonable excuse, fails to comply with subsection (1)(*b*); or

(*b*) in purported compliance with subsection (1)(*b*), knowingly or recklessly provides any information or document that is false or misleading in a material particular,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[10/2013]

Remuneration and expenses of Authority and others in certain cases

292H.—(1) The Authority may at any time fix the remuneration and expenses to be paid by an approved trustee —

(*a*) to a statutory manager or statutory adviser appointed in relation to the approved trustee, whether or not the appointment has been revoked; and

(*b*) where the Authority has assumed control of the relevant business of the approved trustee, to the Authority and any person appointed by the Authority under section 320 in relation to the Authority's assumption of control of the relevant business, whether or not the Authority has ceased to be in control of the relevant business.

[10/2013]

(2) The approved trustee must reimburse the Authority any remuneration and expenses payable by the approved trustee to a statutory manager or statutory adviser.

[10/2013]

Authority may issue directions

293.—(1) The Authority may, where it thinks it necessary or expedient in the interests of the public or a section of the public or for the protection of investors, issue directions by written notice either of a general or specific nature to —

(*a*) where a collective investment scheme is constituted as a corporation, VCC or sub-fund of a VCC, the corporation or VCC, as the case may be;

(*b*) the manager, trustee, custodian or representative for a collective investment scheme; or

(*c*) any class of such persons referred to in paragraph (*a*) or (*b*).

[34/2012; 44/2018]

(2) Any person to whom a notice is given under subsection (1) must comply with such direction as may be contained in the notice.

(3) It is not necessary to publish any direction issued under subsection (1) in the *Gazette*.

[34/2012]

(4) Any person who contravenes any of the directions issued to the person under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

Service

294.—(1) Where a collective investment scheme —

(*a*) is authorised under section 286 and constituted as a unit trust, any document relating to the scheme is sufficiently served if served on the responsible person for the scheme at the responsible person's last known address;

(*aa*) is authorised under section 286 and constituted as a VCC or sub-fund, any document relating to the scheme is sufficiently served if served on the VCC in accordance with section 149 of the Variable Capital Companies Act 2018; or

(*b*) is recognised under section 287, any document relating to the scheme is sufficiently served if served on the responsible person for the scheme or the representative for the scheme at the person's last known address.

[44/2018]

(1A) To avoid doubt, a reference in subsection (1) to service of any document relating to the scheme includes the service of any process in relation to the scheme.

(2) Any notice or direction to be given or served by the Authority on —

(*a*) in a case where a collective investment scheme is constituted as a corporation — the corporation;

(*b*) in a case where a collective investment scheme is constituted as a VCC or a sub-fund — the VCC;

(*c*) the manager for a collective investment scheme;

(*d*) the trustee or custodian for a collective investment scheme; or

(*e*) the representative for a collective investment scheme,

is for all purposes regarded as duly given or served if it has been delivered or sent by post or by fax to such person at the person's last known address.

[44/2018]

(3) In the case of a corporation, the last known address referred to in subsections (1) and (2) is —

(*a*) if it is a company or VCC incorporated in Singapore, the address of its registered office in Singapore; or

(*b*) if it is a foreign company, the address of its registered office in Singapore or the registered address of its authorised representative, referred to in section 366(1) of the Companies Act 1967, or, if it does not maintain a place of business in Singapore, its registered office in the place of its incorporation.

[35/2014; 44/2018]

Winding up

295.—(1) Where a collective investment scheme (other than one constituted as a VCC or sub-fund) is to be wound up, whether under this section or otherwise, the

responsible person for the scheme must give written notice of the proposed winding up to the Authority at least 7 days before the winding up.

[44/2018]

(1A) Where a collective investment scheme constituted as a VCC or sub-fund is being wound up under the Variable Capital Companies Act 2018, the VCC must give written notice to the Authority of the winding up within 3 days after the commencement of the winding up.

[44/2018]

(2) Where the Authority revokes or withdraws the authorisation of a collective investment scheme under section 288, the responsible person and, where applicable, the trustee must take the necessary steps to wind up the scheme.

(3) Where —

(*a*) the responsible person for a collective investment scheme authorised under section 286 which is constituted as a unit trust is in liquidation; or

(*b*) in the opinion of the trustee for a collective investment scheme authorised under section 286 which is constituted as a unit trust, the responsible person for the scheme has ceased to carry on business or has, to the prejudice of the participants of the scheme, failed to comply with any provision of the trust deed in respect of the scheme,

the trustee must summon a meeting of the participants for the purpose of determining an appropriate course of action.

[44/2018]

(4) A meeting under subsection (3) must be summoned —

(*a*) by giving written notice of the proposed meeting at least 21 days before the proposed meeting to each participant at the participant's last known address or, in the case of joint participants, to the participant whose name stands first in the records of the responsible person for the scheme; and

(*b*) by publishing, at least 21 days before the proposed meeting, an advertisement giving notice of the meeting in at least 4 local daily newspapers, one each published in the English, Malay, Chinese and Tamil languages.

(5) If at any such meeting a resolution is passed by a majority in number representing three-fourths in value of the participants present and voting either in person or by proxy at the meeting that the scheme to which the trust deed relates be wound up, the responsible person for the scheme and, where applicable, the trustee must take the necessary steps to wind up the scheme.

(6) Any responsible person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000.

(6A) Any VCC that without reasonable excuse contravenes subsection (1A) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000.

[44/2018]

(7) Any responsible person or, where applicable, trustee who contravenes subsection (2) or (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000.

(8) Any trustee who contravenes subsection (3) or (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000.

Power to acquire units of participants of real estate investment trust in certain circumstances

295A.—(1) Where an arrangement or a contract involving the transfer of all of the units, or all of the units in any particular class, in a real estate investment trust (called in this section the subject trust), to —

(*a*) the trustee of another trust (including the trustee-manager of a business trust and the trustee of another real estate investment trust); or

(*b*) a corporation,

(called in this section the transferee) has, within 4 months after the making of the offer in that behalf by the transferee, been approved as to the units or as to each class of units whose transfer is involved by participants of the subject trust holding no less than 90% of the total number of those units or of the units of that class (other than units already held at the date of the offer by the transferee), the transferee may, at any time within 2 months after the offer has been so approved, give notice in the prescribed manner to any dissenting participant of the subject trust that it desires to acquire the dissenting participant's units.

[2/2009]

(2) When a notice referred to in subsection (1) is given, the transferee, unless on an application made by a dissenting participant within one month from the date on which the notice was given or within 14 days of a statement being supplied to a dissenting participant under subsection (3) (whichever is the later) a court thinks fit to order otherwise, is entitled and bound to acquire those units —

(*a*) on the terms which under the arrangement or contract the units of the approving participants are to be transferred to the transferee; or

(*b*) if the offer contained 2 or more alternative sets of terms, on the terms

which were specified in the offer as being applicable to dissenting participants.

[2/2009]

(3) Where a transferee has given notice to any dissenting participant of the subject trust that it desires to acquire the dissenting participant's units, the dissenting participant is entitled to require the transferee by a demand in writing served on the transferee, within one month from the date on which the notice was given, to supply the dissenting participant with a statement in writing of the names and addresses of all other dissenting participants as shown in the register of participants of the subject trust; and the transferee is not entitled or bound to acquire the units of the dissenting participants until 14 days after the posting of the statement of such names and addresses to the dissenting participant.

[2/2009]

(4) Where, pursuant to any such arrangement or contract, units in the subject trust are transferred to the transferee or its nominee and those units together with any other units in the subject trust held by the transferee at the date of the transfer comprise or include 90% of the total number of the units in the subject trust or of any class of those units, then —

(*a*) the transferee must within one month from the date of the transfer (unless on a previous transfer pursuant to the arrangement or contract it has already complied with this requirement) give notice of that fact in the prescribed manner to the participants of the subject trust holding the remaining units in, or the remaining units of that class of units in, the subject trust who have not assented to the arrangement or contract; and

(*b*) any such participant may within 3 months from receiving the notice require the transferee to acquire the participant's units.

[2/2009]

(5) Where a participant has given notice under subsection (4)(*b*) with respect to any units, the transferee is entitled and bound to acquire those units —

(*a*) on the terms on which under the arrangement or contract the units of the approving participants were transferred to it; or

(*b*) on such other terms as are agreed or as the court on the application of either the transferee or the participant thinks fit to order.

[2/2009]

(6) Where a notice has been given by the transferee under subsection (1) and a court has not, on an application made by the dissenting participant, ordered to the contrary, the transferee must —

(*a*) after the expiration of one month after the date on which the notice has been given;

(*b*) after 14 days after a statement has been supplied to a dissenting participant under subsection (3); or

(*c*) if an application to the court by the dissenting participant is then pending, after that application has been disposed of,

transmit a copy of the notice to the trustee of the subject trust together with an instrument of transfer executed on behalf of the participant by any person appointed by the transferee and on its own behalf by the transferee, and pay, allot or transfer to the trustee of the subject trust the amount or other consideration representing the price payable by the transferee for the units which by virtue of this section the transferee is entitled to acquire, and the trustee of the subject trust must thereupon register the transferee as the holder of those units.

[2/2009]

(7) Any sums received by the trustee of the subject trust under this section must be paid into a separate bank account, and any such sums and any other consideration so received must be held by that trustee in trust for the several persons who had held the units in respect of which they were respectively received.

[2/2009]

(8) Where any consideration other than cash is held in trust by the trustee of the subject trust for any person under this section, the trustee may, after the expiration of 2 years from, and must, before the expiration of 10 years from, the date on which such consideration was allotted or transferred to the trustee, transfer such consideration to the Official Receiver.

[2/2009]

(9) The Official Receiver must sell or dispose of any consideration so received in such manner as he or she thinks fit and must deal with the proceeds of such sale or disposal in accordance with section 295B.

[2/2009]

(10) In determining the units in the subject trust already held by the transferee at the date of the offer under subsection (1) or the percentage of the total number of units in the subject trust or of any class of those units held by the transferee under subsection (4), units held or acquired —

(*a*) by a nominee on behalf of the transferee;

(*b*) where the transferee is a corporation, by its related corporation or by a nominee of the related corporation;

(*c*) where the transferee is the trustee-manager of a business trust or the trustee of a real estate investment trust —

(i) by a person who controls more than 50% of the voting power in the business trust or real estate investment trust, or by a nominee of that person;

(ii) by the trustee-manager of the business trust on its own account, or by the manager for the real estate investment trust, or by a nominee of the trustee-manager or manager; or

(iii) by a related corporation of the trustee-manager for the business trust or the manager for the real estate investment trust or by a nominee of that related corporation; or

(*d*) where the transferee is the trustee of a trust that is not a business trust or real estate investment trust, by a related corporation of the trustee (being a corporation) or by a nominee of that related corporation,

are treated as held or acquired by the transferee.

[2/2009]

(11) To avoid doubt, in this section —

(*a*) a reference to a transferee (being the trustee of a trust) holding, acquiring or contracting to acquire units in another trust is a reference to the transferee's doing any of these as trustee of the firstmentioned trust; and

(*b*) a reference to a transfer of units of a trust to a transferee (being the trustee of another trust) is a reference to such transfer of units to the transferee as trustee of that other trust.

[2/2009]

(12) The reference in subsection (1) to units already held by the transferee —

(*a*) includes a reference to units which the transferee has contracted to acquire; but

(*b*) excludes units which are the subject of a contract binding the holder thereof to accept the offer when it is made, being a contract entered into by the holder for no consideration and under seal or for no consideration other than a promise by the transferee to make the offer.

[2/2009]

(13) Where, during the period within which an offer for the transfer of units to the transferee can be approved, the transferee acquires or contracts to acquire any of the

units whose transfer is involved but otherwise than by virtue of the approval of the offer, then the transferee may be treated for the purposes of this section as having acquired or contracted to acquire those units by virtue of the approval of the offer if, and only if —

(*a*) the consideration for which the units are acquired or contracted to be acquired (called in this subsection the acquisition consideration) does not at that time exceed the consideration specified in the terms of the offer; or

(*b*) those terms are subsequently revised so that when the revision is announced the acquisition consideration, at the time referred to in paragraph (*a*), no longer exceeds the consideration specified in those terms.

[2/2009]

(14) In this section and sections 295B and 295C —

"dissenting participant" includes a participant who has not assented to the arrangement or contract and any participant who has failed or refused to transfer the participant's units to the transferee in accordance with the arrangement or contract;

"Official Receiver" has the meaning given by section 2(1) of the Insolvency, Restructuring and Dissolution Act 2018.

[2/2009; 4/2017; 40/2018]

Unclaimed money to be paid to Official Receiver

295B.—(1) The Official Receiver who receives moneys arising from the proceeds of a sale or disposal under section 295A must place the moneys to the credit of a separate account to be entitled the Compulsory Acquisition of Scheme Account.

[2/2009]

(2) The interest arising from the investment of the moneys standing to the credit of the Compulsory Acquisition of Scheme Account must be paid into the Consolidated Fund.

[2/2009]

(3) If any person makes any demand for any money placed to the credit of the Compulsory Acquisition of Scheme Account, the Official Receiver, upon being satisfied that that person is entitled to the money, must authorise payment thereof to be made to that person out of that Account or, if it has been paid into the Consolidated Fund, may authorise payment of a like amount to be made to that person out of moneys made available by Parliament for the purpose.

[2/2009]

(4) Any person dissatisfied with the decision of the Official Receiver in respect of a claim made pursuant to subsection (3) may appeal to a court which may confirm,

disallow or vary the decision.

[2/2009]

(5) Where any unclaimed moneys paid to a person pursuant to subsection (3) are afterwards claimed by any other person, that other person is not entitled to any payment out of the Compulsory Acquisition of Scheme Account or out of the Consolidated Fund but such other person may have recourse against the firstmentioned person to whom the unclaimed moneys have been paid.

[2/2009]

(6) Any unclaimed moneys paid to the credit of the Compulsory Acquisition of Scheme Account to the extent to which the unclaimed moneys have not been under this section paid out of that Account must, upon the lapse of 7 years from the date of the payment of the moneys to the credit of that Account, be paid into the Consolidated Fund.

[2/2009]

Remedies in cases of oppression or injustice

295C.—(1) Any participant of a real estate investment trust may apply to a court for an order under this section on the ground —

(*a*) that the affairs of the trust are being conducted by the manager or trustee for the trust, or the powers of the directors of the manager or directors of the trustee for the trust are being exercised, in a manner oppressive to one or more of the participants of the trust including the applicant or in disregard of the applicant's or their interests as participants of the trust; or

(*b*) that some act of the manager or trustee for the trust, carried out in its capacity as manager or trustee for the trust (as the case may be) has been done or is threatened or that some resolution of the participants of the trust or any class of them has been passed or is proposed which unfairly discriminates against or is otherwise prejudicial to one or more of the participants of the trust including the applicant.

[2/2009]

(2) If on such application the court is of the opinion that either of the grounds referred to in subsection (1) is established, the court may, with a view to bringing to an end to or remedying the matters complained of, make such order as it thinks fit and, without limiting the foregoing, the order may —

(*a*) direct or prohibit any act or cancel or vary any transaction or resolution;

(*b*) regulate the conduct of the affairs of the manager or trustee for the trust in relation to the trust in future;

(*c*) authorise civil proceedings against the directors of the manager or directors

of the trustee for the trust to be brought in the name of or on behalf of all the participants of the trust as a whole by such person or persons and on such terms as the court may direct;

(*d*) provide for the purchase of the units in the trust by other participants of the trust;

(*e*) provide that the trust be wound up; or

(*f*) provide that the costs and expenses of and incidental to the application for the order are to be raised and paid out of the property of the trust or to be borne and paid in such manner and by such persons as the court deems fit.

[2/2009]

(3) Where an order under this section makes any alteration in or addition to the trust deed of any trust, then, despite anything in any other provision of this Act but subject to the provisions of the order, the manager or trustee of the trust concerned does not have power, without the permission of the court, to make any further alteration in or addition to the trust deed that is inconsistent with the provisions of the order; but subject to the foregoing provisions of this subsection, the alterations or additions made by the order have the same effect as if duly made by special resolution of the participants of the trust.

[2/2009]
[Act 25 of 2021 wef 01/04/2022]

(4) A copy of any order made under this section must be lodged by the applicant with the Authority within 7 days after the making of the order.

[2/2009]

(5) Any person who contravenes subsection (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 and, in the case of a continuing offence, to a further fine not exceeding $1,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(6) This section applies to a person who is not a participant of a trust but to whom units in the trust have been transmitted by operation of law as it applies to the participants of a trust; and references to a participant or participants are to be construed accordingly.

[2/2009]

Subdivision (2A) — Voluntary transfer of business of approved trustee

Interpretation of this Subdivision

295D. In this Subdivision, unless the context otherwise requires —

"approved trustee" means a trustee for collective investment schemes which are authorised under section 286 and constituted as unit trusts;

"business" includes affairs, property, right, obligation and liability;

"Court" means the General Division of the High Court;

"debenture" has the meaning given by section 4(1) of the Companies Act 1967;

"property" includes property, right and power of every description;

"Registrar of Companies" means the Registrar of Companies appointed under the Companies Act 1967 and includes any Deputy or Assistant Registrar of Companies appointed under that Act;

"transferee" means an approved trustee, or a public company which has applied or will be applying for the Authority's approval under section 289(1) to act as an approved trustee, to which the whole or any part of a transferor's business is, is to be or is proposed to be transferred under this Subdivision;

"transferor" means an approved trustee the whole or any part of the business of which is, is to be, or is proposed to be transferred under this Subdivision.

[10/2013; 40/2019]

Voluntary transfer of business

295E.—(1) A transferor may transfer the whole or any part of its business (including any business that is not the usual business of an approved trustee) to a transferee, if —

(*a*) the Authority has consented to the transfer;

(*b*) the transfer involves the whole or any part of the business of the transferor that is the usual business of an approved trustee; and

(*c*) the Court has approved the transfer.

[10/2013]

(2) Subsection (1) does not affect the right of an approved trustee to transfer the whole or any part of its business under any law.

[10/2013]

(3) The Authority may consent to a transfer under subsection (1)(*a*) if the Authority is satisfied that —

(*a*) the transferee is a fit and proper person; and

(*b*) the transferee will conduct the business of the transferor prudently and

comply with the provisions of this Act.

[10/2013]

(4) The Authority may at any time appoint one or more persons to perform an independent assessment of, and provide a report on, the proposed transfer of a transferor's business (or any part thereof) under this Subdivision.

[10/2013]

(5) The remuneration and expenses of any person appointed under subsection (4) must be paid by the transferor and the transferee jointly and severally.

[10/2013]

(6) The Authority must serve a copy of any report provided under subsection (4) on the transferor and the transferee.

[10/2013]

(7) The Authority may require a person to provide, within the period and in the manner specified by the Authority, any information or document that the Authority may reasonably require for the discharge of its duties or functions, or the exercise of its powers, under this Subdivision.

[10/2013]

(8) Any person who —

(*a*) without reasonable excuse, fails to comply with any requirement under subsection (7); or

(*b*) in purported compliance with any requirement under subsection (7), knowingly or recklessly provides any information or document that is false or misleading in a material particular,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding $10,000 for every day or part of a day during which the offence continues after conviction.

[10/2013]

(9) Where a person claims, before providing the Authority with any information or document that the person is required to provide under subsection (7), that the information or document might tend to incriminate the person, the information or document is not admissible in evidence against the person in criminal proceedings other than proceedings under subsection (8).

[10/2013]

Approval of transfer

295F.—(1) A transferor must apply to the Court for its approval of the transfer of the

whole or any part of the business of the transferor to the transferee under this Subdivision.

[10/2013]

(2) Before making an application under subsection (1) —

(*a*) the transferor must lodge with the Authority a report setting out such details of the transfer and provide such supporting documents as the Authority may specify;

(*b*) the transferor must obtain the consent of the Authority under section 295E(1)(*a*);

(*c*) the transferor and the transferee must, if they intend to serve on the participants of their respective collective investment schemes a summary of the transfer, obtain the Authority's approval of the summary;

(*d*) the transferor must, at least 15 days before the application is made but not earlier than one month after the report referred to in paragraph (*a*) is lodged with the Authority, publish in the *Gazette* and in such newspaper or newspapers as the Authority may determine a notice of the transferor's intention to make the application and containing such other particulars as may be prescribed;

(*e*) the transferor and the transferee must keep at their respective offices in Singapore, for inspection by any person who may be affected by the transfer, a copy of the report referred to in paragraph (*a*) for a period of 15 days after the publication of the notice referred to in paragraph (*d*) in the *Gazette*; and

(*f*) unless the Court directs otherwise, the transferor and the transferee must serve on the participants of their respective collective investment schemes affected by the transfer, at least 15 days before the application is made, a copy of the report referred to in paragraph (*a*) or a summary of the transfer approved by the Authority under paragraph (*c*).

[10/2013]

(3) The Authority and any person who, in the opinion of the Court, is likely to be affected by the transfer —

(*a*) have the right to appear before and be heard by the Court in any proceedings relating to the transfer; and

(*b*) may make any application to the Court in relation to the transfer.

[10/2013]

(4) The Court is not to approve the transfer if the Authority has not consented under

section 295E(1)(*a*) to the transfer.

[10/2013]

(5) The Court may, after taking into consideration the views (if any) of the Authority on the transfer —

(*a*) approve the transfer without modification or subject to any modification agreed to by the transferor and the transferee; or

(*b*) refuse to approve the transfer.

[10/2013]

(6) If the transferee does not have the Authority's approval under section 289(1) to act as an approved trustee, the Court may approve the transfer on terms that the transfer takes effect only in the event of the transferee obtaining the Authority's approval under section 289(1) to act as an approved trustee.

[10/2013]

(7) The Court may by the order approving the transfer or by any subsequent order provide for all or any of the following matters:

(*a*) the transfer to the transferee of the whole or any part of the business of the transferor;

(*b*) the allotment or appropriation by the transferee of any share, debenture, policy or other interest in the transferee which under the transfer is to be allotted or appropriated by the transferee to or for any person;

(*c*) the continuation by (or against) the transferee of any legal proceedings pending by (or against) the transferor;

(*d*) the dissolution, without winding up, of the transferor;

(*e*) the provisions to be made for persons who are affected by the transfer;

(*f*) such incidental, consequential and supplementary matters as are, in the opinion of the Court, necessary to secure that the transfer is fully effective.

[10/2013]

(8) Any order under subsection (7) may —

(*a*) provide for the transfer of any business, whether or not the transferor otherwise has the capacity to effect the transfer in question;

(*b*) make provision in relation to any property which is held by the transferor as trustee; and

(*c*) make provision as to any future or contingent right or liability of the transferor, including provision as to the construction of any instrument

under which any such right or liability may arise.

[10/2013]

(9) Subject to subsection (10), where an order made under subsection (7) provides for the transfer to the transferee of the whole or any part of the transferor's business, then by virtue of the order the business (or part thereof) of the transferor specified in the order is transferred to and vests in the transferee, free in the case of any particular property (if the order so directs) from any charge which by virtue of the transfer is to cease to have effect.

[10/2013]

(10) No order under subsection (7) has any effect or operation in transferring or otherwise vesting land in Singapore until the appropriate entries are made with respect to the transfer or vesting of that land by the appropriate authority.

[10/2013]

(11) If any business specified in an order under subsection (7) is governed by the law of any foreign country or territory, the Court may order the transferor to take all necessary steps for securing that the transfer of the business to the transferee is fully effective under the law of that country or territory.

[10/2013]

(12) Where an order is made under this section, the transferor and the transferee must each lodge within 7 days after the order is made —

(*a*) a copy of the order with the Registrar of Companies and with the Authority; and

(*b*) where the order relates to land in Singapore, an office copy of the order with the appropriate authority concerned with the registration or recording of dealings in that land.

[10/2013]

(13) A transferor or transferee which contravenes subsection (12), and every officer of the transferor or transferee (as the case may be) who fails to take all reasonable steps to secure compliance by the transferor or transferee (as the case may be) with that subsection, shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding $2,000 and, in the case of a continuing offence, to a further fine not exceeding $200 for every day or part of a day during which the offence continues after conviction.

[10/2013]

Subdivision (3) — Prospectus requirements

Requirement for prospectus and profile statement, where relevant

296.—(1) A person must not make an offer of units in a collective investment scheme unless the offer —

(*a*) is made in or accompanied by a prospectus in respect of the offer —

(i) that is prepared in accordance with such requirements as the Authority may prescribe;

(ii) a copy of which, being one that has been signed in accordance with subsection (2A), is lodged with the Authority; and

(iii) that is registered by the Authority; and

(*b*) complies with such requirements as the Authority may prescribe.

(1A) A person who lodges a preliminary document with the Authority is deemed to have lodged a prospectus with the Authority.

(1B) A preliminary document referred to in subsection (1A) must contain all information to be included in a prospectus other than such information as the Authority may prescribe.

(2) Despite subsection (1), an offer of units in a collective investment scheme may be made in or accompanied by an extract from, or an abridged version of, a prospectus (called in this Subdivision a profile statement), instead of a prospectus, if —

(*a*) a prospectus is prepared in accordance with such requirements as may be prescribed under subsection (1)(*a*)(i) and the profile statement is prepared in accordance with such requirements as may be prescribed;

(*b*) a copy of the prospectus and a copy of the profile statement, each of which has been signed in accordance with subsection (2A), are lodged with the Authority, and the prospectus is lodged no later than the profile statement;

(*c*) the prospectus and profile statement are registered by the Authority;

(*d*) sufficient copies of the prospectus are made available for collection at the times and places specified in the profile statement; and

(*e*) the offer complies with such other requirements as may be prescribed.

(2A) The copy of a prospectus or profile statement lodged with the Authority must be signed —

(*a*) where the person making the offer of units in a collective investment scheme is the responsible person for the scheme, by every director or

equivalent person of the responsible person and every person who is named therein as a proposed director or an equivalent person of the responsible person; and

(*b*) where the person making the offer of units in a collective investment scheme is not the responsible person for the scheme —

(i) where the responsible person is controlled by —

(A) the person making the offer;

(B) one or more of the related parties of the person making the offer; or

(C) the person making the offer and one or more of that person's related parties,

by the persons referred to in paragraph (*a*) and the persons referred to in sub-paragraph (ii)(A) or (B), as the case may be; and

(ii) in any other case —

(A) where that person is an entity, by every director or equivalent person of that entity; or

(B) where that person is an individual, by the individual or a person authorised by him or her in writing.

(2B) A requirement under subsection (2A) for the copy of a prospectus or profile statement to be signed by a director or an equivalent person is satisfied if the copy is signed —

(*a*) by that director or equivalent person; or

(*b*) by a person who is authorised in writing by that director or equivalent person to sign on his or her behalf.

(2C) A requirement under subsection (2A) for the copy of a prospectus or profile statement to be signed by a person named therein as a proposed director or an equivalent person is satisfied if the copy is signed —

(*a*) by that proposed director or equivalent person; or

(*b*) by a person who is authorised in writing by that proposed director or equivalent person to sign on his or her behalf.

(3) A person must not make an offer of units in a collective investment scheme if that scheme has not been formed or does not exist.

(4) [*Deleted by Act 1 of 2005*]

(5) Any person who contravenes subsection (1) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

(6) The Authority may register a prospectus or a profile statement on any day within the period prescribed by the Authority from the date of lodgment thereof with the Authority, unless —

(*a*) the Authority gives to the person making the offer a notice of an opportunity to be heard under subsection (12);

(*b*) the Authority gives a notice to the person making the offer of an extension, in which case, the Authority may, not later than 28 days from the date of lodgment of the prospectus or profile statement —

(i) register the prospectus or profile statement; or

(ii) give the person making the offer a notice of an opportunity to be heard under subsection (12);

(*c*) the person making the offer applies in writing to extend the period during which the prospectus or profile statement may be registered, in which case the Authority may, at any time up to and including the date on which the extended period ends —

(i) register the prospectus or profile statement; or

(ii) give the person making the offer a notice of an opportunity to be heard under subsection (12); or

(*d*) the person making the offer gives a written notice to the Authority to withdraw the lodgment of the prospectus or profile statement, in which case the Authority must not register the prospectus or profile statement.

[2/2009]

(6A) Where, after a notice of an opportunity to be heard has been given under subsection (6)(*a*), (*b*)(ii) or (*c*)(ii), the Authority decides not to refuse registration of the prospectus or profile statement, the Authority may proceed with the registration on such date as it considers appropriate, except that that date must not be earlier than such day

from the date of lodgment of the prospectus or profile statement with the Authority as the Authority may prescribe.

[2/2009]

(6AA) For the purposes of subsections (6) and (6A), the Authority may prescribe the same period and day for all offers or different periods and days for different offers.

[2/2009]

(6B) Where a prospectus lodged with the Authority is a preliminary document, the Authority must not register the prospectus unless a copy of the prospectus which has been signed in accordance with subsection (2A) and which contains the information required to be included in a prospectus as prescribed under subsection (1)(*a*)(i), including such information which could be omitted from the preliminary document by virtue of subsection (1B), has been lodged with the Authority.

(6C) A person making an offer of units in a collective investment scheme may lodge any amendment to a prospectus or profile statement in respect of that offer at any time before, but not after, the registration of the prospectus or profile statement by the Authority.

(7) Subject to subsection (8) —

(*a*) where any amendment to a prospectus is lodged, the prospectus and any profile statement which is lodged is deemed for the purposes of subsection (6) to have been lodged when such amendment was lodged; and

(*b*) where any amendment to a profile statement is lodged, the profile statement is deemed for the purposes of subsection (6) to have been lodged when such amendment was lodged.

(8) Where an amendment to a prospectus or profile statement is lodged with the consent of the Authority, the prospectus or profile statement as amended is deemed, for the purposes of subsection (6), to have been lodged when the original prospectus or profile statement was lodged with the Authority.

(8A) An amendment to a prospectus or profile statement that is lodged is treated as part of the original prospectus or profile statement.

(9) The Authority may, for public information, publish —

(*a*) a prospectus or profile statement lodged with the Authority under this section; and

(*b*) where applicable, the translation thereof in the English language lodged with the Authority under section 318A(1),

and for the purposes of this subsection, the person making the offer must provide the

Authority with a copy of the prospectus or profile statement and, where applicable, the translation in such form or medium for publication as the Authority may require.

(10) The Authority must refuse to register a prospectus if —

(*a*) the Authority is of the opinion that the prospectus contains a false or misleading statement;

(*b*) there is an omission from the prospectus of any information that is required to be included, or an inclusion in the prospectus of any information that is prohibited, by virtue of requirements prescribed under subsection (1)(*a*);

(*c*) the Authority is of the opinion that the prospectus does not comply with the requirements of this Act;

(*d*) the copy of the prospectus that is lodged with the Authority is not signed in accordance with subsection (2A);

(*e*) any written consent of an expert to the issue of the prospectus required under section 249 (as applied to this Subdivision by virtue of section 302), or a copy thereof which is verified as prescribed, is not lodged with the Authority;

(*ea*) any written consent of an issue manager to the issue of the prospectus required under section 249A(1) (as applied to this Subdivision by virtue of section 302), or a copy thereof which is verified as prescribed, is not lodged with the Authority;

(*eb*) any written consent of an underwriter to the issue of the prospectus required under section 249A(2) (as applied to this Subdivision by virtue of section 302), or a copy thereof which is verified as prescribed, is not lodged with the Authority; or

(*f*) the Authority is of the opinion that it is not in the public interest to do so.

(11) The Authority must refuse to register a profile statement if —

(*a*) the Authority is of the opinion that the profile statement contains a false or misleading statement;

(*b*) there is an omission from the profile statement of any information that is required to be included, or an inclusion in the profile statement of any information that is prohibited, by virtue of requirements prescribed under subsection (2)(*a*);

(*c*) the copy of the profile statement that is lodged with the Authority is not

signed in accordance with subsection (2A);

(*ca*) any written consent of an expert to the issue of the profile statement required under section 249 (as applied to this Subdivision by virtue of section 302), or a copy thereof which is verified as prescribed, is not lodged with the Authority;

(*cb*) any written consent of an issue manager to the issue of the profile statement required under section 249A(1) (as applied to this Subdivision by virtue of section 302), or a copy thereof which is verified as prescribed, is not lodged with the Authority;

(*cc*) any written consent of an underwriter to the issue of the profile statement required under section 249A(2) (as applied to this Subdivision by virtue of section 302), or a copy thereof which is verified as prescribed, is not lodged with the Authority;

(*d*) the Authority is of the opinion that the profile statement does not comply with the requirements of this Act;

(*e*) the prospectus has not been registered by the Authority; or

(*f*) the Authority is of the opinion that it is not in the public interest to do so.

(12) The Authority must not refuse to register a prospectus under subsection (10) or a profile statement under subsection (11) without giving the person making the offer an opportunity to be heard, except that an opportunity to be heard need not be given if the refusal is on the ground that it is not in the public interest to register the prospectus or profile statement on the basis of any of the following circumstances:

(*a*) the person making the offer (being an entity), the responsible person or the collective investment scheme itself, is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;

(*b*) the person making the offer (being an individual) is an undischarged bankrupt, whether in Singapore or elsewhere;

(*c*) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the person making the offer (being an entity), the responsible person or the collective investment scheme.

(13) Any person making an offer may, within 30 days after the person is notified that the Authority has refused to register a prospectus or profile statement to which that person's offer relates under subsection (10) or (11), appeal to the Minister whose

decision is final.

(14) If —

(*a*) a prospectus or profile statement is issued, circulated or distributed before it has been registered by the Authority; or

(*b*) an application to subscribe for or purchase units in a collective investment scheme is accepted, or units in a collective investment scheme are issued or sold, before a prospectus and, where applicable, profile statement, in respect of the units has been registered by the Authority,

the person making the offer and every person who is knowingly a party to —

(*c*) the issue, circulation or distribution of the prospectus or profile statement;

(*d*) the acceptance of the application to subscribe for or purchase the units; or

(*e*) the issue or sale of the units,

as the case may be, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

(14A) For the purposes of subsections (10)(*a*) and (11)(*a*), any reference to a statement includes a reference to any information presented, regardless of whether such information is in text or otherwise.

(15) Regulations made under this section may provide that a contravention of specified provisions thereof shall be an offence and may provide for penalties not exceeding a fine of $50,000.

Requirement for product highlights sheet, where relevant

296A.—(1) A person must not make an offer of units in a collective investment scheme, being an offer that is made in or accompanied by a prospectus or profile statement that complies with section 296, unless the prospectus or profile statement is accompanied by a product highlights sheet in respect of the offer —

(*a*) that complies with such requirements as the Authority may prescribe by regulations made under section 341; and

(*b*) a copy of which is lodged with the Authority.

[34/2012]

(2) A person must not publish or disseminate, whether in Singapore or elsewhere, any document relating to any offer or intended offer of units in a collective investment

scheme or proposed collective investment scheme, being an offer that is, or an intended offer that will be, made in or accompanied by a prospectus or profile statement that complies with section 296, if the document resembles or may otherwise be confused with a product highlights sheet, unless the person is required to do so —

(*a*) under any written law or rule of law, or by any court, in Singapore;

(*b*) under the laws and practices of, or by any court in, any foreign jurisdiction; or

(*c*) by any listing rules or other requirements of any approved exchange or overseas exchange.

[34/2012; 4/2017]

(3) The Authority may, for public information, publish —

(*a*) a product highlights sheet lodged with the Authority under this section; and

(*b*) where applicable, the translation thereof in the English language lodged with the Authority under section 318A(1).

[34/2012]

(4) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

(5) Without affecting section 337(1), the Authority may, by regulations made under section 341, exempt any person or class of persons, any prospectus or profile statement, or any units in a collective investment scheme or proposed collective investment scheme, from any provision of this section, subject to such conditions or restrictions as the Authority may prescribe in those regulations.

[34/2012]

(6) Without affecting section 337(3) and (4), the Authority may, by written notice, exempt any person, prospectus or profile statement, or any units in a collective investment scheme or proposed collective investment scheme, from any provision of this section, subject to such conditions or restrictions as the Authority may specify by written notice.

[34/2012]

(7) It is not necessary to publish any exemption granted under subsection (6) in the *Gazette*.

[34/2012]

(8) Every person who is granted an exemption under subsection (5), or who wishes to

rely on an exemption granted under that subsection, must satisfy every condition or restriction imposed under that subsection for the grant of the exemption.

[34/2012]

(9) Every person who is granted an exemption under subsection (6), or who wishes to rely on an exemption granted under that subsection, must, for the duration of the exemption, satisfy every condition or restriction imposed under that subsection for the grant of the exemption.

[34/2012]

(10) Any person who contravenes subsection (8) or (9) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

Stop order for prospectus and profile statement

297.—(1) If a prospectus has been registered and —

(*a*) the Authority is of the opinion that the prospectus contains a false or misleading statement;

(*b*) there is an omission from the prospectus of any information that is required to be included, or an inclusion in the prospectus of any information that is prohibited, by virtue of requirements prescribed under section 296;

(*c*) the Authority is of the opinion that the prospectus does not comply with the requirements of this Act; or

(*d*) the Authority is of the opinion that it is in the public interest to do so,

the Authority may by a written order (called in this section a stop order) served on the person making the offer of units in a collective investment scheme to which the prospectus relates, direct that no or no further units in the scheme be issued or sold.

(2) If a profile statement has been registered and —

(*a*) the Authority is of the opinion that the profile statement contains a false or misleading statement;

(*b*) there is an omission from the profile statement of any information that is required to be included, or an inclusion in the profile statement of any information that is prohibited, by virtue of requirements prescribed under section 296;

(*c*) the Authority is of the opinion that the profile statement does not comply

with the requirements of this Act; or

(*d*) the Authority is of the opinion that it is in the public interest to do so,

the Authority may by a written order (called in this section a stop order) served on the person making the offer of units in a collective investment scheme to which the profile statement relates, direct that no or no further units in the scheme be issued or sold.

(2A) If —

(*a*) a prospectus or a profile statement has been registered;

(*b*) the prospectus or profile statement relates to units in a collective investment scheme recognised under section 287; and

(*c*) the Authority is of the opinion that it is necessary to stop the person making the offer of units in the scheme from issuing or selling units in the scheme to give effect to an arrangement relating to cross-border offers of collective investment schemes to which Singapore or the Authority is a party,

the Authority may serve a written order (called in this section a stop order) on the person making the offer of units in the scheme directing that no or no further units in the scheme be issued or sold.

[4/2017]

(2B) The Authority must not serve a stop order under subsection (1), (2) or (2A) if —

(*a*) any of the units in a collective investment scheme to which the prospectus or profile statement relates —

(i) has been issued or sold; and

(ii) has been listed for quotation on an approved exchange; and

(*b*) trading in any of the units in the collective investment scheme mentioned in paragraph (*a*) has commenced.

[4/2017]

(3) The Authority must not serve a stop order under subsection (1), (2) or (2A) without giving the person making the offer of units in the collective investment scheme an opportunity to be heard, except that an opportunity to be heard need not be given if the stop order is served on the ground that it is in the public interest to do so on the basis of any of the following circumstances:

(*a*) the person making the offer (being an entity), the responsible person or the collective investment scheme itself, is in the course of being wound up or

otherwise dissolved, whether in Singapore or elsewhere;

(*b*) the person making the offer (being an individual) is an undischarged bankrupt, whether in Singapore or elsewhere;

(*c*) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the person making the offer (being an entity), the responsible person or the collective investment scheme.

[4/2017]

(4) Where applications for units in a collective investment scheme have been made prior to the service of a stop order, and —

(*a*) the contributions of the applicants to the scheme have not yet been invested in accordance with the scheme —

(i) where units in the scheme have not been issued to the applicants, the applications are deemed to have been withdrawn and cancelled; or

(ii) where units in the scheme have been issued to the applicants, the issue of the units is deemed to be void,

and the person making the offer of units in the scheme must, within 7 days from the date of the stop order, pay to the applicants all moneys which the applicants have paid for the units, including contributions to the scheme and charges the applicants have paid to that person, its agent, or any person through whom the applicant has applied for the units; or

(*b*) the contributions of the applicants to the scheme have been invested in accordance with the scheme, the Authority may by written notice issue such directions to the person making the offer of units in the scheme as it deems fit, including a direction that the person provide the applicants with an option, on such terms as the Authority may approve, to obtain from that person a refund of all moneys contributed by the applicants or to redeem their units in accordance with the scheme.

(5) In determining whether to issue a direction under subsection (4) to the person making the offer of units in the collective investment scheme to refund the contributions of the applicants, the Authority must consider whether the responsible person for the scheme will be able to liquidate the property of the scheme without material adverse financial effect to the applicants, and for this purpose, the factors which the Authority may take into account include —

(*a*) whether a significant amount of the contributions of the participants has been invested;

(*b*) the liquidity of the property of the scheme; and

(*c*) the penalties (if any) payable for liquidating the property.

(6) It is not necessary to publish any direction issued under subsection (4) in the *Gazette*.

[34/2012]

(7) If the Authority is of the opinion that any delay in serving a stop order pending the hearing required under subsection (3) is not in the interests of the public, the Authority may, without giving the person making the offer of units in the collective investment scheme an opportunity to be heard, serve an interim stop order on such person directing that no or no further units in a collective investment scheme to which the prospectus or profile statement relates be issued or sold.

(8) An interim stop order, unless revoked, is in force —

(*a*) in a case where —

(i) it is served during a hearing under subsection (3); or

(ii) a hearing under subsection (3) is commenced while it is in force,

until the Authority makes an order under subsection (1), (2) or (2A); or

(*b*) in any other case, for a period of 14 days from the day on which the interim stop order is served.

[4/2017]

(9) Subsection (4) does not apply where only an interim stop order has been served.

(10) Any person who fails to comply with a stop order served under subsection (1), (2) or (2A) or an interim stop order served under subsection (7) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(11) Any person who contravenes subsection (4), or any direction issued to the person under that subsection, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 and, in the case of a continuing offence, to a further fine not exceeding $10,000 for every day or part of a day during which the offence continues after conviction.

(12) For the purposes of subsections (1)(*a*) and (2)(*a*), any reference to a statement includes a reference to any information presented, regardless of whether such information is in text or otherwise.

Lodging supplementary document or replacement document

298.—(1) If, after a prospectus or profile statement is registered but before the close of the offer of units in a collective investment scheme, or the expiration of 12 months from the date of registration of the prospectus by the Authority, whichever is earlier, the person making that offer becomes aware of —

(*a*) a false or misleading statement in the prospectus or profile statement;

(*b*) an omission from the prospectus or profile statement of any information that should have been included in it by requirements prescribed under section 296; or

(*c*) a new circumstance that —

(i) has arisen since the prospectus or profile statement was lodged with the Authority; and

(ii) would have been required under this Act to be included in the prospectus or profile statement,

if it had arisen before the prospectus or the profile statement (as the case may be) was lodged,

and that is materially adverse from the point of view of an investor, the person may lodge a supplementary or replacement prospectus, or a supplementary or replacement profile statement (called in this section a supplementary or replacement document, as the case may be), with the Authority.

(2) If, after a prospectus or profile statement is registered but before the close of the offer of units in a collective investment scheme, or the expiration of 12 months from the registration of the prospectus by the Authority, whichever is earlier, the person making that offer wishes to update any information in a prospectus or profile statement and the person declares in writing to the Authority that none of the situations set out in subsection (1) apply at that time, the person may lodge a supplementary or replacement document with the Authority.

(3) At the beginning of a supplementary document, there must be —

(*a*) a statement that it is a supplementary prospectus or a supplementary profile statement, as the case may be;

(*b*) an identification of the prospectus or profile statement it supplements;

(*c*) an identification of any previous supplementary document lodged with the Authority in relation to the offer; and

(*d*) a statement that it is to be read together with the prospectus or profile statement it supplements and any previous supplementary document in relation to the offer.

(4) At the beginning of a replacement document, there must be —

(*a*) a statement that it is a replacement prospectus or a replacement profile statement, as the case may be; and

(*b*) an identification of the prospectus or profile statement it replaces.

(5) The supplementary document and the replacement document must be dated with the date on which they are lodged with the Authority.

(6) The person making the offer of units in a collective investment scheme must take reasonable steps —

(*a*) to inform potential investors of the lodgment of any supplementary document or replacement document under subsection (1); and

(*b*) to make available to them the supplementary document or replacement document.

(7) For the purposes of the application of this Division to events that occur after the lodgment of a supplementary document —

(*a*) where the supplementary document is a supplementary prospectus, the prospectus in relation to the offer is taken to be the original prospectus together with the supplementary prospectus and any previous supplementary prospectus in relation to the offer; and

(*b*) where the supplementary document is a supplementary profile statement, the profile statement in relation to the offer is taken to be the original profile statement together with the supplementary profile statement and any previous supplementary profile statement in relation to the offer.

(8) [*Deleted by Act 1 of 2005*]

(9) For the purposes of the application of this Division to events that occur after the lodgment of the replacement document —

(*a*) where the replacement document is a replacement prospectus, the

prospectus in relation to the offer is taken to be the replacement prospectus; and

(*b*) where the replacement document is a replacement profile statement, the profile statement in relation to the offer is taken to be the replacement profile statement.

(10) Where, prior to the lodgment of the supplementary document or replacement document under subsection (1), applications have been made under the original prospectus or profile statement for units in a collective investment scheme, the person making the offer of units in the scheme —

(*a*) must —

(i) within 2 days (excluding any Saturday, Sunday or public holiday) from the date of lodgment of the supplementary document or replacement document, give the applicants written notice on how to obtain, or arrange to receive, a copy of the supplementary document or replacement document, as the case may be; and

(ii) take all reasonable steps to make available within a reasonable period the supplementary document or replacement document (as the case may be) to the applicants who have indicated that they wish to obtain, or who have arranged to receive, a copy of the supplementary document or replacement document; or

(*b*) must, within 7 days from the date of lodgment of the supplementary document or replacement document, give the applicants the supplementary document or replacement document, as the case may be.

(11) Any person who contravenes subsection (3), (4), (5) or (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

(12) Any person who contravenes subsection (10) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 and, in the case of a continuing offence, to a further fine not exceeding $10,000 for every day or part of a day during which the offence continues after conviction.

(13) For the purposes of subsection (1)(*a*), the reference to a statement includes a reference to any information presented, regardless of whether such information is in text or otherwise.

Duration of validity of prospectus and profile statement

299.—(1) A person must not make an offer of units in a collective investment scheme, or issue or sell any units in a collective investment scheme, on the basis of a prospectus or profile statement after the expiration of 12 months from the date of registration by the Authority of the prospectus in relation to such offer, issue or sale.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

(3) An issue or a sale of units in a collective investment scheme that is made in contravention of subsection (1) is not, by reason only of that fact, voidable or void.

Restrictions on advertisements, etc.

300.—(1) If a prospectus is required for an offer, or intended offer of units in a collective investment scheme or proposed collective investment scheme, a person must not —

(*a*) advertise the offer or intended offer; or

(*b*) publish a statement that —

(i) directly or indirectly refers to the offer or intended offer; or

(ii) is reasonably likely to induce people to subscribe for or purchase the units,

unless the advertisement or publication is authorised by this section.

(2) In determining whether a statement —

(*a*) indirectly refers to an offer or intended offer; or

(*b*) is reasonably likely to induce people to subscribe for or purchase units in a collective investment scheme,

regard must be had to whether the statement —

(*c*) forms part of the normal advertising of an entity's products or services and is genuinely directed at maintaining its existing customers, or attracting new customers, for those products or services; and

(*d*) is likely to encourage investment decisions to be made on the basis of the

statement rather than on the basis of information contained in a prospectus or profile statement.

(2A) Despite subsection (3A), a person may, before a prospectus or profile statement is registered by the Authority, disseminate a preliminary document which has been lodged with the Authority to institutional investors, relevant persons as defined in section 305(5) and persons to whom an offer referred to in section 305(2) is to be made without contravening subsection (1), if —

(*a*) the front page of the preliminary document contains —

(i) the following statement:

"This is a preliminary document and is subject to further amendments and completion in the prospectus to be registered by the Monetary Authority of Singapore.";

(ii) a statement that a person to whom a copy of the preliminary document has been issued must not circulate it to any other person; and

(iii) a statement in bold lettering that no offer or agreement may be made on the basis of the preliminary document to purchase or subscribe for any units in the collective investment scheme to which the preliminary document relates;

(*b*) the preliminary document does not contain or have attached to it any form of application that will facilitate the making by any person of an offer of units in the collective investment scheme to which the preliminary document relates, or the acceptance of such an offer by any person; and

(*c*) when the prospectus is registered by the Authority, the person takes reasonable steps to notify the persons to whom the preliminary document was issued that the registered prospectus is available for collection.

(2B) Despite subsection (3A), a person does not contravene subsection (1) —

(*a*) by presenting, before a prospectus or profile statement is registered by the Authority, oral or written material on matters contained in a preliminary document which has been lodged with the Authority, to institutional investors, relevant persons as defined in section 305(5) or persons to whom an offer referred to in section 305(2) is to be made; or

(*b*) by presenting oral or written material on matters contained in a prospectus,

profile statement or product highlights sheet which has been lodged with the Authority in respect of an offer of units in a collective investment scheme, before the prospectus or profile statement is registered by the Authority, for the sole purpose of equipping any of the following persons with knowledge of the collective investment scheme in order to enable the person to carry on the regulated activity of dealing in capital markets products that are units in a collective investment scheme, or to provide any financial advisory service, in relation to the units in the collective investment scheme:

(i) a person licensed under this Act in respect of dealing in capital markets products that are units in a collective investment scheme;

(ii) an exempt person;

(iii) a person who is a representative in respect of dealing in capital markets products that are units in a collective investment scheme under this Act;

(iv) a representative of an exempt person;

(v) a person licensed under the Financial Advisers Act 2001 in respect of marketing of collective investment schemes;

(vi) an exempt financial adviser;

(vii) a person who is a representative in respect of marketing of collective investment schemes under the Financial Advisers Act 2001;

(viii) a representative of an exempt financial adviser.

[34/2012; 4/2017]

(2C) [*Deleted by Act 34 of 2012*]

(3) To avoid doubt, a person may disseminate either or both of the following without contravening subsection (1):

(*a*) a prospectus or profile statement that has been registered by the Authority under section 296;

(*b*) a product highlights sheet in respect of which section 296A(1)(*a*) and (*b*) has been complied with, and which is disseminated with a prospectus or

profile statement that has been registered by the Authority under section 296.

[34/2012; 4/2017]

(3A) Before a prospectus or profile statement is registered, an advertisement or a publication does not contravene subsection (1) if it contains only the following:

(*a*) a statement that identifies the person making the offer, the responsible person for the collective investment scheme and, where the collective investment scheme is not a corporation, the collective investment scheme;

(*b*) a statement that a prospectus or profile statement for the offer will be made available when the offer is made;

(*c*) a statement that anyone wishing to acquire the units in the collective investment scheme will need to make an application in the manner set out in the prospectus or profile statement;

(*d*) a statement on how to obtain, or arrange to receive, a copy of the prospectus or profile statement; and

(*e*) the investment focus of the collective investment scheme.

(3B) To satisfy subsection (3A), the advertisement or publication must include all of the statements referred to in paragraphs (*a*), (*b*) and (*c*) of that subsection, and may include the information referred to in paragraphs (*d*) and (*e*).

(3C) After a prospectus or profile statement is registered with the Authority, an advertisement or a publication does not contravene subsection (1) if it complies with such requirements as the Authority may prescribe by regulations made under section 341.

[34/2012]

(4) An advertisement or publication does not contravene subsection (1) if it —

(*a*) consists solely of a disclosure, notice or report required under this Act, or any listing rules or other requirements of an approved exchange or overseas exchange, made by any person, provided that the disclosure, notice or report complies with such requirements as the Authority may prescribe;

(*aa*) consists solely of a notice or report of a meeting or proposed meeting of the participants of the collective investment scheme, or a general meeting or proposed general meeting of the person making the offer, the responsible person or any entity, provided that the notice or report complies with such requirements as the Authority may prescribe, or a

presentation of oral or written material on matters so contained in the notice or report at the meeting or general meeting;

(*b*) consists solely of a report about the collective investment scheme or proposed collective investment scheme that is issued pursuant to this Act and the Code on Collective Investment Schemes;

(*ba*) consists solely of a statement made by the person making the offer or the responsible person that a prospectus or profile statement in respect of the offer or intended offer has been lodged with the Authority;

(*c*) is a news report, or a genuine comment, by a person other than a person referred to in paragraph (*d*)(i), (ii), (iii) or (iv), in a newspaper, periodical or magazine or on radio or television, or any other means of broadcasting or communication, relating to —

(i) a prospectus or profile statement that has been lodged with the Authority or information contained in such a prospectus or profile statement;

(ii) a disclosure, notice or report referred to in paragraph (*a*);

(iii) a notice, report, presentation, meeting, proposed meeting, general meeting or proposed general meeting referred to in paragraph (*aa*);

(iv) a report referred to in paragraph (*b*); or

(v) a product highlights sheet;

(*d*) is a report about the units in the collective investment scheme which are the subject of the offer or intended offer, published by someone who is not —

(i) the person making the offer, the responsible person for the scheme, its agent or distributor;

(ii) a director or an equivalent person of the person making the offer or the responsible person for the scheme;

(iii) a person who has an interest in the success of the issue or sale of the units; or

(iv) a person acting at the instigation of, or by arrangement with, any

person referred to in sub-paragraph (i), (ii) or (iii);

(*e*) is a disclosure, notice, report or publication of a description prescribed by the Authority, and such other conditions as the Authority may prescribe are satisfied; or

(*f*) is a publication made by the person making the offer or the responsible person for the scheme solely to correct or provide clarification on any erroneous or inaccurate information or comment contained in —

(i) an earlier news report or a genuine comment referred to in paragraph (*c*); or

(ii) an earlier publication published in the ordinary course of business of publishing a newspaper, periodical or magazine, or of broadcasting by radio, television or any other means of broadcasting or communication, referred to in subsection (5),

provided that the firstmentioned publication does not contain any material information that is not included in the prospectus.

[2/2009; 34/2012; 4/2017]

(5) A person does not contravene subsection (1) if —

(*a*) the person publishes an advertisement or publication in the ordinary course of a business of —

(i) publishing a newspaper, periodical or magazine; or

(ii) broadcasting by radio, television, or any other means of broadcasting or communication; and

(*b*) the person did not know, and had no reason to suspect, that its publication would constitute a contravention of subsection (1).

(6) Subsection (4)(*c*) and (*d*) does not apply to an advertisement or statement if any person gives consideration or any other benefit for the publication of the advertisement or statement.

(7) Any person who contravenes subsection (1) or who knowingly authorises or permits the publication or dissemination of any advertisement or statement mentioned in that subsection shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(8) This section does not affect any liability that a person has under any other law.

(9) The Authority may exempt any person or class of persons from this section, subject to such conditions as the Authority may determine.

(10) Any person who contravenes any of the conditions under subsection (9) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

(11) For the purposes of this section, any reference to publishing a statement includes a reference to making a statement, whether oral or written, which is reasonably likely to be published.

(12) For the purposes of subsections (1) and (2), any reference to a statement includes a reference to any information presented, regardless of whether such information is in text or otherwise.

(13) In subsection (2B) —

"exempt financial adviser" and "financial advisory service" have the meanings given by section 2(1) of the Financial Advisers Act 2001;

"representative" —

(*a*) in relation to dealing in capital markets products that are units in a collective investment scheme under this Act or an exempt person, has the meaning given by section 2(1); or

(*b*) in relation to marketing of collective investment schemes under the Financial Advisers Act 2001 or an exempt financial adviser, has the meaning given by section 2(1) of that Act.

[34/2012; 4/2017]

Issue of units where prospectus indicates application to list on approved exchange

301.—(1) Where a prospectus states or implies that application has been or will be made for permission for the units in a collective investment scheme offered thereby to be listed for quotation on any approved exchange, and —

(*a*) the permission is not applied for in the form required by the approved exchange within 3 days from the date of the issue of the prospectus; or

(*b*) the permission is not granted before the expiration of 6 weeks from the date of the issue of the prospectus or such longer period not exceeding

12 weeks from the date of the issue as is, within those 6 weeks, notified to the applicant by or on behalf of the approved exchange,

then —

(*c*) any issue whenever made of units made on an application pursuant to the prospectus is void; and

(*d*) any person who continues to issue such units after the period specified in paragraph (*a*) or (*b*) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(2) Where the permission has not been applied for, or has not been granted as mentioned under subsection (1), applications for units in the collective investment scheme have been made and —

(*a*) the contributions of the applicants to the scheme have not yet been invested in accordance with the scheme —

(i) in a case where units in the scheme have not been issued to the applicants, the responsible person for the scheme must treat such applications as having been withdrawn; or

(ii) in a case where units in the scheme have been issued to the applicants, the issue of the units is deemed to be void,

and the responsible person must within 7 days after the period specified in subsection (1)(*a*) or (*b*), whichever is applicable, pay to the applicants all moneys which the applicants have paid for the units, including contributions to the scheme and charges the applicants have paid to the responsible person, its agent, or any person through whom the applicant has applied for the units; or

(*b*) the contributions of the applicants to the scheme have been invested in accordance with the scheme, the Authority may by written notice issue such directions to the responsible person for the scheme as it deems fit, including a direction that the responsible person provide the applicants with an option, on such terms as the Authority may approve, to obtain from the responsible person a refund of all moneys contributed by the applicants or to redeem their units in accordance with the scheme.

(3) In determining whether to issue a direction under subsection (2)(*b*) to the

responsible person to refund the contributions of the applicants, the Authority must consider whether the responsible person for the collective investment scheme will be able to liquidate the property of the scheme without material adverse financial effect to the applicants, and for this purpose, the factors which the Authority may take into account include —

(*a*) whether a significant amount of the contributions of the participants has been invested;

(*b*) the liquidity of the property of the scheme; and

(*c*) the penalties (if any) payable for liquidating the property.

(4) Any responsible person who contravenes subsection (2) or any of the directions issued under that subsection shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 and, in the case of a continuing offence, to a further fine not exceeding $10,000 for every day or part of a day during which the offence continues after conviction.

(5) Any responsible person to whom a notice is given under subsection (2) must comply with such direction as may be contained in the notice.

(6) It is not necessary to publish any direction issued under subsection (2) in the *Gazette*.

[34/2012]

(7) All moneys received from applicants as payment for the units, including contributions to the scheme and charges which the applicants have paid to the responsible person, its agent, or any person through whom the applicant has applied for the units, must be kept in a separate bank account so long as the responsible person for the collective investment scheme may become liable to repay it under subsection (2).

(8) Any responsible person for a scheme which is not in compliance with subsection (7) and, where the scheme is a corporation, every officer thereof, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

(9) Where the approved exchange has, within the period specified in subsection (1)(*b*), granted permission subject to compliance with such requirements as may be specified by the approved exchange, permission is deemed to have been granted by the approved exchange if —

(*a*) in a case where the responsible person for the scheme is a corporation, the directors of the corporation; or

(*b*) in a case where the responsible person for the scheme is not a corporation, such persons as may be required by the approved exchange,

have given to the approved exchange an undertaking in writing to comply with the requirements of the approved exchange.

[4/2017]

(10) Any person who fails to comply with any undertaking given to an approved exchange under subsection (9) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(11) A person must not issue a prospectus inviting persons to subscribe for or purchase units in a collective investment scheme if it includes —

(*a*) a false or misleading statement that permission has been granted for those units to be listed for quotation on, dealt in or quoted on any approved exchange; or

(*b*) any statement in any way referring to any such permission or to any application or intended application for any such permission, or to listing for quotation on, dealing in or quoting the units on any approved exchange, or to any requirements of an approved exchange, unless that statement is or is to the effect that permission has been granted or that application has been or will be made to the approved exchange within 3 days from the date of issue of the prospectus or the statement has been approved by the Authority for inclusion in the prospectus.

[4/2017]

(12) Any person who contravenes subsection (11) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

(13) Where a prospectus contains a statement to the effect that the constituent documents for the collective investment scheme comply, or have been drawn so as to comply, with the requirements of any approved exchange, the prospectus is, unless the contrary intention appears from the prospectus, deemed for the purposes of subsection (11)(*b*) to be a prospectus that includes a statement that application has been, or will be, made for permission for the units to which the prospectus relates, to be listed for quotation on the approved exchange.

[4/2017]

Application of provisions relating to securities and securities-based derivatives contracts

302.—(1) Sections 247, 249, 249A, 252, 253, 254 and 255 apply, with the necessary modifications, in relation to an offer of units in a collective investment scheme as they apply in relation to an offer of securities or securities-based derivatives contracts in Division 1 of this Part.

[4/2017]

(2) For the purposes of subsection (1) —

(*a*) references in those sections to securities or securities-based derivatives contracts are to be read as references to units in a collective investment scheme; and

(*b*) references in those sections to a person subscribing for, purchasing or acquiring securities or securities-based derivatives contracts are to be read as a person subscribing for, purchasing or acquiring units in a collective investment scheme.

[4/2017]

(3) For the purposes of subsection (1), any reference in sections 253 and 254 to an offer referred to in section 280 is to be read as a reference to an offer referred to in section 305C.

(4) For the purposes of subsection (1), any reference in sections 249, 249A, 253 and 254 to the issuer is to be read as a reference to the responsible person.

Subdivision (4) — Exemptions

Issue or transfer for no consideration

302A.—(1) Subdivisions (2) and (3) of this Division do not apply to an offer of units in a collective investment scheme (other than an offer of an option to subscribe for or purchase such units) if no consideration is or will be given for the issue or transfer of the units.

(2) Subdivisions (2) and (3) of this Division do not apply to an offer of an option to subscribe for or purchase units in a collective investment scheme if —

(*a*) no consideration is or will be given for the issue or transfer of the option; and

(*b*) no consideration is or will be given for the underlying units on the exercise of the option.

Small offers

302B.—(1) Subdivisions (2) and (3) of this Division do not apply to personal offers of units in a collective investment scheme by a person if —

(*a*) the total amount raised by the person from such offers within any period of 12 months does not exceed —

(i) $5 million (or its equivalent in a foreign currency); or

(ii) such other amount as the Authority may prescribe in substitution for the amount specified in sub-paragraph (i);

(*b*) in respect of each offer, the person making the offer gives the person to whom the offer is made —

(i) the following statement in writing:

"This offer is made in reliance on the exemption under section 302B(1) of the Securities and Futures Act 2001. It is not made in or accompanied by a prospectus that is registered by the Monetary Authority of Singapore and the scheme is not authorised or recognised by the Authority."; and

(ii) a notification in writing that the units to which the offer (called in this sub-paragraph the initial offer) relates must not be subsequently sold to any person unless the offer resulting in such subsequent sale is made —

(A) in compliance with Subdivisions (2) and (3) of this Division;

(B) in reliance on subsection (8)(*c*) or any other exemption under any provision of this Subdivision (other than this subsection); or

(C) where at least 6 months have elapsed from the date the units were acquired under the initial offer, in reliance on the exemption under this subsection;

(*c*) none of the offers is accompanied by an advertisement making an offer or calling attention to the offer or intended offer;

(*d*) no selling or promotional expenses are paid or incurred in connection with

each offer other than those incurred for administrative or professional services, or by way of commission or fee for services rendered by any of the following persons:

(i) the holder of a capital markets services licence to deal in capital markets products that are units in a collective investment scheme;

(ii) an exempt person in respect of dealing in capital markets products that are units in a collective investment scheme;

(iii) a person licensed under the Financial Advisers Act 2001 in respect of marketing of collective investment schemes;

(iv) an exempt financial adviser as defined in section 2(1) of the Financial Advisers Act 2001;

(v) a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in capital markets products that are units in a collective investment scheme or marketing of collective investment schemes; or

(vi) a person who is exempt from the laws, codes or other requirements mentioned in sub-paragraph (v) in respect of units in a collective investment scheme or marketing of collective investment schemes; and

(*e*) no prospectus in respect of any of the offers has been registered by the Authority or, where a prospectus has been registered —

(i) the prospectus has expired pursuant to section 299; or

(ii) the person making the offer has before making the offer informed the Authority by written notice of its intent to make the offer in reliance on the exemption under this subsection.

[2/2009; 4/2017]

(2) For the purposes of subsection (1)(*b*), where any notice, circular, material, publication or other document is issued in connection with the offer, the person making the offer is deemed to have given the statement and notification to the person to whom the offer is made in accordance with that provision if such statement or notification is contained in the first page of that notice, circular, material, publication or document.

(3) For the purposes of subsection (1), a personal offer of units in a collective investment scheme is one that —

(*a*) may only be accepted by the person to whom it is made; and

(*b*) is made to a person who is likely to be interested in that offer, having regard to —

(i) any previous contact before the date of the offer between the person making the offer and that person;

(ii) any previous professional or other connection established before that date between the person making the offer and that person; or

(iii) any previous indication (whether through statements made or actions carried out) before that date by that person to the person making the offer or any of the persons specified in subsection (1)(*d*)(i), (ii), (iii), (iv) and (v) that that person is interested in offers of that kind.

(4) In determining the amount raised by an offer of units in a collective investment scheme, the following must be included:

(*a*) the amount payable for the units at the time when they are issued or sold;

(*b*) if the units are issued partly-paid, any amount payable at a future time if a call is made;

(*c*) if the units carry a right (by whatever name called) to be converted into other units or to acquire other units in a collective investment scheme, any amount payable on the exercise of the right to convert them into, or to acquire, other units in a collective investment scheme.

(5) In determining whether the amount raised by a person from offers within a period of 12 months exceeds the applicable amount specified in subsection (1)(*a*), each amount raised —

(*a*) by that person from any offer of units in the same collective investment scheme; or

(*b*) by that person or another person from any offer of units in a collective investment scheme, securities or securities-based derivatives contracts, which is a closely related offer,

(if any) within that period in reliance on the exemption under subsection (1) or section 272A(1) must be included.

[4/2017]

(6) Whether an offer is a closely related offer under subsection (5) is determined by considering such factors as the Authority may prescribe.

(7) For the purpose of this section, an offer of units in a collective investment scheme made by a person acting as an agent of another person is treated as an offer made by that other person.

(8) Where units acquired through an offer made in reliance on the exemption under subsection (1) (called in this subsection an initial offer) are subsequently sold by the person who acquired the units to another person, Subdivisions (2) and (3) of this Division apply to the offer from the firstmentioned person to the second-mentioned person which resulted in that sale, unless —

(*a*) such offer is made in reliance on an exemption under any provision of this Subdivision (other than this section);

(*b*) such offer is made in reliance on an exemption under subsection (1) and at least 6 months have elapsed from the date the units were acquired under the initial offer; or

(*c*) such offer is one —

(i) that may be accepted only by the person to whom it is made;

(ii) that is made to a person who is likely to be interested in the offer having regard to —

(A) any previous contact before the date of the offer between the person making the initial offer and that person;

(B) any previous professional or other connection established before that date between the person making the initial offer and that person; or

(C) any previous indication (whether through statements made or actions carried out) before that date by that person to the person making the initial offer or any of the persons specified in subsection (1)(*d*)(i), (ii), (iii), (iv) and (v) that that person is interested in offers of that kind;

(iii) in respect of which the firstmentioned person has given the second-mentioned person —

(A) the following statement in writing:

"This offer is made in reliance on the exemption under section 302B(8)(*c*) of the Securities and Futures Act 2001. It is not made in or accompanied by a prospectus that is registered by the Monetary Authority of Singapore and the scheme is not authorised or recognised by the Authority."; and

(B) a notification in writing that the units being offered must not be subsequently sold to any person unless the offer resulting in such subsequent sale is made —

(BA) in compliance with Subdivisions (2) and (3) of this Division;

(BB) in reliance on this subsection or any other exemption under any provision of this Subdivision (other than subsection (1)); or

(BC) where at least 6 months have elapsed from the date the units were acquired under the initial offer, in reliance on the exemption under subsection (1);

(iv) that is not accompanied by an advertisement making an offer or calling attention to the offer or intended offer; and

(v) in respect of which no selling or promotional expenses are paid or incurred in connection with the offer other than those incurred for administrative or professional services, or by way of commission or fee for services rendered by any of the persons specified in subsection (1)(*d*)(i), (ii), (iii), (iv) and (v).

(9) Subsection (2) applies, with the necessary modifications, in relation to the statement and notification referred to in subsection (8)(*c*)(iii).

(10) In subsections (1)(*c*) and (8)(*c*)(iv), "advertisement" means —

(*a*) a written or printed communication;

(*b*) a communication by radio, television or other medium of communication;

or

(*c*) a communication by means of a recorded telephone message,

that is published in connection with an offer of units in a collective investment scheme, but does not include —

(*d*) a document —

(i) purporting to describe the units in a collective investment scheme being offered; and

(ii) purporting to have been prepared for delivery to and review by persons to whom the offer is made so as to assist them in making an investment decision in respect of the units being offered;

(*e*) a publication which consists solely of a disclosure, notice or report required under this Act, or any listing rules or other requirements of an approved exchange or overseas exchange, which is made by any person; or

(*f*) a publication which consists solely of a notice or report of a meeting or proposed meeting of the participants of the collective investment scheme, or a general meeting or proposed general meeting of the person making the offer, the responsible person or any entity, or a presentation of oral or written material on matters so contained in the notice or report at the meeting or general meeting.

[2/2009; 4/2017]

Private placement

302C.—(1) Subdivisions (2) and (3) of this Division do not apply to offers of units in a collective investment scheme that are made by a person if —

(*a*) the offers are made to no more than 50 persons within any period of 12 months;

(*b*) none of the offers is accompanied by an advertisement making an offer or calling attention to the offer or intended offer;

(*c*) no selling or promotional expenses are paid or incurred in connection with each offer other than those incurred for administrative or professional services, or by way of commission or fee for services rendered by any of the persons specified in section 302B(1)(*d*)(i), (ii), (iii), (iv) and (v); and

(*d*) no prospectus in respect of any of the offers has been registered by the Authority or, where a prospectus has been registered —

(i) the prospectus has expired pursuant to section 299; or

(ii) the person making the offer has before making the offer —

(A) informed the Authority by written notice of its intent to make the offer in reliance on the exemption under this subsection; and

(B) taken reasonable steps to inform in writing the person to whom the offer is made that the offer is made in reliance on the exemption under this subsection.

[2/2009]

(2) The Authority may prescribe such other number of persons in substitution for the number specified in subsection (1)(*a*).

(3) In determining whether offers of units in a collective investment scheme by a person are made to no more than the applicable number of persons specified in subsection (1)(*a*) within a period of 12 months, each person to whom —

(*a*) an offer of units in the same collective investment scheme is made by the firstmentioned person; or

(*b*) an offer of units in a collective investment scheme, securities or securities-based derivatives contracts is made by the firstmentioned person or another person where such offer is a closely related offer,

(if any) within that period in reliance on the exemption under this section or section 272B must be included.

[4/2017]

(4) Whether an offer is a closely related offer under subsection (3) is determined by considering such factors as the Authority may prescribe.

(5) For the purposes of subsection (1) —

(*a*) an offer of units in a collective investment scheme to an entity or to a trustee is treated as an offer to a single person, provided that the entity or trust is not formed primarily for the purpose of acquiring the units which are the subject of the offer;

(*b*) an offer of units in a collective investment scheme to an entity or to a trustee is treated as an offer to the equity owners, partners or members of that entity, or to the beneficiaries of the trust (as the case may be) if the entity or trust is formed primarily for the purpose of acquiring the units which are the subject of the offer;

(*c*) an offer of units in a collective investment scheme to 2 or more persons who will own the units acquired as joint owners is treated as an offer to a single person;

(*d*) an offer of units in a collective investment scheme to a person acting on behalf of another person (whether as an agent or otherwise) is treated as an offer made to that other person;

(*e*) offers of units in a collective investment scheme made by a person as an agent of another person are treated as offers made by that other person;

(*f*) where an offer of units in a collective investment scheme is made to a person with a view to another person acquiring an interest in those units by virtue of section 4, only the second-mentioned person is counted for the purposes of determining whether offers of the units are made to no more than the applicable number of persons specified in subsection (1)(*a*); and

(*g*) where —

(i) an offer of units in a collective investment scheme is made to a person in reliance on the exemption under subsection (1) with a view to those units being subsequently offered for sale to another person; and

(ii) that subsequent offer —

(A) is not made in reliance on an exemption under any provision of this Subdivision; or

(B) is made in reliance on an exemption under subsection (1) or section 305C,

both persons are counted for the purposes of determining whether offers of the units are made to no more than the applicable number of persons specified in subsection (1)(*a*).

(6) In subsection (1)(*b*), "advertisement" has the meaning given by section 302B(10).

Offer or invitation made under certain circumstances

303.—(1) Subdivision (3) of this Division does not apply to an offer of units in a collective investment scheme if it is made in relation to units in a collective investment scheme (not being such excluded units in a scheme as the Authority may prescribe) that have been previously issued, are listed for quotation or quoted on an approved exchange, and are traded on the exchange.

[2/2009; 4/2017]

(2) Subdivisions (2) and (3) of this Division do not apply to an offer of units in a collective investment scheme if it is an offer to enter into an underwriting agreement relating to units in a collective investment scheme.

(3) A person must not advertise an offer or intended offer of any units in a collective investment scheme referred to in subsection (1), or publish a statement that directly or indirectly refers to the offer or intended offer, or that is reasonably likely to induce persons to subscribe for or purchase the units, unless the advertisement or publication complies with such requirements as the Authority may prescribe by regulations made under section 341.

[34/2012]

(4) Any person who contravenes subsection (3), or who knowingly authorises or permits the publication or dissemination of any advertisement or statement referred to in that subsection, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

Offer made to institutional investors

304. Subdivisions (2) and (3) of this Division do not apply to an offer of units in a collective investment scheme (whether or not they have been previously issued) made to an institutional investor.

First sale of units acquired pursuant to section 304

304A.—(1) Despite sections 302B, 302C, 303(1) and 305B but subject to subsection (2), where units in a collective investment scheme acquired pursuant to an offer made in reliance on the exemption under section 304 are first sold to any person other than an institutional investor, then Subdivisions (2) and (3) of this Division apply to the offer resulting in that sale.

[2/2009]

(2) Subsection (1) does not apply where the units in a collective investment scheme acquired are of the same class as, or can be converted into units of the same class as, other units in the scheme —

(*a*) which are listed for quotation on an approved exchange; and

(*b*) in respect of which any offer information statement, introductory document, unitholders' circular for a reverse take-over, document issued for the purposes of a trust scheme, or any other similar document approved by an approved exchange, was issued in connection with —

(i) an offer of those units in the scheme; or

(ii) the listing for quotation of those units in the scheme.

[4/2017]

Offer made to accredited investors and certain other persons

305.—(1) Except to such extent and with such modifications as the Authority may prescribe, Subdivisions (2) and (3) of this Division do not apply to an offer of units in a collective investment scheme (called in this section a restricted scheme), where the offer is made to a relevant person, if the conditions in subsection (3) are satisfied.

(2) Except to such extent and with such modifications as the Authority may prescribe, Subdivisions (2) and (3) of this Division do not apply to an offer of units in a collective investment scheme (also called in this section a restricted scheme) to a person who acquires the units as principal if the offer is on terms that the units may only be acquired at a consideration of not less than $200,000 (or its equivalent in a foreign currency) for each transaction, whether such amount is to be paid for in cash or by exchange of units in a collective investment scheme, securities, securities-based derivatives contracts or other assets, and if the conditions in subsection (3) are satisfied.

[4/2017]

(3) The conditions referred to in subsections (1) and (2) are —

(*a*) the offer is not accompanied by an advertisement making an offer or calling attention to the offer or intended offer;

(*b*) no selling or promotional expenses are paid or incurred in connection with the offer other than those incurred for administrative or professional services, or by way of commission or fee for services rendered by any of the persons specified in section 302B(1)(*d*)(i), (ii), (iii), (iv), (v) and (vi); and

(*c*) no prospectus in respect of the offer has been registered by the Authority or, where a prospectus has been registered —

(i) the prospectus has expired pursuant to section 299; or

(ii) the person making the offer has before making the offer —

(A) informed the Authority by written notice of its intent to make the offer in reliance on the exemption under this subsection; and

(B) taken reasonable steps to inform in writing the person to whom the offer is made that the offer is made in reliance on the exemption under this subsection.

[2/2009; 4/2017]

(4) [*Deleted by Act 2 of 2009*]

(5) In this section —

"advertisement" means —

(*a*) a written or printed communication;

(*b*) a communication by radio, television or other medium of communication; or

(*c*) a communication by means of a recorded telephone message,

that is published in connection with an offer of units in a collective investment scheme, but does not include —

(*d*) an information memorandum;

(*e*) a publication which consists solely of a disclosure, notice or report required under this Act, or any listing rules or other requirements of an approved exchange or overseas exchange, which is made by any person; or

(*f*) a publication which consists solely of a notice or report of a meeting or proposed meeting of the participants of the collective investment scheme, or a general meeting or proposed general meeting of the person making the offer, the responsible person or any entity, or a presentation of oral or written material on matters so contained in the notice or report at the meeting or general meeting;

"information memorandum" means a document —

(*a*) purporting to describe the units in a collective investment scheme being offered; and

(*b*) purporting to have been prepared for delivery to and review by relevant persons and persons to whom an offer referred to in subsection (2) is to be made so as to assist them in making an investment decision in respect of the units being offered;

"relevant person" means —

(*a*) an accredited investor;

(*b*) a corporation the sole business of which is to hold investments and the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor;

(*c*) a trustee of a trust the sole purpose of which is to hold investments and each beneficiary of which is an individual who is an accredited investor;

(*d*) an officer or equivalent person of the person making the offer (such person being an entity) or a spouse, parent, brother, sister, son or daughter of that officer or equivalent person; or

(*e*) a spouse, parent, brother, sister, son or daughter of the person making the offer (such person being an individual).

[2/2009; 4/2017]

(6) Despite any requirement under section 99 or any regulations made thereunder that a person has to deal in capital markets products that are units in a collective investment scheme for the person's own account with or through a person prescribed by the Authority so that the firstmentioned person can qualify as an exempt person, a person who acquires units in a collective investment scheme under section 304 or this section for the person's own account without complying with such requirement is considered an exempt person even though the person does not comply with that requirement.

[4/2017]

(7) The Authority may, by order in the *Gazette*, specify an amount in substitution of any amount specified in subsection (2).

First sale of units acquired pursuant to section 305

305A.—(1) Despite sections 302B, 302C, 303(1) and 305B but subject to subsection (5), where units in a collective investment scheme acquired pursuant to an offer made in reliance on an exemption under section 305 are first sold to any person other than —

(*a*) an institutional investor;

(*b*) a relevant person as defined in section 305(5); or

(*c*) any person pursuant to an offer referred to in section 305(2),

then Subdivisions (2) and (3) of this Division apply to the offer resulting in that sale.

[2/2009]

(2) Subject to subsection (5), securities of a corporation (other than a corporation that is an accredited investor) —

(*a*) the sole business of which is to hold investments; and

(*b*) the entire share capital of which is owned by one or more individuals each of whom is an accredited investor,

must not be transferred within 6 months after the corporation has acquired any units in a collective investment scheme pursuant to an offer made in reliance on an exemption under section 305, unless —

(*c*) that transfer —

(i) is made only to institutional investors or relevant persons as defined in section 305(5); or

(ii) arises from an offer referred to in section 275(1A);

(*d*) no consideration is or will be given for the transfer; or

(*e*) the transfer is by operation of law.

[2/2009]

(3) Subject to subsection (5), where —

(*a*) the sole purpose of a trust (other than a trust the trustee of which is an accredited investor) is to hold investments; and

(*b*) each beneficiary of the trust is an individual who is an accredited investor,

the beneficiaries' rights and interest (howsoever described) in the trust must not be transferred within 6 months after units in a collective investment scheme are acquired for the trust pursuant to an offer made in reliance on an exemption under section 305, unless —

(*c*) that transfer —

(i) is made only to institutional investors or relevant persons as defined in section 305(5); or

(ii) arises from an offer that is made on terms that such rights or interest are acquired at a consideration of not less than $200,000 (or its equivalent in a foreign currency) for each transaction, whether such amount is to be paid for in cash or by exchange of units in a collective investment scheme, securities, securities-based derivatives contracts or other assets;

(*d*) no consideration is or will be given for the transfer; or

(*e*) the transfer is by operation of law.

[2/2009; 4/2017]

(4) To avoid doubt, the reference to beneficiaries in subsection (3) includes a reference to unitholders of a business trust and participants of a collective investment scheme.

(5) Subsections (1), (2) and (3) do not apply where the units in a collective investment scheme acquired are of the same class as other units in the scheme —

(*a*) which are listed for quotation on an approved exchange; and

(*b*) in respect of which any offer information statement, introductory document, unitholders' circular for a reverse take-over, document issued for the purposes of a trust scheme, or any other similar document approved by an approved exchange, was issued in connection with —

(i) an offer of those units in the scheme; or

(ii) the listing for quotation of those units in the scheme.

[4/2017]

Offer made using offer information statement

305B.—(1) Subject to subsection (2), Subdivision (3) of this Division does not apply to an offer of units in a collective investment scheme whose units are listed for quotation on an approved exchange, whether by means of a rights issue or otherwise, if —

(*a*) an offer information statement relating to the offer which complies with such form and content requirements as the Authority may prescribe is lodged with the Authority; and

(*b*) either —

(i) the offer is made in or accompanied by the offer information statement referred to in paragraph (*a*); or

(ii) all the conditions in subsection (2A) are satisfied.

[2/2009; 4/2017]

(2) Subsection (1) only applies to an offer of units referred to in that subsection made within a period of 6 months from the date the offer information statement relating to that offer is lodged with the Authority.

[2/2009]

(2A) The conditions referred to in subsection (1)(*b*)(ii) are —

(*a*) the offer is made using any automated teller machine or such other electronic means as the Authority may prescribe;

(*b*) the automated teller machine or prescribed electronic means indicates to a prospective subscriber or buyer —

(i) how the prospective subscriber or buyer can obtain, or arrange to receive, a copy of the offer information statement in respect of the offer; and

(ii) that the prospective subscriber or buyer should read the offer information statement before submitting an application,

before enabling the prospective subscriber or buyer to submit any application to subscribe for or purchase units in the collective investment scheme; and

(*c*) the person making the offer complies with such other requirements as the Authority may prescribe.

[2/2009]

(3) The Authority may, on the application of any person interested, modify the prescribed form and content of the offer information statement in such manner as is appropriate, subject to such conditions or restrictions as the Authority may prescribe.

(4) Sections 249, 249A, 253, 254 and 255 (as applied to this Division by virtue of section 302) and such requirements as the Authority may prescribe apply in relation to an offer information statement referred to in subsection (1) as they apply in relation to a prospectus.

(5) For the purposes of subsection (4) —

(*a*) a reference in sections 249 and 249A to the registration of the prospectus is to be read as a reference to the lodgment of the offer information statement; and

(*b*) a reference in section 253 or 254 to any information or new circumstance required to be included in a prospectus is to be read as a reference to any information prescribed under subsection (1)(*a*).

(6) Where the written consent of an expert is required to be given under section 249 (as applied in relation to an offer information statement under subsection (4)), that written consent must be lodged with the Authority at the same time as the lodgment of the statement.

(7) Where the written consent of an issue manager or underwriter is required to be given under section 249A (as applied in relation to an offer information statement under subsection (4)), that written consent must be lodged with the Authority at the same time as the lodgment of the statement.

(8) A person must not advertise an offer or intended offer of any units in a collective investment scheme referred to in subsection (1), or publish a statement that directly or indirectly refers to the offer or intended offer, or that is reasonably likely to induce persons to subscribe for or purchase the units, unless the advertisement or publication complies with such requirements as the Authority may prescribe by regulations made under section 341.

[34/2012]

(9) Any person who contravenes subsection (8), or who knowingly authorises or permits the publication or dissemination of any advertisement or statement referred to in that subsection, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

Making offer using automated teller machine or electronic means

305C.—(1) Subject to subsection (3) and such requirements as the Authority may prescribe, a person making an offer of units in a collective investment scheme using —

(*a*) any automated teller machine; or

(*b*) such other electronic means as the Authority may prescribe,

is exempted from the requirement under section 296(1)(*a*) that the offer be made in or accompanied by a prospectus in respect of the offer or, where applicable, the requirement under section 296(2) that the offer be made in or accompanied by a profile statement in respect of the offer.

(2) To avoid doubt, a prospectus which complies with all other requirements of section 296(1)(*a*) or, where applicable, a profile statement which complies with all other requirements of section 296(2) must still be prepared and issued in respect of any offer referred to in subsection (1).

(3) Subsection (1) does not apply unless the automated teller machine or prescribed electronic means indicates to a prospective subscriber or buyer —

(*a*) how the prospective subscriber or buyer can obtain, or arrange to receive, a copy of the prospectus or, where applicable, profile statement in respect of

the offer; and

(*b*) that the prospective subscriber or buyer should read the prospectus or, where applicable, profile statement before submitting an application,

before enabling the prospective subscriber or buyer to submit an application to subscribe for or purchase units.

Power of Authority to exempt

306.—(1) The Authority may exempt any person or class of persons, subject to such conditions as the Authority may determine, from complying with all or any of the provisions of this Division or any regulations made thereunder in relation to an offer in respect of any unit or class of units.

(2) Any person who contravenes any of the conditions under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part of a day during which the offence continues after conviction.

(3) This Division does not apply in the case of the sale of any unit in a collective investment scheme by a personal representative, liquidator, receiver or trustee in bankruptcy in the ordinary course of the realisation of assets for the purposes of the sale.

Revocation of exemption

307.—(1) Where the Authority considers that it is necessary in the interests of the public or for the protection of investors, it may revoke any exemption under this Subdivision (including an exemption granted under section 306(1)), subject to such conditions as it thinks fit.

(2) The Authority may revoke an exemption under subsection (1) without giving the person affected by the revocation an opportunity to be heard, but the person may, within 14 days of the revocation, apply to the Authority for the revocation to be reviewed by the Authority, and the revocation remains in effect unless it is withdrawn by the Authority.

(3) A revocation under this section is final and there is no appeal from the revocation.

Transactions under exempted offers subject to Division 2 of Part 12 of Companies Act 1967, Division 2 of Part 13 of the Variable Capital Companies Act 2018, and Part 12 of this Act

308. To avoid doubt, it is declared that in relation to any transaction carried out under an exempted offer under this Part, nothing in this Part limits or diminishes any liability

which any person may incur in respect of any relevant offence under Division 2 of Part 12 of the Companies Act 1967, Division 2 of Part 13 of the Variable Capital Companies Act 2018, or Part 12 of this Act or any penalty, award of compensation or punishment in respect of any such offence.

[44/2018]

Division 3 — Hawking of Securities, Securities-based Derivatives Contracts and Units in Collective Investment Scheme

[4/2017]

Securities hawking prohibited

309.—(1) A person must not —

(*a*) make an offer to any person of units in a collective investment scheme, securities or securities-based derivatives contracts for subscription or purchase, in the course of, or arising from, an unsolicited meeting with that other person; or

(*b*) make an invitation to any person to subscribe for or purchase units in a collective investment scheme, securities or securities-based derivatives contracts, in the course of, or arising from, an unsolicited meeting with that other person.

[4/2017]

(2) Subsection (1) does not apply to any person who makes an offer or invitation in respect of units in a collective investment scheme, securities or securities-based derivatives contracts that does not need a prospectus by virtue of section 274, 275, 304 or 305.

[4/2017]

(3) The Authority may exempt —

(*a*) any person or class of persons; or

(*b*) any class or description of units in a collective investment scheme, securities or securities-based derivatives contracts,

from compliance with subsection (1), subject to such conditions as the Authority may determine.

[4/2017]

(4) Every person who acts, incites, causes or procures any person to act in contravention of subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding

6 months or to both and, in the case of a second or subsequent offence, to a fine not exceeding $20,000 or to imprisonment for a term not exceeding 12 months or to both.

(5) Where any person is convicted of having made an offer or invitation in contravention of subsection (1), the court before which the person is convicted may order that any contract made as a result of the offer or invitation is void and may give such consequential directions as it thinks proper for the repayment of any money or the retransfer of any units in a collective investment scheme, securities or securities-based derivatives contracts, as the case may be.

[4/2017]

(6) An appeal against any order made under subsection (5) and any consequential directions shall lie to the General Division of the High Court.

[40/2019]

(7) In this section —

(*a*) "securities" has the meaning given by section 2 and also includes the securities of an entity or a business trust, whether the entity or business trust is in existence or is to be formed;

(*b*) "securities-based derivatives contracts" has the meaning given by section 2 and also includes securities-based derivatives contracts of an entity or a business trust, whether the entity or business trust is in existence or is to be formed;

(*c*) "unit", in relation to a collective investment scheme, has the meaning given by section 2 and also includes units in a collective investment scheme, whether the collective investment scheme is in existence or is to be formed;

(*d*) a reference to an offer or invitation in respect of securities, securities-based derivatives contracts or units in a collective investment scheme for subscription or purchase includes an offer or invitation in respect of securities, securities-based derivatives contracts or units in a collective investment scheme (as the case may be) by way of barter or exchange.

[4/2017]

Division 4 — Capital Markets Products

Interpretation of this Division

309A.—(1) In this Division, unless the context otherwise requires —

"issuer" means —

(*a*) in relation to an offer of units in a collective investment scheme, the responsible person for the collective investment scheme; or

(*b*) [*Deleted by Act 4 of 2017*]

(*c*) in relation to an offer of any other capital markets products, the entity that issues or will issue the capital markets products being offered;

"prospectus" means any prospectus, notice, circular, material, advertisement, publication or other document used to make an offer of any capital markets products;

"relevant person" means —

(*a*) a holder of a capital markets services licence;

(*b*) a person who is exempted under section 99(1)(*a*) or (*b*) from the requirement to hold a capital markets services licence;

(*c*) a person licensed under the Financial Advisers Act 2001 in respect of advising on any investment product;

(*d*) a person who is exempted under section 20(1)(*a*), (*b*), (*c*), (*d*) or (*e*) of the Financial Advisers Act 2001 from holding a financial adviser's licence;

(*e*) such other person as the Authority may prescribe by regulations made under section 341; or

(*f*) a representative of any person referred to in paragraph (*a*), (*b*), (*c*), (*d*) or (*e*).

[34/2012; 4/2017]

(2) For the purposes of this Part, a person makes an offer of any capital markets products if, and only if, as principal —

(*a*) the person makes (either personally or by an agent) an offer to any person in Singapore which upon acceptance would give rise to a contract for the issue or sale of those capital markets products by the firstmentioned person or another person with whom the firstmentioned person has made arrangements for that issue or sale; or

(*b*) the person invites (either personally or by an agent) any person in Singapore to make an offer which upon acceptance would give rise to a contract for the issue or sale of those capital markets products by the firstmentioned person or another person with whom the firstmentioned person has made arrangements for that issue or sale.

[34/2012]

(3) In subsection (2), "sale" includes any disposal for valuable consideration.

[34/2012]

(4) To avoid doubt, the obligations imposed by this Division in relation to any capital markets products are in addition to the obligations imposed under Divisions 1, 2 and 3 in relation to those capital markets products.

[34/2012]

Obligation of issuer to determine, and to notify approved exchange and relevant person of, classification of capital markets products

309B.—(1) An issuer must not make an offer of any capital markets products unless —

(*a*) the issuer has determined the classification of those capital markets products;

(*b*) where those capital markets products are or will be listed for quotation or quoted on a market operated by an approved exchange, the issuer has notified the approved exchange in writing of the classification of those capital markets products; and

(*c*) where those capital markets products are or will be offered through any relevant person, the issuer has notified that relevant person in writing of the classification of those capital markets products.

[34/2012]

(2) A relevant person must not make an offer of any capital markets products unless the relevant person has received a notification under subsection (1)(*c*) in respect of those capital markets products.

[34/2012]

(3) Where, after any notification has been given under subsection (1)(*b*) or (*c*) or this subsection in respect of any capital markets products, there is a change in the classification of those capital markets products, the issuer of those capital markets products must, within such time as the Authority may prescribe by regulations made under section 341 —

(*a*) if those capital markets products are or will be listed for quotation or quoted on an approved exchange, notify the approved exchange in writing of the new classification of those capital markets products; and

(*b*) if those capital markets products are or will be offered through any relevant person, notify that relevant person in writing of the new classification of

those capital markets products.

[34/2012]

(4) Without affecting section 337(1), the Authority may, by regulations made under section 341, exempt any person or class of persons from any provision of this section, subject to such conditions or restrictions as the Authority may prescribe in those regulations.

[34/2012]

(5) Without affecting section 337(3) and (4), the Authority may, by written notice, exempt any person from any provision of this section, subject to such conditions or restrictions as the Authority may specify by written notice.

[34/2012]

(6) It is not necessary to publish any exemption granted under subsection (5) in the *Gazette.*

[34/2012]

(7) Every person who is granted an exemption under subsection (4) must satisfy every condition or restriction imposed on the person under that subsection.

[34/2012]

(8) Every person who is granted an exemption under subsection (5) must satisfy every condition or restriction imposed on the person under that subsection.

[34/2012]

(9) Any person who contravenes subsection (1), (2), (3), (7) or (8) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

(10) In this section —

"classification", in relation to any capital markets products, means the classification of the capital markets products as either of the following:

(*a*) prescribed capital markets products;

(*b*) capital markets products other than prescribed capital markets products;

"prescribed capital markets products" means any capital markets products that belong to any class of capital markets products that is prescribed by the Authority, by regulations made under section 341, for the purposes of this definition.

[34/2012]

Use of term "capital protected" or "principal protected"

309C.—(1) A person must not, when describing or referring to any capital markets products which are, will be or have been the subject of an offer or intended offer, do either or both of the following:

(*a*) use the term "capital protected" or any of its derivatives in any language in the name or description or any representation of those capital markets products, or within any prospectus relating to those capital markets products;

(*b*) use the term "principal protected" or any of its derivatives in any language in the name or description or any representation of those capital markets products, or within any prospectus relating to those capital markets products.

[34/2012]

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

Use of term "product highlights sheet"

309D.—(1) A person must not, when describing or referring to any publication in respect of any offer or intended offer of any capital markets products, use the term "product highlights sheet" or any of its derivatives in any language in the name or description or any representation of that publication, unless —

(*a*) that publication is a product highlights sheet —

(i) in respect of an offer that is made in or accompanied by a prospectus or profile statement that complies with section 240; and

(ii) in respect of which section 240AA(1)(*a*) and (*b*) has been complied with;

(*b*) that publication is a product highlights sheet —

(i) in respect of an offer that is made in or accompanied by a prospectus or profile statement that complies with section 296; and

(ii) in respect of which section 296A(1)(*a*) and (*b*) has been

complied with;

(*c*) that person belongs to any class of persons declared by the Authority, by order in the *Gazette*, to be a class of persons who may, when describing or referring to any publication in respect of any offer or intended offer of such capital markets products as the Authority may specify in the order, use that term or any of its derivatives in any language in the name or description or any representation of that publication; or

(*d*) the Authority has given consent in writing to that person to use that term or any of its derivatives in any language, when describing or referring to any publication in respect of any offer or intended offer of such capital markets products as the Authority may specify in writing, in the name or description or any representation of that publication.

[34/2012]

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 and, in the case of a continuing offence, to a further fine not exceeding $5,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

PART 14

APPEALS

Appeals to Minister

310.—(1) Where an appeal is made to the Minister under this Act, the Minister may confirm, vary or reverse the decision of the Authority on appeal, or give such directions in the matter as he or she thinks fit, and the decision of the Minister is final.

(2) Except for an appeal under Part 2, 2A, 3, 3A or 6AA, where an appeal is made to the Minister under this Act, the Minister must, within 28 days of his or her receipt of the appeal, constitute an Appeal Advisory Committee comprising not less than 3 members of the Appeal Advisory Panel and refer that appeal to the Appeal Advisory Committee.

[34/2012; 4/2017]

(3) The Appeal Advisory Committee must submit to the Minister a written report on the appeal referred to it under subsection (2), and may make such recommendations as it thinks fit.

(4) The Minister must consider the report submitted under subsection (3) in making his or her decision under this section but he or she is not bound by the recommendations

in the report.

Appeal Advisory Committees

311.—(1) To enable the Appeal Advisory Committees to be constituted under section 310, the Minister must appoint a panel (called in this Part the Appeal Advisory Panel) comprising such members from the financial services industry, and the public and private sectors, as the Minister may appoint.

(2) A member of the Appeal Advisory Panel must be appointed for a term of not more than 2 years and is eligible for re-appointment.

(3) An Appeal Advisory Committee has the power, in the exercise of its functions, to inquire into any matter or thing relating to the securities and derivatives industry or to financial benchmarks and may, for this purpose, summon any person to give evidence on oath or affirmation or produce any document or material necessary for the purpose of the inquiry.

[34/2012; 4/2017]

(4) Nothing in subsection (3) compels the production by an advocate and solicitor, or a legal counsel referred to in section 128A of the Evidence Act 1893, of a document or material containing a privileged communication made by or to him or her in that capacity or authorise the taking of possession of any such document or material which is in his or her possession.

[34/2012]

(5) An advocate and solicitor, or a legal counsel referred to in section 128A of the Evidence Act 1893, who refuses to produce any document or other material referred to in subsection (4) is nevertheless obliged to give the name and address (if he or she knows them) of the person to whom, or by or on behalf of whom, the privileged communication was made.

[34/2012]

(6) For the purposes of this Act, every member of an Appeal Advisory Committee —

(*a*) is deemed to be a public servant for the purposes of the Penal Code 1871; and

(*b*) in case of any suit or legal proceedings brought against him or her for any act done or omitted to be done in the execution of his or her duty under the provisions of this Act, has the like protection and privileges as are by law given to a Judge in the execution of his or her office.

(7) Every Appeal Advisory Committee must have regard to the interests of the public, the protection of investors and the safeguarding of sources of information.

(8) Subject to the provisions of this Part, an Appeal Advisory Committee may regulate its own procedure and is not bound by the rules of evidence.

Disclosure of information

312. Nothing in this Act requires the Minister or any public servant to disclose facts which he or she considers to be against the interest of the public to disclose.

Regulations for purposes of this Part

313.—(1) The Minister may make regulations for the purposes and provisions of this Part and for the due administration thereof.

(2) Without limiting subsection (1), the Minister may make regulations for or with respect to —

(*a*) the appointment of members to, and procedures of, the Appeal Advisory Panel and Appeal Advisory Committees;

(*b*) the form and manner in which an appeal to the Minister under this Act must be made;

(*c*) the fees to be paid in respect of any appeal made to the Minister under this Act, including the refund or remission, whether in whole or in part, of such fees;

(*d*) the remuneration of the members of the Appeal Advisory Panel and Appeal Advisory Committees; and

(*e*) all matters and things which by this Part are required or permitted to be prescribed or which are necessary or expedient to be prescribed to give effect to any provision of this Part.

PART 15

MISCELLANEOUS

314. [*Repealed by Act 1 of 2005*]

315. [*Repealed by Act 1 of 2005*]

Opportunity to be heard

316. Where this Act provides for a person to be given an opportunity to be heard by the Authority, the Authority may prescribe the manner in which the person must be given an opportunity to be heard.

Records

317.—(1) Without affecting sections 94, 99C, 101A(7) and (8), 123U and 123ZQ, the Authority must keep such records as it considers necessary, in such form as it thinks fit.

[2/2009; 34/2012; 4/2017]

(2) Any person may, on payment of the prescribed fee —

(*a*) inspect any records kept by the Authority under section 94, 99C, 123U or 123ZQ, any records kept or published by the Authority under section 101A(7) and (8) or any prospectus or profile statement lodged with the Authority under Part 13; or

(*b*) require a copy of or extract from any such record to be given or certified by the Authority.

[2/2009; 34/2012; 4/2017]

(3) A copy of or extract from any record lodged with or kept by the Authority certified to be a true copy or extract by the Authority is in any proceedings admissible as evidence of equal validity as the original record.

(4) In any legal proceedings a certificate by the Authority that a requirement of this Act specified in the certificate —

(*a*) had or had not been complied with at a date or within a period specified in the certificate; or

(*b*) had been complied with upon a date specified in the certificate but not before that date,

is prima facie evidence of the matters specified in the certificate.

(5) If the Authority is of the opinion that any record submitted to it —

(*a*) contains any matter contrary to law;

(*b*) by reason of any omission or misdescription has not been duly completed;

(*c*) does not comply with the requirements of this Act; or

(*d*) contains any error, alteration or erasure,

the Authority may refuse to register or receive the record and request that the record be appropriately amended or completed and resubmitted or that a fresh record be submitted in its place.

(6) Any party that is aggrieved by the refusal of the Authority to register or receive any record under subsection (5) may, within 30 days after it is notified of the decision of the Authority, appeal to the Minister whose decision is final.

(7) The Authority may, if it is of the opinion that it is no longer necessary or desirable to retain any record which has been microfilmed or converted to electronic form, destroy such record or otherwise arrange for such record to be disposed of in such manner as the Authority thinks fit.

Size, durability and legibility of records delivered to Authority

318.—(1) For the purposes of securing that the records provided to or lodged with the Authority under this Act are of a standard size, durable and easily legible, the Authority may prescribe such requirements (whether as to size, weight, quality or colour of paper, size, type or colour of lettering, or otherwise) as it considers appropriate; and different requirements may be so prescribed for different documents or classes of documents.

(2) Where the Authority is of the opinion that any record (whether an original or copy thereof) delivered to the Authority does not comply with such requirements prescribed under this section, the Authority may serve on any person by whom under that provision the record was required to be delivered (or if there are 2 or more such persons, may serve on any of them) a notice —

(*a*) stating its opinion to that effect; and

(*b*) indicating the requirements so prescribed with which the record has failed to comply.

(3) Where the Authority serves a notice under subsection (2) with respect to a record delivered under this Act, then, for the purposes of any provision of this Act which enables a penalty to be imposed in respect of any omission to deliver to the Authority such record (and, in particular, for the purposes of any such provision whereby a penalty may be imposed by reference to each day during which the omission continues) —

(*a*) any duty imposed by that provision to deliver the record to the Authority is treated as not having been discharged; but

(*b*) no account is to be taken of any days falling within the period referred to in subsection (4).

(4) The period referred to in subsection (3)(*b*) is the period beginning on the day on which the record was delivered to the Authority as mentioned in subsection (2) and ending on the 14th day after the date of service of the notice under subsection (2).

(5) For the purposes of this section, any reference to delivering a record includes a reference to sending, forwarding, producing, providing, lodging or (in the case of a notice) giving the record.

Translation of instruments

318A.—(1) Where a person submits or provides to or lodges with the Authority any book, application, return, report, prospectus, statement or other information or document under this Act (other than Subdivision (3) of Division 3 of Part 9) which is not in the English language, the person must, at the same time or at such other time as the Authority may permit, submit or provide or lodge with the Authority (as the case may be) an accurate translation thereof in the English language.

(2) Where a person is required to make available for inspection by the public, or any section thereof, any document, report, or other book under this Act which is not in the English language, the person must, at the same time or at such other time as the Authority may permit, make available for such inspection an accurate translation thereof in the English language.

(3) Where a person is required to maintain or keep any book under this Act and the book or any part thereof is not maintained or kept in the English language, the person must —

(*a*) cause an accurate translation of that book or that part of the book in the English language to be made from time to time at intervals of not more than 7 days; and

(*b*) maintain or keep the translation with the book for so long as the book is required under this Act to be maintained or kept.

(4) Subsections (1), (2) and (3) are subject to any express provision to the contrary in this Act or any regulations made under this Act.

(5) Any person who contravenes subsection (1), (2) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $25,000.

(6) Where a person is charged with an offence under subsection (5), it is a defence for the person to prove that —

(*a*) the person had taken all reasonable steps to ensure that the translation that was submitted or provided or lodged with the Authority, made available for inspection, or maintained or kept (as the case may be) was accurate in the circumstances; and

(*b*) the person had believed on reasonable grounds that the translation was accurate.

(7) In subsections (1), (2) and (3), "Act" includes any direction made by the Authority under this Act.

Supply of magnetic tapes — exclusion of liability for errors or omissions

319. Where the Authority provides information, whether in bulk or otherwise, to any person by way of magnetic tapes or by any electronic means, neither the Authority nor any of its officers or authorised agents involved in the provision of such information shall be liable for any loss or damage suffered by that person by reason of any error or omission of whatever nature appearing therein or however caused if made in good faith and in the ordinary course of the discharge of the duties of such officers or authorised agents.

Appointment of assistants

320.—(1) Subject to subsection (1A), the Authority may appoint any person to exercise any of its powers or perform any of its functions or duties under this Act, either generally or in any particular case, except the power to make subsidiary legislation.

(1A) The Authority may, by notification in the *Gazette*, appoint one or more of its officers to exercise the power to grant an exemption to any person or in respect of any capital markets product, matter or transaction (not being an exemption granted to a class of persons or in respect of a class of capital markets products, matters or transactions) under a provision of this Act specified in the Fourth Schedule, or to revoke any such exemption.

(2) Any person appointed by the Authority under subsection (1) is deemed to be a public servant for the purposes of the Penal Code 1871.

Codes, guidelines, etc., by Authority

321.—(1) The Authority may issue, in such manner as it considers appropriate, such codes, guidelines, policy statements, practice notes and no-action letters as it considers appropriate for providing guidance —

(*a*) in furtherance of its regulatory objectives;

(*b*) in relation to any matter relating to any of the functions of the Authority under any of the provisions of this Act; or

(*c*) in relation to the operation of any of the provisions of this Act.

(2) The Authority may publish any such code, guideline, policy statement, practice note or no-action letter, and in such manner as it thinks fit.

(3) The Authority may revoke, vary, revise or amend the whole or any part of any code, guideline, policy statement, practice note or no-action letter issued under this section in such manner as it thinks fit.

(4) Where amendments are made under subsection (3) —

(*a*) the other provisions of this section apply, with the necessary modifications, to such amendments as they apply to the code, guideline, policy statement, practice note or no-action letter; and

(*b*) any reference in this Act or any other written law to the code, guideline, policy statement, practice note or no-action letter however expressed is, unless the context otherwise requires, a reference to the code, guideline, policy statement, practice note or no-action letter as so amended.

(5) A failure by any person to comply with any of the provisions of a code, guideline, policy statement or practice note issued under this section that applies to the person does not of itself render that person liable to criminal proceedings but any such failure may, in any proceedings whether civil or criminal, be relied upon by any party to the proceedings as tending to establish or to negate any liability which is in question in the proceedings.

(6) The issue by the Authority of a no-action letter does not of itself prevent the institution of any criminal proceedings against any person for a contravention of any provision of this Act.

(7) Any code, guideline, policy statement or practice note issued under this section —

(*a*) may be of general or specific application; and

(*b*) may specify that different provisions thereof apply to different circumstances or provide for different cases or classes of cases.

(8) To avoid doubt, any code, guideline, policy statement, practice note or no-action letter issued under this section is deemed not to be subsidiary legislation.

(9) In this section, a "no-action" letter means a letter written by the Authority to an applicant for such a letter to the effect that, if the facts are as represented by the applicant, the Authority will not institute proceedings against the applicant in respect of a particular state of affairs or particular conduct.

Power of Authority to publish information

322.—(1) The Authority may, where it thinks it necessary or expedient in the interests of the public or section of the public or for the protection of investors and in such form or manner as it thinks fit, publish —

(*a*) any information relating to an approved exchange, a recognised market operator, a licensed trade repository, a licensed foreign trade repository, an approved clearing house, a recognised clearing house, an approved holding company, a holder of a capital markets services licence, an exempt person, a representative, or an approved trustee for a collective investment scheme

as defined in section 289;

(*aa*) any information relating to an authorised benchmark administrator, an exempt benchmark administrator, an authorised benchmark submitter, an exempt benchmark submitter or a designated benchmark submitter, a representative of an authorised benchmark administrator, an exempt benchmark administrator, an authorised benchmark submitter, an exempt benchmark submitter or a designated benchmark submitter, or a person from whom any information or expression of opinion used in the determination of a designated benchmark was obtained; or

(*b*) any other information which the Authority has acquired in the exercise of its functions or the performance of its duties under this Act.

[2/2009; 34/2012; 4/2017]

(2) Without limiting subsection (1), the Authority may publish information relating to —

(*a*) the lapsing, revocation or suspension of the approval, licence, authorisation or exemption granted, or designation issued, to any person mentioned in subsection (1);

(*b*) the making of a prohibition order against any person referred to in subsection (1);

(*c*) the reprimand of any relevant person under section 334;

(*d*) the removal of an officer of any person referred to in subsection (1);

(*e*) the composition of any offence —

(i) under this Act committed by any person; or

(ii) under any other law (whether of Singapore or any territory or country outside Singapore) involving a person referred to in subsection (1);

(*f*) any civil or criminal proceedings brought —

(i) under this Act against any person and the outcome of such proceedings, including any settlement, whether in or out of court; or

(ii) under any other law, whether of Singapore or any territory or country outside Singapore, against any person referred to in subsection (1) and the outcome of such proceedings, including

any settlement, whether in or out of court;

(*g*) any disciplinary proceedings brought against any person referred to in subsection (1), by the Authority, an approved exchange, a licensed trade repository, a licensed foreign trade repository, an approved clearing house or a recognised clearing house and the outcome of such proceedings; and

(*h*) any other action as may have been taken by the Minister, the Authority, an approved exchange, a licensed trade repository, a licensed foreign trade repository, an approved clearing house or a recognised clearing house against any person referred to in subsection (1).

[34/2012; 4/2017]

323. [*Repealed by Act 24 of 2003*]

Power of court to prohibit payment or transfer of moneys, capital markets products, etc.

324.—(1) A court may, on an application by the Authority, make one or more of the orders referred to in subsection (1A), where —

(*a*) an investigation is being carried out in relation to any act or omission by a person, being an act or omission that constitutes or may constitute a contravention of this Act;

(*b*) a criminal proceeding has been instituted against a person for an offence under this Act; or

(*c*) a civil proceeding has been instituted against a person under this Act, and the court considers it necessary or desirable to do so for the purpose of protecting the interests of any person to whom the person referred to in paragraph (*a*) or (*b*) or this paragraph (called in this section the relevant person) is liable or may become liable to pay any moneys, whether in respect of a debt, or by way of penalties, damages or compensation or otherwise, or to account for any capital markets products, or other property.

[34/2012; 4/2017]

(1A) The orders of court that may be made under subsection (1) are as follows:

(*a*) an order prohibiting, either absolutely or subject to conditions, a person who is indebted to the relevant person or any person associated with the relevant person from making a payment in total or partial discharge of such debt that is due or accruing due to the relevant person, or to another person

at the direction or request of the relevant person;

(*b*) an order prohibiting, either absolutely or subject to conditions, a person holding moneys, capital markets products, or other property, on behalf of the relevant person or on behalf of any person associated with the relevant person, from paying, transferring or otherwise parting with possession of all or any of the moneys, capital markets products, or other property, to the relevant person, or to another person at the direction or request of the relevant person;

(*c*) an order prohibiting, either absolutely or subject to conditions, the taking or sending out of Singapore of moneys of the relevant person or of any person associated with the relevant person;

(*d*) an order prohibiting, either absolutely or subject to conditions, the taking, sending or transfer of capital markets products, or documents of title to capital markets products, or other property of the relevant person or of any person who is associated with the relevant person, from a place or person in Singapore to a place or person outside Singapore (including the transfer of capital markets products from a register in Singapore to a register outside Singapore);

(*e*) an order appointing —

(i) where the relevant person is an individual, a receiver, having such powers as the court orders, of the property or part of the property of the relevant person; or

(ii) where the relevant person is a corporation, a receiver or receiver and manager, having such powers as the court orders, of the property or part of the property of the relevant person;

(*f*) where the relevant person is an individual, an order requiring the relevant person to deliver up to the court his or her passport and such other documents as the court thinks fit;

(*g*) where the relevant person is an individual, an order prohibiting the relevant person from leaving Singapore without the consent of the court.

[34/2012; 4/2017]

(2) Where an application is made to the court for any order referred to in subsection (1A), the court may, if the court is of the opinion that it is desirable to do so, before considering the application, make any interim order as it thinks fit pending the determination of the application.

[34/2012]

(3) Where the Authority makes an application to the court for the making of an order or interim order under this section, the court is not to require the Authority or any other person, as a condition of granting the order or interim order, to give any undertaking as to damages.

(4) Where the court has made an order or interim order under this section, the court may, on application by the Authority or by any person affected by the order or interim order, rescind or vary the order or interim order.

(5) An order or interim order made under this section may be expressed to operate for a period specified in the order or interim order or until the order or interim order is rescinded.

(6) Any person who contravenes an order or interim order made by the court under this section that is applicable to the person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 2 years or to both.

(7) Subsection (6) does not affect the powers of the court in relation to the punishment for contempt of court.

Power of court to make certain orders

325.—(1) Where —

(*a*) on the application of the Authority, it appears to the court that a person —

(i) has committed an offence under this Act;

(ii) has contravened any condition or restriction of a licence, or the business rules of an approved exchange, a licensed trade repository or an approved clearing house, or the listing rules of an approved exchange; or

(iii) is about to do an act with respect to dealing in capital markets products, administering a designated benchmark, or providing information in relation to a designated benchmark, that, if done, would be such an offence or contravention;

(*b*) on the application of an approved exchange, it appears to the court that a person has contravened the business rules or listing rules of the approved exchange;

(*c*) [*Deleted by Act 4 of 2017*]

(*d*) on the application of an approved clearing house, it appears to the court

that a person has contravened the business rules of the approved clearing house; or

(*e*) on the application of a licensed trade repository, it appears to the court that a person has contravened the business rules of the licensed trade repository,

the court may, without affecting any orders it would be entitled to make otherwise than under this section, make any one or more of the orders specified in subsection (1A).

[34/2012; 4/2017]

(1A) The orders that may be made under subsection (1) are —

(*a*) in the case of a persistent or continuing breach of this Act, of any condition or restriction of a licence, of any business rule of an approved exchange, a licensed trade repository or an approved clearing house, of any listing rule of an approved exchange, or of any condition or restriction imposed on an authorised benchmark administrator, an authorised benchmark submitter or a designated benchmark submitter, an order restraining a person —

(i) from carrying on a business of dealing in capital markets products;

(ii) from acting as a representative of a person carrying on a business of dealing in capital markets products;

(iii) from holding the person out as a person carrying on a business of dealing in capital markets products;

(iv) from carrying on a business of administering a designated benchmark;

(v) from providing information in relation to a designated benchmark;

(vi) from acting as a representative of an authorised benchmark administrator, an authorised benchmark submitter or a designated benchmark submitter;

(vii) from holding the person out as a person —

(A) carrying on a business of administering a designated benchmark; or

(B) providing information in relation to a designated

benchmark; or

(viii) from otherwise acting in breach;

(*b*) an order restraining a person from acquiring, disposing of or otherwise dealing with any capital markets products that are specified in the order;

(*c*) an order appointing a receiver of the property of the holder of a capital markets services licence to deal in capital markets products or of property that is held by such a holder for or on behalf of another person whether on trust or otherwise;

(*d*) an order declaring a contract relating to any dealing in capital markets products to be void or voidable;

(*e*) for the purpose of securing compliance with any other order under this section, an order directing a person to do or refrain from doing a specified act;

(*f*) an order restraining the exercise of any voting or other rights attached to any capital markets products that are specified in the order; and

(*g*) any ancillary order deemed to be desirable in consequence of the making of any of the above orders.

[4/2017]

(2) The court may, before making an order under subsection (1), direct that notice of the application be given to such person as it thinks fit or that notice of the application be published in such manner as it thinks fit, or both.

(3) A person appointed by order of the court under subsection (1) as a receiver of the property of the holder of a capital markets services licence to deal in capital markets products —

(*a*) may require the holder to deliver to the receiver any property of which the person has been appointed receiver or to give to the receiver all information concerning that property that may reasonably be required;

(*b*) may acquire and take possession of any property of which the person has been appointed receiver;

(*c*) may deal with any property that the person has acquired or of which the person has taken possession in any manner in which the holder might lawfully have dealt with the property; and

(*d*) has such other powers in respect of the property as the court may specify in the order.

[4/2017]

(4) For the purposes of subsections (1), (1A) and (3), "property", in relation to the holder of a capital markets services licence to deal in capital markets products, includes —

(*a*) moneys;

(*b*) capital markets products;

(*c*) documents of title to capital markets products; and

(*d*) other property,

entrusted to or received on behalf of any other person by the holder or another person in the course of or in connection with a business of dealing in capital markets products carried on by the holder.

[4/2017]

(5) Any person who, without reasonable excuse, contravenes —

(*a*) an order made under subsection (1); or

(*b*) a requirement of a receiver appointed by order of the court under subsection (1),

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 2 years or to both.

(6) Subject to subsection (6A), subsection (5) does not affect the powers of the court in relation to the punishment for contempt of court.

[4/2017]

(6A) Where a person is convicted of an offence under subsection (5) in respect of any contravention of an order made under subsection (1), such contravention is not punishable as a contempt of court.

[4/2017]

(6B) A person must not be convicted of an offence under subsection (5) in respect of any contravention of an order made under subsection (1) that has been punished as a contempt of court.

[4/2017]

(7) The court may, on the application of an affected person or of its own motion, rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

Injunctions

326.—(1) Where a person has engaged, is engaging or is likely to engage in any conduct that constitutes or would constitute a contravention of this Act, the court may, on the application of —

(*a*) the Authority; or

(*b*) any person whose interests have been, are or would be affected by the conduct,

grant an injunction restraining the firstmentioned person from engaging in the conduct and, if the court is of the opinion that it is desirable to do so, requiring that person to do any act or thing.

(2) Where a person has refused or failed, is refusing or failing, or is likely to refuse or fail, to do an act or thing that the person is required by this Act to do, the court may, on the application of —

(*a*) the Authority; or

(*b*) any person whose interests have been, are or would be affected by the refusal or failure to do that act or thing,

make an order requiring the firstmentioned person to do that act or thing.

(3) Where an application is made to the court for an injunction under subsection (1) or an order under subsection (2), the court may, if the court is of the opinion that it is desirable to do so, before considering the application, grant an interim injunction restraining a person from engaging in conduct of the kind referred to in subsection (1) or make an interim order requiring a person to do any act or thing, pending the determination of the application.

(4) Where the court has power under this section to grant an injunction or interim injunction or make an order or interim order restraining a person from engaging in conduct of a particular kind, or requiring a person to do a particular act or thing, the court may, either in addition to or in substitution for the injunction, order, interim injunction or interim order, order that person to pay damages to any other person.

(5) Where the court has granted an injunction or interim injunction or made an order or interim order under this section, the court may, on application by any party referred to in subsection (1) or (2) or by any person affected by the injunction, order, interim injunction or interim order, rescind or vary the injunction, order, interim injunction or interim order.

(6) An injunction, order, interim injunction or interim order granted or made under

this section may be expressed to operate for a period specified in the injunction, order, interim injunction or interim order or until the injunction, order, interim injunction or interim order is rescinded.

(7) Any person who contravenes an injunction, order, interim injunction or interim order by the court under this section that is applicable to the person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 2 years or to both.

(8) Where an application is made to the court for the grant of an injunction under subsection (1), the power of the court to grant the injunction may be exercised —

(*a*) if the court is satisfied that the person has engaged in conduct of that kind, whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; or

(*b*) if it appears to the court that, in the event that an injunction is not granted, it is likely that the person will engage in conduct of that kind, whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the firstmentioned person engages in conduct of that kind.

(9) Where an application is made to the court for the making of an order under subsection (2), the power of the court to make the order may be exercised —

(*a*) if the court is satisfied that the person has refused or failed to do that act or thing, whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or

(*b*) if it appears to the court that, in the event that an order is not made, it is likely the person will refuse or fail to do that act or thing, whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any person if the firstmentioned person refuses or fails to do that act or thing.

(10) Where the Authority or any person referred to in subsection (1)(*b*) or (2)(*b*) makes an application to the court for the grant of an injunction or interim injunction or for the making of an order or interim order under this section, the court is not to require the Authority or that person (as the case may be) or any other person, as a condition of granting the injunction, interim injunction, order or interim order, to give any undertaking as to damages.

[34/2012]

(11) Subsection (7) does not affect the powers of the court in relation to the

punishment for contempt of court.

Criminal jurisdiction of District Court

327. Despite any provision to the contrary in the Criminal Procedure Code 2010, a District Court has jurisdiction to try any offence under this Act and has power to impose the full penalty or punishment in respect of any offence under this Act.

Falsification of records by officer, employee or agent of relevant person

328.—(1) Any officer, auditor, employee or agent of any relevant person who —

(*a*) wilfully makes, or causes to be made, a false entry in any book, or in any report, slip, document or statement of the business, affairs, transactions, conditions or assets of that relevant person;

(*b*) wilfully omits to make, or causes to be omitted, an entry in any book, or in any report, slip, document or statement of the business, affairs, transactions, conditions or assets of that relevant person; or

(*c*) wilfully alters, extracts, conceals or destroys, or causes to be altered, extracted, concealed or destroyed, an entry in any book, or in any report, slip, document or statement of the business, affairs, transactions, conditions or assets of that relevant person,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 or to imprisonment for a term not exceeding 2 years or to both.

(2) In subsection (1) —

"officer" includes a person purporting to act in the capacity of an officer;

"relevant person" means any —

(*a*) approved exchange;

(*b*) recognised market operator;

(*c*) licensed trade repository;

(*d*) licensed foreign trade repository;

(*e*) approved clearing house;

(*f*) recognised clearing house;

(*g*) approved holding company;

(*h*) holder of a capital markets services licence to carry on business in

any regulated activity;

(*i*) exempt person;

(*j*) representative;

(*k*) approved trustee mentioned in section 289;

(*l*) authorised benchmark administrator;

(*m*) exempt benchmark administrator;

(*n*) authorised benchmark submitter;

(*o*) exempt benchmark submitter; or

(*p*) designated benchmark submitter.

[2/2009; 34/2012; 4/2017]

Duty not to provide false information to Authority

329.—(1) Any person who provides the Authority with any information under this Act must use due care to ensure that the information is not false or misleading in any material particular.

(2) Subsection (1) applies only to a requirement in relation to which no other provision of this Act creates an offence in connection with the provision of information.

(3) Any person who —

(*a*) signs any document lodged with the Authority; or

(*b*) lodges with the Authority any document by electronic means using any identification or identifying code, password or other authentication method or procedure assigned to the person by the Authority,

must use due care to ensure that the document is not false or misleading in any material particular.

[2/2009]

(4) Any person who contravenes subsection (1) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 2 years or to both.

Duty not to provide false statements to approved exchange, licensed trade repository, approved clearing house, recognised clearing house, authorised benchmark administrator, exempt benchmark administrator and Securities

Industry Council

330.—(1) Any person who, with intent to deceive, makes or provides, or knowingly and wilfully authorises or permits the making or provision of, any false or misleading statement or report to any approved exchange, licensed trade repository, approved clearing house, recognised clearing house, authorised benchmark administrator or exempt benchmark administrator, or to any officer of such persons —

(*a*) while carrying on the activity of dealing in capital markets products;

(*b*) relating to a financial instrument;

(*c*) relating to the enforcement of the business rules of an approved exchange, a licensed trade repository or an approved clearing house or the listing rules of an approved exchange;

(*d*) relating to the affairs of an entity or a business trust;

(*e*) relating to a collective investment scheme;

(*f*) relating to the affairs of the trustee-manager of a registered business trust;

(*g*) relating to a registered business trust which is managed and operated by the trustee-manager of the registered business trust; or

(*h*) while carrying on the activity of providing information in relation to a designated benchmark,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 2 years or to both.

[4/2017]

(2) Any person who, with intent to deceive, makes or provides or knowingly and wilfully authorises or permits the making or provision of, any false or misleading statement or report to the Securities Industry Council or any of its officers, relating to any matter or thing required by the Securities Industry Council in the exercise of its functions under this Act shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 2 years or to both.

(3) In subsection (1)(*d*), the reference to affairs of an entity or a business trust —

(*a*) in the case of an entity which is a corporation, includes a reference to the matters referred to in section 2(2); and

(*b*) in the case of —

(i) an entity which is not a corporation; or

(ii) a business trust,

refers to such matters as the Authority may prescribe.

[4/2017]

Corporate offenders and unincorporated associations

331.—(1) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of an officer of the body corporate, the officer as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of the body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with the member's functions of management as if he or she were a director of the body corporate.

(3) Where an offence under this Act committed by a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, the partner as well as the partnership shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(3A) Where an offence under this Act committed by a limited liability partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner or manager of the limited liability partnership, the partner or manager (as the case may be) as well as the partnership shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(4) Where an offence under this Act committed by an unincorporated association (other than a partnership) is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, an officer of the association or a member of its governing body, the officer or member as well as the association shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(5) In this section —

"body corporate" and "partnership" exclude a limited liability partnership within the meaning of the Limited Liability Partnerships Act 2005;

"officer" —

(*a*) in relation to a body corporate, means a director, member of the committee of management, chief executive, manager, secretary or

other similar officer of the body, and includes a person purporting to act in any such capacity; or

(*b*) in relation to an unincorporated association (other than a partnership) means the president, the secretary, or a member of the committee of the association or a person holding a position analogous to that of president, secretary or member of a committee, and includes a person purporting to act in any such capacity;

"partner", in relation to a partnership, includes a person purporting to act as a partner.

(6) Regulations may provide for the application of any provision of this section, with such modifications as the Authority considers appropriate, to a body corporate or unincorporated association formed or recognised under the law of a territory outside Singapore.

Offences by officers

332.—(1) Any person, being an officer of an approved holding company, an approved exchange, a recognised market operator, a licensed trade repository, a licensed foreign trade repository, an approved clearing house, a recognised clearing house, a holder of a capital markets services licence to carry on business in any regulated activity, an authorised benchmark administrator or an authorised benchmark submitter, who fails to take all reasonable steps to secure —

(*a*) compliance with any provision of this Act; or

(*b*) the accuracy and correctness of any statement submitted under this Act,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 or to imprisonment for a term not exceeding 2 years or to both.

[34/2012; 4/2017]

(2) In any proceedings against an officer under subsection (1), it is a defence for the defendant to prove that he or she had reasonable grounds for believing that another person was charged with the duty of securing compliance with the requirements of this Act, or with the duty of ensuring that those statements were accurate (as the case may be) and that that person was competent, and in a position, to discharge that duty.

(3) An officer shall not be sentenced to imprisonment for any offence under subsection (1) unless, in the opinion of the court, he or she committed the offence wilfully.

Penalties for corporations

333.—(1) Subject to subsections (2) and (3), where a corporation is convicted of an offence under this Act, the penalty that the court may impose is a fine not exceeding 2 times the maximum amount that, but for this subsection, the court could impose as a fine for that offence.

(2) Subsection (1) does not apply to —

(*a*) offences under sections 7(4), (5) and (12), 9(13), 17(2), 22, 23(4), 27(13) and (14), 28(14), 29(4) and (7), 30(4), 35(2), 41(4) and (7), 42, 43(11), 45(3), 46(9), 46AA(9), 46AAB(7), 46AAC(10), 46AAI(8), 46C(2), 46E(14), 46P, 46Q(4), 46U(13) and (14), 46V(14), 46Y(8), 46Z(10), 46ZI, 46ZIB(7), 46ZIC(10), 46ZJ(2), 46ZK(4), 46ZN(8), 49(4), (5) and (12), 51(13), 59, 65, 66(4), 70(13) and (14), 71(14), 72(4), 81A, 81P(10), 81R(3), 81S(9), 81SAA(7), 81SAB(10), 81SD(8), 81U(2) and (9), 81W(8), 81ZA(3), 81ZB(2), 81ZC(2), 81ZD(3), 81ZE(11) and (12), 81ZF(13), 81ZG(4), 81ZGA(2), 81ZGC(7), 81ZGD(10), 81ZJ(10), 81ZL(2), 81ZN(8), 103, 105, 107(3) and (4), 123D(3) and (4), 123F(11), 123K(7), 123O(8) and (9), 123W, 123X(9), 123Y(7), 123Z(7), 123ZA(5), 123ZC(2), 123ZV(8), 123ZW(5), 289(7), 290(4) and 295(6); or

(*b*) offences under any subsidiary legislation made under this Act where it is expressly provided in the subsidiary legislation that subsection (1) does not apply to those offences.

[2/2009; 4/2017]

(3) Where an individual is convicted of an offence under this Act by virtue of section 331, he or she shall be liable to the fine or imprisonment or both as prescribed for that offence and subsection (1) does not apply.

Power of Authority to reprimand for misconduct

334.—(1) Where the Authority is satisfied that a relevant person is guilty of misconduct, the Authority may, if it thinks it necessary in the interests of the public or a section of the public or for the protection of investors, reprimand the relevant person.

(2) In this section —

"misconduct" means —

(*a*) the contravention of —

(i) any provision of this Act;

(ii) any condition or restriction imposed under this Act;

(ii*a*) any direction made by the Authority under this Act;

(iii) any code, guideline, policy statement or practice note issued under section 321; or

(iv) any business rules of an approved exchange, a licensed trade repository or an approved clearing house, or the listing rules of an approved exchange;

(*b*) the failure by an officer of a relevant person to discharge any duty or function of his or her office; or

(*c*) the commission of an offence under section 331 or 332(1);

"officer" —

(*a*) in relation to a body corporate, means a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, and includes a person purporting to act in any such capacity; or

(*b*) in relation to an unincorporated association (other than a partnership), means the president, the secretary, or a member of the committee of the association or a person holding a position analogous to that of president, secretary or member of a committee, and includes a person purporting to act in any such capacity;

"partner" includes a person purporting to act as a partner;

"relevant person" means —

(*a*) an approved exchange;

(*b*) a recognised market operator;

(*c*) a licensed trade repository;

(*d*) a licensed foreign trade repository;

(*e*) an approved clearing house;

(*f*) a recognised clearing house;

(*g*) an approved holding company;

(*h*) a holder of a capital markets services licence to carry on business in

any regulated activity;

(*i*) an exempt person;

(*j*) an approved trustee mentioned in section 289;

(*k*) an authorised benchmark administrator;

(*l*) an exempt benchmark administrator;

(*m*) an authorised benchmark submitter;

(*n*) an exempt benchmark submitter;

(*o*) a designated benchmark submitter; or

(*p*) any employee, officer, partner or representative of any person mentioned in paragraphs (*a*), (*b*), (*c*), (*d*), (*e*), (*f*), (*g*), (*h*), (*i*), (*j*), (*k*), (*l*), (*m*), (*n*) and (*o*).

[2/2009; 34/2012; 4/2017]

General penalty

335. Any person who contravenes any provision of this Act shall be guilty of an offence and, where no penalty is expressly provided, shall be liable on conviction to a fine not exceeding $50,000.

Proceedings with consent of Public Prosecutor and power to compound offences

336.—(1) Proceedings for an offence against any provisions of Part 12 may be taken only with the consent of the Public Prosecutor.

[15/2010]

(2) The Authority may compound any offence under this Act which is prescribed as a compoundable offence by collecting from a person reasonably suspected of having committed the offence a sum of money not exceeding one half of the amount of the maximum fine prescribed for that offence.

[34/2012]

(3) The Authority may compound any offence under this Act (including an offence under a provision that has been repealed) which —

(*a*) was compoundable under this section at the time the offence was committed; but

(*b*) has ceased to be so compoundable,

by collecting from a person reasonably suspected of having committed the offence a sum

of money not exceeding one half of the amount of the maximum fine prescribed for that offence at the time it was committed.

[34/2012]

(4) All sums collected by the Authority under subsection (2) or (3) must be paid into the Consolidated Fund.

[34/2012]

Exemption

337.—(1) The Authority may, by regulations, exempt any person, capital markets product, matter or transaction, or any class thereof, from all or any of the provisions of this Act, subject to such conditions or restrictions as may be prescribed.

(2) Subject to any express provision to the contrary in this Act, an exemption granted to a person or in respect of any capital markets product, matter or transaction (other than an exemption granted to a class of persons, capital markets products, matters or transactions) under any provision of this Act other than subsection (1), or a revocation thereof, may be notified in writing to the person concerned, and need not be published in the *Gazette*.

(3) The Authority may, on the application of any person, by written notice exempt the person from all or any of the requirements specified in any direction made by the Authority under this Act.

(4) An exemption granted under subsection (3) —

(*a*) may be granted subject to such conditions or restrictions as the Authority may specify by written notice; and

(*b*) for the avoidance of doubt, need not be published in the *Gazette* and may be revoked at any time by the Authority.

(4A) The Authority may at any time add to, vary or revoke any condition or restriction imposed under this section.

[2/2009]

(5) Any person who contravenes any condition or restriction imposed under subsection (1) or (4)(*a*) (including any condition or restriction added or varied under subsection (4A)) shall be guilty of an offence.

[2/2009]

Power to make regulations giving effect to treaty, etc.

338.—(1) Without limiting section 341, the Authority may make regulations prescribing the matters necessary or expedient to give effect in Singapore to the

provisions of any treaty, convention, arrangement, memorandum of understanding, exchange of letters or other similar instrument relating to the securities and derivatives industry or to financial benchmarks, to which Singapore or the Authority is a party.

[34/2012; 4/2017]

(2) Without limiting subsection (1), such regulations may provide for —

(*a*) exemptions from the requirements relating to licensing, approval or registration of any person, the recognition of recognised market operators or the lodgment or registration of any document under this Act;

(*b*) exemptions from any requirement in Part 13;

(*c*) the application of this Act with such modifications as may be necessary;

(*d*) the revocation or withdrawal of any exemption granted; and

(*e*) the variation of any condition or restriction imposed in connection with the granting of any exemption under this Act.

Extra-territoriality of Act

339.—(1) Where a person does an act partly in and partly outside Singapore which, if done wholly in Singapore, would constitute an offence against any provision of this Act, that person shall be guilty of that offence as if the act were carried out by that person wholly in Singapore, and may be dealt with as if the offence were committed wholly in Singapore.

(2) Where —

(*a*) a person does an act outside Singapore which has a substantial and reasonably foreseeable effect in Singapore; and

(*b*) that act would, if carried out in Singapore, constitute an offence under any provision of Part 2, 2A, 3, 4, 6AA, 8, 12, 13 or 15,

that person shall be guilty of that offence as if the act were carried out by that person in Singapore, and may be dealt with as if the offence were committed in Singapore.

[34/2012; 4/2017]

(2A) For the purposes of an action under section 232 or 234, where a person —

(*a*) does an act partly in and partly outside Singapore which, if done wholly in Singapore, would constitute a contravention of any provision of Part 12; or

(*b*) does an act outside Singapore which has a substantial and reasonably foreseeable effect in Singapore and that act, if carried out in Singapore, would constitute a contravention of any provision of Part 12,

the act is treated as being carried out by that person in Singapore.

(3) The Authority may, by regulations, specify the circumstances under which subsection (2) or (2A)(*b*) does not apply.

Amendment of Schedules

340.—(1) The Minister may by order in the *Gazette*, amend, add to or vary the First, Second, Third or Fourth Schedule.

(2) The Minister may, in any order made under subsection (1), make such incidental, consequential or supplementary provisions to the Act as may be necessary or expedient.

(3) Any order made under subsection (1) must be presented to Parliament as soon as possible after publication in the *Gazette*.

(4) The Authority may, by regulations, provide that the definitions in the Second Schedule do not apply to such person, capital markets product or class of persons or capital markets products as may be prescribed.

Regulations

341.—(1) The Authority may make regulations for carrying out the purposes and provisions of this Act and for the due administration thereof.

(2) Without limiting subsection (1), the Authority may make regulations for or with respect to —

(*a*) the criteria for authorisation or recognition of collective investment schemes and the constitution, operation, management and offer of such schemes including but not limited to the powers and duties of the managers, trustees or representatives and the rights and obligations of the participants of the schemes;

(*b*) the financial requirements and other criteria that a public company must fulfill for it to be considered for approval as a trustee;

(*c*) applications for capital markets services licences to carry on business in any regulated activity and matters incidental thereto;

(*d*) the activities of, and standards to be maintained by persons holding a capital markets services licence to carry on business in any regulated activity and their representatives, including the manner, method and place of soliciting business by the holder of the licence and their representatives, the conduct of such solicitation and the risk management of the business;

(*e*) [*Deleted by Act 16 of 2003*]

(*f*) the conditions for the conduct of business on any approved exchange, recognised market operator, licensed trade repository, licensed foreign trade repository, approved clearing house or recognised clearing house;

(*g*) the form, content distribution and publication of written, printed or visual material and advertisements that may be distributed or used by a person in respect of any regulated activity, including advertisements offering the services of persons holding a capital markets services licence or offering capital markets products for sale;

(*h*) the particulars to be recorded in the profit and loss accounts and balance sheets and the information to be contained in auditor's reports required to be lodged under this Act on the annual accounts of persons holding a capital markets services licence to carry on business in any regulated activity;

(*i*) the remuneration of an auditor appointed under this Act and for the costs of an audit carried out under this Act;

(*j*) the manner in which persons holding a capital markets services licence to carry on a business in any regulated activity conduct their dealings with their customers, conflicts of interest involving the holder of the licence and its customers, and the duties of the holder of a licence to its customers when making recommendations in respect of capital markets products;

(*k*) the purchase or sale of capital markets products for their own accounts, directly or indirectly by holders of capital markets services licences to carry on business in any regulated activity and their representatives;

(*l*) the disclosure by a holder of a capital markets services licence of any material interest that such person might have in a proposed transaction relating to trading in capital markets products;

(*la*) the maintenance by the holder of a capital markets services licence, and a representative of such a holder, of registers of their interests in specified products and their duties relating to the registers, and matters relating thereto;

(*m*) the specification of manipulative and deceptive devices and contrivances in connection with the purchase or sale of capital markets products;

(*n*) the regulation or prohibition of trading on the floor of an approved exchange or a recognised market operator by members of an approved

exchange or a recognised market operator (as the case may be) or their representatives directly or indirectly for their own accounts and the prevention of such excessive trading on an approved exchange or a recognised market operator but off the floor of an approved exchange or a recognised market operator by members of an approved exchange or a recognised market operator (as the case may be) or their representatives directly or indirectly for their own accounts as the Authority may consider is detrimental to the maintenance of a fair and orderly organised market; and the exemption of such transactions as the Authority may decide to be necessary in the interests of the public or a section of the public or for the protection of investors;

(*o*) the borrowing in the ordinary course of business by persons holding a capital markets services licence as the Authority may consider necessary or appropriate in the interests of the public or a section of the public or for the protection of investors;

(*p*) the prohibition or regulation of dealing in capital markets products in circumstances where the person who deals in the capital markets products does not hold or have an interest in the capital markets products which are being or are proposed to be dealt with;

(*q*) the prohibition or restriction of securities-based derivatives contracts that are admitted to the official list of an approved exchange;

(*r*) the forms for the purposes of this Act;

(*s*) the fees to be paid in respect of any matter or thing required for the purposes of this Act, including licences required under this Act and the refund and remission, whether in whole or in part, of such fees;

(*t*) the collection by or on behalf of the Authority, at such intervals or on such occasions as may be prescribed, of statistical information as to such matters relevant to capital markets products as may be prescribed and for the collection and use of such information for any purpose, whether or not connected with the prescribed capital markets products; and

(*u*) all matters and things which by this Act are required or permitted to be prescribed or which are necessary or expedient to be prescribed to give effect to this Act.

[2/2009; 34/2012; 4/2017]

(3) Except as otherwise expressly provided in this Act, the regulations made under this Act —

(*a*) may be of general or specific application;

(*aa*) may contain provisions of a saving or transitional nature;

(*b*) may provide that a contravention of any specified provision thereof shall be an offence; and

(*c*) may provide for penalties not exceeding a fine of $50,000 or imprisonment for a term not exceeding 12 months or both for each offence and, in the case of a continuing offence, a further penalty not exceeding a fine of 10% of the maximum fine prescribed for that offence for every day or part of a day during which the offence continues after conviction.

[34/2012]

(3A) For the purposes of paragraphs (*b*) and (*i*) of the definition of "derivatives contract" in section 2(1), the Authority may prescribe different contracts, arrangements, transactions and classes of contracts, arrangements or transactions for different purposes.

[34/2012; 4/2017]

(3B) For the purposes of the definition of "financial instrument" in section 2(1), the Authority may prescribe different things for different purposes.

[34/2012]

(3C) For the purposes of the definition of "underlying thing" in section 2(1), the Authority may prescribe different arrangements, events, indices, intangible properties, tangible properties, transactions and classes of arrangements, events, indices, intangible properties, tangible properties or transactions for different purposes.

[34/2012; 4/2017]

(4) Where a person is charged with an offence for contravening a regulation made under subsection (2)(*la*), it is a defence for the person to prove —

(*a*) that the person's contravention was due to the person not being aware of a fact or occurrence, the existence of which was necessary to constitute the offence; and

(*b*) that —

(i) the person was not so aware on the date of the summons issued for the charge; or

(ii) the person became so aware before the date of the summons and complied with the regulation within 14 days after becoming so aware.

[2/2009]

(5) For the purposes of subsection (4), a person is, in the absence of proof to the

contrary, conclusively presumed to have been aware of a fact or occurrence at a particular time which an employee or agent of the person, being an employee or agent having duties or acting in relation to his or her employer's or principal's interest or interests in the specified products concerned, was aware of at that time.

[2/2009; 4/2017]

FIRST SCHEDULE

Sections 2(1) and 340(1)

PART 1

MARKET

Definition of organised market

1.—(1) In this Act, "organised market" means —

(*a*) a place at which, or a facility (whether electronic or otherwise) by means of which, offers or invitations to exchange, sell or purchase derivatives contracts, securities or units in collective investment schemes, are regularly made on a centralised basis, being offers or invitations that are intended or may reasonably be expected to result, whether directly or indirectly, in the acceptance or making, respectively, of offers to exchange, sell or purchase derivatives contracts, securities or units in collective investment schemes (whether through that place or facility or otherwise); or

(*b*) such other facility or class of facilities as the Authority may, by order, prescribe.

(2) Despite sub-paragraph (1), "organised market" does not include a place or facility used by only one person —

(*a*) to regularly make offers or invitations to sell, purchase or exchange derivatives contracts, securities or units in collective investment schemes; or

(*b*) to regularly accept offers to sell, purchase or exchange derivatives contracts, securities or units in collective investment schemes.

2. [*Deleted by Act 4 of 2017*]

3. [*Deleted by Act 4 of 2017*]

PART 2

CLEARING FACILITY

Definition of clearing facility

4.—(1) In this Act —

"clearing facility" means —

(*a*) a facility for the clearing or settlement of transactions in derivatives contracts, securities or units in collective investment schemes; or

(*b*) such other facility or class of facilities for the clearing or settlement of transactions as the Authority may, by order, prescribe;

"clearing or settlement", in relation to a clearing facility, means any arrangement, process, mechanism or service provided by a person in respect of transactions, by which —

(*a*) information relating to the terms of those transactions are verified by such person with a view to confirming the transactions;

(*b*) parties to those transactions substitute, through novation or otherwise, the credit of such person for the credit of the parties;

(*c*) the obligations of parties under those transactions are calculated, whether or not such calculations include multilateral netting arrangements; or

(*d*) parties to those transactions meet their obligations under such transactions, including the obligation to deliver, the transfer of funds or the transfer of title to securities between the parties.

(2) For the purposes of this Act, "clearing or settlement" does not include —

(*a*) the back office operations of a party to the transactions referred to in sub-paragraph (1);

(*b*) the services provided by a person who has, under an arrangement with another person (called in this sub-paragraph the customer), possession or control of securities of the customer, where those services are solely incidental to the settlement of transactions relating to the securities; or

(*c*) any other arrangement, process, mechanism or service which the Authority may prescribe.

[2/2009; 34/2012; 4/2017]

SECOND SCHEDULE

Sections 2(1) and 340(1) and (4)

REGULATED ACTIVITIES

PART 1

TYPES OF REGULATED ACTIVITIES

The following are regulated activities for the purposes of this Act:

(*a*) dealing in capital markets products;

(*b*) advising on corporate finance;

(*c*) fund management;

(*d*) real estate investment trust management;

(*e*) product financing;

(*f*) providing credit rating services;

(*g*) providing custodial services.

PART 2

INTERPRETATION

In this Schedule —

"agreement" includes arrangement;

"advising on corporate finance" means giving advice —

(*a*) to any person (whether as principal or agent, or as trustee of a trust) concerning compliance with or in respect of laws or regulatory requirements (including the listing rules of an approved exchange) relating to the raising of funds by any entity, trustee of a trust on behalf of the trust or responsible person of a collective investment scheme on behalf of the collective investment scheme;

(*b*) to a person making an offer —

(i) to subscribe for or purchase specified products; or

(ii) to sell or otherwise dispose of specified products,

concerning that offer;

(*c*) concerning the arrangement, reconstruction or take-over of a corporation or any of its assets or liabilities; or

(*d*) concerning the take-over of a business trust or any of its assets or liabilities held by the trustee-manager on behalf of the business trust;

"credit rating" means an opinion expressed using an established and defined ranking system of rating categories, primarily regarding the creditworthiness of a rating target;

"dealing in capital markets products" means (whether as principal or agent) making or offering to make with any person, or inducing or attempting to induce any person to enter into or to offer to enter into any agreement for or with a view to acquiring, disposing of, entering into, effecting, arranging, subscribing for, or underwriting any capital markets products;

"financial institution" means —

(*a*) any bank licensed under the Banking Act 1970;

(*b*) any merchant bank licensed under the Banking Act 1970; or

(*c*) any finance company licensed under the Finance Companies Act 1967;

"fund management" means managing the property of, or operating, a collective investment scheme, or undertaking on behalf of a customer (whether on a discretionary authority granted by the customer or otherwise) —

(*a*) the management of a portfolio of capital markets products; or

(*b*) the entry into spot foreign exchange contracts for the purpose of managing the customer's funds,

but does not include real estate investment trust management;

"leveraged foreign exchange trading" means entering into a spot foreign exchange contract where one counterparty provides to the other counterparty or the counterparty's agent money, securities, property or other collateral which represents only a part of the value of the spot foreign exchange contract;

"offer" or "offering" includes invitation to treat;

"product financing" means providing any credit facility, advance or loan to facilitate (directly or indirectly) —

(*a*) the subscription of specified products listed or to be listed on an organised market;

(*b*) the purchase of specified products listed or to be listed on an organised market;

(*c*) the purchase of such specified products as the Authority may prescribe; or

(*d*) where applicable, the continued holding of specified products mentioned in paragraph (*a*), (*b*) or (*c*),

whether or not the specified products are pledged as security for the credit facility, advance or loan, but does not include the provision of —

(*e*) any credit facility, advance or loan that forms part of an arrangement to underwrite or sub-underwrite specified products;

(*f*) any credit facility, advance or loan to —

(i) a holder of a capital markets services licence to deal in capital markets products in respect of specified products;

(ii) a holder of capital markets services licence for product financing; or

(iii) a financial institution,

for the purposes of facilitating the acquisition or holding of specified products;

(*g*) any credit facility, advance or loan by a company to its directors or employees to facilitate the acquisition or holding of its own specified products;

(*h*) any credit facility, advance or loan by a member of a group of companies to another member of the group to facilitate the acquisition or holding of specified products by that other member; or

(*i*) any credit facility, advance or loan by an individual to a company in which he or

she holds 10% or more of its issued share capital to facilitate the acquisition or holding of specified products;

"providing credit rating services" means preparing, whether wholly or partly in Singapore, credit ratings in relation to activities in the securities and futures industry for —

(*a*) dissemination, whether in Singapore or elsewhere, or with a reasonable expectation that they will be so disseminated; or

(*b*) distribution by subscription, whether in Singapore or elsewhere, or with a reasonable expectation that they will be so distributed,

but does not include —

(*c*) preparing a private credit rating pursuant to an individual order which is intended to be provided exclusively to the person who placed the order and not intended for public disclosure or distribution by subscription; or

(*d*) preparing credit scores, credit scoring systems or similar assessments related to obligations arising from consumer, commercial or industrial relationships;

"providing custodial services" means, in relation to specified products, providing or agreeing to provide any service where the person providing the service has, under an arrangement with another person (the customer), possession or control of the specified products of the customer and carries out one or more of the following functions for the customer:

(*a*) settlement of transactions relating to the specified products;

(*b*) collecting or distributing dividends or other pecuniary benefits derived from ownership or possession of the specified products;

(*c*) paying tax or other costs associated with the specified products;

(*d*) exercising rights, including without limitation voting rights, attached to or derived from the specified products;

(*e*) any other function necessary or incidental to the safeguarding or administration of the specified products,

but does not include —

(*f*) the activities of a corporation that is a Depository as defined in section 81SF;

(*g*) the provision of services to a related corporation or connected person, so long as none of the specified products in respect of which such services are provided is —

(i) held on trust for another person by the related corporation or connected person;

(ii) held as a result of any custodial services provided by the related corporation or connected person to another person; or

(iii) beneficially owned by any person other than the related corporation or

connected person;

(*h*) the provision of services by a nominee corporation that are solely incidental to the business of the nominee corporation; and

(*i*) any other conduct the Authority may, by order, prescribe;

"rating category" means a rating symbol, such as a letter or numerical symbol which might be accompanied by appending identifying characters, used in a credit rating to provide a relative measure of risk to distinguish the different risk characteristics of the types of rating targets;

"rating target" means the subject of a credit rating which may be —

(*a*) a person other than an individual;

(*b*) the government of a sovereign country, including the Government of Singapore; or

(*c*) capital markets products;

"real estate investment trust management" means managing the property of, or operating, a real estate investment trust;

"spot foreign exchange contract" means a spot contract of which the underlying thing is a currency.

[2/2009; 35/2014; 4/2017;1/2020; S 376/2008; S 20/2012]

THIRD SCHEDULE

Sections 82(2) and 340(1)

SPECIFIED PERSONS

1. Any company licensed under the Trust Companies Act 2005 whose carrying on of the business in that regulated activity is solely incidental to its carrying on of the business for which it is registered under that Act.

2. Any public statutory corporation established under any Act in Singapore.

3. Any —

(*a*) advocate and solicitor;

(*aa*) Singapore law practice, Joint Law Venture, Formal Law Alliance or Qualifying Foreign Law Practice, as defined in section 2(1) of the Legal Profession Act 1966; or

(*b*) public accountant who is registered under the Accountants Act 2004 or accounting corporation which is approved under that Act,

whose carrying on of the business in that regulated activity is solely incidental to the practice of law or accounting, as the case may be.

4. The Official Assignee in exercising his or her powers under the Insolvency, Restructuring and Dissolution Act 2018.

5. The Public Trustee in exercising his or her powers under the Public Trustee Act 1915.

6. A person acting in relation to a company as its liquidator, provisional liquidator, receiver, receiver and manager or judicial manager.

7. Any approved trustee for a collective investment scheme as defined in section 289 whose carrying on of business in a regulated activity is solely incidental to its carrying on of activities as such approved trustee.

8. An approved trustee (as defined in section 289) who is a custodian of a VCC or a sub-fund and whose carrying on of business in a regulated activity is solely incidental to its carrying on of activities as such custodian.

9. [*Deleted by S 791/2022 wef 09/10/2022*]

FOURTH SCHEDULE

Sections 320(1A) and 340(1)

SPECIFIED PROVISIONS

1. Section 7(7)
2. Section 27(11)
3. Section 28(12)
4. Section 46AAG(2)
5. Section 46U(11)
6. Section 46V(12)
7. Section 46ZL(2)
8. Section 49(7)
9. Section 57(3)
10. Section 70(11)
11. Section 71(12)
12. Section 75(3)
13. Section 81SB(2)
14. Section 81U(4)
15. Section 81ZE(10)

16. Section 81ZF(12)

17. Section 81ZI

18. Section 99(1)(*h*)

19. Section 99B(2)

20. Section 99I(1)

21. Section 123K(1)(*b*)

22. Section 123N(1)

23. Section 123ZH(4)

24. Section 129A(2)

25. Section 129H(2)

26. Section 129O(2)

27. Section 247(1)

28. Section 248(2) and (5)

29. Section 249(3)

30. Section 251(14)

31. Section 259(3)

32. Section 262(2)

33. Section 300(9)

34. Section 302 (when applying section 247(1) or 249(3))

35. Section 306(1)

36. Section 309(3)(*a*)

37. Section 309B(5)

38. Section 337(3).

[4/2017]

LEGISLATIVE HISTORY

SECURITIES AND FUTURES ACT 2001

This Legislative History is a service provided by the Law Revision Commission on a best-efforts basis. It is not part of the Act.

1. Act 42 of 2001—Securities and Futures Act 2001

Date of First Reading	:	25 September 2001
		(Bill No. 33/2001 published on 26 September 2001)
Date of Second and Third Readings	:	5 October 2001
Date of commencement	:	1 January 2002
		1 July 2002
		1 October 2002

2. G. N. No. S 674/2001—Securities and Futures Act (Amendment of Second Schedule) Order 2001

Date of commencement	:	1 January 2002

3. Act 39 of 2002—Payments and Settlement Systems (Finality and Netting) Act 2002
(Consequential amendments made to Act by)

Date of First Reading	:	31 October 2002
		(Bill No. 41/2002 published on 1 November 2002)
Date of Second and Third Readings	:	25 November 2002
Date of commencement	:	9 December 2002

4. 2002 Revised Edition—Securities and Futures Act

Date of operation	:	31 December 2002

5. Act 16 of 2003—Securities and Futures (Amendment) Act 2003

Date of First Reading	:	14 August 2003
		(Bill No. 15/2003 published on 15 August 2003)
Date of Second and Third Readings	:	2 September 2003
Date of commencement	:	22 December 2003

6. Act 24 of 2003—Monetary Authority of Singapore (Amendment) Act 2003
(Consequential amendments made to Act by)

Date of First Reading : 16 October 2003

(Bill No. 21/2003 published on 17 October 2003)

Date of Second and Third Readings : 10 November 2003

Date of commencement : 1 January 2004

7. Act 5 of 2004—Companies (Amendment) Act 2004

(Consequential amendments made to Act by)

Date of First Reading : 5 January 2004

(Bill No. 3/2004 published on 6 January 2004)

Date of Second and Third Readings : 6 February 2004

Date of commencement : 1 April 2004

8. Act 31 of 2004—Securities and Futures (Amendment) Act 2004

Date of First Reading : 20 July 2004

(Bill No. 29/2004 published on 21 July 2004)

Date of Second and Third Readings : 1 September 2004

Date of commencement : 12 October 2004

9. Act 5 of 2005—Limited Liability Partnerships Act 2005

(Consequential amendments made to Act by)

Date of First Reading : 19 October 2004

(Bill No. 64/2004 published on 20 October 2004)

Date of Second and Third Readings : 25 January 2005

Date of commencement : 11 April 2005

10. Act 1 of 2005—Securities and Futures (Amendment) Act 2005

Date of First Reading : 19 October 2004

(Bill No. 46/2004 published on 20 October 2004)

Date of Second and Third Readings : 25 January 2005

Date of commencement : 1 July 2005

15 October 2005

11. Act 42 of 2005—Statutes (Miscellaneous Amendment No. 2) Act 2005

Date of First Reading : 17 October 2005

(Bill No. 30/2005 published on 18 October 2005)

Date of Second and Third Readings : 21 November 2005

Date of commencement : 1 July 2005

1 January 2006

30 January 2006

1 April 2006

12. Act 11 of 2005—Trust Companies Act 2005
(Consequential amendments made to Act by)

Date of First Reading : 25 January 2005

(Bill No. 1/2005 published on 26 January 2005)

Date of Second and Third Readings : 18 February 2005

Date of commencement : 1 February 2006

13. 2006 Revised Edition—Securities and Futures Act

Date of operation : 1 April 2006

14. Act 2 of 2007—Statutes (Miscellaneous Amendments) Act 2007

Date of First Reading : 8 November 2006

(Bill No. 14/2006 published on 9 November 2006)

Date of Second and Third Readings : 22 January 2007

Date of commencement : 1 March 2007

15. Act 35 of 2007—Commodity Trading (Amendment) Act 2007

(Consequential amendments made to Act by)

Date of First Reading	:	21 May 2007
		(Bill No. 23/2007 published on 22 May 2007)
Date of Second and Third Readings	:	17 July 2007
Date of commencement	:	27 August 2007
		27 February 2008

16. G. N. No. S 376/2008—Securities and Futures Act (Amendment of Second Schedule and Other Provisions to Act for REIT Management) Order 2008

Date of commencement	:	1 August 2008

17. Act 2 of 2009—Securities and Futures (Amendment) Act 2009

Date of First Reading	:	15 September 2008
		(Bill No. 23/2008 published on 16 September 2008)
Date of Second and Third Readings	:	19 January 2009
Date of commencement	:	20 April 2009
		29 July 2009
		29 March 2010
		26 November 2010
		1 October 2012
		19 November 2012

18. Act 15 of 2010—Criminal Procedure Code 2010

(Consequential amendments made to Act by)

Date of First Reading	:	26 April 2010
		(Bill No. 11/2010 published on 26 April 2010)
Date of Second and Third Readings	:	19 May 2010
Date of commencement	:	2 January 2011

19. G. N. No. S 20/2012—Securities and Futures Act (Amendment of Second Schedule and

Other Provisions for Provision of Credit Rating Services) Order 2012

Date of commencement : 17 January 2012

20. Act 34 of 2012—Securities and Futures (Amendment) Act 2012

Date of First Reading : 15 October 2012

(Bill No. 31/2012 published on 15 October 2012)

Date of Second and Third Readings : 15 November 2012

Date of commencement : 18 March 2013

1 August 2013

31 October 2013

1 May 2014

19 August 2016

21. Act 10 of 2013—Financial Institutions (Miscellaneous Amendments) Act 2013

Date of First Reading : 4 February 2013

(Bill No. 4/2013 published on 4 February 2013)

Date of Second and Third Readings : 15 March 2013

Date of commencement : 18 April 2013

2 August 2013

1 November 2013

22. Act 11 of 2013—Insurance (Amendment) Act 2013
(Consequential amendments made to Act by)

Date of First Reading : 4 February 2013

(Bill No. 5/2013 published on 4 February 2013)

Date of Second and Third Readings : 15 March 2013

Date of commencement : 18 April 2013

23. Act 35 of 2014—Statutes (Miscellaneous Amendments) (No. 2) Act 2014

Date of First Reading	:	8 September 2014 (Bill No. 24/2014 published on 8 September 2014)
Date of Second and Third Readings	:	7 October 2014
Date of commencement	:	1 July 2015 3 January 2016

24. Act 29 of 2014—Business Names Registration Act 2014
(Consequential amendments made to Act by)

Date of First Reading	:	8 September 2014 (Bill No. 26/2014)
Date of Second and Third Readings	:	8 October 2014
Date of commencement	:	3 January 2016

25. Act 36 of 2014—Companies (Amendment) Act 2014

Date of First Reading	:	8 September 2014 (Bill No. 25/2014)
Date of Second and Third Readings	:	8 October 2015
Date of commencement	:	3 January 2016

26. G.N. No. S 446/2016—Securities and Futures Act (Amendment of Third Schedule) Order 2016

Date of commencement	:	30 September 2016

27. Act 4 of 2017—Securities and Futures (Amendment) Act 2017

Date of First Reading	:	7 November 2016 (Bill No. 35/2016)
Date of Second and Third Readings	:	9 January 2017
Date of commencement	:	1 October 2018 (Sections 55 to 59 and 74) 8 October 2018 (Sections 2 to 54, 60 to 73, 75 to 197, 199 to 202 and 204 to 212)

28. Act 31 of 2017—Monetary Authority of Singapore (Amendment) Act 2017

Date of First Reading	:	8 May 2017 (Bill No. 25/2017 published on 8 May 2017)
Date of Second and Third Readings	:	4 July 2017
Date of commencement	:	5 June 2018 29 October 2018

29. Act 44 of 2018—Variable Capital Companies Act 2018

Date of First Reading	:	10 September 2018 (Bill No. 40/2018)
Date of Second and Third Readings	:	1 October 2018
Date of commencement	:	14 January 2020

30. G.N. No. S 53/2020—Securities and Futures Act (Amendment of Third Schedule) Order 2020

Date of commencement	:	21 January 2020

31. Act 2 of 2019—Payment Services Act 2019

Date of First Reading	:	19 November 2018 (Bill No. 48/2018 published on 19 November 2018)
Date of Second and Third Readings	:	14 January 2019
Date of commencement	:	28 January 2020

32. Act 40 of 2018—Insolvency, Restructuring and Dissolution Act 2018

Date of First Reading	:	10 September 2018 (Bill No. 32/2018 published on 10 September 2018)
Date of Second and Third Readings	:	1 October 2018
Date of commencement	:	30 July 2020

33. Act 40 of 2019—Supreme Court of Judicature (Amendment) Act 2019

Date of First Reading	:	7 October 2019 (Bill No. 32/2019)

Date of Second and Third Readings	:	5 November 2019
Date of commencement	:	2 January 2021

34. Act 1 of 2020—Banking (Amendment) Act 2020

Date of First Reading	:	4 November 2019 (Bill No. 35/2019)
Date of Second and Third Readings	:	6 January 2020
Date of commencement	:	1 July 2021

35. G.N. No. S 761/2021—Securities and Futures Act (Amendment of Third Schedule) Order 2021

Date of commencement	:	9 October 2021

36. 2020 Revised Edition—Securities and Futures Act 2001

Operation	:	31 December 2021

37. Act 25 of 2021—Courts (Civil and Criminal Justice) Reform Act 2021
(Amendments made by Part 7 of the above Act)

Bill	:	18/2021
First Reading	:	26 July 2021
Second and Third Readings	:	14 September 2021
Commencement	:	1 April 2022

38. G.N. No. S 791/2022—Securities and Futures Act 2001 (Amendment of Third Schedule) Order 2022

Date of commencement	:	9 October 2022

Abbreviations

(updated on 29 August 2022)

G.N.	Gazette Notification
G.N. Sp.	Gazette Notification (Special Supplement)
L.A.	Legislative Assembly

L.N.	Legal Notification (Federal/Malaysian)
M.	Malaya/Malaysia (including Federated Malay States, Malayan Union, Federation of Malaya and Federation of Malaysia)
Parl.	Parliament
S	Subsidiary Legislation
S.I.	Statutory Instrument (United Kingdom)
S (N.S.)	Subsidiary Legislation (New Series)
S.S.G.G.	Straits Settlements Government Gazette
S.S.G.G. (E)	Straits Settlements Government Gazette (Extraordinary)

COMPARATIVE TABLE

SECURITIES AND FUTURES ACT 2001

This Act has undergone renumbering in the 2020 Revised Edition. This Comparative Table is provided to help readers locate the corresponding provisions in the last Revised Edition.

2020 Ed.	2006 Ed.
—	**46ZIC**—(11) [*Deleted by Act 4 of 2017*]
—	**81SAB**—(11) [*Deleted by Act 4 of 2017*]
—	**81ZGD**—(11) [*Deleted by Act 4 of 2017*]
—	**84**—(4) [*Deleted by Act 2 of 2009*]
—	(5) [*Deleted by Act 2 of 2009*]
—	(5A) [*Deleted by Act 2 of 2009*]
—	(5B) [*Deleted by Act 2 of 2009*]
—	(6) [*Deleted by Act 2 of 2009*]
—	(7) [*Deleted by Act 2 of 2009*]
—	(8) [*Deleted by Act 2 of 2009*]
—	**90**—(2A) [*Deleted by Act 2 of 2009*]
—	**97F**—(11) [*Deleted by Act 4 of 2017*]
—	**342** [*Repealed by Act 4 of 2017*]

SGX-DC Clearing Rules

Chapter 1 Application of Rules

1.01 Application of Rules

1.01.1

This Rules apply to all Clearing Members and operate as a binding contract between the Clearing House and each Clearing Member and between a Clearing Member and any other Clearing Member and for the exclusive benefit only of the parties to such contract(s). Save as otherwise provided in this Rules, a person who is not a party to this Rules has no rights under the Contracts (Rights of Third Parties) Act 2001 to enforce any terms of this Rules.

Amended on 27 March 2006, 22 September 2006 and 18 January 2022.

1.01.2

Except where the Clearing House, SGX RegCo, or any person or entity referred to under Rule 1.01.8 otherwise expressly agree with or expressly commit to any party, the benefit of any performance of obligations under:

1.01.2.1 this Rules, or

1.01.2.2 Directives, Practice Notes or Circulars issued by the Clearing House,

is restricted to only Clearing Members. The Clearing House, its related corporations, SGX RegCo, any person or entity referred to under Rule 1.01.8, and their respective directors, officers, employees, representatives or agents (the "Relevant Persons") shall have no liability to any other party. In particular, the Relevant Persons shall have no liability to any party affected or aggrieved by any alleged action or omission.

Amended on 27 March 2006, 15 September 2017 and 3 June 2019.

1.01.3

Without prejudice to Rule 1.01.2 or the benefit of any exclusion of liability in any contract or undertaking, the Relevant Persons accept no duty to and therefore shall have no liability whatsoever to any Clearing Member or any Third Party in contract, tort, trust, as a fiduciary or under any other cause of action in respect of any damage, loss, cost or expense of whatsoever nature suffered or incurred by a Clearing Member or any Third Party, as the case may be, arising out of or in connection with the following, or any thing done or not done as a direct or indirect consequence of the following:

1.01.3.1 any suspension, restriction or closure of any market whose contracts are cleared by or novated to the Clearing House (each a "Relevant Market"), whether for a temporary period or otherwise or as a result of a decision taken on the occurrence of a market emergency;

1.01.3.2 any failure by the Clearing House or any Relevant Market to supply each other with data or information in accordance with arrangements from time to time established between and/or amongst any or all such persons;

1.01.3.3 the failure of any systems, communications facilities or technology supplied, operated or used by the Relevant Persons;

1.01.3.4 the failure of any systems, communications facilities or technology supplied, operated or used by any Relevant Market;

1.01.3.5 the inaccuracy of any information supplied to and relied on by the Relevant Persons (including but not limited to any error in the establishment of a settlement price made by a Relevant Market) or a Relevant Market;

1.01.3.6 any event which is outside the reasonable control of the Relevant Persons;

1.01.3.7 the Clearing House's clearing and settlement of Contracts, and all other matters as contemplated in this Rules; and

1.01.3.8 the exercise or non-exercise of any discretion or decision making power under this Rules.

Amended on 27 March 2006, 26 April 2013, 15 September 2017 and 3 June 2019.

1.01.4

Without prejudice to Rule 1.01.2, and in addition to Rule 1.01.3, each Clearing Member should and must note that in connection with any index used or to be used by the Clearing House for clearing and settlement or in connection or by reference therewith, none of the Relevant Persons or any relevant party that the Clearing House may contract with for the supply of the index or information in relation thereto (each of the foregoing, a "Relevant Party") assume any obligation or liability in connection with the clearing or settlement of any contract based on such index. Accordingly, none of the foregoing parties shall be in any way responsible for any losses, expenses or damages (in all cases direct or indirect) arising in connection with or referable to the clearing or settlement of any contract linked or referable to the said index, provided that nothing herein shall affect either obligations of the Clearing House or its Clearing Members as parties clearing or settling in any contract so linked or referable. None of the Relevant Parties guarantee or warrant or undertake in any manner the accuracy or completeness of any such index or any information or data included in or referable to it.

NONE OF THE RELEVANT PARTIES MAKES ANY WARRANTY OR GIVES ANY GUARANTEE OR UNDERTAKING, EXPRESS OR IMPLIED, AS TO THE ACCURACY OR COMPLETENESS OF, OR THE RESULTS TO BE OBTAINED BY ANY PERSON OR ENTITY FROM THE USE OF ANY SUCH INDEX, OR ANY INFORMATION OR DATA INCLUDED IN OR REFERABLE TO IT IN CONNECTION WITH ANY CLEARING OR SETTLEMENT OF ANY CONTRACTS OR FOR ANY OTHER USE. NONE OF THE RELEVANT PARTIES MAKES ANY EXPRESS OR IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE WITH RESPECT TO ANY SUCH INDEX, OR ANY INFORMATION OR DATA INCLUDED IN OR REFERABLE TO ANY SUCH INDEX.

Added on 27 March 2006 and amended on 15 September 2017.

1.01.5

All Clearing Members are to note the foregoing and ensure that they are taking on Clearing Membership in and/or will carry on as Clearing Members of the Clearing House, transact and will transact by reference to the Clearing House or any Contract or information or action referable to the Clearing House or any of its directors or officers, only on the foregoing basis and will also ensure that they will not open or allow the continued operation of any account for any person with respect to any Contract unless such person has been notified of the

foregoing provisions and has satisfied him/herself or itself that the same is acceptable and is accepted.

Amended on 27 March 2006.

1.01.6

The Clearing House may waive the application of a Rule (or part of a Rule) to suit the circumstances of a particular case, unless the Rule specifies that the Clearing House shall not waive it. The Clearing House may grant a waiver subject to such conditions as it considers appropriate. Such waiver is only granted if such conditions are satisfied. The Clearing House shall notify any Clearing Member of such waivers as soon as practicable.

Added on 27 March 2006.

1.01.7

No waiver by the Clearing House of any event of default or breach of any obligation under this Rules shall constitute a waiver of any other event or breach, and no exercise or partial exercise by the Clearing House of any remedy shall constitute a waiver of the right subsequently to exercise that or any other remedy.

Added on 27 March 2006.

1.01.8

The Clearing House may delegate, assign or grant authority to exercise any of its rights, powers, authorities and discretions under these Rules, including any right to enforce these Rules, to such person or entity as it may determine in its sole discretion, without consent from any Clearing Member

Where these Rules provide that any power, authority or discretion is to be exercised by the Board, the Board may delegate, assign or grant authority to exercise such power, authority or discretion to any person or entity. The Board may authorise a delegate to sub-delegate.

Added on 15 September 2017.

1.01.9

SGX RegCo shall have the authority to exercise any rights, powers, authorities and discretions under these Rules, including the right to enforce these Rules. In the exercise of any such rights, powers, authorities and discretions under these Rules, SGX RegCo shall be bound to the same extent as the Clearing House in respect of any obligations arising from the exercise of such rights, powers, authorities and discretions.

Added on 15 September 2017.

1.02 Regard to be had to Purpose or Object of Rules

1.02.1

The Clearing House may from time to time issue, without limitation, Directives, Practice Notes and Circulars to provide guidance on the interpretation or application of this Rules.

Added on 27 March 2006.

1.02.2

Directives, Practice Notes and Circulars may only be used in the manner and for such purposes as expressly contemplated under this Rules. "Directives" are binding notices directing Clearing Members to take corrective or other actions in the interests of a safe and efficient clearing facility or in light of investor protection concerns; "Practice Notes" are non-binding guidelines that seek to explain the application and interpretation of a Rule; "Circulars" are binding notices issued by the Clearing House regarding regulatory and non-regulatory matters pertaining to Clearing Members.

Added on 27 March 2006 and amended on 26 April 2013 .

1.02.3

In the interpretation of any provision of this Rules, a construction that would promote the purpose or object underlying this Rules (whether the purpose is expressly stated in this Rules or not) is to be preferred to a construction that would not promote that purpose or object.

Added on 27 March 2006.

1.03 Examples

1.03.1

If this Rules include an example of the operation of a rule:

1.03.1.1 the example is not taken to be exhaustive; and

1.03.1.2 if the example is inconsistent with the Rule, the Rule prevails.

Amended on 27 March 2006.

1.04 Precedence of Instruments

1.04.1

Save as provided in Rule 1.04.2 below, the relationship between the Clearing House and a Clearing Member shall be governed by this Rules, and the prevailing Directives, Practice Notes or Circulars (which may contain prescribed procedures) and terms and conditions governing the operations, facilities and services provided by the Clearing House (together, the "Clearing Member Terms").

Added on 27 March 2006.

1.04.2

The Clearing House is only responsible for the performance of those duties which are expressly set out in the SFA, the Act, any applicable legislation and any regulations issued thereunder and the Clearing Member Terms. The Clearing House shall have no implied duties or obligations of any kind whatsoever.

Added on 27 March 2006.

1.04.3

The order of precedence of the following instruments applicable to the Clearing House and Clearing Members shall be (in descending order of precedence):

1.04.3.1 legislation;

1.04.3.2 this Rules;

1.04.3.3 Directives;

1.04.3.4 Circulars;

1.04.3.5 terms and conditions governing the operations, facilities and services provided by the Clearing House;

1.04.3.6 Practice Notes.

Added on 27 March 2006 and amended on 26 April 2013.

1.04.4

In the event of any conflict between the provisions of the aforesaid instruments, the provisions in an instrument with a higher level of precedence shall prevail over the provisions in an instrument with a lower level of precedence.

Added on 27 March 2006.

1.05 Amendment of Rules

1.05.1

The Clearing House is prohibited from making any amendments to this Rules unless it complies with such requirements as prescribed by the Authority, under the SFA or under any applicable laws. In addition to these requirements Board approval is required to effect any Rule amendments. These safeguards are designed to promote regulatory transparency and accountability on the part of the Clearing House with respect to its rulemaking process and thereby promote investor confidence.

Added on 27 March 2006 and amended on 31 December 2013.

1.05.2

Any amendment to this Rules shall not come into force unless the prescribed time periods for effecting rule amendments as contemplated under or pursuant to the SFA, any regulations issued thereunder and any applicable laws are met.

Added on 27 March 2006 and amended on 31 December 2013.

1.05.3

Notwithstanding anything to the contrary as set forth above the Clearing House may effect Rule amendments in such manner as directed by the Authority or pursuant to the SFA or other applicable laws.

1.06 Applicable Law, Conflict and Jurisdiction

1.06.1

This Rules shall be governed by and construed in accordance with the laws of Singapore, unless otherwise specified.

Added on 27 March 2006 and amended on 31 December 2013.

1.06.2

In the event of any inconsistency between any provision of this Rules and the rules of any Relevant Market, the provisions of this Rules shall prevail as between any Clearing Member and the Clearing House.

Added on 27 March 2006.

1.06.3

Save as otherwise provided in this Rules, the courts of Singapore shall have exclusive jurisdiction to determine any dispute arising from or in connection with this Rules.

Added on 26 January 2007 and amended on 31 December 2013.

1.06.4

Rules 1.06.4, 2.02D.1.1, 2.02D.1.2, 2.14.5.2, 7.03A.1.4, 7.03A.5.1 and 7.03A.11, which apply solely to FCM Clearing Members, shall be governed by and construed in accordance with the federal laws of the United States of America. The federal courts of the United States of America shall have non-exclusive jurisdiction to determine any dispute arising from or in connection with such Rules.

Added on 31 December 2013.

Chapter 2 Clearing Membership

2.01 General

2.01.1

No Clearing Member shall have any right to receive notices of any General Meetings required to be given under the Articles of Association of the Clearing House, to attend thereat or to vote thereat or to participate in the assets or profits of the Clearing House.

2.01.2 [Rule has been deleted.]

Deleted on 27 March 2006.

2.01.3

Clearing Membership to the Clearing House shall comprise such classes of Clearing Membership as may from time to time be provided in this Rules. All Clearing Memberships to the Clearing House are granted pursuant, and subject, to this Rules and such other terms and conditions as may be imposed at the Clearing House's discretion.

Amended on 27 March 2006.

2.01.4

The Clearing Membership of each Clearing Member is conditional upon such Clearing Member being subject to and bound by this Rules and such other terms and conditions as may be specified in the Clearing Membership certificate issued to such Clearing Member or such other terms as may be prescribed by the Clearing House.

Amended on 27 March 2006.

2.01.5

Any member of the Exchange, whose name validly remains on the Register of Members of the Exchange as a "Clearing Member" under the Trading Rules at the close of business on the Qualifying Date shall, subject to this Rules, be deemed to be a Clearing Member on and from the Transfer Date.

2.01.6

All relevant membership certificates issued to such Clearing Members of the Exchange and in effect on the Qualifying Date shall be deemed to continue in full force and effect on and after the Transfer Date as if issued by the Clearing House subject to this Rules.

2.01.7

In consideration of such recognition and continued registration, such Clearing Members shall be deemed thereby to have agreed that they shall observe, comply with and be bound by this Rules and such other terms and conditions as may be specified by the Clearing House. Such Clearing Members shall have the same rights and obligations applicable to them on the Qualifying Date, subject only to such amendments provided under this Rules.

Amended on 27 March 2006.

2.02 Eligibility Criteria for General Clearing Members

2.02.1

Unless otherwise prescribed by the Clearing House, to be eligible for Clearing Membership as a General Clearing Member, an applicant must satisfy the Clearing House that:—

2.02.1.1 it is a corporation with the requisite financial and business standing and repute and is or will upon admission be carrying on the business whether in Singapore or elsewhere;

a. it has a base capital of not less than S$5,000,000; or

b. in the case of an applicant admitted as a clearing member of the Clearing House and CDP, it has a base capital of not less than S$8,000,000;

or such other capital and financial requirements as may be prescribed by the Clearing House from time to time;

2.02.1.2 [Rule has been deleted];

2.02.1.2A it holds a Capital Markets Services Licence unless exempted under the SFA or SFR (Licensing and Conduct of Business);

2.02.1.3 it has, and upon admission will maintain, minimum capital and financial requirements pursuant to Rule 2.07 or Rule 2.08;

2.02.1.4 it has, and upon admission will maintain, a special reserve fund pursuant to Rule 2.09 or Rule 2.10, as the case may be;

2.02.1.5 its managerial or executive staff have a high standard of integrity and a level of knowledge (as may be deemed acceptable by the Clearing House) on the nature, risks and obligations in respect of the market or contracts that it wishes to clear;

2.02.1.6 it must have in place sufficient resources and establish and maintain adequate systems for preserving a sound liquidity and financial position at all times including the maintaining of adequate staff and facilities for monitoring its cashflow and funding requirements and maintaining sufficient liquidity for its day to day operations;

2.02.1.7 it must maintain segregated and adequate back-office functions; and

2.02.1.8 it satisfies any and all other requirements and criteria for such Clearing Membership, which the Clearing House may from time to time hereafter prescribe.

Amended on 27 March 2006, 22 September 2006, 10 August 2007, 31 December 2013 and 29 December 2014.

2.02.2 [Rule has been deleted.]

Deleted on 17 July 2019.

2.02.2A [Rule has been deleted.]

Deleted on 17 July 2019.

2.02.3 [Rule has been deleted.]

Deleted on 17 July 2019.

2.02A Eligibility Criteria for Direct Clearing Members

2.02A.1

Unless otherwise prescribed by the Clearing House, to be eligible for Clearing Membership as a Direct Clearing Member, an applicant must satisfy the Clearing House that:—

2.02A.1.1 it fulfills the criteria and requirements set out in Rule 2.02 (except for Rules 2.02.1.1.b and 2.02.1.4); and

2.02A.1.2 it or its holding company has obtained a long term credit rating from any rating agency registered with an appropriate authority, that indicates, at least, a very strong overall creditworthiness supporting the fulfilment of its financial obligations.

Added on 27 March 2006 and amended on 10 August 2007 and 26 April 2013.

2.02A.2

Upon admission as a Direct Clearing Member, if there is any downgrade in the rating of the Direct Clearing Member or its holding company such that it falls below the minimum

prescribed rating, the Clearing House may, at its absolute discretion, impose additional conditions as it deems fit, for permitting the Direct Clearing Member to continue to clear Contracts through the Clearing House.

Added on 27 March 2006 and amended on 10 August 2007.

2.02B Eligibility Criteria for Bank Clearing Members

2.02B.1

Unless otherwise prescribed by the Clearing House, to be eligible for Clearing Membership as a Bank Clearing Member, an applicant must satisfy the Clearing House that:—

2.02B.1.1 it is authorised to conduct banking business in Singapore pursuant to section 4 of the Banking Act 1970;

2.02B.1.2 it or its parent bank has obtained:

a. a long term credit rating that indicates, at least, a strong overall creditworthiness supporting the fulfilment of its financial obligations; and

b. a credit rating that indicates, at least, adequate intrinsic safety and soundness, excluding external credit support, and a limited ability to withstand adverse business or economic conditions, from any rating agency registered with an appropriate authority.

c. [Rule has been deleted.]

d. [Rule has been deleted.]

2.02B.1.3 *[Rule has been deleted.]*

2.02B.1.4 it or its parent bank has, at the point of application, at least S$50,000,000 of base capital or net head office funds, as the case may be, and complies with such other capital and financial requirements as may be prescribed by the Clearing House from time to time;

2.02B.1.4A it has in place the appropriate procedures and capabilities to participate in the default management activities contemplated under Chapter 7A;

2.02B.1.5 it has, and upon admission will maintain, minimum capital and financial requirements pursuant to Rule 2.07.1B or Rule 2.08.1B;

2.02B.1.6 its managerial or executive staff have a high standard of integrity and a level of knowledge (as may be deemed acceptable by the Clearing House) on the nature, risks and obligations in respect of the market or contracts that it wishes to clear;

2.02B.1.7 it must have in place sufficient resources and establish and maintain adequate systems for preserving a sound liquidity and financial position at all times including the maintaining of adequate staff and facilities for monitoring its cashflow and funding requirements and maintaining sufficient liquidity for its day to day operations governed by this Rules;

2.02B.1.8 it must maintain segregated and adequate back-office functions in respect of its operations governed by this Rules;

2.02B.1.9 it satisfies any and all other requirements and criteria for such Clearing Membership, which the Clearing House may from time to time hereafter prescribe; and

2.02B.1.10 [Rule has been deleted.]

2.02B.1.11 [Rule has been deleted.]

Added on 10 August 2007 and amended on 10 May 2010, 3 November 2010, 26 April 2013, 31 December 2013, 22 April 2019, 17 July 2019 and 18 January 2022.

2.02B.2

Upon admission as a Bank Clearing Member, if there is any downgrade in the rating of the Bank Clearing Member or its parent bank such that it falls below the minimum prescribed rating, the Clearing House may, at its absolute discretion, impose additional conditions as it deems fit, for permitting the Bank Clearing Member to continue to clear Contracts through the Clearing House.

Added on 10 August 2007.

2.02B.3 [Rule has been deleted.]

Deleted on 17 July 2019.

2.02C Eligibility Criteria for Remote Clearing Members

2.02C.1

Unless otherwise prescribed by the Clearing House, to be eligible for Clearing Membership as a Remote Clearing Member that clears Non-Relevant Market Contracts, an applicant must satisfy the Clearing House that:

2.02C.1.1 it is licensed and regulated for the provision of clearing services by a recognised regulator of the jurisdiction for which it provides the remote clearing services, which shall be a jurisdiction outside of Singapore and acceptable to the Clearing House, and is governed by the laws of such jurisdiction;

2.02C.1.2 it is not incorporated in Singapore, has no business presence in Singapore related to the provision of financial services (including clearing services) and does not serve Singapore domiciled customers in respect of such business;

2.02C.1.3 it has a base capital of at least S$50,000,000 and complies with such other capital and financial requirements as may be prescribed by the Clearing House from time to time;

2.02C.1.4 it has in place the appropriate procedures and capabilities to participate in the default management activities contemplated under Chapter 7A;

2.02C.1.5 it has, and upon admission will maintain, minimum capital and financial requirements pursuant to Rule 2.08;

2.02C.1.6 its managerial or executive staff have a high standard of integrity and a level of knowledge (as may be deemed acceptable by the Clearing House) on the nature, risks and obligations in respect of the market or contracts that it wishes to clear;

2.02C.1.7 it has in place sufficient resources and establishes and maintains adequate systems for preserving a sound liquidity and financial position at all times including the maintaining of adequate staff and facilities for monitoring its cashflow and funding requirements and maintaining sufficient liquidity for its day to day operations;

2.02C.1.8 it maintains segregated and adequate back-office functions;

2.02C.1.9 it has the ability to conduct its clearing activities, including the maintenance of adequate contactable staff, during the Clearing House's business hours; and

2.02C.1.10 it satisfies any and all other requirements and criteria for such Clearing Membership, which the Clearing House may from time to time hereafter prescribe.

Added on 31 December 2013 and amended on 17 July 2019.

2.02C.2

Unless otherwise prescribed by the Clearing House, to be eligible for Clearing Membership as a Remote Clearing Member that clears Non-Relevant Market Contracts, an applicant must, in addition to the eligibility criteria prescribed under Rule 2.02C.1, satisfy the Clearing House that:

2.02C.2.1 it or its holding company:

a. is licensed and regulated by a financial authority; and

b. has a long term rating that indicates, at least, a strong overall creditworthiness supporting the fulfilment of its financial obligations from any rating agency registered with an appropriate authority;

2.02C.2.2 it has obtained a guarantee in a form acceptable to the Clearing House from a bank or its holding company, provided that such bank or holding company:

a. is licensed and/or regulated as such by a financial authority; and

b. has obtained:

i. a long term rating from any registered rating agency that indicates, at least, a strong overall creditworthiness supporting the fulfilment of its financial obligations; and

ii. in the case of a bank, a rating that indicates, at least, adequate intrinsic safety and soundness, excluding external credit support, and a limited ability to withstand adverse business or economic conditions.

Added on 31 December 2013 and amended on 17 July 2019.

2.02C.3 [Rule has been deleted.]

Deleted on 17 July 2019.

2.02C.4

If, at any time, the rating of a Remote Clearing Member or its holding company falls below the rating prescribed by and acceptable to the Clearing House, the Clearing House may in its absolute discretion impose additional conditions in permitting the Remote Clearing Member to continue its clearing activities.

Added on 31 December 2013.

2.02D Eligibility Criteria for FCM Clearing Members

2.02D.1

Unless otherwise prescribed by the Clearing House, to be eligible for Clearing Membership as an FCM Clearing Member, an applicant must, in addition to the relevant eligibility criteria prescribed under Rule 2.02, 2.02B or 2.02C, as the case may be, satisfy the Clearing House that:

2.02D.1.1 it is properly registered as an FCM with the CFTC; and

2.02D.1.2 it complies with all regulatory financial requirements (whether relating to capital, equity, risk or otherwise) applicable to it as an FCM, including without limitation the applicable requirements of CFTC Regulation 1.17 and Part 22 of the CFTC Regulations.

Added on 31 December 2013.

2.03 Honorary Clearing Membership

2.03.1

The Clearing House may invite any person of distinction to be an Honorary Clearing Member for such period and on such terms as it deems fit.

2.04 Application

2.04.1

An application for Clearing Membership shall be made to the Clearing House and shall be in such form or forms as the Clearing House may from time to time hereafter prescribe. An applicant for Clearing Membership shall provide to the Clearing House such evidence as the Clearing House may require and shall pay such fees as the Clearing House may from time to time hereafter prescribe. The Clearing House may refuse an application for Clearing Membership.

2.05 Admission

2.05.1

The Clearing House will endeavour to process, consider and decide upon an application to be a Clearing Member in a timely fashion, but owes no obligation to do so.

2.05.2

The Clearing House may require the applicant to provide such evidence as it may require and may require the applicant to be present at such time and place as the Clearing House requires. The Clearing House, if it deems necessary, may conduct such investigation and make enquiries upon the applicant and any information and particulars given by the applicant.

2.05.3

Upon approval of application being granted by the Clearing House, the Clearing House shall promptly notify the applicant in writing.

2.05.4

If the Clearing House refuses an application, it shall notify the applicant in writing of its decision and it shall not be required to give any reason to the applicant for its decision.

2.06 Compliance

2.06.1 Rules

An applicant who has been admitted as a Clearing Member or deemed to have been admitted as a Clearing Member shall comply with this Rules. Without prejudice to the generality of the foregoing the criteria and requirements for Clearing Membership prescribed in this Rules and/or in the Clearing Membership certificate, and/or prescribed by the Clearing House from time to time shall continue to apply even after an applicant has been admitted as a Clearing Member or deemed to have been admitted as a Clearing Member and shall continue to apply during its Clearing Membership. A Clearing Member who fails to comply with such criteria and requirements shall be dealt with in such manner as the Clearing House deems appropriate, including but not limited to suspension of or expulsion from Clearing Membership.

Amended on 27 March 2006.

2.06.2 SFA

Every Clearing Member which is licensed or is exempted from licensing but whose activities are still subject to regulation by the SFA and thus by the Authority shall comply with all applicable provisions of the SFA, and any applicable order, circular, direction or other requirement made by the Authority pursuant to the SFA, and shall procure that each of its directors, officers, agents, employees and representatives complies with the same.

Violation of this Rule 2.06 may be a major offence.

Amended on 27 March 2006.

2.06A Reporting

2.06A.1

Except for a Bank Clearing Member, a Clearing Member must inform the Clearing House in writing immediately if it or any of its directors, officers, Registered Persons, employees, or agents:—

2.06A.1.1 breaches the SFA, SFR or any other applicable laws;

2.06A.1.2 breaches this Rules;

2.06A.1.3 breaches any relevant law or regulation which governs that person's other business activities;

2.06A.1.4 breaches the rules of any other exchange or clearing house;

2.06A.1.5 breaches any provision involving fraud or dishonesty, whether in or out of Singapore;

2.06A.1.6 breaches director's duties;

2.06A.1.7 is the subject of a written complaint involving an allegation of fraud or dishonesty, whether in or out of Singapore;

2.06A.1.8 is the subject of an investigation involving an allegation of fraud or dishonesty, whether in or out of Singapore;

2.06A.1.9 is the subject of any disciplinary action taken by the Clearing Member involving suspension, termination, withholding of commissions, fines or any other significant limitation of activities;

2.06A.1.10 engages in conduct that has the effect of circumventing the SFA, SFR, this Rules or any other applicable laws;

2.06A.1.11 engages in conduct which is inconsistent with the principles of good business practice;

2.06A.1.12 engages in conduct which is detrimental to the financial integrity, reputation or interests of the Clearing House, or clearing facilities established or operated by the Clearing House; or

2.06A.1.13 is insolvent, or has been issued a bankruptcy or winding up proceeding.

Amended on 27 March 2006, 3 November 2010 and 31 December 2013.

2.06A.2

A Bank Clearing Member must inform the Clearing House immediately in writing if it or any of its director(s) who is(are) resident in Singapore and/or responsible for its business governed by this Rules, officers, Registered Persons, employees, or agents, in respect of its business governed by this Rules, :—

2.06A.2.1 breaches the SFA or SFR;

2.06A.2.2 breaches this Rules;

2.06A.2.3 breaches the rules of any other exchange or clearing house;

2.06A.2.4 breaches any provision involving fraud or dishonesty, whether in or out of Singapore;

2.06A.2.5 breaches director's duties;

2.06A.2.6 is the subject of a written complaint involving an allegation of fraud or dishonesty, whether in or out of Singapore;

2.06A.2.7 is the subject of an investigation involving an allegation of fraud or dishonesty, whether in or out of Singapore;

2.06A.2.8 is the subject of any disciplinary action taken by the Clearing Member involving suspension, termination, withholding of commissions, fines or any other significant limitation of activities;

2.06A.2.9 engages in conduct that has the effect of circumventing the SFA, SFR or this Rules;

2.06A.2.10 engages in conduct which is inconsistent with the principles of good business practice;

2.06A.2.11 engages in conduct which is detrimental to the financial integrity, reputation or interests of the Clearing House, or clearing facilities established or operated by the Clearing House; or

2.06A.2.12 is insolvent, or has been issued a bankruptcy or winding up proceeding.

Added on 3 November 2010.

2.07 Minimum Capital and Financial Requirements of Clearing Members Incorporated in Singapore

2.07.1

Each General Clearing Member incorporated in Singapore shall at all times :—

2.07.1.1 Base Capital Requirement

a. maintain a base capital of not less than S$5,000,000;

b. in the case of a General Clearing Member who is also a clearing member of CDP, maintain a base capital of not less than S$8,000,000;

c. [deleted]

or such other amount as may be prescribed by the Clearing House from time to time.

2.07.1.2 Financial Resources Requirement

not cause or permit its financial resources to fall below its total risk requirement;

2.07.1.3 Aggregate Indebtedness Requirement

not cause or permit its aggregate indebtedness to exceed 1,200% of its aggregate resources; and

2.07.1.4 Other Requirements

comply with the accounting, reporting, book-keeping and any other financial and operational requirements prescribed by the Clearing House.

Amended on 27 March 2006, 10 August 2007, 3 November 2010 and 17 July 2019.

2.07.1A

Each Direct Clearing Member incorporated in Singapore shall at all times:—

2.07.1A.1 Base Capital Requirement
maintain a base capital of not less than S$5,000,000;

2.07.1A.2 Financial Resources Requirement
not cause or permit its financial resources to fall below its total risk requirement;

2.07.1A.3 Aggregate Indebtedness Requirement
not cause or permit its aggregate indebtedness to exceed 1,200% of its aggregate resources; and

2.07.1A.4 Other Requirements

comply with the accounting, reporting, book-keeping and any other financial and operational requirements prescribed by the Clearing House.

Added on 27 March 2006 and amended on 10 August 2007.

2.07.1B

Each Bank Clearing Member incorporated in Singapore shall at all times:—

2.07.1B.1 Base Capital Requirement

a. maintain a base capital of not less than S$5,000,000; or

b. in the case of a Bank Clearing Member who is also a clearing member of CDP, maintain a base capital of not less than S$8,000,000;

c. [deleted]

or such other amount as may be prescribed by the Clearing House from time to time;

2.07.1B.2 RRA Financial Requirement

comply with all applicable RRA Financial Requirements; and

2.07.1B.3 [Rule has been deleted.]

2.07.1B.4 Other Requirements

comply with the accounting, reporting, book-keeping and any other financial and operational requirements prescribed by the Clearing House in relation to the Bank Clearing Member's business governed by this Rules.

Added on 10 August 2007 and amended on 3 November 2010, 31 December 2013, 22 April 2019 and 17 July 2019.

2.07.2 [Rule has been deleted.]

Amended on 27 March 2006, 10 August 2007 and deleted on 10 May 2010.

2.07.3

The Clearing House may from time to time prescribe other minimum capital and financial requirements and conditions for exemptions or exceptions therefrom.

2.07.4

The Clearing House reserves the right to call on any of the letters of credit and all other forms of security furnished pursuant to this Rules and apply the proceeds thereof in respect of the Clearing Member's default to the Clearing House and/or its common bond liability under Rule 7A.05 and 7A.06.

Amended on 10 August 2007 and 7 August 2012.

2.07.5

A Clearing Member shall immediately notify the Clearing House if it fails to meet the minimum capital and financial requirements prescribed in the preceding paragraphs or becomes aware that it will fail to comply with such requirements.

2.07.6

If the Clearing House is notified by a Clearing Member under Rule 2.07.5 or becomes aware (whether or not there has been any notification by the Clearing Member under Rule 2.07.5) that the Clearing Member has failed to comply with the minimum capital and financial requirements prescribed in the preceding paragraphs, the Clearing House may direct the Clearing Member to do one (1) or more of the following actions:—

2.07.6.1 liquidate or cease any increase in positions for any account carried by the Clearing Member;

2.07.6.2 liquidate or transfer all or part of any customer's positions, margins, collateral, assets and accounts to one (1) or more other Clearing Members. For the avoidance of doubt, reference to "customer's positions, margins, collateral, assets and accounts" in relation to a Bank Clearing Member, shall refer to customer's positions, margins, collateral, assets and accounts falling within the Bank Clearing Member's business governed by this Rules;

2.07.6.3 operate its business or in the case of a Bank Clearing Member, its business governed by this Rules, in such manner and on such conditions as the Clearing House may impose.

Amended on 27 March 2006 and 10 August 2007.

2.07.7

The Clearing House may prescribe for one (1) or more Clearing Members, capital, financial and other requirements in excess of the minimum prescribed under this Rules on the basis of volume, types of positions carried, margin policies, nature of business conducted or to be conducted or its membership in any exchange or market and such other criteria as deemed necessary by the Clearing House.

Amended on 27 March 2006.

2.07.8 [Rule has been deleted.]

Deleted on 22 April 2019.

2.07A Early Warning Financial Requirements of Clearing Members Incorporated in Singapore

2.07A.1

Each General Clearing Member or Direct Clearing Member incorporated in Singapore shall immediately notify the Clearing House:—

2.07A.1.1 if its financial resources fall below 120% of its total risk requirement; or

2.07A.1.2 if its aggregate indebtedness exceeds 600% of its aggregate resources.

Amended on 10 August 2007, 3 November 2010 and 22 April 2019.

2.07A.2

If the Clearing House is notified by a Clearing Member under Rule 2.07A.1.1 or becomes aware (whether or not there has been any notification by the Clearing Member under Rule 2.07A.1.1) that such Clearing Member's financial resources have fallen below 120% of its total risk requirement, the Clearing House may direct such Clearing Member to comply with one (1) or more of the directions prescribed under Regulation 7(3) of the SFR (Financial and Margin Requirements).

2.07A.2.1 [Rule has been deleted]

2.07A.2.2 [Rule has been deleted]

2.07A.2.3 [Rule has been deleted]

Amended on 27 March 2006, 10 August 2007, 3 November 2010 and 22 April 2019.

2.07A.3

If the Clearing House is notified by a General Clearing Member or a Direct Clearing Member under Rule 2.07A.1.2 or becomes aware (whether or not there has been any notification by such Clearing Member under Rule 2.07A.1.2) that such Clearing Member's aggregate indebtedness has exceeded 600% of its aggregate resources, the Clearing House may direct:—

2.07A.3.1 where such Clearing Member is a General Clearing Member, to comply with one (1) or more of the directions prescribed under Regulation 17(2) of the SFR (Financial and Margin Requirements);

2.07A.3.2 where such Clearing Member is a Direct Clearing Member, to comply with one (1) or more of the directions described under Regulation 17(2) of the SFR (Financial and Margin Requirements).

Amended on 27 March 2006 and 10 August 2007.

2.07A.4

The Clearing House may from time to time prescribe other early warning financial requirements and conditions for exemptions or exceptions therefrom on all or any of the Clearing Members.

2.07B Notification Requirements of Clearing Members Incorporated in Singapore

2.07B.1

Each Clearing Member incorporated in Singapore shall:

2.07B.1.1 in the case of a General Clearing Member or Direct Clearing Member, immediately notify the Clearing House if its financial resources fall below 150% of its total risk requirement; and

2.07B.1.2 in the case of a Bank Clearing Member, immediately notify the Clearing House of any event in relation to its regulatory capital and liquidity ratios that is required to be reported to its Relevant Regulatory Authority.

Amended on 3 November 2010 and 22 April 2019.

2.07B.2

The Clearing House may from time to time prescribe other notification requirements and conditions for exemptions or exceptions therefrom on all or any of the Clearing Members.

2.07B.3

If the Clearing House is notified by a Clearing Member under Rule 2.07B.1 or becomes aware (whether or not there has been any notification by the Clearing Member under Rule 2.07B.1)that such Clearing Member's financial resources have fallen below 150% of its total risk requirement or that a reportable event in relation to its regulatory capital and liquidity ratios has occurred, the Clearing House may direct such Clearing Member to do one (1) or more of the following actions:—

2.07B.3.1 submit (where applicable), the statements of assets and liabilities, financial resources, total risk requirement, aggregate indebtedness, and such other statements as required by the Clearing House at such interval and for such time frame as determined by the Clearing House;

2.07B.3.2 operate its business, or in the case of a Bank Clearing Member, its business governed by this Rules, in such manner and on such conditions as the Clearing House may impose.

Added on 10 August 2007 and amended on 3 November 2010 and 22 April 2019.

2.07C Qualifying Letter of Credit

2.07C.1

For the purpose of Rules 2.07 and 2.07A, a Clearing Member may include one (1) or more qualifying letter(s) of credit deposited with the Clearing House in its calculation of aggregate resources, subject to the total amount payable under the qualifying letter(s) of credit or 50% of its total risk requirement, whichever is lower. In the case of a Clearing Member admitted as a clearing member of the Clearing House and CDP, and which has deposited such qualifying letter(s) of credit with CDP, pursuant to the corresponding provisions in the CDP Clearing Rules, it need not deposit another qualifying letter(s) of credit with the Clearing House.

Amended on 10 August 2007 and 29 December 2014.

2.07C.2

For the purpose of Rule 2.07C.1, a qualifying letter of credit is a legally enforceable and irrevocable letter of credit that:—

2.07C.2.1 is made in favour of the Clearing House;

2.07C.2.2 is issued by a bank approved by, and in a form acceptable to the Clearing House; and

2.07C.2.3 does not include any letters of credit provided by the Clearing Member to satisfy Chapter 7 or Chapter 7A or any other requirement imposed by the Clearing House.

Amended on 10 August 2007 and 7 August 2012.

2.07C.3

The Clearing House reserves the right to call on any of the qualifying letters of credit furnished pursuant to this Rules and apply the proceeds thereof in respect of the Clearing Member's default to the Clearing House and/or its common bond liability under Rule 7A.05 and 7A.06. In the case of a Clearing Member admitted as a clearing member of the Clearing House and CDP, the Clearing House shall have the discretion to apportion in any manner, the use of the proceeds between the Clearing House and CDP. In deciding on the apportionment, the Clearing House may, in consultation with CDP, take into account factors, including but not limited to, the amount owed by the Clearing Member to the Clearing House and CDP respectively.

Amended on 10 August 2007 and 7 August 2012.

2.08 Minimum Capital and Financial Requirements of Clearing Members Incorporated Outside Singapore

2.08.1

Each General Clearing Member incorporated outside Singapore shall at all times:—

2.08.1.1 Base Capital Requirement

a. maintain net head office funds of not less than S$5,000,000;

b. in the case of a General Clearing Member who is also a clearing member of CDP, maintain net head office funds of not less than S$8,000,000; or

c. in the case of a General Clearing Member who wishes to clear OTCF Contracts, maintain net head office funds of not less than S$50,000,000;

or such other amount as may be prescribed by the Clearing House from time to time.

2.08.1.2 Financial Resources Requirement
not cause or permit its adjusted net head office funds to fall below its total risk requirement;

2.08.1.3 Aggregate Indebtedness Requirement
not cause or permit its aggregate indebtedness to exceed 1,200% of its aggregate resources; and

2.08.1.4 Other Requirements
comply with the accounting, reporting, book-keeping and any other financial and operational requirements prescribed by the Clearing House.

Amended on 27 March 2006, 10 August 2007 and 3 November 2010.

2.08.1A

Each Direct Clearing Member incorporated outside Singapore shall at all times:—

2.08.1A.1 Base Capital Requirement
maintain net head office funds of not less than S$5,000,000;

2.08.1A.2 Financial Resources Requirement
not cause or permit its financial resources to fall below its total risk requirement;

2.08.1A.3 Aggregate Indebtedness Requirement
not cause or permit its aggregate indebtedness to exceed 1,200% of its aggregate resources; and

2.08.1A.4 Other Requirements
comply with the accounting, reporting, book-keeping and any other financial and operational requirements prescribed by the Clearing House.

Amended on 10 August 2007.

2.08.1B

Each Bank Clearing Member incorporated outside Singapore shall at all times:—

2.08.1B.1 Base Capital Requirement

(a) maintain a base capital of not less than S$5,000,000; or

(b) in the case of a Bank Clearing Member who is also a clearing member of CDP, maintain a base capital of not less than S$8,000,000; or

(c) [deleted]

or such other amount as may be prescribed by the Clearing House from time to time;

2.08.1B.2 RRA Financial Requirement

comply with all applicable RRA Financial Requirements; and

2.08.1B.3 Other Requirements

comply with the accounting, reporting, book-keeping and any other financial and operational requirements prescribed by the Clearing House in relation to the Bank Clearing Member's business governed by this Rules.

Added on 10 August 2007 and amended on 25 August 2009, 3 November 2010, 22 April 2019 and 17 July 2019.

2.08.1BA Liquidity Resource Requirement

Each Bank Clearing Member incorporated outside Singapore shall deposit liquidity resources with the Clearing House upon the Clearing House's request, if the Clearing House determines that any conditions exist which may threaten the ability of the Bank Clearing Member to satisfy its obligations to the Clearing House and/or CDP under this Rules and the CDP Clearing Rules respectively.

Such liquidity resources shall be an amount up to S$5,000,000, or S$8,000,000 in the case of a Bank Clearing Member who is also a clearing member of CDP, and shall be paid in cash and/or acceptable government securities within such time as determined by the Clearing House.

Added on 22 April 2019.

2.08.1C [Rule has been deleted]

Deleted on 22 April 2019.

2.08.1D

Each Remote Clearing Member incorporated outside Singapore shall at all times:

2.08.1D.1 Base Capital Requirement

maintain a base capital of not less than S$50,000,000;

2.08.1D.2 RRA Financial Requirement

comply with all applicable RRA Financial Requirements; and

2.08.1D.3 [Rule has been deleted.]

2.08.1D.4 Other Requirements

comply with the accounting, reporting, book-keeping and any other financial and operational requirements prescribed by the Clearing House.

Added on 31 December 2013 and amended on 22 April 2019.

2.08.1E

In addition to the other applicable requirements under Rule 2.08, each FCM Clearing Member shall at all times maintain an adjusted net capital, in accordance with CFTC Regulation 1.17, of not less than US$50,000,000.

Added on 31 December 2013.

2.08.2 [Rule has been deleted.]

Amended on 27 March 2006 and 10 August 2007 and deleted on 10 May 2010.

2.08.3

The Clearing House may from time to time prescribe other minimum capital and financial requirements and conditions for exemptions or exceptions therefrom.

2.08.4

The Clearing House reserves the right to use or call on any cash and/or acceptable government securities deposited with the Clearing House or CDP pursuant to Rule 2.08.1B.1, letters of credit and all other forms of security furnished pursuant to this Rules and apply the proceeds thereof in respect of the Clearing Member's default to the Clearing House and/or its common bond liability under Rule 7A.05 and 7A.06.

Amended on 27 March 2006, 10 August 2007 and 7 August 2012.

2.08.5

A Clearing Member shall immediately notify the Clearing House if it fails to meet the minimum capital and financial requirements prescribed in the preceding paragraphs or becomes aware that it will fail to comply with such requirements.

Amended on 10 August 2007.

2.08.6

If the Clearing House is notified by a Clearing Member under Rule 2.08.5 or becomes aware (whether or not there has been any notification by the Clearing Member under Rule 2.08.5) that such Clearing Member has failed to comply with the minimum capital and financial requirements prescribed in the preceding paragraphs, the Clearing House may direct such Clearing Member to do one (1) or more of the following actions:—

2.08.6.1 liquidate or cease any increase in positions for any account carried by the Clearing Member;

2.08.6.2 liquidate or transfer all or part of any customer's positions, margins, collateral, assets and accounts to one (1) or more other Clearing Members. For the avoidance of doubt, reference to "customer's positions, margins, collateral, assets and accounts" in relation to a Bank Clearing Member shall refer to customer's positions, margins, collateral, assets and accounts falling within the Bank Clearing Member's business governed by this Rules;

2.08.6.3 operate its business or in the case of a Bank Clearing Member, its business governed by this Rules, in such manner and on such conditions as the Clearing House may impose.

Amended on 27 March 2006 and 10 August 2007.

2.08.7

The Clearing House may prescribe for one (1) or more Clearing Members, capital, financial and other requirements in excess of the minimum prescribed under this Rules on the basis of volume, types or positions carried, margin policies, nature of business conducted or to be conducted or its membership in any other exchange or market and such other criteria as deemed necessary by the Clearing House.

Amended on 27 March 2006.

2.08.8 [Rule has been deleted.]

Deleted on 22 April 2019.

2.08A Early Warning Financial Requirements of Clearing Members Incorporated Outside Singapore

2.08A.1

Each General Clearing Member or Direct Clearing Member incorporated outside Singapore shall immediately notify the Clearing House:—

2.08A.1.1 if its adjusted net head office funds fall below 120% of its total risk requirement; or

2.08A.1.2 if its aggregate indebtedness exceeds 600% of its aggregate resources.

Amended on 10 August 2007, 25 August 2009, 3 November 2010, 31 December 2013 and 22 April 2019.

2.08A.2

If the Clearing House is notified by a Clearing Member under Rule 2.08A.1.1 or becomes aware (whether or not there has been any notification by the Clearing Member under Rule 2.08A.1.1) that such Clearing Member's adjusted net head office funds have fallen below 120% of its total risk requirement, the Clearing House may direct such Clearing Member to comply with one (1) or more of the directions prescribed under Regulation 7(3) of the SFR (Financial and Margin Requirements).

2.08A.2.1 [Rule has been deleted]

2.08A.2.2 [Rule has been deleted]

2.08A.2.3 [Rule has been deleted]

Amended on 27 March 2006, 10 August 2007, 25 August 2009, 3 November 2010, 31 December 2013 and 22 April 2019.

2.08A.3

If the Clearing House is notified by a Clearing Member under Rule 2.08A.1.2 or becomes aware (whether or not there has been any notification by such Clearing Member under Rule 2.08A.1.2) that such Clearing Member's aggregate indebtedness has exceeded 600% of its aggregate resources, the Clearing House may direct such Clearing Member to comply with one (1) or more of the directions prescribed under Regulation 17(2) of the SFR (Financial and Margin Requirements).

2.08A.3.1 [Rule has been deleted]

2.08A.3.2 [Rule has been deleted]

Amended on 27 March 2006, 10 August 2007, 31 December 2013 and 22 April 2019.

2.08A.4

The Clearing House may from time to time prescribe other early warning financial requirements and conditions for exemptions or exceptions therefrom on all or any of the Clearing Members.

2.08B Notification Requirements of Clearing Members Incorporated Outside Singapore

2.08B.1

Each Clearing Member incorporated outside Singapore shall:

2.08B.1.1 in the case of a General Clearing Member or Direct Clearing Member, immediately notify the Clearing House if its financial resources fall below 150% of its total risk requirement;

2.08B.1.2 in the case of a Bank Clearing Member, immediately notify the Clearing House of any event in relation to its regulatory capital and liquidity ratios that is required to be

reported to its Relevant Regulatory Authority; and

2.08B.1.3 in the case of a Remote Clearing Member, immediately notify the Clearing House of any event in relation to its regulatory capital and liquidity ratios that is required to be reported to its Relevant Regulatory Authority, subject to a minimum requirement to notify the Clearing House if its base capital falls below 150% of its minimum risk requirement.

Amended on 10 August 2007, 25 August 2009, 3 November 2010 and 22 April 2019.

2.08B.2

The Clearing House may from time to time prescribe other notification requirements and conditions for exemptions or exceptions therefrom on all or any of the Clearing Members.

Amended on 10 August 2007.

2.08B.3

If the Clearing House is notified by a Clearing Member under Rule 2.08B.1 or becomes aware (whether or not there has been any notification by the Clearing Member under Rule 2.08B.1)that such Clearing Member's adjusted net head office funds or cash and/or acceptable government securities deposited with the Clearing House or CDP pursuant to Rule 2.08.1B.1 (whichever is applicable), have fallen below 150% of its total risk requirement, or that a reportable event in relation to its regulatory capital and liquidity ratios has occurred, the Clearing House may direct such Clearing Member to do one (1) or more of the following actions:—

2.08B.3.1 submit (where applicable), the statements of assets and liabilities, adjusted net head office funds, cash and/or acceptable government securities deposited with the Clearing House or CDP, aggregate indebtedness, total risk requirement and such other statements as required by the Clearing House at such interval and for such time frame as may be determined by the Clearing House;

2.08B.3.2 operate its business, or in the case of a Bank Clearing Member, its business governed by this Rules, in such manner and on such conditions as the Clearing House may impose.

Added on 10 August 2007 and amended on 25 August 2009, 3 November 2010 and 22 April 2019.

2.08C Qualifying Letter of Credit

2.08C.1

For the purpose of Rules 2.08 and 2.08A, a Clearing Member may include one (1) or more qualifying letter(s) of credit deposited with the Clearing House in its calculation of aggregate resources subject to the total amount payable under the qualifying letter(s) of credit or 50% of its total risk requirement, whichever is lower. In the case of a Clearing Member admitted as a clearing member of the Clearing House and CDP, and which has deposited such qualifying letter(s) of credit with CDP, pursuant to the corresponding provisions in the CDP Clearing Rules, it need not deposit another qualifying letter(s) of credit with the Clearing House.

Amended on 10 August 2007, 3 November 2010, 29 December 2014 and 17 July 2019.

2.08C.2

For the purpose of Rule 2.08C.1, a qualifying letter of credit is a legally enforceable and irrevocable letter of credit that:—

2.08C.2.1 is made in favour of the Clearing House;

2.08C.2.2 is issued by a bank approved by, and in a form acceptable to the Clearing House; and

2.08C.2.3 does not include any letters of credit provided by the Clearing Member to satisfy Chapter 7 or Chapter 7A or any other requirement imposed by the Clearing House.

Amended on 10 August 2007 and 7 August 2012.

2.08C.3

The Clearing House reserves the right to call on any of the qualifying letters of credit furnished pursuant to this Rules and apply the proceeds thereof in respect of the Clearing Member's default to the Clearing House and/or its common bond liability under Rule 7A.05 and 7A.06. In the case of a Clearing Member admitted as a clearing member of the Clearing House and CDP, the Clearing House shall have the discretion to apportion in any manner, the use of the proceeds between the Clearing House and CDP. In deciding on the apportionment, the Clearing House may, in consultation with CDP, take into account factors, including but not limited to, the amount owed by the Clearing Member to the Clearing House and CDP respectively.

Amended on 10 August 2007 and 7 August 2012.

2.09 Special Reserve Fund for General Clearing Members Incorporated in Singapore

2.09.1

In addition to the minimum capital and financial requirements in Rule 2.07, every General Clearing Member incorporated in Singapore shall maintain a special reserve fund to which a sum of not less than 30% of the audited net profits of each year shall be transferred out of the net profits after due provision has been made for taxation, so long as the base capital less unappropriated profits in the latest audited accounts is less than S$15,000,000.

Amended on 27 March 2006.

2.09.2

The special reserve fund for the time being set aside pursuant to this Rule 2.09 shall not be available for the declaration of dividends without the prior written approval of the Clearing House.

Amended on 27 March 2006.

2.10 Special Reserve Fund for General Clearing Members Incorporated Outside Singapore

2.10.1

In addition to the minimum capital and financial requirements in Rule 2.08, every General Clearing Member incorporated outside Singapore shall maintain a special reserve fund to which a sum of not less than 30% of the audited net profits of each year shall be transferred out of the net profits after due provision has been made for taxation, so long as the net head office funds is less than S$15,000,000.

Amended on 27 March 2006.

2.10.2

The special reserve fund for the time being set aside pursuant to this Rule 2.10 shall not be available for the declaration of dividends without the prior written approval of the Clearing House.

Amended on 27 March 2006.

2.11 Other Financial Requirements

2.11.1 Reduction in Paid-Up Ordinary Share Capital or Paid-Up Irredeemable and Non-Cumulative Preference Share Capital

2.11.1.1 Each Clearing Member incorporated in Singapore, except in the case of a Bank Clearing Member, shall not reduce its paid-up ordinary share capital or paid-up irredeemable and non-cumulative preference share capital without the prior approval of the Clearing House.

Amended on 27 March 2006, 10 August 2007 and 29 December 2014.

2.11.2 Preference Share

2.11.2.1 Each Clearing Member incorporated in Singapore, except in the case of a Bank Clearing Member, shall immediately notify the Clearing House prior to the date of issue of any preference share.

2.11.2.2 A Clearing Member incorporated in Singapore, except in the case of a Bank Clearing Member, shall not repay the principal of any preference share (other than any paid-up irredeemable and non-cumulative preference share capital) that is computed as part of its financial resources, through repurchase or redemption:—

a. unless the Clearing Member notifies the Clearing House within such time before the proposed date of repurchase or redemption as prescribed by the SFR (Financial and Margin Requirements);

b. if at the date of repurchase or redemption:—

i. the financial resources of the Clearing Member is less than 150% of its total risk requirement; or

ii. the aggregate indebtedness of the Clearing Member exceeds 600% of its aggregate resources;

c. if such a repurchase or redemption will cause an event in Rule 2.11.2.2.b above to occur; or

d. if the Clearing House has prohibited in writing such a repurchase or redemption.

Amended on 27 March 2006, 10 August 2007 and 29 December 2014.

2.11.3 Qualifying Subordinated Loans

2.11.3.1 Each General Clearing Member or Direct Clearing Member incorporated in Singapore, shall immediately notify the Clearing House when it draws down a qualifying subordinated loan no later than the date of draw down.

2.11.3.2 A General Clearing Member or Direct Clearing Member incorporated in Singapore: —

a. shall not repay, whether in part or in full, any subordinated loan principal before the maturity date without the prior approval of the Clearing House;

b. shall not repay, whether in part or in full, any subordinated loan principal that has matured:—

i. unless the Clearing Member notifies the Clearing House at least one (1) Business Day before the date of repayment;

ii. if the financial resources ofthe Clearing Member, are less than 150% of its total risk requirement;

iii. in the case of a General Clearing Member or Direct Clearing Member, if the aggregate indebtedness of the General Clearing Member or Direct Clearing Member exceeds 600% of its aggregate resources;

iv. if such a repayment will cause an event in Rules 2.11.3.2.b.ii or iii to occur; or

v. if the Clearing House has prohibited in writing such a repayment.

Amended on 27 March 2006, 10 August 2007, 29 December 2014 and 22 April 2019.

2.11.4 Making of Unsecured Loan or Advance, Payment of Dividend or Director's Fees or Increase in Director's Remuneration

2.11.4.1 Each Clearing Member, except for a Bank Clearing Member or a Remote Clearing Member, shall not, without the prior written approval of the Clearing House, make any unsecured loan or advance, pay any dividend or director's fees or increase any director's remuneration if:—

a. in the case where the Clearing Member is incorporated in Singapore:—

i. the base capital of the Clearing Member is less than the base capital requirement applicable to the Clearing Member under Rule 2.07;

ii. the financial resources of the Clearing Member are less than 150% of its total risk requirement;

iii. the aggregate indebtedness of the Clearing Member exceeds 600% of its aggregate resources; or

iv. such a loan, advance, payment or increase will cause an event in Rules 2.11.4.1.a.i, ii or iii to occur;

or

b. in the case where the Clearing Member is incorporated outside Singapore:—

i. the net head office funds of the Clearing Member are below the net head office funds requirement applicable to the Clearing Member under Rule 2.08;

ii. the adjusted net head office funds of the Clearing Member are less than 150% of its total risk requirement;

iii. the aggregate indebtedness of the Clearing Member exceeds 600% of its aggregate resources; or

iv. such a loan, advance, payment or increase will cause an event in Rules 2.11.4.1.b.i, ii or iii to occur.

2.11.4.1A A Remote Clearing Member shall notify the Clearing House immediately of any action taken that has or may have a financial or capital impact on the Remote Clearing Member and is required to be reported to the Relevant Regulatory Authority, or in relation to the events set out in Rule 2.11.4.1.

Amended on 27 March 2006, 10 August 2007, 29 December 2014 and 22 April 2019.

2.11.5 [Rule has been deleted.]

Deleted on 19 September 2016.

Rights and Obligations of Clearing Members

2.12 Rights of Clearing Members

2.12.1

Every Clearing Member shall have only such rights and obligations as are set out in the terms and conditions governing its Clearing Membership. Such terms and conditions shall also set out the Contract Class or Contract Classes, as the case may be, that each class of Clearing Membership is eligible to clear. The rights and obligations attaching to such Clearing Member's Clearing Membership may be varied or abrogated by the Clearing House from time to time.

Amended on 27 March 2006, 10 August 2007 and 3 November 2010.

2.12.2

A General Clearing Member can, subject to the Rules and/or unless otherwise notified by the Clearing House:—

2.12.2.1 clear its own trades and trades of Third Parties;

2.12.2.2 by its Clearing Membership with the Clearing House participate in the clearing system established and maintained by the Clearing House to clear Contracts; and

2.12.2.3 have access to each Mutual Offset System.

Amended on 27 March 2006 and 10 August 2007.

2.12.3

A Direct Clearing Member can, subject to the Rules and/or unless otherwise notified by the Clearing House:—

2.12.3.1 clear only its own trades and the proprietary trades of its related corporations; and

2.12.3.2 by its Clearing Membership with the Clearing House participate in the clearing system established and maintained by the Clearing House to clear Contracts.

Added on 10 August 2007.

2.12.4

A Bank Clearing Member can, subject to the Rules and/or unless otherwise notified by the Clearing House:—

2.12.4.1 clear its own trades and trades of Third Parties;

2.12.4.2 by its Clearing Membership with the Clearing House participate in the clearing system established and maintained by the Clearing House to clear Contracts; and

2.12.4.3 have access to each Mutual Offset System.

Added on 10 August 2007.

2.12.5

A Remote Clearing Member can, subject to the Rules and/or unless otherwise notified by the Clearing House:

2.12.5.1 clear its own trades, proprietary trades of its related corporations and trades of Third Parties; and

2.12.5.2 by its Clearing Membership with the Clearing House participate in the clearing system established and maintained by the Clearing House to clear only Non-Relevant Market Contracts.

Added on 31 December 2013 and amended on 17 July 2019.

2.12A [Rule has been deleted.]

Added on 27 March 2006 and deleted on 10 August 2007.

2.13 Duties and Responsibilities of Clearing Members

2.13.1

A Clearing Member shall, subject to the Rules, also have the following responsibilities and duties:—

2.13.1.1 To maintain bank accounts in the currencies that may incur settlement and with banks acceptable to the Clearing House;

2.13.1.2 Subject to the same being accepted by the Clearing House, (i) to clear Non-Relevant Market Contracts and/or Contracts made on any Relevant Market by such members of

the Relevant Market with whom it has agreed to clear, and (ii) to clear Connect Contracts made by such members with whom it has agreed to clear;

2.13.1.3 Not to directly carry any account and/or clear any Contract for the direct or indirect benefit of an employee or officer of another Clearing Member if such employee or officer shall be trading for his own account, unless the prior written approval of that other Clearing Member has been obtained;

2.13.1.4 Not to provide funds, credit or finance to any other Clearing Member or a member of any Relevant Market for any purpose except with the prior written approval of the Clearing House, and except that this Rule 2.13.1.4 shall not apply to Bank Clearing Members;

2.13.1.5 To provide and maintain such Clearing Fund Deposit as specified in Rule 7A.06.2 in addition to any security deposit requirement that may be required of it as a Clearing Member of the Clearing House;

2.13.1.6 To maintain minimum capital and financial requirements as specified in Rule 2.07 or 2.08;

2.13.1.7 To clear such Contracts made on any Relevant Market by any person through any approved electronic trading terminal or facilities provided to it or to such members of the Relevant Market to whom it shall have agreed to provide clearing services;

2.13.1.8 To have in place sufficient resources and establish and maintain adequate internal control and risk management system, including written risk management policies and procedures, for its business, and in the case of a Bank Clearing Member, its business governed by this Rules;

2.13.1.8A Where the Clearing Member is registered with and regulated by the CFTC, including as an FCM, swap dealer or major swap participant, it shall make information and documents regarding its risk management policies, procedures and practices directly available to the CFTC upon the CFTC's request; and

2.13.1.9 To comply with such other requirements as may be prescribed by the Clearing House from time to time.

Amended on 27 March 2006, 10 August 2007, 7 August 2012, 8 November 2012, 31 December 2013, 12 November 2018 and 29 July 2022.

2.13A Business Continuity Requirements

Refer to Practice Note 2.13A.

2.13A.1

A Clearing Member must assess its business and operational risks and maintain adequate business continuity arrangements.

2.13A.2

A Clearing Member must document its business continuity arrangements in a business continuity plan.

2.13A.3

A Clearing Member's senior management shall be responsible for the Clearing Member's business continuity plan. Sufficient awareness of the risks, mitigating measures and state of readiness must be demonstrated by way of an attestation to the Clearing Member's Board of Directors.

2.13A.4

A Clearing Member must review and test its business continuity plan regularly.

2.13A.5

A Clearing Member must appoint emergency contact persons, and furnish the contact information of such persons to the Clearing House. The Clearing Member's emergency contact persons must be contactable at all times, and must immediately notify the Clearing House in the event of emergencies.

Added on 22 January 2009.

2.14 Required Records and Reports

2.14.1

Each Clearing Member shall prepare, maintain and keep current those books and records required by this Rules, the SFA any applicable laws. Such books and records shall be open to inspection and promptly provided to the Clearing House upon request.

Amended on 27 March 2006 and 31 December 2013.

2.14.2

Each Clearing Member must file any information requested by the Clearing House within the time period specified in the request.

2.14.3

Each Clearing Member shall maintain at all times the ability to provide to the Clearing House in an acceptable form a complete set of equity system reports (including, at a minimum, the equity run, open position listing, day trade listing, cash adjustments listing and margin call and debit equity listing). Such reports shall forthwith be available to the Clearing House upon the Clearing House's request. Where such request is made at or before 12 p.m. on a Business Day (the "Request Date"), the Clearing Member shall report the required information up to and as at the two (2) Business Days immediately before the Request Date, and where such request is made after 12 p.m. on a Business Day, the Clearing Member shall report the required information up to and as at the Business Day immediately before the Request Date.

2.14.3A

Each Clearing Member shall submit to the Clearing House, in the manner as prescribed from time to time:—

2.14.3A.1 a report on all its credit facilities with its financial institutions, on a monthly basis.

2.14.3A.2 any change to its credit facilities, including variation of credit limits and addition or termination of credit facilities, immediately upon such change.

2.14.3A.3 the identities of the owners or controlling parties for any House Account or Customer Account which:

a. is used for trading of Contracts or carrying of Contracts; or

b. contains positions required to be reported pursuant to Rules 7.09.1 and 7.16.1;

within such time as prescribed by the Clearing House.

Added on 22 September 2006.

2.14.3B

A Clearing Member must maintain separate accounts for each person whose account is carried on the books of the Clearing Member.

Added on 26 April 2013.

2.14.4

Where a Clearing Member at any time fails to make or keep current the books and records required by the Clearing House it shall notify the Clearing House of such failure on the same day, specifying the relevant books and records, and shall thereafter comply with all orders of the Clearing House.

Violation of this Rule may be a major offence.

Amended on 27 March 2006.

2.14.5

2.14.5.1 In addition to the foregoing requirements under Rule 2.14, each Remote Clearing Member shall submit to the Clearing House:

a. any other reports, including any early warning reports, which may be required to be provided by the Remote Clearing Member to its home regulator; and

b. any other reports, including any early warning reports, which may be required to be provided by the Remote Clearing Member to a self-regulatory organisation with oversight over the Remote Clearing Member, if applicable.

2.14.5.2 In addition to the other applicable requirements under Rule 2.14, each FCM Clearing Member shall submit to the Clearing House:

a. accurate and complete information—

i. the first time it clears on behalf of a Cleared Swaps Customer, to enable the identification of such Cleared Swaps Customer; and

ii. at least once each business day thereafter or on such more frequent basis as the Clearing House may require, to enable the identification of the positions of Cleared Swaps Customers and associated Cleared Swaps Customer Collateral, including the amount of Cleared Swaps Customer Collateral posted in excess of that required by the Clearing House, in accordance with the requirements of Part 22 of the CFTC Regulations; and

b. the financial reports specified in CFTC Regulation 1.10.

Added on 31 December 2013.

2.14.6

A Clearing Member who:

a. reports, or clears on behalf of a customer who reports, to a swap data repository under Part 45 of the CFTC Regulations; or

b. is, or clears on behalf of a customer who is, a U.S. person as construed by the CFTC,

shall as soon as technologically practicable after registration of a Non-Relevant Market Transaction or an OTCF Transaction for clearing with the Clearing House:

1. report all primary economic terms data of the relevant transaction, as defined in CFTC Regulation 45.1, to the Clearing House; and

2. inform the Clearing House of the identity of the swap data repository that the relevant transaction was previously reported to, if any.

Added on 31 December 2013 and amended on 1 May 2014.

2.15 Audit Requirements

2.15.1 Statutory Audit Report for General Clearing Members

Without prejudice to such audit and/or reporting requirements as may be imposed by the Clearing House from time to time, a General Clearing Member shall furnish to the Clearing House within five (5) months of the end of its financial year or within such longer period as may be permitted in writing by the Clearing House, the relevant forms which a General Clearing Member is required to lodge in the prescribed format under Regulation 27(9) of the SFR (Financial and Margin Requirements), the annual accounts duly audited by, and the certificate of, its auditor or auditors who shall be a public accountant or a firm of public accountants acceptable to the Clearing House. The certificate shall pertain to the audit conducted by such auditor or auditors in respect of the financial year aforesaid and shall be in such form prescribed by the Relevant Regulatory Authority.

2.15.1.1 [Rule has been deleted.]

2.15.1.2 [Rule has been deleted.]

2.15.1.3 [Rule has been deleted.]

2.15.1.4 [Rule has been deleted.]

Reporting obligations of auditors

2.15.1.5 Where, in the performance of his or their duties, the General Clearing Member's auditor or auditors becomes or become aware:—

a. of any matter which in his or their opinion adversely affects or may adversely affect the financial position of the General Clearing Member to a material extent,

b. of any matter which in his or their opinion constitutes or may constitute a contravention of any provision of the SFA or this Rules, or an offence involving fraud or dishonesty,

c. of any irregularity that has or may have a material effect upon the accounts, including irregularities that jeopardise the moneys or other assets of any customer of the General Clearing Member, or

d. that the accounting system, internal accounting control and procedures for safeguarding moneys or other assets are inadequate and the inadequacies have a material effect on the accounts,

the auditor or auditors shall immediately report the matter to the Clearing House.

Amended on 27 March 2006, 10 August 2007 and 22 April 2019.

2.15.1A Audit Report for Direct Clearing Members

Without prejudice to such audit and/or reporting requirements as may be imposed by the Clearing House from time to time, a Direct Clearing Member shall furnish to the Clearing House within five (5) months of the end of its financial year or within such longer period as may be permitted in writing by the Clearing House, the relevant forms which a Direct Clearing Member is required to lodge in the prescribed format under Rule 2.26, the annual accounts duly audited by, and the certificate of, its auditor or auditors who shall be a public accountant or a firm of public accountants acceptable to the Clearing House. The certificate shall pertain to the audit conducted by such auditor or auditors in respect of the financial year aforesaid and shall be in such form prescribed by the Relevant Regulatory Authority.

2.15.1A.1 [Rule has been deleted.]

2.15.1A.2 [Rule has been deleted.]

2.15.1A.3 [Rule has been deleted.]

2.15.1A.4 [Rule has been deleted.]

Reporting obligations of auditors

2.15.1A.5 Where, in the performance of his or their duties, the Direct Clearing Member's auditor or auditors becomes or become aware:—

a. of any matter which in his or their opinion adversely affects or may adversely affect the financial position of the Direct Clearing Member to a material extent,

b. of any matter which in his or their opinion constitutes or may constitute a contravention of any provision of this Rules or an offence involving fraud or dishonesty, or

c. of any irregularity that has or may have a material effect upon the accounts,

the auditor or auditors shall immediately report the matter to the Clearing House.

Added on 27 March 2006 and amended on 10 August 2007 and 22 April 2019.

2.15.1B Audit Report for Bank Clearing Members

Without prejudice to such audit and/or reporting requirements as may be imposed by the Clearing House from time to time, a Bank Clearing Member shall furnish to the Clearing House within five (5) months of the end of its financial year or within such longer period as may be permitted in writing by the Clearing House, the annual accounts duly audited by, and the certificate of its auditor or auditors. The certificate shall pertain to the audit conducted by such

auditor or auditors in respect of the financial year aforesaid and shall be in such form prescribed by the Relevant Regulatory Authority.

2.15.1B.1 [Rule has been deleted.]

2.15.1B.2 [Rule has been deleted.]

2.15.1B.3 [Rule has been deleted.]

2.15.1B.4 [Rule has been deleted.]

Reporting obligations of auditors

2.15.1B.5 Where, in the performance of his or their duties, the Bank Clearing Member's auditor or auditors becomes or become aware:—

a. of any matter which in his or their opinion adversely affects or may adversely affect the financial position of the Bank Clearing Member to a material extent,

b. of any matter which in his or their opinion constitutes or may constitute a contravention of any applicable provision of the SFA or this Rules or an offence involving fraud or dishonesty,

c. of any irregularity in the Bank Clearing Member's business governed by this Rules, that has or may have a material effect upon the accounts, including irregularities that jeopardise the moneys or other assets of any customer of the Bank Clearing Member, or

d. that the accounting system, internal accounting control and procedures for safeguarding moneys or other assets are inadequate and the inadequacies have a material effect on the accounts,

the auditor or auditors shall immediately report the matter to the Clearing House.

Added on 10 August 2007 and amended on 22 April 2019.

2.15.1C Audit Reports for Remote Clearing Members

Without prejudice to such audit and/or reporting requirements as may be imposed by the Clearing House from time to time, a Remote Clearing Member shall furnish to the Clearing House:

2.15.1C.1 within five (5) months of the end of its financial year or within such longer period as may be permitted in writing by the Clearing House, the management report and the annual accounts duly audited in accordance with the usual accounting standards of the Remote Clearing Member by, and the certificate of, its auditor or auditors who shall be a public accountant or a firm of public accountants acceptable to the Clearing House. The auditor's certificate shall be in such form prescribed by the Relevant Regulatory Authority.

a. [Rule has been deleted.]

b. [Rule has been deleted.]

c. [Rule has been deleted.]

d. [Rule has been deleted.]

Reporting obligations of auditors

e. where, in the performance of his or their duties, the Remote Clearing Member's auditor or auditors becomes or become aware:

i. of any matter which in his or their opinion adversely affects or may adversely affect the financial position of the Remote Clearing Member to a material extent;

ii. of any matter which in his or their opinion constitutes or may constitute a contravention of any provision of this Rules, the SFA and/or any applicable laws or an offence involving fraud or dishonesty;

iii. of any irregularity that has or may have a material effect upon the accounts, including irregularities that jeopardize the moneys or other assets of any customer of the Remote Clearing Member; or

iv. that the accounting system, internal accounting control and procedures for safeguarding moneys or other assets are inadequate and the inadequacies have a material effect on the accounts,

the auditor or auditors shall immediately report the matter to the Clearing House; and

2.15.1C.2 [Rule has been deleted.]

Added on 31 December 2013 and amended on 22 April 2019.

2.15.2 Internal Audit Report

A General Clearing Member, Remote Clearing Member or Bank Clearing Member shall cause its internal auditors to conduct an internal audit of its operations annually or at such times and within such scope as prescribed by the Clearing House and to submit a report of each internal audit conducted and the follow-up actions taken to the Clearing House by such time as may be prescribed by the Clearing House. Without prejudice to the foregoing, where the internal audit is conducted for a Bank Clearing Member, it shall be limited to the Bank Clearing Member's operations governed by this Rules.

Amended on 27 March 2006, 10 August 2007 and 31 December 2013.

2.16 [Rule has been deleted.]

Deleted on 27 March 2006.

2.17 Limit on Lending to Directors, Officers or Employees of General Clearing Members

2.17.1.1 A General Clearing Member or Remote Clearing Member must not grant, whether directly or indirectly, any unsecured advance, unsecured loan or unsecured credit facility as defined in the SFR (Licensing and Conduct of Business) to any of its directors (other than a director who is also its employee) or to a person who to its knowledge, is a connected person as defined in the SFA of such director.

2.17.1.2 Subject to Rule 2.17.1.1 and section 162 of the Act, a General Clearing Member or Remote Clearing Member must not grant, whether directly or indirectly, any unsecured advance, unsecured loan or unsecured credit facility to its officers (other than a director

who is not its employee) or its employees (a "relevant person") which in the aggregate and outstanding at any one time exceeds one year's emoluments of such relevant person.

2.17.1.3 For the purpose of Rule 2.17.1.2, any unsecured advance, unsecured loan or unsecured credit facility granted by a General Clearing Member or Remote Clearing Member to any person to purchase, subscribe for or trade in any capital markets product for:—

a. the account of a relevant person of the General Clearing Member or Remote Clearing Member;

b. an account in which a relevant person of the General Clearing Member or Remote Clearing Member has an interest;

c. an account of any person who acts jointly with, under the control of, or in accordance with, the direction of a relevant person of the General Clearing Member or Remote Clearing Member; or

d. an account of any connected person (as defined in the SFA) of a relevant person of the General Clearing Member or Remote Clearing Member, where the connected person is not himself a relevant person of the General Clearing Member or Remote Clearing Member,

shall be deemed to be an unsecured advance, unsecured loan or unsecured credit facility granted by the General Clearing Member or Remote Clearing Member to that relevant person.

Amended on 27 March 2006, 10 August 2007 and 31 December 2013.

2.17.2 [Rule has been deleted.]

Deleted on 27 March 2006.

2.18 Segregation of Customer's Money, Securities and Property

2.18.1 General

2.18.1.1 A General Clearing Member or Bank Clearing Member shall ensure that it shall at all times inform and keep the Clearing House informed of such information as would be required for the Clearing House to enable it to discharge its segregation obligations under the SFA and/or to enable the Clearing House to issue to the Authority the verification of margin funds statement placed with the Clearing House as required under the SFA.

Amended on 27 March 2006 and 10 August 2007.

2.18.2 [Rule has been deleted.]

Deleted on 26 April 2013.

2.18.3 Miscellaneous

Nothing in this Rules shall be regarded, treated, or otherwise interpreted as obliging or requiring the Clearing House to recognise any right or entitlement of any Third Party including a Customer unless required to do so by the provisions of the SFA. Any attempt on the part of a

Clearing Member to fix the Clearing House with notice of any fact or claim otherwise would be a violation of this Rule.

Violation of this Rule shall be a major offence.

2.19 Omnibus Account

2.19.1 Clearing Requirements

A Clearing Member carrying Omnibus Accounts must maintain with the Clearing House a complete list of all such accounts, and shall notify the Clearing House in writing within three (3) Business Days from the time such an account is either opened or closed. Information for each Omnibus Account must include the account holder's name, account number and the account holder's address, and such other information as the Clearing House may require, and classification of the account as either "Customer" or "House".

2.19.2 Restrictions

The Clearing House is empowered to place restrictions or limitations on each Clearing Member which carries Omnibus Accounts. In making these determinations, the Clearing House may consider:—

2.19.2.1 the number of Omnibus Accounts carried and volume of business of the Clearing Member;

2.19.2.2 the financial condition of the Clearing Member and the Omnibus Account Holder in light of requirements or standards determined by the Clearing House; and

2.19.2.3 the Clearing Member's clearing facilities and capacity.

Amended on 27 March 2006.

2.19.3 Responsibility

A Clearing Member that maintains an Omnibus Account shall be responsible to the Clearing House to ensure that the Omnibus Account is operated at all times in accordance with all relevant provisions of this Rules including the relevant rules on position limits and position accountability, and shall, without prejudice to any other liability it may have, indemnify the Clearing House for any loss or damage or prejudice that the Clearing House may suffer referable to a violation of this Rule (including such loss, damage or costs the Clearing House incurs in taking such measures as it deems in good faith necessary to preserve the integrity of the Clearing House and/or the Exchange in relation to any claim referable to such violation).

Amended on 27 March 2006 and 3 August 2020.

2.19.4 Disclosure

An Omnibus Account Holder shall at all times disclose to the Clearing Member carrying that account the gross long and short positions held by that Omnibus Account in each Commodity. Such Clearing Member shall immediately notify the Clearing House and shall promptly comply with all orders of the Clearing House if the Omnibus Account Holder fails to make such disclosure.

An Omnibus Account Holder shall, prior to the first delivery day in a Delivery Month or as otherwise required by the Clearing House, provide the Clearing Member carrying that account

with a complete list of the purchase and sale dates of all open positions for that Delivery Month. Such list shall be kept up to date throughout the Delivery Month in order that the delivery procedure of the Clearing House not be impaired.

A Clearing Member that maintains an Omnibus Account shall ensure that its Omnibus Account Holders are aware of this Rule 2.19.

Amended on 22 September 2006.

2.20 Limits of Positions

2.20.1

The Clearing House may from time to time establish limits on the positions owned or controlled by any person or persons acting in concert with respect to any Contracts including the Designated Futures Contracts and the Connect Contracts.

Amended on 29 July 2022.

2.20.2

Any person may request for an increase in initial position limit or previously approved position limit by making an application to the Clearing House on forms provided by Clearing House through its Clearing Member carrying the relevant positions for its account on the books of the Clearing Member.

2.20.3

In conjunction with the foregoing, a Clearing Member shall ensure at all times that:—

2.20.3.1 each of its Customers and their respective related corporations for whom such Clearing Member also maintains accounts as Customers of the Clearing Member (each such Customer and its related corporations to be hereafter referred to as the "Collective Customer"); and

2.20.3.2 each House Account carried on its books (collectively the "Collective House Accounts"),

shall comply with the respective position limits as may be applicable to them individually or collectively as may be prescribed by the Clearing House from time to time.

2.20.4 [Rule has been deleted.]

Deleted on 3 August 2020.

2.20A Accumulation of Positions

2.20A.1

The positions of all accounts directly or indirectly owned or controlled by a person or persons, and the positions of all accounts of a person or persons acting pursuant to an express or implied agreement or understanding, and the positions of all accounts in which a person or persons have a proprietary or beneficial interest, shall be cumulated and deemed to be

positions of each such persons as if each owned or controlled all cumulated positions individually.

Added on 27 March 2006.

2.20A.2

Where any person has exceeded such position limits imposed or approved by the Clearing House, or exceeds such position accountability thresholds, the Clearing House, if it deems it necessary, may subject the Clearing Member to one or more of the following:

1. to cease any further increase in the person’ s positions;
2. to liquidate the person’ s positions to comply with the position limits or to reduce it below the position accountability thresholds within such time as may be prescribed by the Clearing House;
3. to be subject to higher margin requirements as the Clearing House may impose, in respect of the positions; or
4. to trade under such conditions and restrictions as the Clearing House may consider necessary to ensure compliance with the prescribed position limits or to reduce the positions below such position accountability thresholds.

Added on 3 August 2020.

2.20B Withholding of Profits from Overtrading

2.20B.1

The Clearing Member shall upon being notified by the Clearing House, withhold:

a. any profits due or owing to its Collective Customer or its Collective House Account from any transaction traded on any Relevant Market and cleared through the Clearing House, that resulted in the Collective Customer trading beyond the limits set by the Clearing Member, Relevant Market, the Clearing House or MAS (such conduct referred to hereafter as "overtrading"); and

b. such monies due or owing to its Collective Customer or its Collective House Account as directed by the Clearing House,

and shall not release any such profits or monies until such time as determined by the Clearing House.

Added on 1 October 2009 and amended on 31 December 2013.

2.20B.2

Without prejudice to the foregoing, the Clearing House may withhold any profits due or owing to any Clearing Member from the transaction that resulted in overtrading, or such monies due or owing to such Clearing Member, until such time as determined by the Clearing House.

Added on 1 October 2009.

2.20C Position Accountability

2.20C.1

Upon request by the Clearing House, a Clearing Member shall provide information, including but not limited to, the nature and size of the position, the trading strategy employed with respect to the position, and hedging information (if applicable) of any Person or Persons acting in concert with respect to any Contract when such position accountability thresholds have been exceeded.

Added on 3 August 2020.

2.21 Covenant

2.21.1

Each Clearing Member shall ensure that its Memorandum and Articles of Association or its constitution shall at all times conform to this Rules so as to enable it to observe and perform fully the covenants, terms, stipulations, conditions and other provisions of this Rules and, in so far as may be necessary, each Clearing Member shall amend its Memorandum and Articles of Association or constitution accordingly.

Amended on 27 March 2006.

2.22 Change or Intended Change

2.22.1

Without prejudice to any other provisions of this Rules, every Clearing Member shall forthwith notify the Clearing House upon, or where practicable, pre-notify the Clearing House of, the happening of all or any of the following events:—

2.22.1.1 except for a Bank Clearing Member, any change in the legal or beneficial ownership of 20% or more of such Clearing Member's share capital and any subsequent increase of 5% or more of such Clearing Member's share capital;

2.22.1.1A in the case of a Bank Clearing Member:

(a) any change in the legal or beneficial ownership of that Bank Clearing Member's share capital ; and

(b) any subsequent increase of that Bank Clearing Member's share capital

above any thresholds imposed by any law or regulation to which that Bank Clearing Member is subject.

2.22.1.2 any change in any circumstances which will have or may have the effect of altering the control of itself;

2.22.1.3 any change in the composition of its board of directors or of any director, or in the case of a Bank Clearing Member, any change in the composition of its board of directors or of any director, who are/is resident in Singapore and/or responsible for its business governed by this Rules, due to the appointment, removal or resignation of any of its directors. For the purpose of this Rule 2.22.1.3, a change of director includes a change in the director's appointment from a non-executive director to an executive director;

2.22.1.4 any change in its name;

2.22.1.5 any change or amendment to its Memorandum or Articles of Association or constitutive documents, notice of which should be given at least seven (7) days prior to

the change or amendment being effected, except in the case of a Bank Clearing Member, notification will be furnished to the Clearing House by such times that a Bank Clearing Member has to notify MAS under the Banking Act 1970, or any regulation or directive issued thereunder;

2.22.1.6 any death or bankruptcy of any of its directors or in the case of a Bank Clearing Member, its directors who are resident in Singapore and/or responsible for its business governed by this Rules;

2.22.1.7 the engagement or involvement or proposed engagement or involvement in any new business or any change in any of its business(es) or in the case of a Bank Clearing Member, its business governed by this Rules. For the purpose of this Rule 2.22.1.7, examples of such new business or change in business include, without limitation, market making and product financing activities;

2.22.1.8 any change in its senior management, or in the case of a Bank Clearing Member, its senior management responsible for the Bank Clearing Member's business governed by this Rules; and

2.22.1.9 any application is contemplated or proposed to be made by the Clearing Member for registration as an FCM with the CFTC.

Amended on 27 March 2006, 25 August 2009, 3 November 2010, 31 December 2013, 8 October 2018 and 18 January 2022.

2.22.2

Such notice or pre-notification shall be in writing and shall be supplied with full particulars of the relevant event together with such further information as the Clearing House may require.

2.22.3

The Clearing House may upon the happening of any of the events described in the preceding Rules 2.22.1.1 to 2.22.1.3 require such Clearing Member to submit itself within five (5) days of the date of its notice (or within such longer period as may be permitted in writing by the Exchange) for re-election as though applying for Clearing Membership for the first time.

Amended on 27 March 2006.

2.23 Notification of Reduction in Capital and Under-Segregation

2.23.1

Every Clearing Member shall:—

2.23.1.1 except in the case of a Bank Clearing Member or a Remote Clearing Member, report to the Clearing House within 48 hours of occurrence of any reduction in excess of 20% in its financial resources or adjusted net head office funds, as the case may be, from the previously submitted financial statement; or

2.23.1.2 except in the case of a Direct Clearing Member, immediately report to the Clearing House of any under-segregation of money, assets or properties margins as required under this Rules, the SFA and/or any applicable laws; or

2.23.1.3 in the case of a Bank Clearing Member or a Remote Clearing Member, report to the Clearing House within 48 hours of occurrence of any reduction in excess of 20% in its regulatory capital from the previously submitted financial statement.

Amended on 27 March 2006, 10 August 2007, 31 December 2013 and 22 April 2019.

2.24 Appointment of Chief Executive Officer, Deputy Chief Executive Officer

2.24.1

No General Clearing Member, Remote Clearing Member or Direct Clearing Member may appoint a chief executive officer or deputy chief executive officer unless prior written approval of the Clearing House is obtained.

Amended on 10 August 2007 and 31 December 2013.

2.24.2 [Rule has been deleted.]

Deleted on 10 August 2007.

2.24.2A

A Bank Clearing Member must notify the Clearing House in writing at least seven (7) days prior to the appointment of any chief executive officer or deputy chief executive officer.

Added on 10 August 2007 and amended on 25 August 2009.

2.24.3 [Rule has been deleted.]

Deleted on 10 August 2007.

2.25 Appointment of Auditors

2.25.1

A Clearing Member, except for a Bank Clearing Member, shall, unless exempted in writing by the Clearing House, at least thirty (30) days prior to any general meeting whereat new auditors are to be appointed notify the Clearing House in writing of such meeting and shall consult the Clearing House on such appointment.

Amended on 10 August 2007.

2.25.2

A Bank Clearing Member shall inform the Clearing House of the appointment of any new auditors within seven (7) days of such appointment.

Added on 10 August 2007.

2.26 Special Call for Financial Statements

2.26.1

The Clearing House may at any time require any Clearing Member to submit to the Clearing House, as the case may be, financial statements in such form and pertaining to such matters and within such time as may be stipulated by the Clearing House promptly. The Clearing Member shall thereafter comply with such directions as the Clearing House may in its sole discretion issue. Failure to comply with such requirement shall be a major offence.

Amended on 27 March 2006.

2.26.2

Each Clearing Member must make and keep as a record formal computations of its capital and financial requirements pursuant to:—

a. in the case of a General Clearing Member, Rules 2.07, 2.07A, 2.07B, 2.07C, 2.08, 2.08A, 2.08B, 2.08C, 2.09 and 2.10;

b. in the case of a Direct Clearing Member, Rules 2.07, 2.07A, 2.07B, 2.07C, 2.08, 2.08A, 2.08B and 2.08C;

c. in the case of a Bank Clearing Member, Rules 2.07, 2.07B, 2.08 and 2.08B; or

d. in the case of a Remote Clearing Member, Rules 2.08 and 2.08B,

as of the close of business each month, or in the case of capital adequacy report of Bank Clearing Members, quarterly. The computations must be in such form as the Clearing House may prescribe and submitted to the Clearing House within fourteen (14) calendar days after the end of each month, or such time frame as the Clearing House may prescribe.

Amended on 27 March 2006, 10 August 2007, 31 December 2013 and 22 April 2019.

2.26.3 [Rule has been deleted.]

Added on 27 March 2006 and deleted on 10 August 2007.

2.27 Request for Information

2.27.1

Each Clearing Member except in the case of a Bank Clearing Member or a Remote Clearing Member, shall immediately notify the Clearing House when any Customer Account and any House Account is under-margined by an amount which exceeds its aggregate resources, except that no notification is required for the Clearing Member's own proprietary House Accounts.

Amended on 27 March 2006, 10 August 2007 and 22 April 2019.

2.27.1A

Each Bank Clearing Member or Remote Clearing Member shall immediately notify the Clearing House when required to do so by the Clearing House when any Customer Account and any House Account is under-margined by such amount as may be determined by the Clearing House.

Added on 27 March 2006 and amended on 10 August 2007 and 22 April 2019.

2.27.2

For the purpose of this Rule 2.27, the full amount of qualifying letters of credit deposited pursuant to Rule 2.07 or 2.08C above shall be taken into account for the calculation of aggregate resources.

Amended on 10 August 2007.

2.27.3

Failure to comply with such requirement shall be a major offence.

2.28 Voluntary Suspension and Resignation

2.28.1

A Clearing Member may at any time request the Clearing House to suspend its Clearing Membership. The Clearing House may give effect thereto upon such terms and conditions as the Clearing House may decide.

2.28.2

Any Clearing Member may resign upon giving notice in writing thereof to the Clearing House. Such resignation shall be effective upon the Clearing Member closing out its positions in all Contracts, subject to a minimum period of 30 days from the Clearing House's receipt of its notice of resignation (such period of 30 days being hereafter referred to as the "Minimum Notice Period"). Notwithstanding the foregoing, the Clearing House shall have the discretion to vary the effective date of resignation in the case of a defaulted or suspended Clearing Member.

Amended on 7 August 2012.

2.28.2A

In respect of all events of default declared by the Clearing House, which occurrence takes place at or after such time that the Clearing House receives a Clearing Member's notice of resignation and before its effective date of resignation (such period being hereafter referred to as the "Notice Period"), the following shall apply:

2.28.2A.1 the Clearing House shall apply the resigning Clearing Member's Clearing Fund Deposit and Further Assessment Amount in accordance with Rules 7A.01A.2B and 7A.01A.2D, except that the aggregate amount applied in respect of all such events of default shall be subject always to a limit of no more than two (2) times of the resigning Clearing Member's Clearing Fund Deposit requirement and Further Assessment Amount as at the time the Clearing House receives its notice of resignation.

2.28.2A.2 [This rule has been deleted]

This Rule 2.28.2A shall apply provided always that the Clearing Member complies with Rule 2.28.2B.

Added on 7 August 2012 and amended on 29 July 2013, 30 June 2014, 12 November 2018 and 17 July 2019.

2.28.2B

Unless otherwise permitted by the Clearing House or required under this Rules, a resigning Clearing Member shall not undertake any transactions which have the effect of increasing its positions in any Contract during its Notice Period.

Added on 7 August 2012.

2.28.2C

If a resigning Clearing Member breaches Rule 2.28.2B at any time during the Notice Period, Rule 2.28.2A.1 shall not apply to such Clearing Member in their entirety and instead the following shall apply:

2.28.2C.1 such Clearing Member shall have all the obligations under this Rules of a non-resigning Clearing Member in respect of all events of default under Rule 7A.01A.1 occurring during the Notice Period; and

2.28.2C.2 if, due to the operation of Rule 2.28.2A.1, any amount of such Clearing Member's:

a. Clearing Fund Deposit requirement; or

b. Further Assessment Amount; or

c. both,

has not been used and applied by the Clearing House in accordance with Rules 7A.01A.2B and 7A.01A.2D, the Clearing House shall have the authority to call for and apply such amount as if the assessment had been utilised in the first instance in accordance with Rules 7A.01A.2B and 7A.01A.2D.

Added on 7 August 2012 and amended on 29 July 2013, 30 June 2014, 12 November 2018 and 17 July 2019.

2.28.2D

Notwithstanding Rule 2.28.2A, a resigning Clearing Member shall have no obligations in relation to any event of default, other than its own, occurring at or after such time that the following conditions have been met:

2.28.2D.1 the Minimum Notice Period has lapsed; and

2.28.2D.2 the resigning Clearing Member has no open positions in any Contract other than positions acquired in relation to an event of default occurring during the Notice Period, by way of:

a. an auction pursuant to Rule 7A.02.1.3.c.

b. [This rule has been deleted]

Added on 7 August 2012 and amended on 30 June 2014 and 17 July 2019.

2.28.3

Subject to Rule 2.28.2A and Rule 2.28.2D, a resignation shall not in any way affect the rights and liabilities of the Clearing Member to the Clearing House and other Clearing Members and

all such rights and liabilities shall subsist until satisfied or discharged.

Amended on 7 August 2012.

2.28.4

Where proceedings have been commenced against any Clearing Member which resigns, such proceedings may with the consent of the Clearing House be stayed or terminated.

Amended on 7 August 2012.

2.28A Clearing Arrangements with Trading Members

Added on 11 January 2011.

2.28A.1

In order to clear the trades of a Trading Member, a Clearing Member shall:—

2.28A.1.1 inform the Clearing House of such clearing arrangement with the Trading Member, and if the Clearing House requests, such details of the Trading Member as the Clearing House may from time to time specify;

2.28A.1.2 pay such administrative fee as the Clearing House may from time to time levy for the processing of such applications;

2.28A.1.3 satisfy the Clearing House that it has in place adequate internal control measures and risk management systems, including automated pre-execution credit control checks, to monitor the Trading Member's trades and manage its risk exposure to such trades;

2.28A.1.4 enter into a written agreement with the Trading Member setting out the terms and conditions governing their relationship, which shall include without limitation, risk management provisions such as the right to impose trading limits on the Trading Member;

2.28A.1.5 undertake to inform the Clearing House if it has knowledge or has reasons to believe that a Trading Member whom it has a clearing arrangement with has defaulted or may default in any of its obligations under the trades transacted by the Trading Member; and

2.28A.1.6 have processes in place to minimise and manage any conflicts of interest, including but not limited to separating its front office and back office functions.

Added on 11 January 2011 and amended on 15 March 2013.

2.28A.2

If a Clearing Member wishes to cease clearing the trades of its Trading Member, it shall:—

2.28A.2.1 give not less than 30 days' written notice (or such shorter period as the Clearing House may from time to time deem acceptable) to the Clearing House of its intention to cease clearing the trades of that Trading Member and the proposed date of cessation, provided always that the Clearing House may waive such notice requirement at any time with respect to any Clearing Member;

2.28A.2.2 satisfy the Clearing House that it has taken before the proposed date of cessation proper steps to disable the Trading Member from entering into trades to be cleared by the Clearing Member;

2.28A.2.3 satisfy the Clearing House that it has taken, or will take, proper steps for the orderly clearing and settlement of the Trading Member's trades;

2.28A.2.4 comply with any reasonable direction of the Clearing House in relation to the orderly cessation of the clearing of the Trading Member's trades; and

2.28A.2.5 take such steps including without limitation, procedural steps (whether of a technical or non-technical nature or otherwise) as the Clearing House may deem appropriate to ensure that none of the Trading Member's trades will be cleared and settled through the Clearing Member by the proposed date of cessation.

Added on 11 January 2011.

2.28A.3

If a Clearing Member wishes to suspend its clearing arrangement with a Trading Member, it shall:—

2.28A.3.1 notify the Clearing House of its decision to suspend its clearing arrangement with that Trading Member; and

2.28A.3.2 comply with any reasonable direction of the Clearing House in relation to the suspension of the clearing of the Trading Member's trades.

Added on 11 January 2011.

2.28A.4

A Clearing Member may suspend its clearing arrangement with a Trading Member for not more than 30 days. Before the end of the 30-day period, the Clearing Member must notify the Clearing House in writing of its intention to either resume with the clearing arrangement or cease clearing for the Trading Member. Where the Clearing Member intends to cease clearing for the Trading Member, Rule 2.28A.2 shall apply.

Added on 11 January 2011.

2.28A.5

Notwithstanding the cessation or suspension of the clearing arrangement, the Clearing Member shall clear and settle all the trades of the Trading Member which are done right up to the point when the Trading Member has been disabled from entering trades to be cleared by the Clearing Member.

Added on 11 January 2011.

2.28B Fictitious Transactions Without Change in Ownership

Added on 19 September 2016.

2.28B.1

A Clearing Member shall ensure that it does not clear any trade where the beneficial interest in both sides of the trade belongs to the same person. The Clearing Member's record keeping and audit trails must show that it has taken reasonable measures to establish that both sides of the trade belong to different beneficial owners.

This Rule does not apply in the following circumstances:

a. the trade originates from a fund manager whose instructions are to switch the contract from one sub-account to another for legitimate commercial reasons;

b. each side of the trade will be booked out finally to different beneficial owners;

c. if the Clearing Member establishes to the Clearing House that the creation of a false market was not a purpose of the trade.

Added on 19 September 2016.

2.29 [Rule has been deleted.]

Deleted on 22 September 2006.

2.30 [Rule has been deleted.]

Deleted on 7 August 2012.

2.30.1 [Rule has been deleted.]

Deleted on 7 August 2012.

2.30.1A [Rule has been deleted.]

Deleted on 7 August 2012.

2.30.2 [Rule has been deleted.]

Deleted on 7 August 2012.

2.31 [Rule has been deleted.]

Deleted on 7 August 2012.

2.31.1 [Rule has been deleted.]

Deleted on 7 August 2012.

2.31.2 [Rule has been deleted.]

Deleted on 7 August 2012.

2.32 [Rule has been deleted.]

Deleted on 7 August 2012.

2.32.1 [Rule has been deleted.]

Deleted on 7 August 2012.

2.33 [Rule has been deleted.]

Deleted on 7 August 2012.

2.33.1 [Rule has been deleted.]

Deleted on 7 August 2012.

2.33.2 [Rule has been deleted.]

Deleted on 7 August 2012.

2.34 Market Disorders, Impossibility of Performance, Emergency Situations and Powers

Amended on 15 September 2017.

2.34.1

Without prejudice to Rule 1.01.2, if the Clearing House determines that one (1) of the following conditions is satisfied, namely:—

(a) a state of war or emergency exists or is imminent or threatened and is likely to affect or has affected the normal course of business, including, but not limited to, performance under any open contract;

(b) the government of any nation, state or territory or any institution or agency thereof has proclaimed or given notice of its intention to exercise, vary or revoke controls which appear likely to affect the normal course of business, including, but not limited to, performance under any open contract;

(c) any international organisation, or any institution or agency thereof, has introduced, varied, terminated or allowed to lapse any provision so as to be likely to affect the normal course of business, including, but not limited to, performance under the open contract; or has given notice of its intention to do so or appears to be about to do so;

(d) it is necessary or desirable for ensuring a fair and orderly market or for ensuring a safe and efficient clearing facility, or for ensuring the integrity of the market or for proper management of systemic risk in the market,

then:—

2.34.1.1 the Clearing House shall be entitled to close out a contract at a price determined by the Clearing House or to require such Clearing Members to comply with any directions issued by the Clearing House regarding the performance of, or any other direction in respect of, the open contract;

2.34.1.2 accounts shall be made up by the Clearing House for each Clearing Member who is a party to the open contract to be closed out as aforesaid. Settlement of such accounts shall be due immediately and settlement thereof shall be made forthwith in discharge of the open contract closed out notwithstanding any further change of circumstances; and

2.34.1.3 the Clearing House shall be entitled to take such other action or require one or more Clearing Members to take such action as it deems necessary or desirable.

Amended on 27 March 2006 and 26 April 2013.

2.34.1A

If a Clearing Member has been found guilty of a rule violation or is found to have a record of frequent rule violations and inadequate management, which in the opinion of the Clearing House, places or may place the Clearing House at risk or the financial condition of such Clearing Member is such that it jeopardizes or may jeopardize the integrity of the Clearing House, the Clearing House may carry out one (1) or more of the following against the Clearing Member:—

2.34.1A.1 order it to cease and desist from conduct found to be in violation of this Rules;

2.34.1A.2 prescribe such additional capital requirements as the Clearing House deems necessary;

2.34.1A.3 prescribe such position limits as the Clearing House deems necessary;

2.34.1A.4 impose a fine against it, not exceeding S$250,000;

2.34.1A.5 order the Clearing Member to liquidate all or any portion of the open contracts cleared by it which are open contracts under its House Accounts and/or open contracts of its Customers as the Clearing House deems necessary for ensuring a fair and orderly market or for ensuring the integrity of, and proper management of systemic risk in the organised market and/or transfer all or any portion of the open contracts clearing by such Clearing Member to one (1) or more Clearing Members; and

2.34.1A.6 reprimand, suspend, expel or impose such other sanction or penalty or take such other actions it deems fit against such Clearing Member.

Added on 27 March 2006 and amended on 8 October 2018.

2.34.1B

If the Clearing House determines that an emergency exists which threatens the financial integrity of the Clearing House or any of the Clearing Members, it may take any of the actions referred to at Rules 2.34.1A.1 to 2.34.1A.6 and/or order special or advance margins or funds to be deposited with the Clearing House from all or any Clearing Member(s) or from Clearing Members having cleared particular long, and/or short contracts which remain open.

As soon as practicable, the Authority shall be notified of such actions. Nothing in this Rule 2.34 shall in any way limit the authority of the Clearing House, SGX RegCo or any other committee or person or entity referred to under Rule 1.01.8 to act in an emergency situation in accordance with this Rules.

Amended on 15 September 2017 and 3 June 2019.

2.34.2

If the Clearing House determines in accordance with this Rules that an excessive position or unwarranted speculation or any other undesirable situation or practice is developing or has developed which is affecting or capable of affecting a market in a Commodity or any Contract, the Clearing House:

(a) may take such action in respect of one (1) or more open contracts for such Commodity or such Contract in a Clearing Member's name as may be provided by this Rules, or as may be agreed between the Relevant Market in respect of such Commodity or such Contract and the Clearing House; and

(b) shall be entitled to take such other action or require one or more Clearing Members to take such action as it deems necessary or desirable.

Amended on 26 April 2013.

2.34.3

Without prejudice to the generality of Chapter 1, the Clearing House, its related corporations, SGX RegCo, any person or entity referred to under Rule 1.01.8, and their respective directors, officers, employees, representatives and agents shall not be liable to any Clearing Member or any Third Party in respect of any damage, loss, cost or expense of whatsoever nature (whether direct, indirect, special or consequential, including without limitation any loss of business, revenue, goodwill, bargain or profit), suffered or incurred by such Clearing Member or Third Party, arising out of or in connection with, or arising out of or in connection with any thing done or not done as a direct or indirect consequence of, the exercise or non-exercise of powers under Rule 2.34 or the determination of the satisfaction or non-satisfaction of any condition for the exercise of such powers.

Added on 26 April 2013 and amended on 15 September 2017 and 3 June 2019.

2.35 Force Majeure

2.35.1

Without prejudice to Rule 1.01.2, none of the Clearing House, its related corporations, SGX RegCo, any person or entity referred to under Rule 1.01.8, and their respective directors, officers, employees, representatives or agents ("Relevant Persons") shall be liable for, or for any thing done or not done as a direct or indirect consequence of, any failure, hindrance or delay in performance in whole or in part of the Clearing House's obligations under the terms of this Rules or of any Contract if such failure, hindrance or delay arises out of events or circumstances beyond the Relevant Person's control. Such events or circumstances may include, but are not limited to, acts of God or the public enemy, acts of a civil or military authority other than the acts referred in Rule 2.34 above, embargoes, fire, flood, labour dispute, unavailability or restriction of computer or data processing facilities, energy supplies, or of bank transfer systems or wires, and any other causes beyond the Relevant Person's reasonable control.

Amended on 27 March 2006, 15 September 2017 and 3 June 2019.

2.35.2

On the happening of any one (1) or more of the events or circumstances referred to in Rule 2.35.1 above, the Clearing House and any party affected shall immediately notify the same to the relevant party or parties.

Amended on 27 March 2006.

2.35.3

In respect of affected Contracts, the Clearing House shall be entitled at any time after the receipt of such notice by the Clearing House or any relevant Clearing Member or Third Party, to close out some or all Contracts in the relevant Clearing Member's name at a price determined by the Clearing House, or to take such other action as it deems necessary or desirable in respect of some or all of the affected Contracts in the relevant Clearing Member's name or require the relevant Clearing Member to take such action as the Clearing House may direct in respect of the same.

2.35.4

Without prejudice to the generality of the foregoing, the Relevant Persons shall not be liable for, or for any thing done or not done as a direct or indirect consequence of, any failure, hindrance or delay in the performance (in whole or in part) of any of the Clearing House's obligations to Clearing Members with regard to any securities or instruments accepted as margin where such failure, hindrance or delay arises from causes beyond the Clearing House's control, such as but not limited to the failure whether partial or total, interruption or suspension of any depository or custodian or other service ("depository", which expression shall include banks or financial institutions with which cash, securities or instruments are placed with) the Clearing House is using, the termination or suspension of the Clearing House's membership or use of the depository or any variation of the depository's operational timetable, whether or not occasioned by action of the depository operator or other party, or any embargo, unavailability or restriction of bank transfer systems or wires, malfunction or overload of the depository or other emergency.

Amended on 15 September 2017 and 3 June 2019.

2.35A [Rule has been deleted.]

Deleted on 7 August 2012.

2.35A.1 [Rule has been deleted.]

Deleted on 7 August 2012.

2.35A.2 [Rule has been deleted.]

Deleted on 7 August 2012.

2.35A.3 [Rule has been deleted.]

Deleted on 7 August 2012.

2.35A.4 [Rule has been deleted.]

Deleted on 7 August 2012.

2.35A.5 [Rule has been deleted.]

Deleted on 7 August 2012.

2.35A.6 [Rule has been deleted.]

Deleted on 7 August 2012.

2.35A.7 [Rule has been deleted.]

Deleted on 7 August 2012.

2.35A.8 [Rule has been deleted.]

Deleted on 7 August 2012.

2.36 Fees, Levies and Charges

2.36.1

The Clearing House may from time to time for the purposes of meeting the expenses of the Clearing House or otherwise, impose fees, levies and charges to be paid by Clearing Members in such respects and on such terms as the Clearing House may prescribe. The Clearing House shall give notice of such fees, levies and charges by means of Directives or other means as the Clearing House in its sole discretion shall deem fit.

A Clearing Member who fails to pay any fee, levy or charge within thirty (30) days of it becoming payable shall be notified in writing by the Clearing House of such arrears. If the arrears are not paid in by the Clearing Member within ten (10) days of the date of despatch of such notice, the Clearing Member shall be subject to disciplinary proceedings in accordance with this Rules.

2.37 Contract Clause

2.37.1

All Contracts including Designated Futures Contracts shall be made subject to this Rules, the SFA, SFR and any other applicable laws and all Clearing Members shall ensure that in their agreements with any Third Party to provide its clearing services that it be so provided and agreed.

Amended on 27 March 2006, 12 October 2005 and 31 December 2013.

2.38 The Authority

2.38.1

The responsibility for the conduct and supervision of the Clearing House shall rest with the Board but the Clearing House shall be subject to the supervision of the Authority and any Other Regulator. The Clearing House may enter into arrangements with the Authority as in the opinion of the Board may be conducive to the objectives of the Clearing House and for the supervision of the Clearing House, and the Clearing House may give to the Authority or (subject to the confidentiality provisions of the SFA, SFR, this Rules and/or any applicable laws) any Other Regulator any information or document relating to transactions in the Clearing House or relating to any Clearing Member or any other person who shall be subject to this Rules.

Amended on 31 December 2013.

2.39 Information and Reports

2.39.1

The Clearing House may from time to time make available to a Relevant Market (or its clearing house) all information and documents:

(a) relating to the transactions in respect of any Contract traded on such Relevant Market; or

(b) relating to any Clearing Member in respect of such Contract traded on such Relevant Market.

Without prejudice to the generality of the foregoing the Clearing House may from time to time provide a Relevant Market (or its clearing house) with reports on the large positions as determined by the Clearing House from time to time) in any Contract traded on the Relevant Market on the books of any of its Clearing Members. For the avoidance of doubt, this Rule shall apply to the provision of information or documents to a Participating Market, in relation to transactions in respect of Designated Futures Contracts.

The Clearing House may from time to time provide any information in relation to any Clearing Member or its account(s) to the Exchange.

Amended on 1 October 2009.

2.40 [Rule has been deleted.]

Deleted on 27 March 2006.

2.41 [Rule has been deleted.]

Deleted on 27 March 2006.

2.42 [Rule has been deleted.]

Deleted on 27 March 2006.

2.43 Notice to Clearing Members

2.43.1

Except as otherwise specifically provided by this Rules, any notice to any Clearing Member shall be effected by way of letter or facsimile or any electronic means (as the Clearing House shall in its sole discretion deem fit) and, in the case of delivery by letter or facsimile, respectively posted or delivered personally to the last known address or sent to the facsimile number of the Clearing Member as notified to the Clearing House.

2.43.2

Such notice to the Clearing Member shall be deemed to have been duly served, if delivered personally, immediately upon delivery, or if transmitted by facsimile, upon the generation of a successful transmission report from the facsimile machine, or if sent by prepaid post, two (2) days (for local mail) and seven (7) days (for overseas airmail) after posting and in proving the same it shall be sufficient to show that such notice, demand or communication was (in the case of delivery) duly addressed, or (in the case of sending by prepaid post) contained in an envelope which was duly addressed, stamped and posted, or (in the case of facsimile

transmission) was duly transmitted from the despatching facsimile machine, as evidenced by a successful transmission report generated by such machine.

Chapter 3 Committees

3.01 Disciplinary Committee

3.01.1

The Disciplinary Committee may conduct hearings and investigations on those matters over which it is assigned jurisdiction by Chapter 4.

3.01.2

The Disciplinary Committee comprises persons appointed by the SGX RegCo Board and shall not have a member, who is, or who within three years of the proposed appointment date was, a director, officer or employee of:

3.01.2.1 SGX; or

3.01.2.2 any of SGX's related corporations.

Added on 27 March 2006 and amended on 15 September 2017 and 3 June 2019.

3.01.3

The SGX RegCo Board shall appoint the chairman and deputy chairman of the Disciplinary Committee. In the absence of the chairman, the deputy chairman will have all the powers of the chairman.

Added on 27 March 2006 and amended on 15 September 2017 and 3 June 2019.

3.01.4 [Rule has been deleted.]

Deleted on 3 June 2019.

3.01.5 [Rule has been deleted.]

Deleted on 3 June 2019.

3.01.6 [Rule has been deleted.]

Deleted on 3 June 2019.

3.01.7 [Rule has been deleted.]

Deleted on 3 June 2019.

3.01.8

Procedures may be issued in relation to Disciplinary Committee proceedings. The procedures are binding on all the parties to the proceedings and may be varied by the Disciplinary Committee as provided in the procedures or this Rules. Where any matter is not dealt with by the procedures or this Rules, the Disciplinary Committee may establish its own procedures.

Refer to the [Disciplinary Committee and Appeals Committee Handbook].

Added on 27 March 2006 and amended on 3 June 2019.

3.02 Appeals Committee

3.02.1

The Appeals Committee may conduct appellate hearings and investigations over which it is assigned jurisdiction by Chapter 4.

3.02.2

The Appeals Committee shall comprise persons appointed by the SGX RegCo Board and approved by the Authority provided that:—

3.02.2.1 the Appeals Committee shall not have a member who is, or who within three years of the proposed appointment date was, a director, officer or employee of:

(a) SGX;

(b) any or any of SGX's related corporations

3.02.2.2 a majority of the Appeals Committee shall not be directors, officers or employees of the members of SGX or SGX's subsidiaries; and

3.02.2.3 a majority of the Appeals Committee shall not be substantial shareholders of SGX or directors, officers or employees of any substantial shareholder of SGX.

Added on 27 March 2006 and amended on 15 September 2017 and 3 June 2019.

3.02.3

The powers of the Appeals Committee include:—

3.02.3.1 all the powers of the Disciplinary Committee;

3.02.3.2 varying the sanctions imposed by the Disciplinary Committee, and overturning, varying or upholding any decision or specific findings of the Disciplinary Committee;

3.02.3.3 hearing and deciding appeals in accordance with this Rules; and

3.02.3.4 dealing with such other matters as the SGX RegCo Board gives it (either generally or in a particular case).

Added on 27 March 2006 and amended on 15 September 2017 and 3 June 2019.

3.02.3A

A failure to comply with any sanction imposed by the Appeals Committee constitutes a breach of this Rules.

Added on 3 June 2019.

3.02.4

The SGX RegCo Board shall appoint the chairman and the deputy chairman of the Appeals Committee. In the absence of the chairman, the deputy chairman will have all the powers of the chairman.

Added on 27 March 2006 and amended on 3 June 2019.

3.02.5 [Rule has been deleted.]

Deleted on 3 June 2019.

3.02.6 [Rule has been deleted.]

Deleted on 3 June 2019.

3.02.7 [Rule has been deleted.]

Deleted on 3 June 2019.

3.02.8 [Rule has been deleted.]

Deleted on 3 June 2019.

3.02.9

Procedures may be issued in relation to Appeals Committee proceedings. The procedures are binding on all the parties to the proceedings and may be varied by the Appeals Committee as provided in the procedures or this Rules. Where any matter is not dealt with by the procedures or this Rules, the Appeals Committee may establish its own procedures.

Refer to the [Disciplinary Committee and Appeals Committee Handbook].

Amended on 3 June 2019.

Chapter 4 Enforcement of Rules

4.01 General Provision

4.01.1

This Rules are intended to ensure the financial integrity of the Clearing House and to try to ensure its ability to discharge its clearing or other obligations to the Relevant Markets and to provide protection to its Clearing Members against unwarranted liability arising otherwise than as a consequence upon its own clearing of Contracts. To that end, the Clearing House may carry out investigations and may establish committees to hear charges or appeals and impose fines or other disciplinary actions for violations of any provision of this Rules.

Amended on 27 March 2006 and 15 September 2017.

4.01A Clearing House Investigations

4.01A.1

The Clearing House may conduct an investigation if:—

4.01A.1.1 the investigation involves a possible breach of the SFA, SFR, this Rulesand/or any applicable laws;

4.01A.1.2 the Clearing House receives a written complaint involving a Clearing Member, director, officer, employee or agent;

4.01A.1.3 there is a dispute between Clearing Members on a clearing or settlement matter; or

4.01A.1.4 in the Clearing House's opinion, the circumstances warrant.

Added on 27 March 2006 and amended on 31 December 2013.

4.01A.2

The Clearing House will conduct an investigation if the Authority or any Other Regulator directs.

Added on 27 March 2006 and amended on 31 December 2013.

4.01A.3

The Clearing House may require a Clearing Member, any of its directors, officers, employees or agents to:—

4.01A.3.1 render all assistance as the Clearing House requires, at the Clearing House's premises or elsewhere; and

4.01A.3.2 provide the Clearing House with information, books and records which, in the Clearing House's opinion, may be relevant to the investigation.

Added on 27 March 2006.

4.01A.4

A Clearing Member, director, officer, employee or agent must not wilfully make, furnish or permit the making or furnishing of any false or misleading information, statement or report to the Clearing House.

Added on 27 March 2006.

4.01A.5

The Clearing House may appoint any person or persons to assist in its investigation (the "Clearing House Examiners").

Added on 27 March 2006.

4.01A.6

The Clearing House may delegate all or any of its powers under this Rule to the Clearing House Examiner. The Clearing House Examiner must report the results of the investigation to the Clearing House.

Added on 27 March 2006.

4.01B Clearing House Inspections

4.01B.1

The Clearing House may conduct an inspection on a Clearing Member at any time, and may appoint any person or persons to conduct the inspection (the "**Clearing House Inspectors**").

Added on 27 March 2006.

4.01B.2

A Clearing Member, director, officer, employee or agent must give the Clearing House Inspector access to all information, books and records as requested. For the avoidance of doubt, reference to "information, books and records" in relation to a Bank Clearing Member shall refer to information, books and records falling within the Bank Clearing Member's business governed by this Rules.

Added on 27 March 2006.

4.01B.3

The Clearing House will give a copy of the inspection report to the Clearing Member concerned.

Added on 27 March 2006.

4.01B.4

The Clearing House may charge a fee for the inspection. The fee is payable immediately by Clearing Members.

Added on 27 March 2006.

4.02 [Rule has been deleted.]

Deleted on 27 March 2006.

4.02A Disciplinary Action

4.02A.1

If an investigation or inspection reveals that a Clearing Member has breached any Rules, the Clearing House may take any of the following forms of disciplinary action, namely:

4.02A.1.1 to charge the Clearing Member before the Disciplinary Committee;

4.02A.1.2 to make an offer of composition to the Clearing Member, if an investigation or inspection reveals that the Clearing Member may have breached any Rule which is indicated in the third column of Schedule A as being compoundable; or

4.02A.1.3 to issue a letter of warning to the Clearing Member.

Amended on 27 March 2006 and 16 May 2011.

4.02A.1A

If the Clearing Member does not accept the offer of composition or comply with the terms of the composition within the stipulated time as prescribed by the Clearing House, the Clearing House may refer the said Clearing Member to the Disciplinary Committee.

Added on 16 May 2011.

4.02A.2

No proceeding or determination in respect of a Rule violation shall be annulled, avoided, called into question or set aside by reason of the fact that the matter under consideration may or should have been dealt with by another committee under this Rules, or that the person concerned was absent from the hearing or any adjournments thereof despite having been given notice thereof.

Amended on 27 March 2006.

4.02B Composition by the Clearing House.

4.02B.1

The Clearing House may make an offer of composition to a Clearing Member if an investigation or inspection shows that the Clearing Member may have breached any Rules. The terms of the offer of composition include payment of a specified sum to the Clearing House and may include the fulfillment of any accompanying terms that the Clearing House may prescribe.

Added on 16 May 2011.

4.02B.2

Upon payment of the specified sum and fulfillment of the accompanying terms by the Clearing Member within the stipulated time, no further proceedings shall be taken against that Clearing Member for that Rule violation.

Added on 16 May 2011.

4.02B.3

Acceptance of the offer of composition by the Clearing Member amounts to an admission of liability and the Member will be deemed to have committed the conduct described in the charge.

Added on 16 May 2011.

4.02B.4

In respect of Rule violations which the Clearing House may offer composition, guidelines on the range of composition which the Clearing House may offer to a Clearing Member who has committed a Rule violation are indicated in Schedule A.

Added on 16 May 2011.

4.02B.5

The Clearing House retains the discretion to offer composition to a Clearing Member of an amount which does not fall within these guidelines, except that the amount of composition that the Clearing House may offer to a Clearing Member shall not exceed S$10,000 for each Rule violation.

Added on 16 May 2011.

4.02B.6

Notwithstanding that a Rule violation is indicated as being compoundable or may be compoundable under Schedule A, the Clearing House retains the discretion not to make an offer of composition to the Clearing Member but instead, to charge the Clearing Member before the Disciplinary Committee.

Added on 16 May 2011.

4.02B.7

If the Clearing House has made an offer of composition, it will not commence disciplinary proceedings against a Clearing Member until after the stipulated period for the offer lapses.

Added on 16 May 2011.

4.02B.8

For the purposes of determining whether a Rule violation is classified as a first, second, third or subsequent offence under Schedule A, only previous violations under the same Rule will be taken into consideration.

Added on 16 May 2011.

4.03 [Rule has been deleted.]

Deleted on 27 March 2006.

4.03A Disciplinary Committee Powers

4.03A.1

The Clearing House may initiate disciplinary proceedings and charge a Clearing Member before the Disciplinary Committee if the Clearing House is of the opinion that the Clearing Member has committed any of the following: —

4.03A.1.1 breaches the SFA;

4.03A.1.2 subject to Rules 4.02B.2 and 4.02B.7, breaches this Rules;

4.03A.1.3 breached any relevant laws or regulations that govern the Clearing Member's other business activities;

4.03A.1.4 breached the rules of any other exchange;

4.03A.1.5 engaged in fraud or dishonesty, whether in or out of Singapore;

4.03A.1.6 breached directors' duties;

4.03A.1.7 engaged in conduct that has the effect of circumventing the SFA, SFR, this Rules and/or any other applicable laws or regulations; or

4.03A.1.8 engaged in conduct detrimental to the financial integrity, reputation, interests or operation of the Clearing House.

Added on 27 March 2006 and amended on 31 December 2013 and 3 June 2019.

4.03A.1A

The Disciplinary Committee shall, as a tribunal of first instance hear and determine charges brought by the Clearing House against a Clearing Member pursuant to Rule 4.03A.1. The Disciplinary Committee may exercise its powers against a Clearing Member if it is satisfied, on a balance of probabilities, that the Clearing Member has committed any of the matters set out in Rule 4.03A.1.

Added on 3 June 2019.

4.03A.2

The Disciplinary Committee may exercise its powers against a Clearing Member if a director, officer, employee or agent breaches, or causes the Clearing Member to breach this Rules.

Added on 27 March 2006.

4.03A.3

A former Clearing Member, is bound by this Rules in respect of acts or omissions occurring before expulsion. The Clearing House and the Disciplinary Committee retain their respective jurisdiction notwithstanding expulsion.

Added on 27 March 2006.

4.03A.4

The powers of the Disciplinary Committee include:—

4.03A.4.1 expelling a Clearing Member. The Disciplinary Committee may order a Clearing Member to be expelled notwithstanding that he has resigned;

4.03A.4.2 suspending a Clearing Member;

4.03A.4.3 imposing a fine not exceeding S$250,000 per charge, or in the case of multiple charges, not exceeding S$1,000,000 per hearing, or, in the case of a delivery contract, any other amount as specified in the relevant contract specifications on a Clearing Member;

4.03A.4.4 reprimanding (publicly or privately) a Clearing Member;

4.03A.4.5 requiring an education program to be undertaken;

4.03A.4.6 requiring a compliance program to be undertaken;

4.03A.4.7 imposing any restrictions or conditions on activities that a Clearing Member undertakes or in the case of a Bank Clearing Member, its business governed by this Rules;

4.03A.4.8 requiring reimbursement or compensation to be paid;

4.03A.4.9 ordering payment of fines by instalments, which shall not exceed 12 months from the date of imposition of the fine, unless otherwise permitted by the Disciplinary Committee;

4.03A.4.10 ordering a stay of the penalty imposed, pending an appeal to the Appeals Committee;

4.03A.4.11 requiring any director or in the case of a Bank Clearing Member, any director or person in a senior management position who is responsible for its business governed by this Rules, to step down from day-to-day conduct of the business affairs of the Clearing Member; and

4.03A.4.12 confirming, changing, or discharging the appointment of a manager to manage the business of the Clearing Member or in the case of a Bank Clearing Member, its business governed by this Rules. The Disciplinary Committee will fix the remuneration of the manager, which must be paid by the Clearing Member. The Clearing Member is solely responsible for the manager's acts and defaults. The manager must carry out directions given by the Disciplinary Committee in relation to the business of the Clearing Member, including carrying on the business of the Clearing Member in accordance with instructions.

Added on 27 March 2006 and amended on 10 August 2007, 22 February 2010 and 3 June 2019.

4.03A.5

4.03A.5 Mandatory Minimum Penalties to be Imposed by Disciplinary Committee for certain Rule Violations.

Where a mandatory minimum penalty has been stipulated for a particular Rule violation in the seventh column of Schedule A, the Disciplinary Committee:

a. shall impose a penalty not lower than such minimum amount; and

b. may choose to impose, in addition to the penalty in Rule 4.03A.5(a), any one or more of the sanctions as set out in Rule 4.03A.4.

Added on 16 May 2011 and amended on 3 June 2019.

4.03A.6

A failure to comply with any sanction imposed by the Disciplinary Committee constitutes a breach of this Rules.

Added on 3 June 2019.

4.04A Disciplinary Committee Proceedings

4.04A.1 [Rule has been deleted.]

Deleted on 3 June 2019.

4.04A.2 [Rule has been deleted.]

Deleted on 3 June 2019.

4.04A.3 [Rule has been deleted.]

Deleted on 3 June 2019.

4.04A.4 [Rule has been deleted.]

Deleted on 3 June 2019.

4.04A.5 [Rule has been deleted.]

Deleted on 3 June 2019.

4.04A.6 [Rule has been deleted.]

Deleted on 3 June 2019.

4.04A.7 Decision of Disciplinary Committee

4.04A.7.1 [deleted]

4.04A.7.2 The Disciplinary Committee shall provide written grounds of its decision, which shall include any sanctions imposed against the Clearing Member, within a reasonable period after the conclusion of the hearing.

4.04A.7.3 The Disciplinary Committee shall cause its written grounds of decision to be published, unless the sanction imposed involves the issuance of a private reprimand. Where a private reprimand is issued by the Disciplinary Committee, the Disciplinary Committee shall determine whether the written grounds of decision are to be published in part or in whole.

4.04A.7.4 Each Clearing Member irrevocably consents to the publication of the Disciplinary Committee's written grounds of decision pursuant to Rule 4.04A.7.3. The consent will remain valid and effective notwithstanding that the Clearing Member ceases to be a Clearing Member. A Clearing Member cannot initiate any action or proceeding against the Clearing House or the Disciplinary Committee for such publication.

Amended on 3 June 2019.

4.05A Appeals

4.05A.1

The Clearing House or the Clearing Member charged may appeal to the Appeals Committee against the decision of the Disciplinary Committee.

Added on 27 March 2006.

4.05A.2

The decision of the Appeals Committee is final and binding.

Amended on 27 March 2006.

4.06A Appeals Proceedings

4.06A.1 [Rule has been deleted.]

Deleted on 3 June 2019.

4.06A.2 [Rule has been deleted.]

Deleted on 3 June 2019.

4.06A.3 Appeals By Rehearing

The Appeals Committee will determine the appeal by way of rehearing. It will only rehear that part of the decision of the Disciplinary Committee appealed against.

Added on 27 March 2006 and amended on 3 June 2019.

4.06A.4 [Rule has been deleted.]

Deleted on 3 June 2019.

4.06A.5 [Rule has been deleted.]

Deleted on 3 June 2019.

4.06A.6 [Rule has been deleted.]

Deleted on 3 June 2019.

4.06A.7 [Rule has been deleted.]

Deleted on 3 June 2019.

4.06A.8 Decision of Appeals Committee

4.06A.8.1 [deleted]

4.06A.8.2 The Appeals Committee shall provide written grounds of decision,which shall include any sanctions imposed against the Clearing Member, within a reasonable period after the conclusion of the hearing.

4.06A.8.3 The Appeals Committee shall cause its written grounds of decision to be published, unless the sanction imposed involves the issuance of a private reprimand. Where a private reprimand is issued by the Appeals Committee, the Appeals Committee shall determine whether the written grounds of decision are to be published in part or in whole.

4.06A.8.4 Each Clearing Member irrevocably consents to the publication of the Disciplinary Committee's written grounds of decision pursuant to Rule 4.06A.8.3. The consent will remain valid and effective notwithstanding that the Clearing Member ceases to be a Clearing Member. A Clearing Member cannot initiate any action or proceeding against the Clearing House or the Appeals Committee for such publication.

Amended on 3 June 2019.

4.07 [Rule has been deleted.]

Deleted on 27 March 2006.

4.07A Payment of Costs

4.07A.1

The Disciplinary Committee or Appeals Committee may require the Clearing Member charged to pay all or part of the costs of the investigation, inspection or hearing.

Added on 27 March 2006.

4.07A.2

The Disciplinary Committee or Appeals Committee may order the costs awarded to be paid within fourteen (14) days.

Added on 27 March 2006.

4.07A.3

Where an order for costs of the proceedings has been imposed against a Clearing Member and the Clearing Member does not make payment within the specified period, the outstanding sum shall be a debt payable to the Clearing House. The Clearing House may commence legal action to recover that debt, subject to any subsequent payments made by the Clearing Member. The Clearing House shall be entitled to claim reasonable interest, a month after the payment is due, based on the sum outstanding.

Added on 3 June 2019.

4.08 [Rule has been deleted.]

Deleted on 27 March 2006.

4.08A Fine

4.08A.1

A fine must be paid within fourteen (14) days from the date of notice, or such longer time as the chairman of the Disciplinary Committee or the Appeals Committee (as applicable), or his nominee, permits.

Added on 27 March 2006.

4.08A.2

If the fine remains unpaid after the deadline, the Clearing Member's access to the clearing system established and maintained by the Clearing House may be suspended. The suspension ends upon full payment of the fine.

Added on 27 March 2006.

4.08A.3

Where a fine has been imposed against a Clearing Member and the Clearing Member does not make payment within the specified period, the outstanding sum shall be a debt payable to the Clearing House. The Clearing House may commence legal action to recover that debt, subject to any subsequent payments made by the Clearing Member. The Clearing House shall be entitled to claim reasonable interest, a month after the payment is due, based on the sum outstanding.

Added on 3 June 2019.

4.09 [Rule has been deleted.]

Amended on 12 October 2005 and deleted on 27 March 2006.

4.09A Notification of Decision

4.09A.1

The Clearing House will notify all Clearing Members and Authorised Clearing Members of all charges established by the Disciplinary Committee (together with such details as the Clearing House thinks appropriate).

Added on 8 June 2005.

4.09A.2

The Clearing House may make the decision public (together with such details as the Clearing House thinks appropriate). For avoidance of doubt, this includes publication of the following information:—

4.09A.2.1 the particulars of the Clearing Member charged;

4.09A.2.2 the particulars of the charge;

4.09A.2.3 the underlying facts in respect of the charge;

4.09A.2.4 the findings and decision of the Disciplinary Committee or the Appeals Committee (as applicable);

4.09A.2.5 the basis of the findings and decision of the Disciplinary Committee or the Appeals Committee (as applicable); and

4.09A.2.6 the powers exercised by the Disciplinary Committee or the Appeals Committee (as applicable).

Added on 8 June 2005 and amended on 27 March 2006.

4.09A.3

This Rule operates as irrevocable consent by a Clearing Member and an Authorised Clearing Member for the Clearing House to publish or notify a decision. The consent remains valid and effective notwithstanding that the person ceases to be a Clearing Member or Authorised Clearing Member. A Clearing Member or Authorised Clearing Member cannot initiate any action or proceeding against the Clearing House or members of the Disciplinary Committee or Appeals Committee for publishing or notifying a decision under this Rule.

Added on 8 June 2005.

4.09B Limitation of Liability

4.09B.1

No liability (whether in contract, tort or otherwise) shall be incurred by the Disciplinary Committee, Appeals Committee, the Clearing House, or a manager appointed under Rule 4.03A.4.12 for anything done or omitted to be done with reasonable care and in good faith in the course of or in connection with:

(1) the exercise or purported exercise of any power under the Rules;

(2) the performance or purported performance of any function or duty under the Rules; or

(3) the compliance or purported compliance with the Rules.

Added on 3 June 2019.

4.10 Classification of Offences

4.10.1

Offences under this Rules shall be classified into major offences and minor offences.

4.10.2

Major offences may be dealt with by expulsion, suspension, fine not exceeding S$250,000 or, in the case of a delivery contract, as provided in the relevant Contract Specifications or by both suspension and fine.

Amended on 27 March 2006 and 22 February 2010.

4.10.3

Minor offences may be dealt with by a fine not exceeding S$10,000 or suspension for not more than one (1) year, or both.

4.11 Continuous Offences

4.11.1

Each occasion on which a rule violation occurs or is repeated shall be regarded as a distinct offence. Where the rule violation concerned results in a condition or state of affairs that unless rectified is liable to continue, the Clearing Member shall be liable to pay, on being called upon to do so by the Clearing House or, if the Clearing Member has been charged, the relevant body hearing the matter, a fine not exceeding S$250,000 in the case of a major offence, or a fine not exceeding S$10,000 in the case of a minor offence, as the Clearing House or the relevant body hearing the matter may determine, for every day during which the said rule violation, condition or state of affairs continues.

Amended on 27 March 2006 and 15 September 2017.

4.12 Major Offences

4.12.1

It shall be a major offence for a Clearing Member charged to:—

4.12.1.1 be guilty of fraud or any act of bad faith or of any dishonest conduct;

4.12.1.2 make a material mis-statement to the Clearing House, SGX RegCo, any committee, any person or entity referred to under Rule 1.01.8, or their respective employees and members;

4.12.1.3 not to take steps to prevent further Contracts having to be cleared by it after its insolvency;

4.12.1.4 refuse to appear before the Clearing House, in connection with any investigation, or any committee at a duly convened hearing, or in connection with any investigation, refuse to fully answer all questions or produce all books and records at any audit hearing or investigation, or give false testimony, or fail to produce any books or records requested by the Clearing House staff in connection with an investigation within thirty (30) days after such request is made or fail to appear at a scheduled staff interview unless good cause is shown for such failure to appear;

4.12.1.5 make use of or reveal any confidential information obtained by reason of participating in any investigative proceeding or hearing;

4.12.1.6 fail to maintain minimum financial requirements or fail to maintain the required Clearing Fund Deposit;

4.12.1.7 commit an act which is substantially detrimental to the interests of the Clearing House;

4.12.1.8 refuse to comply with a final arbitration award;

4.12.1.9 refuse, after hearing, to comply with an order of any hearing committee;

4.12.1.10 violate any provision under this Rules which cites such violation as a major offence;

4.12.1.11 fail to comply with any written directive from the Clearing House or any other officer or committee of the Clearing House (including but not limited to any Circular, notice, letter or memorandum signed by the Clearing House or such officer or committee); and

4.12.1.12 fail or neglect to maintain or keep complete and accurate records in accordance with the SFA and/or SFR or this Rules.

Amended on 27 March 2006, 15 September 2017, 12 November 2018 and 3 June 2019.

4.12.2

For the avoidance of doubt, it shall be a major offence for a Clearing Member to:—

4.12.2.1 make, or cause to be made, a false or misleading entry, in hardcopy or electronic form, in any books, records, reports, slips, documents, or statements relating to the business, affairs, transactions, conditions, assets or accounts ("the Documents") of a Clearing Member;

4.12.2.2 omit from making, for whatever reason, a material entry in any of the Documents; or

4.12.2.3 alter or destroy any of the Documents without a valid reason.

Without prejudice to the foregoing, it may, at the determination of the Clearing House, be a major offence if a Clearing Member commits an offence or violation as a member of any Relevant Market.

Amended on 27 March 2006.

4.13 Minor Offences

4.13.1

Without prejudice to this Rules, it shall be an minor offence for a Clearing Member to:—

4.13.1 be guilty of dishonourable or uncommercial conduct;

4.13.2 make a false entry on a clearing sheet;

4.13.3 fail to answer Customers' complaints promptly;

4.13.4 violate any rule, the violation of which is not a major offence; and

4.13.5 make a mis-statement to the Clearing House, SGX RegCo, any committee, any person or entity referred to under Rule 1.01.8, or their respective employees and members.

Amended on 27 March 2006, 15 September 2017 and 3 June 2019.

4.14 [Rule has been deleted.]

Deleted on 27 March 2006.

4.15 Clearing Member's Indemnity

Amended on 15 September 2017.

4.15.1

Each Clearing Member indemnifies each of the Clearing House, its related corporations, SGX RegCo, any person or entity referred to under Rule 1.01.8, and their respective directors, officers, employees, representatives and agents ("Indemnified Persons") against any loss or liability reasonably incurred or suffered by an Indemnified Person where such loss or liability arose out of or in connection with:—

4.15.1.1 any breach by the Clearing Member of its obligations under this Rules; or

4.15.1.2 any wilful, unlawful, reckless or negligent act or omission by the Clearing Member.

Amended on 27 March 2006, 26 April 2013, 15 September 2017 and 3 June 2019.

4.15.2

Without prejudice to the generality of Rule 4.15.1, in the event that any legal, arbitration or other proceedings are brought to impose any liability on all or any of the Indemnified Persons for an alleged failure on the part of any Indemnified Person to prevent or to require action by a Clearing Member or any of its directors, officers, employees, representatives or agents, the Clearing Member shall reimburse the relevant Indemnified Persons for:—

4.15.2.1 all expenses and legal fees incurred by or on behalf of the Indemnified Person in connection with such proceedings;

4.15.2.2 any payment made by or on behalf of the Indemnified Person with the approval of the Clearing Member in connection with any settlement of such proceedings; and

4.15.2.3 any payment made by or on behalf of the Indemnified Person as a result of any order, award or judgment made in such proceedings.

The Clearing Member shall render such co-operation as the Indemnified Person reasonably requires in respect of such proceedings including without limitation the production of any document or records.

Added on 26 April 2013 and amended on 15 September 2017.

4.15.3

Without prejudice to Rule 4.15.2, the Clearing Member shall pay to an Indemnified Person, if the Indemnified Person so requires, the costs incurred by or on behalf of the Indemnified Person of producing or obtaining, pursuant to a court order or other legal process, records relating to the business or affairs of a Clearing Member or any of its directors, officers, representatives, employees or agents, regardless of the party requiring such production or obtainment.

Added on 26 April 2013 and amended on 15 September 2017.

4.16 Complaints by Clearing Members

4.16.1

It is the policy of the Clearing House to maintain a forum for the resolution of any dispute between Clearing Members arising out of transactions on the Clearing House or of other matters pertaining to the Clearing House.

Any Clearing Member who has a dispute, grievance or complaint against another Clearing Member may refer the matter to arbitration in accordance with Chapter 5 or may file a written complaint with the Clearing House as appropriate.

Amended on 27 March 2006.

4.16.2

A Clearing Member who fails to exhaust the procedures set out above and in Chapter 5 may be found to have engaged in conduct which is substantially detrimental to the interest of the Clearing House.

4.16.3

A Clearing Member found guilty of having engaged in conduct which is substantially detrimental to the interest of the Clearing House may, in addition to the disciplinary actions prescribed for a major offence, be required to pay the Clearing House an amount computed to include the costs and expenses, including legal fees on an indemnity basis, incurred by the Clearing House in defending or responding to any proceeding by such Clearing Member.

4.16.4

A Clearing Member who believes that another Clearing Member or the Clearing House or its officials, officers, employees or representatives has acted in contravention of the law or this Rules may, without violating this Rule, complain directly to the Authority.

4.17 Supply of Information

4.17.1

For the purposes of this Rule:—

"Reciprocal Arrangement" means any agreement or arrangement between the Clearing House, any Relevant Market and/or any governmental agency or regulatory authority (including, without limitation, a futures exchange, organised market, or clearing house) in Singapore or elsewhere whose functions include the regulation of trading in commodities (in Singapore or elsewhere) which provides for the disclosure of information between the Clearing House, the Relevant Market and/or the other agency or authority relation to dealings in commodities (in Singapore or elsewhere).

Amended on 8 October 2018.

4.17.2

Without derogating from the powers of the Clearing House or any Relevant Market (where the Clearing Member is also a member) to obtain information and to conduct inspections and investigations relative to the affairs of a Clearing Member, the Clearing House may request in particular that a Clearing Member provide specified information relating to the terms and circumstances of, and parties to, any dealings in commodities by Customers and/or former Customers of that Clearing Member.

Such request shall be in writing and the Clearing Member shall provide the information to the Clearing House within such period as is specified by the Clearing House being a period of not less than two (2) Business Days of receipt of the request.

Amended on 27 March 2006.

4.17.3

Subject to the other provisions of this Rules, the Clearing House shall take all reasonable measures to protect from unauthorised use or disclosure of information provided to the Clearing House in confidence by or on behalf of a Clearing Member pursuant to this Rules. Disclosure of information by the Clearing House is authorised if it:

4.17.3.1 is pursuant to a Reciprocal Arrangement;

4.17.3.2 is required to be disclosed by the Clearing House under any law (in or out of Singapore) or any order of any court or authority or regulatory body (each in or out of Singapore);

4.17.3.3 is publicly available at the time of disclosure to or by the Clearing House and/or any Relevant Market;

4.17.3.4 is for the purposes of monitoring compliance with and/or the enforcement of this Rules or the adjudication of a matter;

4.17.3.5 is, without prejudice to the generality of Rule 4.17.3.2 above, approved by the Authority and is to any governmental agency or regulatory authority (in or out of Singapore) including, without limitation, a futures exchange or clearing house, that requests that the Clearing House provide the information for the proper exercise of powers relating to:—

a. the governance of a Clearing Member; or

b. the trading of commodities or clearing of contracts in commodities (in or out of Singapore),

4.17.3.6 is in connection with the discharge of its regulatory obligations under the Securities and Futures Act or when compelled under applicable laws to do so or pursuant to any cross-border regulatory sharing arrangement subject to its obligation to maintain confidentiality under the Securities and Futures Act;

4.17.3.7 is to any of SGX-DC's related corporations;

4.17.3.8 is authorised by the Authority to be disclosed or furnished under the Securities and Futures Act; or

4.17.3.9 is specifically authorised under this Rules.

Amended on 27 March 2006 and 17 July 2019.

4.17.4

Nothing in this Rule 4.17 limits what may at common law otherwise constitute, for the purposes of this Rule, authorised use or disclosure of information.

Chapter 5 Arbitration

5.01 Disputes Arbitrated

5.01.1 Dispute Resolution Involving Contracts (Excluding Deliverable Commodity Futures Contracts)

5.01.1.1 Where any dispute arises from or in connection with a Contract (excluding deliverable commodity futures contracts), other than a complaint of a disciplinary nature, the disputing Clearing Members shall attempt to settle the dispute through good faith negotiations, failing which the disputing Clearing Members may choose to settle the dispute, by such other means they elect, including arbitration before the SIAC in accordance with the rules of the SIAC.

Added on 27 March 2006 and amended on 22 September 2006, 26 January 2007 and 26 November 2007.

5.01.2 Dispute Resolution Involving Deliverable Commodity Futures Contracts

5.01.2.1 Where any dispute arises from or in connection with a commodity futures contract, other than a complaint of a disciplinary nature, the parties shall attempt to settle the dispute, through the claim procedure set forth or referred to in the relevant Contract Specifications. In the absence of an applicable claim procedure, the parties shall attempt

to settle the dispute through good faith negotiations, failing which, at the election of any disputing Clearing Member, the dispute shall be settled by arbitration before the SIAC in accordance with the rules of the SIAC.

5.01.2.2 Unless otherwise specified under the claim procedure set forth or referred to in the relevant Contract Specifications, if any, the award of the arbitrator or panel of arbitrators shall be binding on Sellers and Buyers.

5.01.2.3 The failure or refusal of a Clearing Member to settle the dispute under the claim procedure set forth or referred to in the relevant Contract Specifications, or arbitrate under this Rule where the other counterparty elects to do so shall constitute a breach of this Rules.

5.01.2.4 Subject to the claim procedure set forth or referred to in the relevant Contract Specifications, Clearing Members shall cause their Sellers and Buyers and their respective assigns to agree that where there is a dispute as a result of or arising in connection with a deliverable commodity futures contract:

a. the Sellers and Buyers shall agree to submit to arbitration before the SIAC at the election of their respective Clearing Members; and

b. the award of the arbitrator or panel of arbitrators shall be final and binding on the Sellers and Buyers.

Added on 22 September 2006 and amended on 26 January 2007, 26 November 2007 and 1 October 2009.

5.02 Waiver of Clearing House Objects and Purposes

5.02.1

The submission of any dispute to arbitration under this Rules shall in no way limit or preclude the taking of any other step or exercise of any power by the Clearing House in relation to the dispute.

5.03 to 5.36 [Rules have been deleted.]

Deleted on 27 March 2006.

Chapter 6 Delivery and Related Matters

6.01 General

6.01.1

Any delivery of Commodities under any Contract cleared by the Clearing House shall be made in accordance with the relevant Contract Specifications and, if not so dealt with, with the provisions of this Chapter and by such other requirements as the Clearing House may prescribe from time to time (collectively "Delivery Rules").

Amended on 22 September 2006 and 1 October 2009.

6.01.1A

In the case of a Contract traded on the Exchange, the Delivery Rules shall include the Trading Rules.

Added on 1 October 2009.

6.01.1B

For the avoidance of doubt, this Chapter shall apply in respect of all matters relating to the rights, obligations and liabilities of the Clearing House as against any Clearing Member, regardless of the Relevant Market on which the Contract is traded, unless otherwise provided under this Chapter.

Added on 1 October 2009.

6.01.1C

Eligible Non-Relevant Market Contracts shall be settled or delivered in accordance with the relevant Delivery Rules.

Added 27 March 2006 and amended on 22 September 2006, 1 October 2009 and 8 November 2012.

6.01.2

Cash-settled Contracts which remain open at maturity may be satisfied by payment of cash.

Any Contracts other than cash-settled Contracts which remain open at maturity may be liable to delivery in accordance with the Delivery Rules.

Amended on 22 September 2006.

6.01.3.1 to 6.01.4 [Rules have been deleted.]

Deleted on 22 September 2006.

6.02 [Rule has been deleted.]

Deleted on 22 September 2006.

6.02A Clearing House Merely Facilitates Delivery

6.02A.1 Clearing Member Causes Compliance with and Guarantees Delivery Obligations

A Clearing Member sponsoring a Trading Member, or a member of any other Relevant Market, carrying an account for a Seller or Buyer or a Clearing Member carrying an account for a Seller or Buyer shall cause its Seller or Buyer (as the case may be) to comply with all relevant Delivery Obligations for the underlying Commodity under a Contract or delivery contract including those relating to the delivery of information, documents or the underlying Commodity to the Clearing House or to clearing members of the opposite Buyer or Seller (hereafter referred to as the "counterparty clearing member" for the purposes of this Chapter), and shall comply with all time limits in accordance with the Delivery Rules.

For the avoidance of doubt, a counterparty clearing member referred to in this Chapter and Rule 7.04.1B shall include a Clearing Member and the clearing member of any other Relevant Market (or its clearing house) of the opposite Buyer or Seller notwithstanding that such counterparty clearing member is not a Clearing Member.

Added on 22 September 2006 and amended on 1 October 2009.

6.02A.2

A Clearing Member sponsoring a Trading Member, or a member of any other Relevant Market, carrying an account for a Seller or Buyer or a Clearing Member carrying an account for a Seller or Buyer shall guarantee and assume complete responsibility to the counterparty clearing member, for the performance of all Delivery Obligations in accordance with the relevant Delivery Rules.

Added on 22 September 2006 and amended on 1 October 2009.

6.02A.3

Violation of Rule 6.02A.1 or Rule 6.02A.2 may constitute a major offence.

Added on 22 September 2006.

6.02A.4 Insolvent Clearing Member

In the event of the Clearing House becoming aware of a Clearing Member becoming insolvent or being deemed insolvent after having given any relevant delivery notices or acceptance notices with respect to its Delivery Obligations to the Clearing House, then, notwithstanding the preceding, the Clearing House shall be entitled but not obliged to permit the relevant Sellers or Buyers (as the case may be) of the Clearing Member (if their identities can be readily ascertained and verified) to be directly substituted for such Clearing Member to the extent necessary to effect and/or complete delivery. None of the requirements for delivery, including notices, instructions, payment, etc., shall be waived by the Clearing House in exercising such option. Moreover, substitution shall in no way relieve the insolvent Clearing Member of its obligations to the Clearing House and/or the counterparty clearing member with regard to any claims arising out of that delivery.

Added on 22 September 2006 and amended on 1 October 2009.

6.02A.5

For the purposes of Rule 6.02A, a Clearing Member becomes or shall be deemed insolvent on the occurrence of any of the events stated in Rule 7A.01.3.

Added on 22 September 2006 and amended on 7 August 2012.

6.02A.6 No Physical Delivery Obligations on Clearing House

Except as otherwise provided in this Rules, the Clearing House accepts no and is to have no liability either to effect or ensure or guarantee the discharge or satisfactory discharge of any obligation under a delivery contract. The obligations of the Clearing House with respect to the delivery contract shall be limited only to the discharge of its escrow obligations (where applicable) in accordance with this Rules and/or the relevant Contract Specifications. For the avoidance of doubt, Rule 7.04 does not apply to any delivery contract.

Added on 22 September 2006 and amended on 26 January 2007.

6.02A.7 Matching and Re-Novation

a. The contract between a Selling Member or Buying Member and the Clearing House shall be novated and a new contract shall arise between such persons as are matched in accordance with the relevant Contract Specifications (such process being described as "re-novation") at such time, and upon such conditions being met, in accordance with the relevant Contract Specifications for:

   (i) such re-novation to be effective; or

   (ii) the cessation of the Clearing House as a central counterparty.

b. The new contract arising from the re-novation shall simultaneously discharge and replace pro tanto the Contract between the Selling Member or Buying Member and the Clearing House, and the Clearing House shall be released from its obligations as a central counterparty. For the avoidance of doubt, re-novation only applies to matched positions relating to lot sizes equal to or more than the minimum size prescribed under the relevant Contract Specifications for physical delivery.

Added on 22 September 2006 and amended on 26 January 2007, 1 October 2009, 22 February 2010 and 22 April 2010.

6.02A.7A Cash Settlement

Without prejudice to Rule 6.09, unless otherwise provided in the relevant Contract Specifications, matched positions of lot sizes less than the minimum size prescribed under the relevant Contract Specifications for physical delivery existing after the matching process in Rule 6.02A.7 has been effected, shall be cash-settled in accordance with the relevant Contract Specifications.

Added on 26 January 2007.

6.02A.7B Posting of Performance Deposits and Payment of Contract Value

Unless otherwise provided in the relevant Contract Specifications, Performance Deposits and contract value shall, for the purposes of Rule 6.02A.7 and Rule 7.04.3.3, be deemed to have been posted or paid as follows:

6.02A.7B.1 where posting or payment is in cash, upon Confirmation of the relevant Payment Instruction by the Settlement Bank of such Clearing Member that is undertaking Delivery Obligations in a delivery contract; and

6.02A.7B.2 where posting or payment is in the form of an irrevocable letter of credit or any other security, upon receipt of the irrevocable letter of credit or other security by the Clearing House, provided that the said irrevocable letter of credit or other security is in a form and issued by a bank acceptable to the Clearing House.

Added on 22 February 2010 and amended on 26 April 2013.

6.02A.8 Method of Matching

6.02A.8.1 Contracts subject to physical delivery shall be matched by the Clearing House in accordance with the relevant Contract Specifications.

6.02A.8.2 Notwithstanding Rule 6.02A.8.1, Contracts traded on the Exchange and subject to physical delivery shall be matched by the Clearing House based on the quantity, lot size and the mutual preference(s) (if any) stated by the Seller and Buyer (through their respective Clearing Members). Failing mutuality of preferences, matching shall be in accordance with the preference(s) of the Seller or Buyer, as the case may be, as stated in the relevant Contract Specifications.

Added on 22 September 2006 and amended on 1 October 2009.

6.02A.9 Forms for Matching

The Clearing House may prescribe such forms and/or other requirements for the giving of relevant notice, initiating and/or completing delivery under a Contract and/or necessary to enable the Clearing House to effect the required matching of the relevant parties to effect delivery as between them as are consistent with the relevant Delivery Rules. If a Clearing Member fails to give the relevant delivery notice or acceptance notice within the prescribed time, the Clearing House shall be entitled to match such Clearing Member with the relevant counterparty. Matching may be in accordance with the preference(s) of such opposite counterparty.

Added on 22 September 2006 and amended on 1 October 2009.

6.02A.9A Notification of Matching

The Clearing House shall notify the relevant matched parties in such manner and at such time as specified in the relevant Contract Specifications.

Added on 1 October 2009.

6.02A.10 Force Majeure

6.02A.10.1 Unless the delivery provisions in the relevant Contract Specifications otherwise provide, the Delivery Obligations of Contracts shall be absolute and unconditional and shall not be subject to the defence of Force Majeure, impossibility, commercial impracticability or other similar defences. Notwithstanding the preceding, if delivery or acceptance or any precondition or requirement of the Buying Member or Selling Member as the case may be is prevented or threatened to be prevented as a consequence of or arising out of an occurrence of Force Majeure relevant to performance of Delivery Obligations such that performance of such Delivery Obligations cannot be guaranteed by reason of such occurrence of Force Majeure, such Selling Member or Buying Member as the case may be shall immediately notify the Clearing House.

6.02A.10.1A If the Clearing House determines that emergency action may be necessary, it shall take such action as it deems fit in accordance with the relevant Contract Specifications.

6.02A.10.1B Notwithstanding Rule 6.02A.10.1A, in the case of a Contract traded on the Exchange, the Clearing House shall call a special meeting with the Exchange and arrange for the presentation of evidence with respect to the occurrence of Force Majeure. If the Clearing House and the Exchange determine that a Force Majeure exists, the Clearing House and the Exchange shall take such action as they see fit, including but not limited to the deferment of delivery dates and the designation of alternate delivery points.

6.02A.10.1C For the purposes of this Rule 6.02A.10, Force Majeure shall have the meaning as set forth in the relevant Contract Specifications or the rules of the Relevant Market on which the Contract was traded.

6.02A.10.1D Notwithstanding Rule 6.02A.10.1C, in the case of a Contract traded on the Exchange, Force Majeure means any event beyond the control of a Seller or Buyer or its respective Clearing Member including acts of a civil or military authority, labour disputes, strikes, fires, floods, epidemic diseases, accidents, wars (whether declared or undeclared), acts of the public enemy, riots, perils of the sea, embargoes, restrictions imposed by any governmental authority (including allocations, priorities, requisitions, quotas and price controls) or any other acts of God.

6.02A.10.2 Without prejudice to Rule 6.02A.10.1 to Rule 6.02A.10.1D, in the event that the Clearing House and/or the Exchange determine that for any reason whatsoever there exists or is likely to come into existence a shortage of the underlying Commodity or circumstances prejudicial to a Seller or Buyer or it's respective Clearing Member's Delivery Obligations the Clearing House and/or the Exchange may take such action as may appear necessary to prevent, correct, or alleviate such shortage, subject to the provisions in the relevant Contract Specifications for such shortage, if any.

Added on 22 September 2006 and amended on 1 October 2009.

6.02A.11 Cessation of Collection of Margins

The Clearing House shall cease to collect margins for a Contract after such time as it ceases to act as a central counterparty pursuant to Rule 6.02A.7 or Rule 6.09.3.

Added on 22 September 2006 and amended on 26 January 2007.

6.02A.12 Electronic Documentation

The Clearing House retains the discretion to accept delivery of Title Documents in either physical or electronic format and subject to such safeguards as it deems fit.

Added on 22 September 2006.

6.02A.13 Clearing House does not Verify Authenticity of Documents or Check Commodity

The Clearing House shall have no responsibility or liability to any person:

6.02A.13.1 to investigate, verify or guarantee the authenticity, validity, accuracy, or completeness of:—

(a) any form or document required by it for the required matching of:

(i) the relevant parties in accordance with the Contract Specifications; or

(ii) a Seller or Buyer for whom an insolvent clearing member acts and the counterparty clearing member; or

(b) any Title Documents received by the Clearing House under the relevant Contract Specifications,

to effect delivery as between such matched parties as are consistent with the relevant Delivery Rules. Nonetheless, the Clearing House reserves the right at its discretion and in

good faith to reject any form or accompanying documents submitted by a Clearing Member for such matching, delivery or any other purposes if in its good faith view, the form or accompanying documents (or, where relevant, payment) as submitted are not in compliance with its stated requirements or otherwise indicate that the delivery to be effected or accepted are not in compliance with the relevant Delivery Rules;

6.02A.13.2 to check any Commodity received from or delivered to the clearing member of a Buyer or Seller in relation to the quality or suitability of fitness of the Commodity and the obligation of the Seller or Buyer, or its clearing member, to make or take delivery under a delivery contract; and

6.02A.13.3 with respect to any forged or irregular documents, including Title Documents, relating to any open contract and delivery contract, received from or delivered to the clearing member of a Buyer or Seller. The sole recourse of the Clearing Member receiving such forged or irregular documents shall be to the clearing member which delivered or caused to be delivered such forged or irregular documents.

Added on 22 September 2006 and amended on 26 January 2007 and 1 October 2009.

6.02A.14 Clearing House does not Check and is not Liable for Designated Delivery Facility

The Clearing House shall have no responsibility or liability to any person:

6.02A.14.1 to check the availability, suitability or quality of any designated delivery facility, producer, factory, port, grader, surveyor, sampler, analyst or any other organization that may be involved with delivery of any Commodity as identified in the relevant Contract Specifications; and

6.02A.14.2 for the acts, omissions, default or insolvency of any designated delivery facility, producer, factory, port, grader, surveyor, sampler, analyst or any other organization that may be involved with delivery of any Commodity as identified in the relevant Contract Specifications.

Added on 22 September 2006 and amended on 26 January 2007.

6.02A.15 Disclaimers

6.02A.15.1 **Title Documents and Transfer of Title or Possession**
The Clearing House disclaims any liability arising from or in connection with the delivery or non-delivery of Title Documents by the clearing member of any Seller and any irregularities in the transfer of title and/or possession in the underlying Commodity from the Seller to the Buyer.

6.02A.15.2 **Release of Payment**
In no event shall the Clearing House be liable for releasing any payment in exchange for documents that appear bona fide on their faces.

Added on 22 September 2006 and amended on 26 January 2007 and 1 October 2009.

6.03 Delivery Default May be Major Offence

6.03.1

Any delivery default under the relevant Contract Specifications may constitute a major offence.

Added on 22 September 2006.

6.03.2

Without prejudice to Rule 6.03.1, the Clearing House may take such disciplinary action including imposing penalties in connection with the performance of Delivery Obligations as provided for under the relevant Contract Specifications. For the avoidance of doubt, penalties which the Clearing House may impose shall include penalties for any delivery default or late performance of any Delivery Obligation.

Added on 1 October 2009.

6.04 Duty of Clearing Members to Mitigate Risk of Non-Delivery

6.04.1

Prior to the Last Trading Day of the relevant Contract, each Clearing Member shall require evidence from its respective Seller or Buyer having accounts on its books, that all open positions which will not be offset on the Last Trading Day will be completed by delivery of the relevant underlying Commodity. If the Seller or Buyer fails to provide such evidence, the Clearing Member shall, unless entitled to opt otherwise under the relevant Contract Specifications, liquidate the remaining open positions on or before the Last Trading Day. Unless otherwise permitted under the relevant Contract Specifications, each Clearing Member shall liquidate any and all open positions relating to lot sizes less than the minimum size prescribed under the relevant Contract Specifications for physical delivery.

Added on 22 September 2006 and amended on 7 December 2015.

6.04.2

Failure by a Clearing Member to liquidate the open positions pursuant to Rule 6.04.1 may constitute a major offence.

Added on 22 September 2006.

6.05 Consolidation of Positions and Other Powers of the Clearing House

6.05.1

If at any time the Clearing House becomes aware of opposite open positions held by different Clearing Members, or by any Clearing Member and clearing member of any other Relevant Market (or its clearing house), for the account of the same Seller or Buyer, the Clearing House may (but is not obliged to) direct such Clearing Members to take steps to liquidate the offsetting positions.

Added on 26 January 2007 and amended on 1 October 2009.

6.05.2

Where a Seller or Buyer has open positions with more than one Clearing Member, or with any Clearing Member and any clearing member of any other Relevant Market (or its clearing house) on the first Business Day following the Last Trading Day, the Clearing House may (but is

not obliged to) consolidate all such open positions held by all the Clearing Members and clearing members of such other Relevant Market (or its clearing house) for the same Seller or Buyer in such manner as it deems fit including, without limitation, effecting the following:

6.05.2.1 appointing one (1) or more of these Clearing Members to whom all such positions shall be transferred to be handled for such Seller or Buyer, where such appointment shall be binding;

6.05.2.2 requiring any Clearing Member to transfer positions to one (1) or more such clearing members of the other Relevant Market to be handled for such Seller or Buyer;

6.05.2.3 setting-off any opposite open positions held by the appointed Clearing Member(s) for the account of the same Seller or Buyer; and/or

6.05.2.4 taking such other actions or giving such other directions to the appointed Clearing Member(s) as it deems fit.

Added on 22 September 2006 and amended on 26 January 2007 and 1 October 2009.

6.05.3

Notwithstanding that the Clearing House is entitled to consolidate the open positions of the Clearing Members and the clearing members of any other Relevant Market (or its clearing house) with reference to the account of the Seller or Buyer, nothing in Rule 6.05.2 shall imply or be construed to mean that a Seller or Buyer (who is not a Clearing Member) shall have any right against the Clearing House with regard to its open positions which have been so consolidated.

Amended on 26 January 2007 and 1 October 2009.

6.06 Passing of Property and Risk

6.06.1

Property and risk in relation to an underlying Commodity in any delivery contract shall pass in accordance with the relevant Delivery Rules and if not so dealt with, with the provisions of the Sale of Goods Act 1979. For the avoidance of doubt, at no time will property and risk in any underlying Commodity in any delivery contract pass to the Clearing House.

Added on 22 September 2006 and Amended on 18 January 2022.

6.07 Deliveries Involving Clearing House as Escrow Agent and Treatment of Performance Deposits, Other Payments and Other Escrow Assets

Amended on 26 April 2013.

6.07.1

If so required under the relevant Contract Specifications, a Selling Member and/or Buying Member in a delivery contract shall post or cause its respective Seller or Buyer to post with the Clearing House as escrow agent a Performance Deposit and/or other payment (including but not limited to contract value) as may be prescribed under the relevant Contract Specifications (such person responsible for posting the Performance Deposit or other payment being

referred to as the "depositing party"), at such time as provided under the relevant Contract Specifications, as security for the benefit of the counterparty under the delivery contract for the performance of the depositing party's obligations under the delivery contract. For the avoidance of doubt, posting of Performance Deposits or other payments by the depositing party is to be made without any set-off or withholding.

Added on 22 September 2006 and amended on 26 January 2007, 1 October 2009 and 26 April 2013.

6.07.2

A Selling Member or Buying Member shall collect Performance Deposits, other payments and other Escrow Assets (where applicable) from its respective Seller or Buyer within such time as prescribed in the relevant Contract Specifications, or by the Clearing House. Nothing herein prohibits a Member from collecting additional monies or deposits from its Seller or Buyer to secure performance as it sees fit.

Added on 22 September 2006 and amended on 26 January 2007, 22 February 2010, 26 January 2007, 1 October 2009 and 26 April 2013.

6.07.3

No Clearing Member shall grant, whether directly or indirectly, any advance, loan or credit facility to any Seller or Buyer for the purpose of posting Performance Deposits, other payments or other Escrow Assets (where applicable) with the Clearing House. For avoidance of doubt, Members shall only post the full sum of Performance Deposits, other payments and/or other Escrow Assets (where applicable) with the Clearing House.

Added on 22 September 2006 amended on 26 January 2007, 22 February 2010 and 26 April 2013.

6.07.4

When under this Rules, the Clearing House becomes the escrow agent of any Escrow Asset in connection with the delivery of the underlying Commodity, the following shall apply:

(a) The Clearing House holds such Escrow Asset solely as escrow agent on behalf of the depositing party subject to this Rules or the relevant Contract Specifications. As escrow agent, the Clearing House shall act solely as a stakeholder for the convenience of the depositing party and in accordance with the terms for such escrow holding as may be set out in this Rules or the relevant Contract Specifications.

(b) None of the Clearing House, any of its directors, officers, agents or employees (collectively "Officers") shall be liable to any party for any loss or damage arising out of or in connection with any act or omission with respect to the delivery and/or payment obligations of the depositing party during the period that the Clearing House is the escrow agent for such Escrow Asset or with respect to the non-release or delay in release of the Escrow Asset in accordance with the terms of the escrow unless the loss or damage is caused directly as a result of wilful breach or breach in bad faith by the Officers of the terms of the escrow.

Added on 22 September 2006 and amended on 22 February 2010 and 26 April 2013.

6.07.5

The Clearing House shall be entitled to physically commingle Performance Deposits, other payments and other Escrow Assets (where applicable) with all Collateral subject always to its obligations under the SFA to segregate monies received for House Contracts and Customer Contracts.

Added on 22 September 2006 and amended on 26 January 2007 and 26 April 2013.

6.07.6

The Clearing House shall be entitled to charge an administrative fee for acting as the escrow agent.

Added on 22 September 2006.

6.07.7

The Clearing House shall credit all Performance Deposits, other payments and other Escrow Assets (where applicable) which a Clearing Member has posted with the Clearing House pursuant to this Rules with interest, dividends, and any other returns or entitlements on the full amount at such rate as prescribed by the Clearing House except for:

6.07.7.1 money continued to be held consequent or subsequent to a delivery default; and

6.07.7.2 any administrative fees payable to the Clearing House pursuant to Rule 6.07.6.

The depositing party shall be entitled to the benefit of any such interest, dividends, returns or entitlements that is credited.

Amended on 26 January 2007 and 26 April 2013.

6.07.8 Release of Performance Deposits and Other Payments

6.07.8.1 Subject to Rule 6.07.8.2, the Clearing House shall release the Performance Deposit and/or other payment posted with it (less any administrative fees payable) to the respective Selling Member and/or Buying Member, as the case may be only as provided in the relevant Contract Specifications.

6.07.8.2 The lodging of a claim which is not bona fide by a Seller or Buyer, or Clearing Member as the case may be, may subject such Clearing Member or the Clearing Member of such Seller or Buyer to such penalties as the Clearing House may impose.

6.07.8.3 For the avoidance of doubt, upon the release of the Performance Deposit and/or other payment, the Clearing House shall be released from its obligations as an escrow agent in relation to such Performance Deposit and/or other payment (as the case may be), and from any liabilities in relation thereto.

Added on 22 September 2006 and amended on 1 October 2009 and 26 April 2013.

6.07.9 Release of Escrow Assets Other than Performance Deposits and Other Payments

The Clearing House shall release the Escrow Assets other than the Performance Deposits and other payments (less any administrative fees payable) to the respective clearing members of the Seller and/or Buyer, as the case may be, only as provided in the relevant Contract Specifications. For the avoidance of doubt, upon the release of such Escrow Assets, the

Clearing House shall be released from its obligations as an escrow agent in relation to such Escrow Assets, and from any liabilities in relation thereto.

Added on 26 January 2007 and amended on 1 October 2009 and 26 April 2013.

6.07A Clearing House May Appoint A Facilitator Agent

Refer to Practice Note 6.07A.

6.07A.1

The Clearing House may appoint any person as a Facilitator Agent to perform, on its behalf, such function as may be requiredfor the purpose of facilitating delivery of the underlying Commodity of any Contract by Clearing Members.

Added on 1 October 2009.

6.07A.2

Clearing Members shall perform such Delivery Obligations through the Facilitator Agent as prescribed by the Clearing House.

Added on 1 October 2009.

6.08 Time is of the Essence for Periods in the Relevant Contract Specifications

6.08.1

Time is of the essence with respect to the periods stipulated in this Chapter and the relevant Contract Specifications including those pertaining to the posting of Performance Deposits with the Clearing House, delivery of documents, making and taking of delivery and effecting payment.

Added on 22 September 2006.

6.09 Alternative Delivery Procedure

6.09.1

Unless otherwise provided by the relevant Contract Specifications, nothing in this Rules shall prevent the parties otherwise obliged to make and take delivery from effecting delivery via Alternative Delivery Procedure.

Added on 22 September 2006.

6.09.2

Upon the delivery of a notice of Alternative Delivery Procedure to the Clearing House (the "ADP Notice"), the Seller and Buyer or such persons designated to make or take delivery as may be prescribed in the ADP Notice shall be solely responsible for completing delivery.

Added on 22 September 2006.

6.09.3

Notwithstanding Rule 6.02A.2, the Selling Member and/or Buying Member shall be released from their respective Delivery Obligations, and the Clearing House from its obligations as a central counterparty and/or an escrow agent, and from any liabilities in relation thereto, upon the election of an Alternative Delivery Procedure.

Added on 22 September 2006 and amended on 26 January 2007 and 1 October 2009.

6.09.4

In executing such Alternative Delivery Procedure, the Seller and/or Buyer, for whom a Clearing Member acts, or such persons designated to respectively make and/or take delivery in place of such Clearing Member as may be prescribed in the ADP Notice shall indemnify the Clearing House and the Exchange against any liability, costs or expense it may incur for any reason as a result of the execution, delivery or performance of any agreement reached between the Seller and Buyer or such persons designated to respectively make and take delivery as may be prescribed in the ADP Notice, or any breach thereof or default thereunder.

For the avoidance of doubt, where the clearing members of the Relevant Market making or taking delivery prior to the execution of an Alternative Delivery Procedure are both Clearing Members, the Buyer and Seller or such persons designated to make and take delivery in place of the Clearing Members as may be prescribed in the ADP Notice shall jointly and severally indemnify the Clearing House and/or the Exchange.

Added on 22 September 2006 and amended on 26 January 2007 and 1 October 2009.

6.10 Post Arbitral Award Procedures

6.10.1

Where any dispute in connection with a deliverable commodity futures contract is settled by such claim procedure set forth or referred to in the relevant Contract Specifications, the Clearing Member shall follow such post arbitral award procedures as set forth in the relevant Contract Specifications.

Added on 1 October 2009.

6.10.2

Without prejudice to Rule 6.10.1, where any dispute in connection with a deliverable commodity futures contract is settled by arbitration before the SIAC, the procedures set out in this Rule 6.10 shall apply.

Added on 22 September 2006 and amended on 26 November 2007 and 1 October 2009.

6.10.2A

Upon the conclusion of arbitration and the grant of an arbitral award, SIAC shall serve a notice of the award on the Clearing House and each of the Clearing Members to the arbitration.

Added on 22 September 2006 and amended on 1 October 2009.

6.10.3

If an arbitral award is made in favour of the Buying Member, the Buying Member shall be entitled to:

6.10.3.1 claim the Performance Deposit posted in relation to the delivery contract by the Selling Member with the Clearing House to the extent that it satisfies the arbitral award; and

6.10.3.2 the return of the Performance Deposit posted by it in relation to the delivery contract with the Clearing House, without any deduction or set-off.

Added on 22 September 2006 and amended on 1 October 2009.

6.10.4

If the Performance Deposit posted by the Selling Member in relation to the delivery contract is insufficient to satisfy the arbitral award made in favour of the Buying Member, the Buying Member shall be entitled to pursue the balance of such arbitral award against the Selling Member. If such Performance Deposit is greater than the arbitral award made in favour of the Buying Member, the balance of the Performance Deposit shall be returned to the Selling Member.

Added on 22 September 2006 and amended on 1 October 2009.

6.10.5

Where the arbitral award is made in favour of the Selling Member, Rules 6.10.4 and 6.10.5 shall apply with the references to "Buying Member" and "Selling Member" being changed to "Selling Member" and "Buying Member" respectively.

Amended on 1 October 2009.

6.10.6

For the avoidance of doubt, the above procedures do not apply if the Clearing Members have agreed to effect delivery via an Alternative Delivery Procedure.

Amended on 1 October 2009.

6.11 Precedence of Rules

6.11.1

In the event of a conflict between Chapter 6 of this Rules and the relevant Contract Specifications, this Rules shall prevail.

Added on 22 September 2006.

Chapter 7 Clearing and Margins

7.01 Clearing House

7.01.1

The Clearing House shall facilitate the prompt adjustment of contractual obligations arising out of:

a. Contracts traded on the Exchange or a Relevant Market; and

b. Non-Relevant Market Contracts

c. [Deleted]

insofar as the same are duly accepted by the Clearing House or with respect to which the Clearing House is otherwise obliged to accept and to protect the integrity of such Contracts in accordance with these Rules.

Amended on 27 March 2006, 3 November 2010, 8 November 2012, 17 July 2019 and 29 July 2022.

7.01.1A

Further to Rule 7.01.1, the Clearing House shall accept such Contracts traded on a Relevant Market other than the Exchange, as prescribed in Appendix 2.

Refer to Appendix 2 — Contracts of Other Relevant Markets Accepted by the Clearing House.

Added on 1 October 2009.

7.01.2

Wherever these Rules and/or the Trading Rules create a right in favour of the Clearing House or impose a liability on the Clearing House, such right or liability shall prior to the Transfer Date be construed as the right or liability of the Exchange, and shall be enforced by or against the Exchange and on or after the Transfer Date, shall be construed as the right or liability of the Clearing House, and shall be enforced by or against the Clearing House.

7.01.3 [Rule has been deleted.]

Deleted on 27 March 2006.

7.01.4

The Clearing House shall from time to time prescribe in these Rules the rights and obligations of Clearing Members and all requisite matters in relation to the operation and management of the Clearing House (including but not limited to systems of clearing, deposits, margins, delivery, charges, settlement prices, payments and settlement).

Amended on 27 March 2006.

7.02 Limitation of Liability

7.02.1

Without prejudice to any other limitation or exclusion of liability (including liability with respect to Contracts liable to delivery as opposed to cash settlement) the liability of the Clearing House shall be limited to net losses to the Clearing Members resulting from the substitution of the Clearing House by way of novation, creation of positions, or as otherwise described in Rule 7.04, in respect of Contracts to which Clearing Members are party and/or,

where the opposite side of the Contract is cleared through any other Relevant Market (or its clearing house), to net losses in connection with the substitution of such other Relevant Market (or its clearing house) for members of the same or its clearing house. This shall include the substitution of a Participating Market (or where relevant its clearing house) for members of the same or its clearing house pursuant to the Mutual Offset System. Without prejudice to the generality of the foregoing or to the provisions in Chapter 1, the Clearing House shall not be liable for obligations of a Clearing Member to any Third Party including a non-member of the Clearing House, obligations of a Clearing Member to another Clearing Member who is acting for him as broker or obligations to a Customer by a Clearing Member, nor shall the Clearing House become liable to make deliveries whether from any Third Party or any Clearing Member.

Amended on 1 October 2009 and 29 July 2022.

7.02A Registration of Non-Relevant Market Transactions, NLT transactions, EFP transactions and EFS transactions

Amended on 8 November 2012 and 19 September 2016.

7.02A.1 Non-Relevant Market Transactions, NLT transactions, EFP transactions and EFS transactions

7.02A.1.1 Only Non-Relevant Market Transactions, NLT transactions, EFP transactions and EFS transactions which meet the following criteria will be eligible for registration with the Clearing House:

a. a transaction:

i. which falls under one of the classes of Eligible Non-Relevant Market Contracts; or

ii. in respect of a Contract listed on the Exchange or the Connect Contract which has been designated by the Exchange for NLT transactions and which meets the minimum volume thresholds, conditions and other procedures prescribed by the Exchange or the Clearing House from time to time; or

iii. in respect of a Contract listed on the Exchange for EFP transactions and EFS transactions which meets the procedures prescribed by the Exchange from time to time; and

b. a transaction where:

i. the Seller and the Buyer have satisfied the credit and position thresholds prescribed by their respective Clearing Members; or

ii. notwithstanding that either the Seller or the Buyer has not, its Clearing Member has signified its agreement to clear the transaction.

Once the criteria in Rule 7.02A.1.1 are satisfied, the Clearing Members acting for the Seller and the Buyer respectively shall be responsible for the relevant transaction as principals to the Clearing House.

7.02A.1.2 If a Non-Relevant Market Transaction, a NLT transaction, a EFP transaction or a EFS transaction does not fulfill the criteria in Rule 7.02A.1.1, and is rejected by the Clearing House for clearing, the transaction shall be deemed not to have been submitted to the

Clearing House and will be dealt with in accordance with any terms agreed between the Seller and the Buyer.

7.02A.1.3 The specifications of Eligible Non-Relevant Market Contracts including Contract size, Contract Month, trading hours, underlying asset, exercise price, minimum price fluctuation, last trading day, settlement basis and method of exercise shall be set out in Circulars issued by the Clearing House from time to time.

Added on 27 March 2006 and amended on 28 November 2008, 3 November 2010, 8 November 2012, 19 September 2016, 24 June 2019 and 29 July 2022.

7.02A.2 Registration of Non-Relevant Market Transactions, NLT transactions, EFP transactions and EFS transactions

7.02A.2.1 Non-Relevant Market Transactions, NLT transactions, EFP transactions and EFS transactions will be registered with the Clearing House for clearing through the Trade Registration System or other facility as prescribed by the Clearing House. A complete submission for registration will be accepted or rejected by the Clearing House as quickly after submission as would be technologically practicable if fully automated systems were used.

7.02A.2.2 A Non-Relevant Market Transaction, a NLT transaction, a EFP transaction and a EFS transaction may only be registered by:

a. [Deleted]

b. a Clearing Member acting for a Seller and a Clearing Member acting for a Buyer; or

c. such other party authorised by either Clearing Member and approved by the Clearing House.

7.02A.2.3 [Deleted]

7.02A.2.4 Any party using the Trade Registration System, or other facility prescribed by the Clearing House, shall comply with the terms and conditions governing the access to and operation of that system, as varied, amended, or supplemented from time to time.

7.02A.2.5 A Clearing Member acting for a Seller or Buyer, as the case may be, must submit to the Clearing House the name of each party referred to in Rule 7.02A.2.2 who is authorised to register Non-Relevant Market Transactions, NLT transactions, EFP transactions or EFS transactions on the behalf of such Clearing Member.

7.02A.2.6 A Clearing Member acting for a Seller or Buyer, as the case may be, shall obtain the consent of such Seller or Buyer, before allowing any party referred to in Rule 7.02A.2.2 to register Non-Relevant Market Transactions, NLT transactions, EFP transactions or EFS transactions on the behalf of such Clearing Member.

7.02A.2.7 Each registration of a Non-Relevant Market Transaction, a NLT transaction, a EFP transaction or a EFS transaction, in order to be complete, must specify:

a. the type(s) of Eligible Non-Relevant Market Contract(s) which the Non-Relevant Market Transaction falls under, or the Connect Contract, or the Contract listed on the Exchange to which the NLT transaction, EFP transaction or EFS transaction relates;

b. the expiry month;

c. the quantity;

d. the price;

e. the Clearing Member(s) acting for the Buyer and Seller;

f. the Seller's account number (which may only be specified by a Clearing Member acting for a Seller or such party that the Clearing Member authorises) and the Buyer's account number (which may only be specified by a Clearing Member acting for a Buyer or such party that the Clearing Member authorises); and

g. such other particulars as may be prescribed by the Clearing House from time to time.

All particulars required by this rule must be specified correctly and accurately.

7.02A.2.8 [Deleted]

7.02A.2.9 For each Non-Relevant Market Transaction, NLT transaction, EFP transaction or EFS transaction, (a) complete registration as set out in Rule 7.02A.2.7 and (b) where applicable, the signifying of a Clearing Member's agreement to the clearing of a trade as set out in Rule 7.02A.1.1.b.ii must be carried out by the timelines set out below:

i. For a transaction concluded in a "T" trading session on a Trading Day: No later than thirty (30) minutes after the "T" session closes.

ii. For a transaction concluded in a "T+1" trading session on a Trading Day: No later than thirty (30) minutes after the "T session" on the next Trading Day closes.

7.02A.2.9A Clearing Members are required to ensure that all trades are submitted for registration in a timely manner.

7.02A.2.10 A Clearing Member acting for a Seller shall assume the duties and obligations of the Seller, as principal to the Clearing House, for any Non-Relevant Market Transaction, NLT transaction, EFP transaction or EFS transaction that is eligible for registration pursuant to Rule 7.02A.1.1 and that has been registered by any of the parties in Rule 7.02A.2.2.

7.02A.2.11 A Clearing Member acting for a Buyer shall assume the duties and obligations of the Buyer, as principal to the Clearing House, for any Non-Relevant Market Transaction, NLT transaction, EFP transaction or EFS transaction that is eligible for registration pursuant to Rule 7.02A.1.1 and that has been registered by any of the parties in Rule 7.02A.2.2.

7.02A.2.12 In allowing the submission of a Non-Relevant Market Transaction for registration through the Trade Registration System or other facility as prescribed by the Clearing House, the Seller and Buyer of such Non-Relevant Market Transaction shall be deemed to have mutually agreed (i) to substitute their contract for a contract based on the specifications referred to in Rule 7.02A.1.3, and (ii) for the Clearing House to become the central counterparty to the Clearing Members in whose names such Non-Relevant Market Transaction has been registered pursuant to Rule 7.04.

In allowing the submission of a NLT transaction, a EFP transaction or a EFS transaction for registration through the Trade Registration System or other facility as prescribed by the Clearing House, the Seller and Buyer of such transaction shall be deemed to have mutually agreed for the Clearing House to become the central counterparty to the

Clearing Members in whose names the transaction has been registered, pursuant to Rule 7.04.

7.02A.2.13 Once a Non-Relevant Market Transaction that is eligible for registration pursuant to Rule 7.02A.1.1 has been submitted for registration, the terms of the Non-Relevant Market Transaction shall be final and a Clearing Member shall be bound by the terms of the Non-Relevant Market Transaction registered in its name.

The Clearing House shall not be responsible for confirming the terms of such Non-Relevant Market Transaction.

7.02A.2.14 In the event of any technical fault that prevents or inhibits access and/or use of the Trade Registration System for registration of Non-Relevant Market Transactions, NLT transaction, EFP transaction or EFS transaction by any Clearing Member(s), the Clearing House may, in its absolute discretion, and in circumstances which it deems appropriate, allow for registration by such other means as it may prescribe.

7.02A.2.15 If the Clearing House exercises its discretion pursuant to Rule 7.02A.2.14:

a. The Clearing House will inform all Clearing Members of this decision by issuance of a circular or by such other means as the Clearing House deems appropriate; and

b. The Clearing House may vary or waive the timelines for registration as set out in Rule 7.02A.2.9.

7.02A.2.16 Any loss or inhibition of access and/or use of the Trade Registration System which is due to any technical faults arising from or caused by a Clearing Member's own equipment, system, device or market facility will not be considered sufficient ground for the Clearing House to exercise its discretion under Rule 7.02A.2.14.

7.02A.2.17 Factors which the Clearing House may consider in the exercise of its discretion include:

a. the number of Clearing Members which are affected by the technical fault;

b. the estimated length of time required to resolve the technical fault;

c. the impact of the technical fault on the ability of the Clearing House to operate a safe and efficient clearing facility; and/or

d. any other factor which the Clearing House deems relevant.

7.02A.2.18 Clearing Members shall produce to the Clearing House, if requested, evidence of compliance with this Rule 7.02A.2.

Added on 27 March 2006 and amended on 28 November 2008, 3 November 2010, 8 November 2012, 31 December 2013, 19 September 2016, 24 June 2019 and 29 July 2022.

7.02AA [Rule has been deleted.]

Deleted on 17 July 2019.

7.02AA.1 [Rule has been deleted.]

Deleted on 17 July 2019.

7.02AA.2 [Rule has been deleted.]

Deleted on 17 July 2019.

7.02B Withdrawal of Classes of Non-Relevant Market Contracts for Clearing by the Clearing House

Amended on 8 November 2012 and 17 July 2019.

7.02B.1

The Clearing House shall be entitled to withdraw any class of Eligible Non-Relevant Market Contracts for clearing at its discretion. The Clearing House will give the Clearing Members reasonable notice where possible, before such withdrawal.

Added on 27 March 2006 and amended on 3 November 2010, 8 November 2012 and 17 July 2019.

7.02B.2

The Clearing House shall have the sole discretion to disallow the registration or substitution, as the case may be, of:

a. a Non-Relevant Market Transaction, other than a closing-out contract after it has given notice to withdraw the clearing of any class of Eligible Non-Relevant Market Contract which the transaction falls under.

b. [deleted]

Added on 27 March 2006 and amended on 3 November 2010, 8 November 2012, 19 September 2016 and 17 July 2019.

7.02B.3

If a Clearing Member has not closed out all open Eligible Non-Relevant Market Contracts novated with the Clearing House in its name pursuant to Rule 7.04 after the Clearing House has given such notice, the Clearing House shall, at its sole discretion, be entitled to:

7.02B.3.1 liquidate any or all of such Eligible Non-Relevant Market Contracts and require such contracts to be cash settled at a price determined by the Clearing House; or

7.02B.3.2 postpone the withdrawal date until such time as the Clearing House determines.

Added on 27 March 2006 and amended on 3 November 2010, 8 November 2012 and 17 July 2019.

7.03 [Rule has been deleted.]

Deleted on 7 August 2012.

7.03.1 [Rule has been deleted.]

Deleted on 7 August 2012.

7.03.2 [Rule has been deleted.]

Deleted on 7 August 2012.

7.03.3 [Rule has been deleted.]

Deleted on 7 August 2012.

7.03.4 [Rule has been deleted.]

Deleted on 7 August 2012.

7.03.5 [Rule has been deleted.]

Deleted on 7 August 2012.

7.03.6 [Rule has been deleted.]

Deleted on 7 August 2012.

7.03.7 [Rule has been deleted.]

Deleted on 7 August 2012.

7.03.8 [Rule has been deleted.]

Deleted on 7 August 2012.

7.03.9

[This Rule has been intentionally left blank.]

7.03.10 [Rule has been deleted.]

Deleted on 7 August 2012.

7.03.11 [Rule has been deleted.]

Deleted on 7 August 2012.

7.03.12 [Rule has been deleted.]

Deleted on 7 August 2012.

7.03A Collateral

7.03A.1 Trust Arrangements

7.03A.1.1 Subject to all rights and remedies of the Clearing House against or in respect of Collateral under this Rules, the Security Deed and the SFA, Collateral held by or otherwise deposited with or provided to the Clearing House shall be held on trust by the Clearing House for the benefit of:

a. Clearing Members, except where such Collateral is held by or otherwise deposited with or provided to the Clearing House solely in respect of Customer Contracts; and

b. the relevant customers of the Clearing Member pursuant to the SFA, where such Collateral is held by or otherwise deposited with or provided to the Clearing House solely in respect of Customer Contracts.

7.03A.1.2 The Clearing House shall have the right to commingle any or all Collateral held by or otherwise deposited with or provided to it by Clearing Members, except where such Collateral is held by or otherwise deposited with or provided to the Clearing House solely in respect of Customer Contracts, in the same account.

7.03A.1.3 The Clearing House shall have the right to commingle any or all Collateral held by or otherwise deposited with or provided to it by Clearing Members solely in respect of Customer Contracts, except where such Collateral is Cleared Swaps Customer Collateral, in the same account.

7.03A.1.4 The Clearing House shall have the right to commingle any or all Cleared Swaps Customer Collateral held by or otherwise deposited with or provided to it by FCM Clearing Members in the same account.

Added on 26 April 2013 and amended on 31 December 2013.

7.03A.2 Security Deed

Prior to the Clearing House commencing any clearing activities in respect of any Clearing Member, the Clearing Member shall execute and deliver a Security Deed in the form and on terms prescribed by the Clearing House, setting out the terms under which its Collateral are provided to, and held by, the Clearing House.

Added on 26 April 2013.

7.03A.3 General Lien

Without prejudice and in addition to any Security Interest or other right or remedy which the Clearing House may have under this Rules, contract, law or equity, and subject to any applicable restrictions pursuant to the provisions of the SFA and/or imposed by the Authority, the Clearing House shall have a lien on all Collateral deposited with or provided to the Clearing House and on any other monies and/or assets of the Clearing Member which may be or become available to the Clearing House.

Added on 26 April 2013.

7.03A.4 Collateral Deposit

A Clearing Member shall deposit or otherwise provide to the Clearing House such Collateral, in such acceptable form and denomination as may be prescribed by the Clearing House from time to time, and may deposit or otherwise provide to the Clearing House Collateral in excess of the amount required by the Clearing House, subject to such terms and conditions prescribed by the Clearing House from time to time.

Added on 26 April 2013 and amended on 31 December 2013.

7.03A.5 Collateral Withdrawal

7.03A.5.1 Where any obligation under this Rules, the Security Deed or as may otherwise be owing to the Clearing House remains outstanding on the part of a Clearing Member, such Clearing Member shall have no right to withdraw any Collateral or request for the repayment of any credit balance held with or subject to the control of the Clearing House without the Clearing House's prior consent.

7.03A.5.2 Any withdrawal of Collateral consented to by the Clearing House under this Rule shall not be deemed to be a release of the existing or future Security Interest over any remaining Collateral held with or subject to the control of the Clearing House, other than the withdrawn Collateral.

7.03A.5.3 A request for withdrawal of Collateral may only be made by a Clearing Member subject to Rule 7.03A.5.1. Without prejudice to Rule 2.18.3, a Third Party may not withdraw or request for the withdrawal of any Collateral held with or subject to the control of the Clearing House, other than through the Third Party's Clearing Member. All Collateral permitted by the Clearing House to be withdrawn shall be returned only to the Clearing Member.

7.03A.5.4 In the case of a defaulted or suspended FCM Clearing Member, any unused Collateral withdrawn and returned to such FCM Clearing Member is intended to be treated in accordance with applicable U.S. laws, including the U.S. Bankruptcy Code, the CEA and the CFTC Regulations.

Added on 26 April 2013 and amended on 31 December 2013.

7.03A.6 Valuation of Collateral

7.03A.6.1 The Clearing House shall value such Collateral as it deems appropriate. The Clearing House shall, at its sole discretion, determine (i) what monies and/or assets will be acceptable as Collateral and (ii) when will such monies and/or assets cease to be acceptable as Collateral, and determine the valuation to be attributed thereto.

7.03A.6.2 If any Collateral deposited or provided by any Clearing Member is found in any way to be unacceptable by the Clearing House, the Clearing House shall have the right to immediately give a zero value to such Collateral for the purposes of satisfying such Clearing Members' obligations under this Rules or as may otherwise be owing to the Clearing House, pursuant to which such Collateral was deposited or provided.

7.03A.6.3 Following revaluation of any Collateral deposited with or provided to the Clearing House, where such Collateral is found by the Clearing House to be insufficient to meet any obligation of the Clearing Member under this Rules or as may otherwise be owing to the Clearing House, pursuant to which such Collateral was deposited or provided, the Clearing Member shall deposit with or provide to the Clearing House such additional Collateral as may be required to meet such obligation, within such time as the Clearing House may require.

7.03A.6.4 In the event of any dispute as to any matters covered in this Rule, the Clearing House's decision shall be final and binding.

Added on 26 April 2013.

7.03A.7 Investment and Use of Collateral

7.03A.7.1 The Clearing House may invest, manage and use Collateral in such manner as it shall deem fit, provided that:

a. Collateral in respect of Customer Contracts shall be invested in accordance with this Rules, the Security Deed, the SFA and any applicable laws; and

b. the Clearing House shall not use any Collateral received and notified to it as Collateral in respect of a Customer Contract to settle any obligations that are incurred in relation to a House Contract, except in accordance with this Rules, the Security Deed, the SFA and any applicable laws.

c. the Clearing House shall not use any Collateral received and notified to it as Collateral in respect of an Affiliate Contract to settle any obligations that are incurred in relation to a House Contract that is not an Affiliate Contract, except in accordance with this Rules, the Security Deed, the SFA and any applicable laws.

7.03A.7.2 Each Clearing Member shall secure contractual waivers in favour of the Clearing Member from its Customers waiving their respective rights to all interest and investment earnings from the Collateral held with or otherwise provided to the Clearing House in respect of Customer Contracts, in the form and manner as may be prescribed by the Clearing House, as may be necessary to give effect to the Clearing House's rights in relation to interest and fees under Rule 7.03A.8.

7.03A.7.3 All Collateral deposited or provided by each Clearing Member to the Clearing House shall be subject to this Rules, the Security Deed, the SFA (each as amended or supplemented from time to time) and any applicable laws. Each Clearing Member shall ensure that all Collateral deposited or provided to the Clearing House are deposited or provided only on the foregoing basis and shall also ensure that, prior to depositing or providing any Collateral to the Clearing House for the account or for the Contracts of any person, such person has been notified of and has accepted the foregoing.

Added on 26 April 2013 and amended on 31 December 2013 and 2 May 2016.

7.03A.8 Fees and Interest

7.03A.8.1 The Clearing Member shall pay the Clearing House such administrative fees as may be prescribed by the Clearing House and notified to the Clearing Member from time to time for the investment and management of the Collateral. Administrative fees may be deducted from the investment earnings arising from or in connection with the Collateral or paid directly to the Clearing House as determined by the Clearing House.

7.03A.8.2 Unless otherwise provided for in this Rules, the Clearing House shall pay the Clearing Member interest on the Collateral at such rate and in such manner as prescribed by the Clearing House and notified to a Clearing Member.

7.03A.8.3 Except as set forth in this Rule, the Clearing House shall have no obligation to make payment of any other fees, interest and investment earnings arising from or in connection with the Collateral to any person.

Added on 26 April 2013.

7.03A.9 Safekeeping Indemnity

7.03A.9.1 Any Collateral accepted by Clearing House shall be deposited with the appropriate custodian(s) designated by the Clearing House for safekeeping in a Clearing House account for House Contracts or in a Clearing House account for Customer Contracts, as the case may be, and the Clearing House shall retain control over such Collateral.

7.03A.9.2 The Clearing House shall not have any obligation or responsibility to preserve, protect, collect or realise, and under no circumstances shall the Clearing House be liable for any loss or diminution in value or depreciation in or in connection with, the Collateral maintained pursuant to this Rule.

7.03A.9.3 A Clearing Member who maintains Collateral with the Clearing House pursuant to this Rule shall indemnify and hold the Clearing House harmless from any loss, damage, costs, charges and/or expenses of whatsoever nature and howsoever arising ("Loss") suffered or incurred by the Clearing House to any designated custodian which may result from or arise with respect to:

a. any act, delay or omission in connection with Collateral (whether by such Clearing Member or the Clearing House) deposited with such designated custodian; or

b. any contract or agreement between the Clearing House and any designated custodian, or any representation, warranty or undertaking given by the Clearing House to any designated custodian, in relation to or otherwise in connection with Collateral deposited with such designated custodian, provided that this indemnity shall not cover any Loss and/or liability of the Clearing House attributable or referable to the gross negligence or wilful misconduct of the Clearing House or any of the Clearing House's officers, agents and/or employees.

7.03A.9.4 If any loss of Collateral occurs, or any Collateral becomes unavailable to the Clearing House, such that any obligation of the Clearing Member under this Rules or as may otherwise be owing to the Clearing House, pursuant to which such Collateral was deposited or provided, cannot be sufficiently met as determined by the Clearing House, the Clearing Member shall deposit with or provide to the Clearing House such additional Collateral as may be required to meet such obligation, within such time as the Clearing House may require.

Added on 26 April 2013.

7.03A.10 Regulatory Information

Clearing Members shall provide the Clearing House with any information necessary in relation to such Collateral deposited with or provided to the Clearing House to enable the Clearing House to meet its reporting obligations to the Authority and/or other relevant governmental or regulatory authorities or for any other regulatory purposes, including but not limited to for withholding tax purposes.

Added on 26 April 2013.

7.03A.11 Permitted Depositories for Cleared Swaps Customer Collateral

7.03A.11.1 The Clearing House shall deposit Cleared Swaps Customer Collateral with a permitted depository in accordance with the CFTC Regulations and ensure that the Cleared Swaps Customer Collateral is segregated in accordance with the CEA and CFTC Regulations. The Cleared Swap Customer Account and Cleared Swaps Customer Collateral shall be part of the cleared swaps account class for the purposes of Part 190 of the CFTC Regulations.

7.03A.11.2 Each FCM Clearing Member shall maintain written records of the authorisation of each Cleared Swaps Customer for the deposit of its Cleared Swaps Customer Collateral

outside of the United States with a permitted depository in accordance with Rule 7.03A.11.1.

Added on 31 December 2013.

7.04 Substitution

7.04.1 Relevant Market Trades (other than trades matched on Connect Market)

7.04.1.1 **Relevant Market trades (other than trades matched on Connect Market) cleared by two Clearing Members**

When a contract matched on a Relevant Market (other than trades matched on Connect Market) is cleared through the Clearing House by two Clearing Members, upon matching of the contract on the Relevant Market (other than trades matched on Connect Market), the original contract between the Clearing Members shall be discharged and replaced with two separate and distinct Contracts as described below, both of which are on the same terms as the original contract:

a. the Clearing Member who assumes the position of the buyer shall enter into a Contract with the Clearing House, which assumes the position of the seller, and

b. the Clearing Member who assumes the position of the seller shall enter into a Contract with the Clearing House, which assumes the position of the buyer.

7.04.1.2 The events described under Rule 7.04.1.1 shall be deemed not to have taken place if the Clearing House has received corrupt or unreadable data in respect of the original contract, or if the original contract is based on a series that is not eligible for clearing. Clearing Members will be notified in such instances.

7.04.1.3 **Relevant Market trades (other than trades matched on Connect Market) cleared by a Clearing Member and a clearing member of another Relevant Market or its clearing house**

Subject to Rule 7.04.1.4, when a contract matched on a Relevant Market (other than trades matched on Connect Market) is cleared by a Clearing Member and a clearing member of a Relevant Market or its clearing house (other than the Clearing House), the original contract shall be discharged and replaced with two separate and distinct Contracts as described below, both of which are on the same terms as the original contract:

a. a Contract between the Clearing Member and Clearing House, wherein:

i. the Clearing House assumes the position of the buyer if the Clearing Member assumes the position of the seller, and conversely,

ii. the Clearing House assumes the position of the seller if the Clearing Member assumes the position of the buyer; and

b. a Contract between the Relevant Market (or its clearing house) and the Clearing House, wherein:

i. the Relevant Market (or its clearing house) assumes the position of the buyer if the Clearing House assumes the position of the seller, and conversely,

ii. the Relevant Market (or its clearing house) assumes the position of the seller if the Clearing House assumes the position of the buyer.

7.04.1.4 The events described under Rule 7.04.1.3 shall take place only upon the occurrence of the following:

a. matching of the original contract on the Relevant Market (other than trades matched on Connect Market); and

b. confirmation by the Relevant Market (or its clearing house) that it will enter into the Contract described in Rule 7.04.1.3.b.

7.04.1.5 Notwithstanding Rule 7.04.1.4, the events described under Rule 7.04.1.3 shall be deemed not to have taken place if the Clearing House has received corrupt or unreadable data in respect of the original contract, or if the original contract is based on a series that is not eligible for clearing. Clearing Members will be notified in such instances.

Amended on 27 March 2006, 22 September 2006, 26 January 2007, 3 November 2010, 8 November 2012, 26 April 2013 and 29 July 2022.

7.04.1A [Rule has been deleted.]

Deleted on 26 April 2013.

7.04.1B Trades matched on Connect Market

7.04.1B.1 **Trades matched on Connect Market cleared by two Clearing Members**

When a Connect Contract matched on a Connect Market is to be cleared by two Clearing Members of the Clearing House, upon matching of the Connect Contract on the Connect Market, two separate and distinct Contracts will be created as described below, both of which based on the same terms as the original Connect Contract:

a. the Clearing Member who assumes the position of the buyer shall enter into a Contract with the Clearing House, which assumes the position of the seller, and

b. the Clearing Member who assumes the position of the seller shall enter into a Contract with the Clearing House, which assumes the position of the buyer.

7.04.1B.2 Clearing Members shall at all times be solely liable to the Clearing House in respect of all clearing and settlement obligations arising out of the Contracts created in Rule 7.04.1B.1.

7.04.1B.3 **Trades matched on Connect Market cleared by a Clearing Member and where only one of the counterparties to the trade is a Clearing Member**

When a Connect Contract matched on a Connect Market is to be cleared by a Clearing Member and where only one of the counterparties to the trade is a Clearing Member, upon matching of the Connect Contract on the Connect Market, two separate and distinct Contracts will be created as described below, both of which based on the same terms as the original Connect Contract:

a. a Contract between the Clearing Member and Clearing House, wherein:

i. the Clearing House assumes the position of the buyer if the Clearing Member assumes the position of the seller, and conversely,

ii. the Clearing House assumes the position of the seller if the Clearing Member assumes the position of the buyer; and

b. a Contract between the Connect Broker and the Clearing House, wherein:

i. the Connect Broker assumes the position of the buyer if the Clearing House assumes the position of the seller, and conversely,

ii. the Connect Broker assumes the position of the seller if the Clearing House assumes the position of the buyer.

7.04.1B.4 Clearing Members and the Connect Broker shall at all times be solely liable to the Clearing House in respect of all clearing and settlement obligations arising out of the Contracts created in Rule 7.04.1B.3.

7.04.1B.5 The events described under Rule 7.04.1B shall be deemed not to have taken place if the Clearing House has received corrupt or unreadable data in respect of the original contract, or if the original contract is based on a series that is not eligible for clearing, or such trades are cancelled by the Connect Exchange or not cleared by the Connect Counterparty. Clearing Members will be notified in such instances.

Added on 29 July 2022.

7.04.2 Off Market Trades (other than NLT transactions for Connect Contracts)

7.04.2.1 **Non-Relevant Market Transactions, EFP transactions, EFS transactions and NLT transactions (other than NLT transactions for Connect Contracts) cleared by two Clearing Members**

When a Non-Relevant Market Transaction, EFP transaction, EFS transaction or NLT transaction (other than NLT transactions for Connect Contracts) that is eligible for registration pursuant to Rule 7.02A.1.1 and that is registered pursuant to Rule 7.02A.2 between two Clearing Members is cleared through the Clearing House, upon the Clearing House issuing to the Clearing Members a Notice of Novation that the transaction has been accepted for clearing, the original contract between the Clearing Members shall be discharged and replaced with two separate and distinct Contracts as described below, both of which are on the same terms as the original contract:

a. the Clearing Member who assumes the position of the buyer shall enter into a Contract with the Clearing House, which assumes the position of the seller, and

b. the Clearing Member who assumes the position of the seller shall enter into a Contract with the Clearing House, which assumes the position of the buyer.

A "**Notice of Novation**" for the purpose of Rule 7.04.2 means a "BD4" message or such other message that the Clearing House may inform Clearing Members will be used in place of a "BD4" message.

7.04.2.2 [Deleted]

7.04.2.3 [Deleted]

7.04.2.4 **EFP transactions, EFS transactions and NLT transactions (other than NLT transactions for Connect Contracts) cleared by a Clearing Member and a clearing member of another Relevant Market (or its clearing house)**

When an EFP transaction, EFS transaction or NLT transaction (other than NLT transactions for Connect Contracts) that is eligible for registration pursuant to Rule 7.02A.1.1 and that is registered pursuant to Rule 7.02A.2 between a Clearing Member and a clearing member of a Relevant Market or its clearing house (other than the Clearing House) is cleared through the Clearing House, upon the Clearing House issuing to the Clearing Member and clearing member a Notice of Novation that the transaction has been accepted for clearing, the original contract shall be discharged and replaced with two separate and distinct Contracts as described below, both of which are on the same terms as the original contract:

a. a Contract between the Clearing Member and Clearing House, wherein:

i. the Clearing House assumes the position of the buyer if the Clearing Member assumes the position of the seller, and conversely,

ii. the Clearing House assumes the position of the seller if the Clearing Member assumes the position of the buyer; and

b. a Contract between the Relevant Market (or its clearing house) and the Clearing House, wherein:

i. the Relevant Market (or its clearing house) assumes the position of the buyer if the Clearing House assumes the position of the seller, and conversely,

ii. the Relevant Market (or its clearing house) assumes the position of the seller if the Clearing House assumes the position of the buyer.

7.04.2.5 [Deleted]

Amended on 1 October 2009, 26 April 2013, 19 September 2016, 17 July 2019 and 29 July 2022.

7.04.2A Off Market Trades for Connect Contracts

7.04.2A.1 **NLT transactions for Connect Contracts cleared by two Clearing Members**

When a NLT transaction for Connect Contracts that is eligible for registration pursuant to Rule 7.02A.1.1 and that is registered pursuant to Rule 7.02A.2 between two Clearing Members is cleared through the Clearing House, upon the Clearing House issuing to the Clearing Members a Notice of Novation that the transaction has been accepted for clearing, the original contract between the Clearing Members shall be discharged and replaced with two separate and distinct Contracts as described below, both of which are on the same terms as the original contract:

a. the Clearing Member who assumes the position of the buyer shall enter into a Contract with the Clearing House, which assumes the position of the seller, and

b. the Clearing Member who assumes the position of the seller shall enter into a Contract with the Clearing House, which assumes the position of the buyer.

A "**Notice of Novation**" for the purpose of Rule 7.04.2A means a "BD4" message or such other message that the Clearing House may inform Clearing Members will be used in place of a "BD4" message.

Added on 29 July 2022.

7.04.3 Transfers

7.04.3.1 **Mutual Offset System transfers**

When an open position in a Designated Futures Contract is transferred from a clearing member of any other Participating Market (or its clearing house) to a Clearing Member pursuant to Rule 8.03.1.3, upon such transfer being effective, two separate and distinct Contracts shall be created on the same terms as the open position:

a. a Contract between the Clearing Member and Clearing House, wherein:

i. the Clearing House assumes the position of the buyer if the Clearing Member assumes the position of the seller, and conversely,

ii. the Clearing House assumes the position of the seller if the Clearing Member assumes the position of the buyer; and

b. a Contract between the Participating Market (or its clearing house) and the Clearing House, wherein:

i. the Participating Market (or its clearing house) assumes the position of the buyer if the Clearing House assumes the position of the seller, and conversely,

ii. the Participating Market (or its clearing house) assumes the position of the seller if the Clearing House assumes the position of the buyer.

7.04.3.2 **Transfers for consolidation between two Clearing Members**

Subject to Rule 7.04.3.3, when an open position is transferred from a Clearing Member to an appointed Clearing Member pursuant to Rule 6.05.2 for the purpose of consolidation, the original Contract in respect of the open position shall be discharged and replaced by a separate and distinct Contract between the appointed Clearing Member and the Clearing House on the same terms as the original Contract, as described below:

a. the Clearing House assumes the position of the buyer if the appointed Clearing Member assumes the position of the seller, and conversely,

b. the Clearing House assumes the position of the seller if the appointed Clearing Member assumes the position of the buyer.

7.04.3.3 The events described under Rule 7.04.3.2 shall take place only upon the occurrence of the following:

a. Confirmation by the appointed Clearing Member's Settlement Bank of the Payment Instruction in respect of the margin call received by the Clearing Member pursuant to the first margin cycle run following the transfer, or, if no such margin call is received, the end of that margin cycle; or

b. the posting of Performance Deposits as prescribed in Rule 6.02A.7B, due pursuant to Rule 6.07.1 or the relevant Contract Specifications, by the appointed Clearing Member,

whichever is applicable, or if both Rule 7.04.3.3.a and Rule 7.04.3.3.b are applicable, only upon the later in time occurrence of the matters described in Rule 7.04.3.3.a and Rule 7.04.3.3.b.

7.04.3.4 **Transfers for consolidation from a clearing member of another Relevant Market (or its clearing house) (other than the Connect Market) to a Clearing Member**

Subject to Rule 7.04.3.5, when an open position is transferred from a clearing member of any other Relevant Market (or its clearing house) (other than the Connect Market) to a Clearing Member pursuant to Rule 6.05.2 for the purpose of consolidation, two separate and distinct Contracts shall be created on the same terms as the open position:

a. a Contract between the Clearing Member and Clearing House, wherein:

i. the Clearing House assumes the position of the buyer if the Clearing Member assumes the position of the seller, and conversely,

ii. the Clearing House assumes the position of the seller if the Clearing Member assumes the position of the buyer; and

b. a Contract between the Relevant Market (or its clearing house) and the Clearing House, wherein:

i. the Relevant Market (or its clearing house) assumes the position of the buyer if the Clearing House assumes the position of the seller, and conversely,

ii. the Relevant Market (or its clearing house) assumes the position of the seller if the Clearing House assumes the position of the buyer.

7.04.3.5 The events described under Rule 7.04.3.4 shall take place only upon the later in time occurrence of the following:

a. Confirmation by the Clearing Member's Settlement Bank of the Payment Instruction in respect of the margin call received by the Clearing Member pursuant to the first margin cycle run following the transfer, or if no such margin call is received, the end of that margin cycle; and

b. confirmation by the Relevant Market (or its clearing house) that it will enter into the Contract described in Rule 7.04.3.4.b.

7.04.3.6 **Transfers for consolidation from a Clearing Member to a clearing member of another Relevant Market (or its clearing house) (other than the Connect Market)**

Subject to Rule 7.04.3.7, when an open position is transferred from a Clearing Member to a clearing member of any other Relevant Market (or its clearing house) (other than the Connect Market) pursuant to Rule 6.05.2 for the purpose of consolidation, the Contract between the Clearing Member and the Clearing House in respect of the open position shall be terminated.

7.04.3.7 The event described under Rule 7.04.3.6 shall take place only upon the confirmation by the other Relevant Market (or its clearing house) that it will enter into a contract with its clearing member in respect of such open position.

7.04.3.8 **Transfers pursuant to Rule 7.28 from a clearing member of another Relevant Market (or its clearing house) (other than the Connect Market) to a Clearing Member**

Subject to Rule 7.04.3.9, when an open position is transferred from a clearing member of any other Relevant Market (or its clearing house) (other than the Connect Market) to a Clearing Member pursuant to Rule 7.28 at the request of a Customer, two separate and distinct Contracts shall be created on the same terms as the open position:

a. a Contract between the Clearing Member and Clearing House, wherein:

i. the Clearing House assumes the position of the buyer if the Clearing Member assumes the position of the seller, and conversely,

ii. the Clearing House assumes the position of the seller if the Clearing Member assumes the position of the buyer; and

b. a Contract between the Relevant Market (or its clearing house) and the Clearing House, wherein:

i. the Relevant Market (or its clearing house) assumes the position of the buyer if the Clearing House assumes the position of the seller, and conversely,

ii. the Relevant Market (or its clearing house) assumes the position of the seller if the Clearing House assumes the position of the buyer.

7.04.3.9 The events described under Rule 7.04.3.8 shall take place only upon the later in time occurrence of the following:

a. Confirmation by the Clearing Member's Settlement Bank of the Payment Instruction in respect of the margin call received by the Clearing Member pursuant to the first margin cycle run following the transfer, or, if no such margin call is received, the end of that margin cycle; and

b. confirmation by the Relevant Market (or its clearing house) that it will enter into the Contract described in Rule 7.04.3.8.b.

7.04.3.10 **Transfers pursuant to Rule 7.28 from a Clearing Member to a clearing member of another Relevant Market (or its clearing house) (other than the Connect Market)**

Subject to Rule 7.04.3.11, when an open position is transferred from a Clearing Member to a clearing member of any other Relevant Market (or its clearing house) (other than the Connect Market) pursuant to Rule 7.28 at the request of a Customer, the Contract between the Clearing Member and the Clearing House in respect of the open position shall be terminated.

7.04.3.11 The event described under Rule 7.04.3.10 shall take place only upon the later in time occurrence of the following:

a. Confirmation by the Clearing Member's Settlement Bank of the Payment Instruction in respect of the margin call received by the Clearing Member pursuant to the first margin cycle run following the transfer, or, if no such margin call is received, the end of that margin cycle; and

b. confirmation by the other Relevant Market (or its clearing house) that it will enter into a contract with its clearing member in respect of such open position.

7.04.3.12 **Transfers from a defaulted/suspended Clearing Member to a designated Clearing Member**

Subject to Rule 7.04.3.13, when an open position is transferred from a defaulted or suspended Clearing Member to a designated Clearing Member pursuant to Rule 7A.02.1.1, the original Contract in respect of the open position shall be discharged and replaced by a separate and distinct Contract between the designated Clearing Member and the Clearing House on the same terms as the original Contract, as described below:

a. the Clearing House assumes the position of the buyer if the appointed Clearing Member assumes the position of the seller, and conversely,

b. the Clearing House assumes the position of the seller if the appointed Clearing Member assumes the position of the buyer.

7.04.3.13 The events described under Rule 7.04.3.12 shall take place only upon Confirmation by the designated Clearing Member's Settlement Bank of the Payment Instruction in respect of the margin call received by the designated Clearing Member pursuant to the first margin cycle run following the transfer, or, if no such margin call is received, the end of that margin cycle.

7.04.3.14 **Transfers pursuant to Rule 7.27 between two Clearing Members**

Subject to Rule 7.04.3.15, when an open position is transferred from a Clearing Member ("Original Party") to another Clearing Member ("New Party") pursuant to Rule 7.27, excluding Rule 7.27.1.5, the original Contract between the Original Party and the Clearing House in respect of the open position shall be discharged and replaced by a separate and distinct Contract between the New Party and the Clearing House on the same terms as the original Contract, as described below:

a. the Clearing House assumes the position of the buyer if the New Party assumes the position of the seller, and conversely,

b. the Clearing House assumes the position of the seller if the New Party assumes the position of the buyer.

For the purposes of Rule 7.04.3.14, "Original Party" and "New Party" shall be as defined herein.

7.04.3.15 The events described under Rule 7.04.3.14 shall take place only upon:

a. where both Clearing Members receive margin call pursuant to the first margin cycle run following the transfer: the later in time Confirmation by the Clearing Members' Settlement Bank(s) of the Payment Instructions in respect of the margin calls; or

b. where only one Clearing Member receives margin call pursuant to the first margin cycle run following the transfer: Confirmation by that Clearing Member's Settlement Bank of the Payment Instruction in respect of that margin call; or

c. where neither Clearing Member receives margin call pursuant to the first margin cycle run following the transfer: the end of that margin cycle.

7.04.3.16 **Transfers pursuant to Rule 7.27.1.5 for order fill/give-up from a Clearing Member or a clearing member of another Relevant Market (or its clearing house) (other than the Connect Market) to another Clearing Member**

Subject to Rule 7.04.3.17, when an open position is transferred for the purpose of filling an order or as a give-up by a Clearing Member or a clearing member of another Relevant Market (or its clearing house) (other than the Connect Market) ("Original Party") to another Clearing Member ("New Party") pursuant to Rule 7.27.1.5, the original Contract between the Original Party and the Clearing House in respect of the open position shall be discharged and replaced by a separate and distinct Contract between the New Party and the Clearing House on the same terms as the original Contract, as described below:

a. the Clearing House assumes the position of the buyer if the New Party assumes the position of the seller, and conversely,

b. the Clearing House assumes the position of the seller if the New Party assumes the position of the buyer.

For the purposes of Rule 7.04.3.16, "Original Party" and "New Party" shall be as defined herein.

7.04.3.17 The events described under Rule 7.04.3.16 shall take place only if they occur on the same trading day as the creation of the open position and only upon the approval of the transfer by the Clearing House.

Amended on 27 March 2006, 22 September 2006, 1 October 2009, 7 August 2012, 26 April 2013 and 29 July 2022.

7.04.3A [Rule has been deleted.]

Deleted on 26 April 2013.

7.04.3B [Rule has been deleted.]

Deleted on 26 April 2013.

7.04.3C [Rule has been deleted.]

Deleted on 26 April 2013.

7.04.3D [Rule has been deleted.]

Deleted on 26 April 2013.

7.04.3E [Rule has been deleted.]

Deleted on 26 April 2013.

7.04.4 [Rule has been deleted.]

Deleted on 26 April 2013.

7.04.5 Options exercise

7.04.5.1 Upon the exercise of an option Contract by or on behalf of a Clearing Member or, as the case may be, by the Clearing House or upon the deemed exercise of such option Contract pursuant to this Rules or the rules of the Relevant Market at which the option Contract was traded, the option Contract shall be replaced by an open Contract in the underlying under the terms specified in the option Contract at the strike price or at some other price in accordance with the terms of such option Contract.

7.04.5.2 Upon the assignment of an option Contract by the Clearing House, the option Contract shall be replaced by an open Contract in the underlying under the terms specified in the option Contract at the strike price or at some other price in accordance with the terms of such option Contract.

Amended on 16 July 2012 and 26 April 2013.

7.04.5A [Rule has been deleted.]

Deleted on 17 July 2019.

7.04.5B [Rule has been deleted.]

Deleted on 17 July 2019.

7.04.5C [Rule has been deleted.]

Deleted on 17 July 2019.

7.04.5D [Rule has been deleted.]

Deleted on 17 July 2019.

7.04.5E [Rule has been deleted.]

Deleted on 17 July 2019.

7.04.5F [Rule has been deleted.]

Deleted on 17 July 2019.

7.04.6

Nothing in these Rules shall be regarded, treated or otherwise interpreted as limiting, diminishing, modifying or otherwise affecting the relationship between the Clearing House and a Clearing Member, which, when Contracts have been accepted by the Clearing House, and as between the Clearing House and the Clearing Member, is and is deemed to be, as principals to one another.

7.04.7

Nothing in these Rules shall be regarded, treated or otherwise interpreted as obliging or requiring the Clearing House to recognise any right or entitlement of any Third Party (in so far as such right or entitlement is contrary to the provisions in Chapter 1 of this Rules or Rule 7.04).

7.04A Registration of an NLT, EFP or EFS in Respect of Contracts Listed on a Relevant Market

7.04A.1

With regard to an NLT, EFP or EFS in respect of any Contract listed for trading on a Relevant Market (other than the Connect Contracts) to be cleared through the Clearing House, Clearing Members shall comply with requirements for the registration of such NLT, EFP or EFS, as set forth in the rules of the Relevant Market.

Added on 1 October 2009 and Amended on 29 July 2022.

7.04A.2

With regard to an NLT in respect of the Connect Contracts, Clearing Members shall comply with requirements for the registration of NLT transactions, as set forth in Rule 7.02A.

Added on 29 July 2022.

7.05 Open Positions/Open Contracts for Contracts Traded on the Exchange/Any Relevant Market and Non-Relevant Market Contracts

Amended on 8 November 2012.

7.05.1

All Contracts to which the Clearing House is a party shall remain open until liquidated by offset as provided in Rule 7.06, terminated in accordance with Rule 7A.07, Rule 7A.02.1.5A or Rule 7A.02A, or by delivery in accordance with Chapter 6 of this Rules, and

7.05.1.1 for Non-Relevant Market Contracts, such liquidation or delivery shall be in accordance with these Rules; and

7.05.1.2 for other Contracts (other than the Connect Contracts) such liquidation or delivery shall be in accordance with the relevant provision(s) of the Relevant Market where the Contracts were traded and/or transferred or novated from pursuant to a Mutual Offset System and this Rules.

Amended on 27 March 2006, 3 November 2010, 7 August 2012, 8 November 2012, 17 July 2019 and 29 July 2022.

7.05A [Rule has been deleted.]

Deleted on 17 July 2019.

7.05A.1 [Rule has been deleted.]

Deleted on 17 July 2019.

7.06 Offset by Liquidation

7.06.1

A Clearing Member long or short any Contract to the Clearing House as a result of substitution may liquidate the position by acquiring an appropriate opposite position.

7.07 Offset not Automatic

7.07.1

When a Clearing Member buys and sells or (vis-à-vis the Clearing House) is deemed to buy and sell Contracts for the same series and such Contracts are cleared through the Clearing House, the purchases and sales are not automatically offset one against the other where the relevant account is a gross position account. Transactions can only be offset against one another by complying the rules of the Relevant Market(s) at which they were effected and by submission of a close out request to the Clearing House by the relevant Clearing Member.

Amended on 7 December 2009.

7.07.1A

When a Clearing Member buys and sells or (vis-à-vis the Clearing House) is deemed to buy and sell Contracts for two different fungible series and such Contracts are cleared through the Clearing House, such transactions can only be offset against one another by complying with the rules of the Relevant Market(s) at which they were effected and by submission of a close out request to the Clearing House by the relevant Clearing Member.

Added on 7 December 2009.

7.07A Invoicing Back of Open Positions to the Clearing House

7.07A.1

Where open positions are invoiced back to the Clearing House by any other Relevant Market (or clearing house) relating to a Contract subject to physical delivery prior to the matching process in Rule 6.02A.7, the Clearing House may invoice the positions back to Clearing Members holding appropriate positions (whether reported back to the Clearing House as being House or Customer positions) as at the date of such invoicing back, on a pro-rata basis, calculated as the proportion of such positions of each Clearing Member at the date of such invoicing back relative to the aggregate value of such open positions held by all non-defaulting Clearing Members (to be rounded down or up if the number of lots is not a whole number at the Clearing House's absolute discretion). Invoicing back shall be carried out by the Clearing House effecting and registering opposite positions between itself and each of the affected Clearing Members and thereupon settling such open positions against such opposite positions, at a price determined by the Clearing House. The Clearing House's actions, including the timing of the invoicing back and the price determined by the Clearing House shall be binding on all affected Clearing Members.

Added on 1 October 2009.

7.08 False Information

7.08.1

Without prejudice to the right and power of the Clearing House at the cost and expense of the Clearing Member concerned to effect such rectification or correction measures otherwise, no Clearing Member shall place any false or inaccurate entries on any other submission or otherwise provide false or inaccurate information in any document submitted to the Clearing House for clearing purposes.

Violation of this Rule may constitute a major offence.

7.09 Position Change Sheets

7.09.1

Position change sheets must be submitted to the Clearing House each trading day by the time specified by the Clearing House. Position change sheets shall be in such form as prescribed by the Clearing House. When requested, the identification of accounts will be made available to the Clearing House.

Amended on 3 November 2010 and 17 July 2019.

7.10 Recap Ledger

7.10.1

The Clearing House will produce a recap ledger for each Clearing Member which will itemise, among other things, the incoming positions in respect of any Contract; the position changes the closing positions in respect of any Contract; the net settlements, pay or collect, margins required, the current margin balance, and the net debit balance(s) payable by the Clearing Member and/or credit balance(s) payable by the Clearing House.

The net debit balance(s) reflected on the recap ledger, excluding those arising from margin withdrawals ("**Net Debit Balance(s)**") and the net credit balance(s) reflected on the recap ledger, excluding those arising from margin deposits and calls ("**Net Credit Balance(s)**") shall be payable in accordance with Rule 7.14.

Amended on 3 November 2010 and 26 April 2013.

7.10.2

If a Clearing Member believes that there is any error in the recap ledger, the Clearing Member must immediately notify the Clearing House in writing and in any event, no later than 5 p.m. on the following Business Day.

Violation of this Rule may constitute a major offence.

7.11 Daily Settlement Price

7.11.1

The daily settlement price of a Contract shall be determined:

7.11.1.1 in Non-Relevant Market Contracts, by using price data from market participants or derived from pricing models, as selected or established by the Clearing House from time to time; and

Refer to Practice Note 7.11.1.1.

7.11.1.2 in all other Contracts (other than Connect Contracts), in accordance with the relevant formula and procedures applicable to each Contract, as determined by the Clearing House. In arriving at such formula, the Clearing House may, in consultation with the Exchange, take into account factors, including but not limited to:

a. the last traded price;

b. bid and offer spread at the close of market; and

c. price data derived from pricing models, as selected or established by the Clearing House from time to time.

Refer to Practice Note 7.11.1.2.

7.11.1.3 in the Connect Contracts, in accordance with the relevant formula and procedures, as determined by the Clearing House.

Amended on 27 March 2006, 22 September 2006, 3 November 2010, 8 November 2012, 17 July 2019 and 29 July 2022.

7.11.2

Notwithstanding the foregoing, the Clearing House shall reserve the right to amend the settlement prices of any Contract for the purposes of settlement under this Rules if it so deems necessary.

Amended on 22 September 2006.

7.11.3

The daily settlement price of a Contract shall be binding on all Clearing Members.

Added on 22 September 2006.

7.11A Final Settlement Price of Contracts Traded on the Exchange/Any Relevant Market and Non-Relevant Market Contracts

Amended on 8 November 2012.

7.11A.1

The Final Settlement Price of Non-Relevant Market Contracts shall be determined in the manner as set out in Appendix 1, and of all other Contracts, in the manner as set out in the Trading Rules or relevant Contract Specifications.

Refer to Appendix 1 — Final Settlement Price.

Added on 27 March 2006 and amended on 22 September 2006, 3 November 2010, 8 November 2012 and 17 July 2019.

7.11A.2

The Final Settlement Price shall be binding on all Clearing Members.

Added on 27 March 2006 and amended on 22 September 2006.

7.11A.3

Notwithstanding the foregoing, where the means for determining the Final Settlement Price for Contracts are not available, the Clearing House or the Exchange, as the case may be, may resolve the Final Settlement Price by such means as it may in its discretion decide. The decision of the Clearing House or the Exchange and the price determined by such other means shall be binding upon all Clearing Members.

Added on 27 March 2006 and amended on 22 September 2006.

7.11B [Rule has been deleted.]

Deleted on 17 July 2019.

7.11B.1 [Rule has been deleted.]

Deleted on 17 July 2019.

7.11B.2 [Rule has been deleted.]

Deleted on 17 July 2019.

7.11B.3 [Rule has been deleted.]

Deleted on 17 July 2019.

7.12 Settlement to Settlement Price Daily

7.12.1

When a Clearing Member is long or short any amount of any Contract at the end of the day, as indicated by the recap ledger prepared by the Clearing House, settlement shall be made with the Clearing House to the settlement price for that day, and such Clearing Member shall be liable to pay to, or entitled to collect from, the Clearing House any loss or profit, as the case may be, represented by the difference between the price at which the Contract was bought or sold and the settlement price of the Contract at the end of the day.

7.12.2

Such settlement must be paid in cash in the respective currencies of the Contracts, or such other currency as the Clearing House may prescribe in the interest of a safe and efficient clearing facility, and at such exchange rate as determined by the Clearing House. Without prejudice to the generality of the foregoing, the Clearing House may refer to exchange rates published by data vendors in determining the relevant exchange rates.

Amended on 26 April 2013.

7.12.3

After making such settlement with the Clearing House, such Clearing Member shall be deemed long or short (or long and short) such Contract, as the case may be, at the settlement price of the day.

7.12.4

Notwithstanding the foregoing, the Clearing House shall not be required to pay any profit to a Clearing Member in the event that such Clearing Member fails to meet any required settlement or margin call for that day with the Clearing House.

7.12.5

This Rule 7.12 shall not apply to trading in options contracts in respect of which the following shall apply.

7.12.6

Except for payment of relevant premiums on establishment of an option contract, no variation payments are thereafter required to be made from or to the Clearing House.

7.12.7

In respect of the payment of relevant premiums on establishment of an option contract as referred to in Rule 7.12.6, such payment must be paid in cash in the respective currencies of the options contract, or such other currency as the Clearing House may prescribe in the interest of a safe and efficient clearing facility, and at such exchange rate as determined by the Clearing House. Without prejudice to the generality of the foregoing, the Clearing House may refer to exchange rates published by data vendors in determining the relevant exchange rates.

Added on 26 April 2013.

7.13 Settlement Variation for Contracts Cleared by the Clearing House

Amended on 8 November 2012 and 29 July 2022.

7.13.1

The Clearing House may prescribe an adjustment to the Settlement Variation if, in the Clearing House' s opinion, it is necessary to address a change in the underlying that fundamentally affects the pricing of a Contract. Any adjustments will be specified by the Clearing House in a Circular. A Clearing Member would be liable for or entitled to an adjustment, as the case may be, in respect of its open positions in a relevant Contract.

Added on 27 March 2006, 8 November 2012 and amended on 8 June 2020.

7.13.2

No interest shall be payable by the Clearing House on any amount that has to be refunded to a Clearing Member as a result of any such adjustment to the Settlement Variation.

Added on 27 March 2006.

7.13.3

Settlement Variation and adjustments to Settlement Variation (where relevant) as calculated and/or determined at such times as the Clearing House shall determine, must be paid in cash.

Amended on 27 March 2006.

7.13A [Rule has been deleted.]

Deleted on 17 July 2019.

7.13A.1 [Rule has been deleted.]

Deleted on 17 July 2019.

7.13A.2 [Rule has been deleted.]

Deleted on 17 July 2019.

7.13A.3 [Rule has been deleted.]

Deleted on 17 July 2019.

7.14 Net Debit Balances and Credit Balances

Amended on 26 April 2013.

7.14.1

If the recap ledger of any Clearing Member shows a Net Debit Balance against such Clearing Member:

(a) and if it appears to the Clearing House that the Clearing Member will have insufficient cash margin held by the Clearing House to apply towards payment of the Clearing Member's Net Debit Balance, the Clearing Member shall receive margin call and be required to deposit additional cash collateral to cover the shortage in such cash margin;

(b) payment of such New Debit Balance shall be effected at the Confirmation Cut Off Time, by the Clearing House applying the Clearing Member's cash margin held with the Clearing House towards payment of such Net Debit Balance. If, at the Confirmation Cut Off Time, the Clearing Member has insufficient cash margin held with the Clearing House to apply towards payment of the full Net Debit Balance, all of such cash margin will, at the Confirmation Cut Off Time, be applied towards payment of such portion of the Net Debit Balance as it covers; and

(c) such application shall constitute final and irrevocable settlement of the Clearing Member's obligation to pay such Net Debit Balance or such portion of the Net Debit Balance (as the case may be) to the Clearing House.

Violation of this Rule may constitute a major offence.

Added on 3 November 2010 and amended on 26 April 2013.

7.14.2

If the recap ledger of any Clearing Member shows a Net Credit Balance in favour of such Clearing Member payment of such Net Credit Balance shall be effected at the Confirmation Cut Off Time, by the Clearing House crediting the Net Credit Balance directly to the Clearing Member's cash margin held with the Clearing House. Such crediting shall constitute final and irrevocable settlement of the Clearing House's obligation to pay such Net Credit Balance to the Clearing Member.

Added on 3 November 2010 amended on 26 April 2013.

7.14.3

"Confirmation Cut Off Time", in relation to the Net Debit Balance or the Net Credit Balance shown in the recap ledger of any Clearing Member shall, for the purposes of this Rule 7.14, mean the cut-off time for Confirmation in respect of any margin call that may be made in that recap ledger, as notified by the Clearing House to Clearing Members.

Added on 26 April 2013.

7.15 [Rule has been deleted.]

Deleted on 7 August 2012.

7.15.1 [Rule has been deleted.]

Deleted on 7 August 2012.

7.15.2 [Rule has been deleted.]

Deleted on 7 August 2012.

7.15.3 [Rule has been deleted.]

Deleted on 7 August 2012.

7.15.4 [Rule has been deleted.]

Deleted on 7 August 2012.

7.15A [Rule has been deleted.]

Deleted on 7 August 2012.

7.15A.1 [Rule has been deleted.]

Deleted on 7 August 2012.

7.15A.2 [Rule has been deleted.]

Deleted on 7 August 2012.

7.15B [Rule has been deleted.]

Deleted on 7 August 2012.

7.15B.1 [Rule has been deleted.]

Deleted on 7 August 2012.

7.15B.2 [Rule has been deleted.]

Deleted on 7 August 2012.

7.15B.3 [Rule has been deleted.]

Deleted on 7 August 2012.

7.16 Reports of Large Positions

7.16.1

Clearing Members shall submit to the Clearing House a daily report of Customers' Accounts and House Accounts, with details of such large positions in relation to such contracts as the Clearing House may prescribe (whether assumed or entered into on any Relevant Market or elsewhere). Such daily reports shall be submitted to the Clearing House by such time and/or in such manner as may be prescribed by the Clearing House.

Such report shall be in such form as the Clearing House may prescribe from time to time and shall include but not be limited to the account numbers and the number of open contracts in each month for a Commodity and, in the case of options, in each expiration month for a put or call option, in which any person owns or controls open positions in a single Contract Month or contract month or Delivery Month of any Commodity that equals or exceeds the reporting level for such Commodity or option prescribed from time to time by the Clearing House.

Amended on 22 September 2006 and 7 December 2010.

7.16.2

The Clearing House shall be entitled to require reports from one or more Clearing Members in relation to any contract even if the number of positions (whether assumed or entered into on any Relevant Market or elsewhere) owned or controlled is below the reporting level presently prescribed by the Clearing House.

Amended on 7 December 2010.

7.16.3

Subject to Rule 7.16.4 below, Clearing Members shall identify the owner and any controlling parties for any account or ensure that such information is made available directly to the Clearing House within such time as the Clearing House may prescribe.

Amended on 27 March 2006.

7.16.4

Upon request of the Clearing House, Clearing Members shall obtain the information required by this Rule regarding the ownership and control of positions (whether assumed or entered into on any Relevant Market or elsewhere) within any Omnibus Account and any Sub-Account of any Omnibus Account. Provided that if the Omnibus Account Holder does not want the identity of any Sub-Account holder (save for a Cleared Swaps Customer, whose identity must always be disclosed) to be disclosed to its carrying Clearing Member, the Omnibus Account Holder may apply to the Clearing House for a special identification for the Sub-Account thereof for reporting positions (whether assumed or entered into on any Relevant Market or elsewhere) covered within this Rule through its carrying Clearing Member.

Amended on 31 December 2013.

7.16.5

Violation of this Rule may constitute a major offence.

7.16.6

The Clearing House shall be entitled to disclose the contents of any reports made under this Rule to the Exchange or to any other Relevant Market or its clearing house in so far as such information relates to Contracts traded on the Relevant Market.

Amended on 1 October 2009.

7.17 Speculative Long and Short Positions; Same Contract Month

7.17.1

Clearing Members shall not be permitted to carry a speculative long position and a speculative short position for any Third Party or for themselves in the case of futures contracts, in the same Commodity for the same Contract Month and in the case of options contracts, in the same Commodity, for the same class, for the same Contract Month and for the same strike price.

Amended on 27 March 2006, 22 September 2006 and 17 July 2019.

7.17.2

The Clearing House may require any Clearing Member to liquidate any or all positions in any Contract belonging to any person concurrently holding a speculative long position and a speculative short position in such Contract.

Added on 1 October 2009.

7.17.3

Rule 7.17.1 shall not apply if the concurrent long and short speculative positions result from a transfer under Rule 7.27 and such concurrent long and short speculative positions do not extend beyond the Trading Day on which the transfer is reported to the Clearing House.

Added on 1 October 2009.

7.18 Right to Set-Off

Amended on 26 April 2013.

7.18.1 [Rule has been deleted.]

Deleted on 26 April 2013.

7.18.1

Without prejudice to the generality of the foregoing, in addition to any Security Interest or other right or remedy which the Clearing House may have under this Rules, contract, law or equity, and subject to any applicable restrictions pursuant to the provisions of the SFA and/or imposed by the Authority, the Clearing House may at any time consolidate any or all accounts (notwithstanding that relevant positions in such accounts have not been closed out) of the Clearing Member and set-off and/or transfer and/or apply any Collateral in such account towards satisfaction of any liabilities of the Clearing Member to the Clearing House, whether or not:

7.18.1.1 such Collateral and liabilities are denominated in the same currency; and

7.18.1.2 such liabilities are due, owing or incurred, or joint or several.

Amended on 26 April 2013.

7.19 Clearing House Margins

7.19.1

All margins deposited with or provided to the Clearing House by Clearing Members shall be retained by the Clearing House in whole or in part, as the Clearing House may deem necessary but, subject to this Rules (in particular, Rule 7.03A.3, 7.03A.5, Rule 7.18 and Rule 7A.05.1) and the Security Deed, may be returned to the Clearing Member when the positions for which such margins have been deposited or provided have been liquidated. Notwithstanding the foregoing, the Clearing House may retain margins for freight forward contracts for tanker voyage routes in relation to any potential Flat Rate adjustment, even after the positions of the Clearing Member have been liquidated.

Amended on 27 March 2006, 7 August 2012 and 26 April 2013.

7.20 Margin Amounts

7.20.1 Acceptable Margin

Margin requirements shall be prescribed by the Clearing House from time to time. The Clearing House will accept as margin, cash, government securities or common stocks, units of listed business trusts or units of listed real estate investment trusts in accordance with such procedures as may be prescribed by the Clearing House all of which must be and remain unencumbered, unless otherwise permitted or contemplated under this Rules, the Security Deed or the SFA.

The Clearing Member shall notify the Clearing House as to whether such Collateral is to be maintained for its Customer Contracts or its House Contracts. Where the Collateral is to be maintained for the Clearing Member's Customer Contracts, the Clearing Member shall notify the Clearing House as to whether it is to be held for an Applicable Customer Account. Where the Collateral is to be maintained for the Clearing Member's House Contracts, the Clearing Member shall notify the Clearing House as to whether it is to be held for an Affiliate Account. Collateral will be held by the Clearing House for the relevant account.

Amended on 27 March 2006, 26 April 2013, 31 December 2013 and 2 May 2016.

7.20.2 Margin Composition

Without prejudice to the generality of the foregoing, the aggregate amount of Collateral deposited with or provided to the Clearing House in respect of the aggregate required margin in relation to Customer Contracts, Affiliate Contracts and House Contracts (excluding Affiliate Contracts) must each separately comply with the following:

7.20.2.1 where the relevant total margin requirements are US$1,000,000 (or its equivalent) or less, the entire margin requirements must be in the form of cash and/or government securities;

7.20.2.2 where the relevant total margin requirements are more than US$1,000,000 (or its equivalent), cash and/or government securities must constitute at least US$1,000,000 or 60 percent of the total margin requirements whichever is the greater; and

7.20.2.3 [Rule has been deleted]

7.20.2.4 government securities or any other form of Collateral acceptable to the Clearing House shall not exceed a prescribed proportion of the margin requirement, as the Clearing House may specify from time to time in its discretion.

Added on 27 March 2006 and amended on 3 November 2010, 8 November 2012, 26 April 2013, 2 May 2016 and 2 March 2020.

7.20.3 Calculation of Margin

The amount of margins required to be deposited by any Clearing Member with the Clearing House shall be calculated and determined:

7.20.3.1 on a cumulative gross basis with reference to all open positions (both long and short) for which such Clearing Member is responsible and in accordance with procedures prescribed by the Clearing House; and/or

7.20.3.2 on a cumulative gross basis with respect to cumulative Settlement Variation for freight forward contracts for tanker voyage routes, with reference to any potential adjustments to the Flat Rate.

Amended on 27 March 2006.

7.20.3A

The Clearing House may make margin calls in respect of the margin requirements prescribed pursuant to this Rule 7.20. Such margin calls shall be paid by such time and means as the Clearing House shall prescribe.

Added on 26 April 2013.

7.20.4 [Rule has been deleted.]

Deleted on 26 April 2013.

7.20.5 [Rule has been deleted.]

Deleted on 26 April 2013.

7.21 [Rule has been deleted.]

Deleted on 26 April 2013.

7.21.1 [Rule has been deleted.]

Deleted on 26 April 2013.

7.22 Margins of Third Parties

7.22.1

A Clearing Member shall procure initial margins from its Third Parties (including Customers), and ensure that its Third Parties comply with maintenance margins for such amounts as required by the Clearing House.

Amended on 27 March 2006 and 22 September 2006.

7.22.1A [Deleted]

Deleted on 25 January 2017.

7.22.2

A Clearing Member may accept cash, government securities, common stocks, bank certificates of deposit, bank guarantees, bank letters of credit, gold bars, gold certificates and such other instruments as the Clearing House permits from its Third Parties (including Customers) for meeting their initial margins and maintenance margins requirements. Valuation of such instruments shall be in accordance with procedures specified by the Clearing House. The following are not acceptable forms of margins under this Rule:

7.22.2.1 bank guarantees or letters of credit issued by a Third Party, or a Third Party's related corporation which is a bank, for trades incurred in that Third Party's account;

7.22.2.2 bank guarantees and letters of credit other than those issued by a bank that holds a valid licence and operates in Singapore under the Banking Act 1970; and

7.22.2.3 currency and financial instruments denominated in currencies which are subject to exchange controls such that they are illegal tender outside the currency's home country or are restricted by any form of capital controls.

Amended on 27 March 2006, 22 September 2006 and 18 January 2022.

7.22.3

Except for trades which reduce a Third Party's maintenance margins requirements, a Clearing Member shall not accept orders or new trades for clearing from any Third Party (including any Customer) unless:

7.22.3.1 the minimum initial margins for the new trades are deposited or are forthcoming within a reasonable period from the trade date; and

7.22.3.2 the Third Party's total net equity complies with the maintenance margins for its existing open positions and in relation to potential Flat Rate adjustment applicable to freight forward contracts for tanker voyage routes or additional margins to be posted pursuant to Rule 7.22.4 are forthcoming within a reasonable period from the trade date.

For settlement currency denominated in Japanese Yen, "reasonable period" in Rule 7.22.3.1 or 7.22.3.2 means a period which shall not exceed three (3) Trading Days from the trade date (T+3). For all other settlement currencies it means a period which shall not exceed two (2) Trading Days from the trade date (T+2).

7.22.3.3 Credits in excess of required initial margins on all open positions and in relation to any potential Flat Rate adjustment applicable to freight forward contracts for tanker voyage routes of a Third Party (including a Customer), may be utilised by a Clearing Member as initial margins on a new position of the same Third Party (including a Customer).

Amended on 27 March 2006, 22 September 2006 and 25 January 2017.

7.22.4

A Clearing Member shall call for additional margins from a Third Party (including a Customer) for whom the Clearing Member provides carrying and/or clearing services if at any time the Third Party's total net equity falls below the maintenance margins. Such additional margins posted should be sufficient to bring the relevant account up to the initial margins level, within a reasonable period. Nothing herein prohibits a Clearing Member from making a call for additional margins or imposing a stricter settlement period as it sees fit.

For settlement currency denominated in Japanese Yen, "reasonable period" in this Rule 7.22.4 means a period which shall not exceed three (3) Trading Days from the date that the Third Party's total net equity falls below the maintenance margins. For all other settlement currencies it means a period which shall not exceed two (2) Trading Days from the date that the Third Party's total net equity falls below the maintenance margins.

Amended on 22 September 2006.

7.22.5

If the Clearing Member is unable to effect personal contact with a Third Party (including a Customer) for whom the Clearing Member provides carrying and/or clearing services, a written notice sent to the Third Party at the most recent address furnished by it to the Clearing Member shall be deemed sufficient.

7.22.6

In the event of a Clearing Member's failure to obtain margins from the relevant Third Parties (including Customers) as required under Rule 7.22, the Clearing House may order such Clearing Member to immediately close out all or such part of the positions of such Third Parties on its books so as to correct the deficiency notwithstanding that the Clearing Member itself has sufficient margins placed with the Clearing House for the support of such positions in Contracts. Nothing herein prohibits a Clearing Member from taking such necessary actions to rectify the deficiency as it sees fit.

Amended on 27 March 2006 and 22 September 2006.

7.22.7

Clearing Members shall be responsible to the Clearing House for all margin requirements.

7.22.7A

A Clearing Member shall comply with such requirements on the computation and monitoring of a Third Party's (including a Customer's) margins as the Clearing House, or where relevant, the Exchange may prescribe.

Added on 22 September 2006.

7.22.8

Violation of this Rule 7.22 shall be a major offence.

7.22A Inter-Exchange Cross Margining

7.22A.1

Notwithstanding Rule 7.22, a Clearing Member may grant margin credit, at a rate not exceeding that which is prescribed by the Clearing House, to a Third Party (including a Customer) which holds long and short positions on contracts (on the same Underlying) with the Clearing House and another clearing house to the extent that the risk on the position in one clearing house is set-off against another ("inter-exchange cross margining"), if the following conditions are satisfied:

7.22A.1.1 The risk-offsetting positions relate to contracts prescribed by the Clearing House as eligible for inter-exchange cross margining.

7.22A.1.2 The Clearing Member ensures that the risk-offsetting positions are carried in the accounts belonging to the same Third Party (including a Customer) in which the same Third Party is the legal and beneficial owner. For the avoidance of doubt, inter-exchange cross margining is not allowed for positions carried in accounts opened by the same Third Party with different Clearing Members.

7.22A.1.3 The Clearing Member provides for the right of set-off in respect of the Third Party's (including a Customer's) positions with the Clearing House and any other clearing house in its contractual agreements with that Third Party.

7.22A.1.4 The Clearing Member continues to calculate the counterparty risk requirement for each counterparty exposure to the Third Party (including a Customer) as if margin credit had not been granted.

7.22A.1.5 The Clearing Member, except in the case of a Bank Clearing Member, continues to maintain adequate liquidity facilities (bank lines and cash balances) to fund the gross margins payable to the Clearing House and any other relevant clearing houses.

7.22A.1.6 The Clearing Member, except in the case of a Bank Clearing Member, imposes a limit on the amount of margin credit granted to the Third Party (including a Customer) which should not exceed 20% of such Clearing Member's free financial resources.

7.22A.1.7 The Clearing Member, except in the case of a Bank Clearing Member, has proper internal controls and risk management procedures, as prescribed below, to monitor the credit risk and liquidity risk arising from inter-exchange cross margining:

a. the limit on the amount of margin credit granted to a Third Party (including a Customer) must be set, approved and regularly reviewed by an authorised staff independent of trading, dealing or marketing functions;

b. in setting the limit on the amount of margin credit granted to a Third Party (including a Customer), the Clearing Member must take into account possible maintenance margin calls and Settlement Variation losses to be paid to the Clearing House and any other relevant clearing house;

c. the Clearing Member must strictly observe the limit on the amount of margin credit granted to each Third Party (including a Customer); and

d. the Clearing Member must ensure that it has proper systems and control procedures to monitor, on a daily basis, the usage of the margin credits and the adequacy of its liquidity facilities (bank lines and cash balances) to meet obligations arising from positions held with the Clearing House and any other relevant clearing house, including:

i. daily monitoring of each Third Party's (including a Customer's) intra-day and end-of-day use of margin credits to ensure that the limit on the amount of margin credit granted is not breached;

ii. daily monitoring of all Third Parties' (including Customers') aggregated intra-day and end-of-day use of margin credits to ensure that the Clearing Member's liquidity facilities (bank lines and cash balances), after setting-off the Third Parties' aggregate use of margin credits, are adequate to meet the potential mark-to-market loss for positions carried at any relevant clearing house

(excluding the Clearing House), as well as potential mark-to-market loss equivalent to at least two (2) times the maintenance margin for positions carried with the Clearing House;

iii. reports used for intra-day and end-of-day monitoring are generated in a timely manner and have the following information:

- limit on amount of margin credit granted to each Third Party (including a Customer);
- amount of margin credit used by each Third Party;
- aggregate limit on amount of margin credit granted for all Third Parties;
- aggregate amount of margin credit used by all Third Parties;
- available liquidity facilities (bank lines and cash balances);
- excess liquidity facilities (bank lines and cash balances) after setting off the Third Parties' aggregate use of margin credits;

and

iv. remedial procedures are in place should there be any breach of controls, limits and thresholds.

7.22A.1.8 The Clearing Member must notify the Clearing House if it decides to offer the inter-exchange cross margining arrangement to Third Parties (including Customers), that it has complied with, and shall continue to comply with the conditions stated in Rule 7.22A.

7.22A.1.9 The Clearing House reserves the right to impose additional conditions or disallow a Clearing Member from offering the inter-exchange cross margining arrangement if it is not satisfied with the internal controls and risk management procedures of the Clearing Member requesting inter-exchange cross margining.

Added on 22 September 2006 and amended on 10 August 2007.

7.23 Emergency Margins and Advance Call for Settlement

7.23.1

The Clearing House may take any of the following actions:

7.23.1.1 When in its opinion unstable conditions exist or market conditions and price fluctuations relating to one or more Commodities or Contracts or contracts at any time require that additional margins to maintain an orderly market or to preserve fiscal integrity or for any other reason, the Clearing House may call for additional margins from one or more Clearing Members.

Such additional margins may be as much as or more than the original margin and must be deposited with the Clearing House during the next banking hour after demand therefore or at such time as may be specified. Such additional margins may be called for one or more Contracts, from one or more Clearing Members and on long positions, short positions or both, or in relation to any potential Flat Rate adjustment applicable to freight forward contracts for tanker voyage routes.

7.23.1.2 When the Clearing House believes that any Clearing Member is carrying positions in its House and/or Customer Accounts, that are larger than is justified by the financial condition of that Clearing Member, or the Clearing Member is found to have a record of frequent rule violations or inadequate or unsound management or serious operational defects which, in the Clearing House's opinion, places or may place the Clearing House at risk, then the Clearing House may require such Clearing Member to deposit additional margins with the Clearing House during the next banking hour after demand therefore or at such time as may be specified or they may require that a portion of the open positions on the books of such Clearing Member be transferred to the books of another Clearing Member.

Amended on 27 March 2006.

7.23.2

If market conditions or price fluctuations are such that the Clearing House deems it necessary, it may call upon the Clearing Members whom it believes are affected by such conditions or fluctuations to deposit additional funds with the Clearing House by such time as it shall specify and in the amount it deems necessary to meet settlements.

Amended on 27 March 2006.

7.24 Failure to Comply with Emergency Orders

7.24.1

In the event of the failure of a Clearing Member to deposit additional margins or to comply with the order of transfer of positions or to deposit additional funds as required under Rule 7.23, the Clearing House may direct and the Clearing Member shall in such event forthwith comply with any such direction that the Clearing Member forthwith liquidate all or part of the positions on its books.

Amended on 27 March 2006.

7.24.2

If there is a failure to so effect the required reduction in positions by the next Business Day, the Clearing House shall thereupon order the liquidation of all or the required part of the Clearing Member's position with due consideration to the positions in Customer Accounts and Affiliate Accounts. Any Clearing Member whose trades are thus liquidated shall provide for the payment of any loss to the Clearing House on the next settlement cycle by the Clearing House pursuant to Rule 7.12 or 7.13.

Amended on 27 March 2006 and 2 May 2016.

Miscellaneous

7.25 Fees

7.25.1 Clearing Fees

Clearing fees shall be charged by the Clearing House against a Clearing Member for each Contract cleared by the Clearing House in such amounts as the Clearing House may from time

to time prescribe.

7.25.2 Administrative Fees

Without prejudice to Rule 2.36, administrative fees or similar fees shall be charged by the Clearing House against a Clearing Member in respect of such matters and in such amounts as the Clearing House may from time to time prescribe.

Amended on 27 March 2006.

7.25.3 Payment

Such fees as may be imposed by the Clearing House pursuant to this Rule shall be payable by the Clearing Members by such times and in such manner as may be prescribed by the Clearing House from time to time.

7.26 Fines for Errors, Delays and Omissions

7.26.1

The Clearing House may impose fines against Clearing Members for errors, delays and omissions with respect to the required position change sheet or any other submission to the Clearing House.

Amended on 27 March 2006.

7.27 Transfers of Trades

7.27.1

Subject to the approval of the Clearing House:

7.27.1.1 Existing trades may be transferred on the books of a Clearing Member to the books of another Clearing Member when an error has been made in the assignment of a trade or trades, or when the change merely constitutes a transfer from one account title to another account title where both account titles have a common owner;

7.27.1.2 Existing trades may be transferred from the books of one Clearing Member to the books of another Clearing Member when:—

a. they merge or the first-mentioned Clearing Member is transferring the whole or part of its business to another entity; or

b. a Clearing Member resigns from the Clearing House; or

c. a new Clearing Member has an interest in existing trades on another Clearing Member's books. The original Clearing Member shall not suffer any loss in commission to which it is entitled on the trades that were transferred; or

d. a mutual clerical error was made by two Clearing Members or the clearing members of the Relevant Market they are clearing for with respect to the trades to be cleared by them respectively on opposite sides thereof. Clear and sufficient information must be included with respect to the transfer trades and both the trade to reverse the error and the replacement trade must clear as transfers. In this event, and only in

this event, the transfer may liquidate an open position on the books of the relevant Clearing Member(s);

7.27.1.3 Existing trades on the books of one Clearing Member being a Customer Contract may be transferred to the books of another Clearing Member at the request of the relevant Customer, provided that the Customer is not at that time in default to the Clearing Member from whom the trades are to be transferred;

7.27.1.4 Existing trades on the books of one Clearing Member may be transferred to the books of another Clearing Member when such transfer is EFP or an EFS transaction. The provisions of this Rule 7.27.1.4 shall not however apply to options contracts; and

7.27.1.5 A trade made on a Relevant Market by a Clearing Member or a member of the Relevant Market (other than the Connect Market) (the "Executing Member") intended to be an order fill or to be given up to (i.e. placed on the books of) a Clearing Member (the "Recipient Member") other than the Executing Member or (where relevant) its qualifying member, may be placed or transferred into the books of the Recipient Member subject to compliance with Rule 7.27.3.

Amended on 27 March 2006, 10 August 2007, 31 December 2013 and 29 July 2022.

7.27.2

Except with the approval of the Clearing House, existing trades on the books of one Clearing Member may not be transferred to the books of another Clearing Member in order to liquidate a position by offset or where such transfer would result in concurrent long and short positions for the same speculative account.

Amended on 27 March 2006.

7.27.3

Where an Executing Member makes a trade on a Relevant Market intended to be an order fill or to be given up to a Recipient Member, as contemplated in Rule 7.27.1.5 (a "Relevant Trade"), each Relevant Trade may be transferred or placed to the books of the Recipient Member provided that the transfer or placement shall occur:

7.27.3.1 within such time and in accordance with such procedures as the Relevant Market and/or the Clearing House may from time to time prescribe; and

7.27.3.2 subject to the approval of the Clearing House.

7.27.3.3 [Rule has been deleted.]

Amended on 27 March 2006 and 7 December 2010.

7.27.4

If a Recipient Member purports to reject the transfer or placement of an alleged Relevant Trade(s) onto its books and the rejection (if permitted) would result in the Executing Member (if a Clearing Member itself) or its qualifying member having to accept onto its own books the rejected trade(s), and such rejected trade(s) would (whether of itself or together with other similarly rejected trade(s) for the same trading day) give rise to an aggregate maintenance margin obligation equal to S$3,000,000 (or such other amount as the Clearing House may from time to time prescribe):

7.27.4.1 The Clearing House may:

a. require the Recipient Member, as the party purporting to so reject the said trades, to satisfy the Clearing House of the validity of its rejection; and/or

b. require the Clearing Member who would, if the rejection were effective, have to accept onto its own books the rejected trades, to provide such information and evidence in its possession or control relevant to the issue of the validity of the purported rejection;

and

7.27.4.2 unless the Clearing House is, consequent to any or both of its foregoing requirement(s) satisfied that the purported rejection was fully justified and valid, the Clearing House is thereafter empowered to require the Recipient Member to accept the transfer or placement out of all such part of the trades purported to have been rejected as the Clearing House deems appropriate onto its own books, and the Recipient Member shall abide by such requirement.

7.27.4.3 In so far as the Clearing House deems it appropriate that only some of the trades purported to be rejected shall be accepted by the Recipient Member, the balance shall be treated as permitted rejection and the Executing Member (if itself a Clearing Member) or its qualifying member shall accept the same onto its own books accordingly.

7.27.4.4 Failure by any Clearing Member to act accordingly pursuant to the Clearing House's requirement as aforesaid shall be a major offence.

7.27.4.5 The Recipient Member shall, in anticipation of the prospect of the Clearing House exercising its discretion pursuant to Rule 7.27.4.1 above pursuant to a relevant purported rejection of an alleged Relevant Trade, be ready and willing consequent upon it so purporting to reject a said trade forthwith to produce on request by the Clearing House satisfactory evidence validating its purported rejection.

7.27.4.6 Any decision by the Clearing House as aforesaid shall be without prejudice to the rights of any Clearing Member to pursue its contractual rights inter se either by arbitration pursuant to these Rules or the rules of the Relevant Market where the relevant Contract was executed (or where permitted) by litigation.

Amended on 27 March 2006.

7.27.5

The Clearing House may, with the consent of both Clearing Members, transfer existing trades on the books of one Clearing Member to the books of another Clearing Member, if in its opinion, the situation so requires and such transfer is to the best interests of the Clearing House. In such case, the Customer may be charged only one commission.

Amended on 27 March 2006.

7.27.5A

The Clearing House may, in accordance with any Contract Specifications, transfer existing trades from the books of one Clearing Member to the books of another Clearing Member with the consent of both Clearing Members, or from one Customer Account to another Customer Account of a Clearing Member with the consent of that Clearing Member.

Added on 7 December 2015.

7.27.6

All transfers or placements made pursuant to this Rule shall be reported to the Clearing House in a form acceptable to the Clearing House for the type of transaction involved. The Clearing Members involved shall maintain a full and complete record of all transactions together.

7.27.7

Notwithstanding any provision in this Rule 7.27, the Clearing House shall require (i) any Clearing Member from whose name one or more trades are to be transferred and, (ii) any Clearing Members in whose name one or more trades are to be transferred to provide the Clearing House with sufficient collateral to meet margin requirements and Settlement Variation and/or comply with any other margin requirement prescribed by the Clearing House as a condition of transfer of such trades .

Amended on 3 November 2010.

7.27.8

Transfers of positions under this Rule 7.27 will not require the close-out and re-booking of the relevant positions.

Added on 31 December 2013.

7.28 Inter-Clearing House Transfers of Positions

7.28.1

Subject to the approval of the Clearing House, existing positions may be transferred between the books of a Clearing Member and the clearing member of any other Relevant Market (other than the Connect Market) at the request of the Customer, if:

7.28.1.1 such positions relate to Contracts accepted for clearing by the Clearing House and such other Relevant Market (or its clearing house);

7.28.1.2 the transfer has been approved by the other Relevant Market; and

7.28.1.3 the other Relevant Market is not a Participating Market which is party to the Mutual Offset System.

Added on 1 October 2009 and Amended on 29 July 2022.

7.28.2

All transfers made pursuant to this Rule shall be reported to the Clearing House in a form acceptable to the Clearing House. The Clearing Member involved shall maintain a full and complete record of all such transfers together with all pertinent memoranda.

Added on 1 October 2009.

7.29 [Rule has been deleted.]

Deleted on 17 July 2019.

7.29.1 [Rule has been deleted.]

Deleted on 17 July 2019.

7.29.2 [Rule has been deleted.]

Deleted on 17 July 2019.

7.29.3 [Rule has been deleted.]

Deleted on 17 July 2019.

7.29.4 [Rule has been deleted.]

Deleted on 17 July 2019.

7.29.5 [Rule has been deleted.]

Deleted on 17 July 2019.

7.29.6 [Rule has been deleted.]

Deleted on 17 July 2019.

7.29.7 [Rule has been deleted.]

Deleted on 17 July 2019.

7.30 Applicable Customer Accounts

7.30.1

For the purposes of Part 7 of these Rules, a Customer mayrequest its Clearing Member to designate any of its Customer Accounts as an Applicable Customer Account. The Clearing Member shall inform each of its Customers of the availability of this choice, and shall designate a Customer Account as being an Applicable Customer Account if the Customer requests for it. If the Clearing Member is not ready to designate a Customer Account as an Applicable Customer Account when the Customer requests for it, the Clearing Member shall inform the Customer when it will be able to do so.

Added on 31 December 2013.

7.30.2

A Customer making a request pursuant to Rule 7.30.1 may do so only in respect of the clearing of its Non-Relevant Market Contracts (or Non-Relevant Market Transactions).

Added on 31 December 2013 and amended on 17 July 2019.

7.30.3

The Clearing House shall be under no obligation to treat a Customer Account as being an Applicable Customer Account unless the Clearing House has received information relating to

the identities of the Customers underlying the Applicable Customer Account as it requires.

Added on 31 December 2013.

7.30.4

Each Cleared Swaps Customer Account shall be treated by the Clearing House as being an Applicable Customer Account.

Added on 31 December 2013.

7.30.5

Each FCM Clearing Member shall provide to the Clearing House information relating to the identity of the Customer underlying each Cleared Swaps Customer Account as required by the Clearing House from time to time.

Added on 31 December 2013.

7.31 Affiliate Account

7.31.1

For the purpose of Part 7 and 7A of this Rules, a Clearing Member may designate as an Affiliate Account, any House Account that belongs to and is maintained wholly for the benefit of one or more Affiliates. The Clearing Member must notify the Clearing House of any designation, failing which the Clearing House will be under no obligation to treat the designated account(s) as Affiliate Account(s).

Added on 2 May 2016.

Chapter 7A Suspension and Default

7A.01 Suspension of Clearing Members

7A.01.1

The Clearing House shall be entitled to restrict the activities of the Clearing Member on the Clearing House or suspend the Clearing Member without prior notice if:

7A.01.1.1 the Clearing Member becomes insolvent or is deemed insolvent;

7A.01.1.2 unless exempted, the Clearing Member ceases to hold a valid Capital Markets Services Licence as prescribed under the SFA, or ceases to be authorised to conduct banking business in Singapore pursuant to section 4 of the Banking Act 1970, where applicable;

7A.01.1.3 the Clearing House is of the opinion that the integrity of the Clearing Member, in relation to its financial integrity or conduct, or the Clearing House's ability to operate a safe and efficient clearing facility is, or may be, materially compromised in any of the following events:

a. the parent company or related corporation of the Clearing Member becomes insolvent or is deemed insolvent;

b. the Clearing Member is suspended or expelled from membership of any Relevant Market or its clearing house;

c. the Clearing Member fails to comply with or settle any of its financial obligations under the rules and regulations of any exchange or clearing house of which it is a member;

d. the Clearing Member fails duly to perform or is, in the opinion of the Clearing House, in breach of:

i. any provision of this Rules;

ii. any Directive which is in force from time to time; or

iii. any agreement, understanding or arrangement which the Clearing Member has with the Clearing House from time to time; or

7A.01.1.4 the Clearing House, in its absolute discretion, considers it necessary or desirable to protect its own interests, the interests of other Clearing Members and/or the interests of the customers of the Clearing Member.

Added on 7 August 2012 and amended on 26 April 2013, 29 December 2014, 18 January 2022 and 29 July 2022.

7A.01.2

In restricting the activities of a Clearing Member pursuant to Rule 7A.01.1, the Clearing House may impose such conditions or requirements for the carrying on of its business on the Clearing House as it deems appropriate, including, without limitation, the following:

7A.01.2.1 prohibiting the Clearing Member from increasing its positions in one or more Contracts;

7A.01.2.2 prohibiting the Clearing Member from taking on positions in one or more Contracts which may increase its margin requirements;

7A.01.2.3 require the Clearing Member to close out positions in one or more Contracts; and

7A.01.2.4 prohibiting the repatriation of funds to any other person, unless the prior approval of the Clearing House has been obtained.

Added on 7 August 2012.

7A.01.3

A Clearing Member or its parent company or its related corporation becomes insolvent or shall be deemed to be insolvent on the occurrence of any of the following events:—

7A.01.3.1 in the case of a Clearing Member only, it fails to fulfil or meet margins or settlement requirements for all or any of its Contracts;

7A.01.3.2 in the case of a Clearing Member only, it fails to post Performance Deposits with the Clearing House within the time specified in the relevant Contract Specifications;

7A.01.3.3 in the case of a Clearing Member only, it defaults upon any levy owing to the Clearing House arising out of Rule 7A.01A;

7A.01.3.4 it is or is at risk of being in material default under the term of any loan or other agreement relating to its indebtedness;

7A.01.3.5 it fails, is unable, admits its inability, or is deemed for the purposes of any law to be unable, to pay its debts as they fall due;

7A.01.3.6 a composition, assignment or arrangement is proposed or made for the benefit of its creditor;

7A.01.3.7 the value of its assets is less than its liabilities, taking into account contingent and prospective liabilities;

7A.01.3.8 by reason of its financial integrity having been or anticipated to be compromised, it proposes, or commences negotiations with one or more of its creditors, to suspend, stop, defer or reschedule payments on any of its indebtedness, or announces an intention to do so;

7A.01.3.9 it, its directors or other officers seek or give notice of their intention to seek, or if it or any of its assets becomes subject to, the appointment of an administrator, provisional liquidator, receiver, administrative receiver, judicial manager, judicial custodian, compulsory manager, trustee, trustee in bankruptcy, conservator, custodian or other similar officer, whether out of court or otherwise;

7A.01.3.10 a moratorium is declared in respect of any of its indebtedness;

7A.01.3.11 the enforcement of any security over any of its assets, or any distress, execution, attachment, sequestration or other legal process levied, enforced or served upon any of its assets;

7A.01.3.12 any corporate action, legal proceedings or other procedure or step is taken, including without limitation the presentation of a petition, the making of an application, the filing of documents with a court, the convening of a meeting of the Clearing Member or its parent company, its directors or its members, the giving of a notice of a proposal or the passing of a resolution, in relation to or with a view to:

a. the winding up, liquidation, dissolution, or seeking of a judgment of insolvency or other relief under any insolvency law or other similar law affecting creditors' rights in respect of the Clearing Member, whether voluntary or involuntary; or

b. the administration, whether out of court, with a registrar or otherwise, judicial management or reorganisation, whether by way of voluntary arrangement, scheme of arrangement or otherwise, of the Clearing Member or its parent company, whether voluntary or involuntary.

7A.01.3.13 it causes or is subject to any event which, under the applicable laws of any jurisdiction, has an effect analogous to any of the events specified above;

7A.01.3.14 it takes any action or step in furtherance of, or indicating its consent to, approval of or acquiescence in, any of the foregoing acts; or

7A.01.3.15 if the Clearing House considers in its absolute discretion that the occurrence of any such events or their equivalent is imminent or likely in any jurisdiction.

Added on 7 August 2012 and amended on 29 July 2013.

7A.01.4

A Clearing Member shall immediately notify the Clearing House upon the occurrence of any of the events stated in Rule 7A.01.1.

Added on 7 August 2012.

7A.01.5

Where the Clearing House becomes aware of the occurrence of any of the events stated in Rule 7A.01.1, the Clearing House may take any of the following actions:

7A.01.5.1 request a Relevant Market to suspend the Clearing Member or otherwise restrict its activities on the Relevant Market if the Clearing Member's activities on the Clearing House are restricted or the Clearing Member has been suspended; or

7A.01.5.2 notify any other exchanges, operators of trade registration systems or clearing houses of any action or proceedings taken against the Clearing Member.

Added on 7 August 2012.

7A.01A Events of Default

7A.01A.1

On the occurrence of any of the following events, or if the Clearing House in its discretion determines that any of the following events has occurred, the Clearing House may declare an event of default:—

a. the insufficiency of a Clearing Member's Collateral to discharge such Clearing Member's obligations to the Clearing House; or

b. the insufficiency of the Collateral of any other Relevant Market (other than the Connect Market), including a Participating Market, available to the Clearing House to fully meet such other Relevant Market's and/or its clearing house's obligations to the Clearing House; or

c. the insolvency of a Clearing Member (as determined by Rule 7A.01.3), any other Relevant Market which clears the opposite side of any Contract, including a Participating Market, and/or its clearing house or any depository (as defined in Rule 2.35.4); or

d. conversion, theft, breach of trust, embezzlement, or any other similar cause, caused or suffered by or in connection with a Clearing Member.

Added on 26 April 2013 and Amended on 29 July 2022.

7A.01A.2 [Rule has been deleted.]

Deleted on 17 July 2019.

7A.01A.2A [Rule has been deleted.]

Deleted on 17 July 2019.

7A.01A.2B Application of the Clearing Fund

7A.01A.2B.1 The Clearing Fund shall be applied in the manner set out in Rule 7A.01A.2B.2 to meet losses suffered by the Clearing House, arising from or in connection with, an event of default or a Trigger Event, provided always that the defaulted Clearing Member's Collateral, or in the case of a Trigger Event, the Connect Counterparty' s collateral, has been fully applied in accordance with Rule 7A.05.1.

7A.01A.2B.2 Save as provided in Rule 7A.06.6.4 on the application of the Clearing Fund in a Multiple Default Period, and subject to the application of Rule 7A.01A.2F when a Trigger Event has been declared, the Clearing Fund shall be applied in the following order of priority, with each source of funds to be exhausted before the next source is applied:

a. first, the Clearing House First Loss Contribution, in the manner set out in Rule 7A.01A.2C;

b. second, the Clearing Fund Deposits of Active Clearing Members, in the manner set out in Rule 7A.01A.2D;

c. third, the Clearing House Intermediate Contribution, in the manner set out in Rule 7A.01A.2E;

d. fourth, the Clearing Fund Deposits of non-defaulting Clearing Members that are not available for use pursuant to Rule 7A.01A.2B.2.b, which will be applied on a pro-rata basis, calculated as the proportion of the Clearing Fund Deposit requirement of that Clearing Member relative to the aggregate Clearing Fund Deposit requirements of all such Clearing Members;

e. fifth, the Further Assessment Amounts of all non-defaulting Clearing Members, which will be applied on a pro-rata basis, calculated as the proportion of the Further Assessment Amount requirement of that Clearing Member relative to the aggregate Further Assessment Amount requirements of all such Clearing Members; and

f. sixth, any other contributions to the Clearing Fund.

Added on 17 July 2019 and Amended on 29 July 2022.

7A.01A.2C Application of the Clearing House First Loss Contribution

7A.01A.2C.1 Subject to Rule 7A.01A.2C.2, the Clearing House First Loss Contribution shall be apportioned, in such proportion as the Clearing House determines, to meet losses in each Contract Class in which an event of default and/or Trigger Event has occurred.

7A.01A.2C.2 Where one or more auctions in respect of a Contract Class are held, the Clearing House First Loss Contribution apportioned to that Contract Class shall be further apportioned to each auction in such proportion as the Clearing House determines, and applied in the following manner:

a. the Clearing House First Loss Contribution apportioned to each auction shall be applied to meet losses arising from or in connection with that auction; and

b. any unused apportioned Clearing House First Loss Contribution for an auction shall be applied to meet any losses outstanding in the same Contract Class in such manner as the Clearing House determines.

7A.01A.2C.3 Where an event of default has occurred in more than one Contract Class, any unused apportioned Clearing House First Loss Contribution for one Contract Class shall be applied to meet any losses outstanding in the other Contract Class(es).

Added on 17 July 2019 and Amended on 29 July 2022.

7A.01A.2D Application of Clearing Fund Deposits of Active Clearing Members

7A.01A.2D.1 Subject to Rule 7A.01A.2D.2 and Rule 7A.01A.2D.4, the Clearing Fund Deposits deposited by Active Clearing Members to clear the Contract Class in which an event of default and/or Trigger Event has occurred shall be applied to meet the losses in that Contract Class.

7A.01A.2D.2 Where an auction is held in relation to the Contract Class specified in Rule 7A.01A.5.a, the Clearing Fund Deposit of each Required Participant shall be further apportioned to that auction in such proportion as the Clearing House determines, to be applied to meet the losses arising from or in connection with that auction, in the following order of priority and manner, with each level to be exhausted before the next level is applied:

a. first, the apportioned Clearing Fund Deposits of Required Participants who did not submit a bid;

b. second, the apportioned Clearing Fund Deposits of Required Participants who had submitted bids that were below the Winning Bid Price, which will be applied on a pro-rata basis based on the product of:

i. the distance between such Required Participant's bid price and the Winning Bid Price; and

ii. the amount of such Required Participant's Clearing Fund Deposit apportioned to the auction;

c. third, the unused apportioned Clearing Fund Deposits of Required Participants who had submitted bids that were below the Winning Bid Price, which are not applied in Rule 7A.01A.2D.2.b; and

d. fourth, the apportioned Clearing Fund Deposits of Required Participants who had submitted the Winning Bid Price.

7A.01A.2D.3 Where an auction is held in relation to the Contract Class specified in Rule 7A.01A.5.a, any unused apportioned Clearing Fund Deposits for that auction shall be aggregated with the remaining Clearing Fund Deposits apportioned to the Contract Class, and applied to meet any outstanding losses in that Contract Class (including outstanding losses in any other such auction(s)) in such manner as the Clearing House determines.

7A.01A.2D.4 Where an event of default has occurred in more than one Contract Class, any unused apportioned Clearing Fund Deposits for a Contract Class (regardless of whether this follows the application of Rule 7A.01A.2D.3) shall be applied to meet any losses outstanding in the other Contract Class(es).

Added on 17 July 2019 and Amended on 29 July 2022.

7A.01A.2E Application of the Clearing House Intermediate Contribution

7A.01A.2E.1 Subject to Rule 7A.01A.2E.2, the Clearing House Intermediate Contribution shall be apportioned, in such proportion as the Clearing House determines, to meet losses in each Contract Class in which an event of default and/or Trigger Event has occurred.

7A.01A.2E.2 Where one or more auctions in respect of a Contract Class are held, the Clearing House Intermediate Contribution apportioned to that Contract Class shall be further apportioned to each auction in such proportion as the Clearing House determines, and applied in the following manner:

a. the Clearing House Intermediate Contribution apportioned to each auction shall be applied to meet losses arising from or in connection with that auction; and

b. any unused apportioned Clearing House Intermediate Contribution for an auction shall be applied to meet any losses outstanding in the same Contract Class in such manner as the Clearing House determines.

7A.01A.2E.3 Where an event of default has occurred in more than one Contract Class, any unused apportioned Clearing House Intermediate Contribution for one Contract Class shall be applied to meet any losses outstanding in the other Contract Class(es).

Added on 17 July 2019 and Amended on 29 July 2022.

7A.01A.2F Application of the Connect Layer upon the declaration of Trigger Event

7A.01A.2F.1 The Connect Layer shall be applied in the following order of priority, with each source of funds to be exhausted before the next source is applied, to meet losses suffered by the Clearing House arising out of the management, including termination or liquidation, of the Connect Broker' s positions in the Connect Contract, when a Trigger Event has been declared, provided the Connect Counterparty' s collateral has been fully applied in accordance with Rule 7A.05.1.6:

a. first, the Clearing House Connect Layer First Loss Contribution;

b. second, the Clearing Member Connect Layer Contribution Requirement, in the manner set out in Rule 7A.01A.2G; and

c. third, any other Clearing House contribution to the Connect Layer.

7A.01A.2F.2 Where the Connect Layer has been exhausted and there are residual losses remaining, the Clearing Fund shall be applied in accordance with Rule 7A.01A.2B.2.

Added on 29 July 2022.

7A.01A.2G Application of the Clearing Member Connect Layer Contribution Requirement

Where the Clearing House Connect First Loss Contribution has been exhausted and there are residual losses outstanding, the Clearing Member Connect Layer Contribution Requirement will be applied to cover the losses. The Clearing Members' liability for the residual loss will be on a pro-rata basis, calculated based on their respective contribution requirement.

Added on 29 July 2022.

7A.01A.3

Where Clearing Members' Clearing Fund Deposits or Further Assessment Amounts are used and applied in accordance with Rules 7A.01A.2B.2 and 7A.01A.2D, the limits to one or more Clearing Members' liabilities in respect of such funds as set out in Rule 2.28.2A or Rule 7A.06.6.6 may be reached. As a consequence of the foregoing, the contributions of Clearing Members which remain liable in respect of the relevant source of funds may remain unexhausted, while outstanding losses remain following such use and application of the source of funds. In such instances, the following shall apply:

a. the remaining contributions of Clearing Members in respect of the relevant source of funds shall be applied to meet the outstanding loss, subject to their limits set out in Rule 2.28.2A and Rule 7A.06.6.6; and

b. the liability of each Clearing Member for such loss shall be determined as described in Rules 7A.01A.2B.2 and 7A.01A.2D, whichever is applicable, subject always to the operation of Rule 7A.06.6.5.

Added on 26 April 2013, amended on 30 June 2014, 12 November 2018 and 17 July 2019.

7A.01A.4

If the Clearing House is unable to ascertain any of its losses in relation to a potential Flat Rate adjustment promptly after an event of default, the Clearing House may estimate its loss as if such estimated loss has already been ascertained, and apply the Clearing Fund accordingly. Upon ascertaining its actual loss suffered in relation to a Flat Rate adjustment, the Clearing House will debit or credit the monies to the Clearing Fund accordingly.

Added on 26 April 2013.

7A.01A.5

An event of default can occur in one or more Contract Classes. Each of the following limbs comprises a Contract Class:

a. Contracts that are listed for trading on the Exchange or Relevant Market and Non-Relevant Market Contracts; or

b. [Deleted]

c. [Deleted].

Added on 26 April 2013, amended on 12 November 2018 and 17 July 2019.

7A.01A.6

An event of default shall be deemed to have fallen within a particular Contract Class if the defaulting Clearing Member had open commitment or outstanding obligations to the Clearing House in that Contract Class at the time of such default.

Added on 26 April 2013.

7A.01A.7

An event of default that is due to the insufficiency of a Clearing Member's Collateral deposited with, provided to or otherwise made available to the Clearing House to fully discharge such Clearing Member's obligations to the Clearing House, or is due to the insolvency of a Clearing

Member, shall be deemed for the purpose of Chapter 7A to have occurred in each Contract Class that Clearing Member was clearing or had open commitment in at the time of default.

Added on 26 April 2013 and amended on 17 July 2019.

7A.01A.8

Where an event of default is due to:

(i) the insufficiency of the Collateral of any Relevant Market including a Participating Market, available to the Clearing House to fully meet the obligations of such Relevant Market and/or its clearing house to the Clearing House; or

(ii) the insolvency of the Relevant Market;

a default shall be deemed to have occurred in the class of Contracts that are listed for trading on the Exchange or the Relevant Market.

Added on 26 April 2013 and Amended on 29 July 2022.

7A.01A.9

An event of default that is due to conversion, theft, breach of trust or embezzlement of a Clearing Member, or any other cause shall be deemed to have occurred in each Contract Class that Clearing Member was clearing or had open commitment in at the time of default.

Added on 26 April 2013.

7A.01A.10

While application of the Clearing Fund shall be mandatory, the detailed implementation of Rule 7A.05 and 7A.06 shall be the responsibility of the Clearing House.

Added on 26 April 2013.

7A.01A.11

Without prejudice to the generality of Chapter 1, the Clearing House shall not be liable to any Clearing Member or any Third Party in respect of any damage, loss, cost or expense of whatsoever nature (whether direct, indirect, special or consequential, including without limitation any loss of business, revenue, goodwill, bargain or profit), suffered or incurred by such Clearing Member or Third Party, arising out of or in connection with the declaration or non-declaration of an event of default by the Clearing House.

Added on 26 April 2013.

7A.01B [Rule has been deleted.]

Deleted on 17 July 2019.

7A.01B.1 [Rule has been deleted.]

Deleted on 17 July 2019.

7A.01B.2 [Rule has been deleted.]

Deleted on 17 July 2019.

7A.01B.3 [Rule has been deleted.]

Deleted on 17 July 2019.

7A.01B.4 [Rule has been deleted.]

Deleted on 17 July 2019.

7A.01C Trigger Events under the Connect

The Clearing House may declare that a Trigger Event has occurred in respect of the Connect Counterparty and/or Connect Broker when it determines, in its sole discretion, that any of the following has occurred:

a. Failure of the Connect Counterparty to provide collateral to meet the margin or collateral requirements within the agreed timelines; or

b. The Connect Counterparty fails to meet its settlement obligations to the Connect Broker, whether partially or wholly, and such failure results in the Connect Broker failing to meet its settlement obligations to the Clearing House.

Added on 29 July 2022.

7A.02 Open Positions of Defaulted /Suspended Clearing Members

7A.02.1

When a Clearing Member having open positions has defaulted upon its obligation to the Clearing House, or has been suspended, the Clearing House may:—

7A.02.1.1 transfer or facilitate the transfer of all or any part of positions in Customer Contracts held by the defaulted or suspended Clearing Member to one (1) or more Clearing Members designated by the Clearing House in accordance with applicable laws, provided that all or any part of positions held in Cleared Swaps Customer Accounts may be transferred only to one (1) or more FCM Clearing Members designated by the Clearing House. When such positions are so transferred, the following shall apply:

a. subject to Rule 7A.02.1.1.c. and to the extent permitted by applicable laws, margins deposited with the Clearing House in respect of the positions shall be entrusted to the designated Clearing Member or Clearing Members;

b. the margins entrusted to a designated Clearing Member pursuant to this Rule 7A.02.1.1 may not be in such form as was originally deposited with the Clearing House;

c. the Clearing House shall have the discretion not to transfer all or any part of the margins to a designated Clearing Member as described in Rule 7A.02.1.1.a., if:

i. those margins cannot be attributed to the positions that are transferred to that Clearing Member; or

ii. those margins may be applied pursuant to Rule 7A.05.1.2 or 7A.05.1.2A,

provided that where margins are not transferred to the designated Clearing Member, the designated Clearing Member shall be required to collect the required margins from its Customer; and

d. The margins not entrusted to designated Clearing Members shall be retained by the Clearing House and may be applied in accordance with Rule 7A.05.1.2 or 7A.05.1.2A. Any unused margins shall be returned to the defaulted or suspended Clearing Member, or entrusted to the designated Clearing Members, as the Clearing House deems appropriate:

i. following the settlement of losses arising from the event of default; or

ii. at such time that the Clearing House determines that the margins may not be used.

7A.02.1.1A transfer or facilitate the transfer of all or any part of positions in Affiliate Contracts held by the defaulted or suspended Clearing Member to one (1) or more Clearing Members designated by the Clearing House in accordance with applicable laws. When such positions are so transferred, the following shall apply:

a. subject to Rule 7A.02.1.1A.c. and to the extent permitted by applicable laws, margins deposited with the Clearing House in respect of the positions shall be entrusted to the designated Clearing Member or Clearing Members;

b. the margins entrusted to a designated Clearing Member pursuant to this Rule 7A.02.1.1A may not be in such form as was originally deposited with the Clearing House;

c. the Clearing House shall have the discretion not to transfer all or any part of the margins to a designated Clearing Member as described in Rule 7A.02.1.1A.a., if:

i. those margins cannot be attributed to the positions that are transferred to that Clearing Member; or

ii. those margins may be applied pursuant to Rule 7A.05.1.1A, 7A.05.1.2 or 7A.05.1.2A,

provided that where margins are not transferred to the designated Clearing Member, the designated Clearing Member shall be required to collect the required margins from the Affiliate; and

d. The margins not entrusted to designated Clearing Members shall be retained by the Clearing House and may be applied in accordance with Rules 7A.05.1.1A, 7A.05.1.2 and 7A.05.1.2A. Any unused margins shall be returned to the defaulted or suspended Clearing Member, or entrusted to the designated Clearing Members, as the Clearing House deems appropriate:

i. following the settlement of losses arising from the event of default; or

ii. at such time that the Clearing House determines that the margins may not be used.

7A.02.1.2 execute hedging transactions, on behalf of and at the risk of the defaulted or suspended Clearing Member, to eliminate or reduce market risk resulting from such open positions;

7A.02.1.3

a. close out or liquidate any such open positions as well as positions resulting from any hedging transaction executed pursuant to Rule 7A.02.1.2;

b. appoint one or more Inter Dealer Brokers, Clearing Members or members of the applicable Relevant Market to close out any such open positions as well as positions resulting from any hedging transaction executed pursuant to Rule 7A.02.1.2, all on the behalf of and at the risk of the defaulted or suspended Clearing Member; or

c. conduct an auction of such open positions, as well as positions resulting from any hedging transaction executed pursuant to Rule 7A.02.1.2, in such manner as prescribed by the Clearing House;

7A.02.1.4 where the open positions relate to a Non-Relevant Market Transaction or a Contract subject to physical delivery prior to re-novation in Rule 6.02A.7, and it is in the Clearing House's good faith opinion impossible or impracticable for the open positions to be transferred or closed out pursuant to Rules 7A.02.1.1, 7A.02.1.1A and 7A.02.1.3 respectively, the Clearing House may, in addition to any other power or right it may have, invoice back such positions to the defaulting or suspended Clearing Member. The Clearing House shall then simultaneously invoice back the equivalent number of positions or as nearly equivalent number of such positions as the Clearing House may deem practical to the following:—

a. in the case of a Non-Relevant Market Transaction or a Contract subject to physical delivery prior to the matching process in Rule 6.02A.7, to other non-defaulting and non-suspended Clearing Members, and/or any other non-defaulting Relevant Market (or its clearing house) holding appropriate opposite positions (whether reported to the Clearing House as being House or Customer positions) as at the date of such invoicing back, on a pro-rata basis, calculated as the proportion of such gross opposite positions of each non-defaulting and non-suspended Clearing Member and/or Relevant Market (or its clearing house) at the date of such transfer relative to the aggregate value of such open positions held by all non-defaulting and non-suspended Clearing Members (to be rounded down or up if the number of lots is not a whole number at the Clearing House's absolute discretion); or

b. in the case of a Contract subject to physical delivery after the matching process in Rule 6.02A.7 and before re-novation in Rule 6.02A.7, to the non-defaulting and non-suspended Clearing Members and/or clearing member of another Relevant Market (or its clearing house), with which the defaulting or suspended Clearing Member has been matched in accordance with Rule 6.02A.7 (whether reported to the Clearing House as being House or Customer positions).

The invoicing back shall be carried out by the Clearing House effecting and registering opposite positions between itself and each of the relevant affected persons. The Clearing House shall then settle the open positions against such opposite positions, at a price determined by it. The Clearing House's actions, including the timing of the transfer and the price determined by the Clearing House shall be binding on all affected Clearing Members;

7A.02.1.5 [Rule has been deleted.]

7A.02.1.5A

a. In the event that:

i. the Clearing House is unsuccessful in closing out or liquidating such open positions;

ii. an auction of such open positions has failed; or

iii. the Clearing House is of the good faith opinion that it is impossible or impracticable for such open positions to be closed out, liquidated, or auctioned;

the Clearing House may, subject to Rule 7A.02.1.5A.b, terminate the open positions and simultaneously terminate an equivalent number of opposite positions held by the other Clearing Members in such manner and at such price as prescribed by the Clearing House.

b. In determining the opposite positions of the other Clearing Members that are to be terminated, the Clearing House shall:

i. select positions on a pro-rata basis to the extent practicable, based on the number of positions in the relevant Contracts held by each Clearing Member across its House Accounts and Customer Accounts; and

ii. provide each such Clearing Member an opportunity to re-assign which of its positions from its House Accounts and Customer Accounts are to be terminated, provided that:

(1) the Clearing Member submits to the Clearing House an allocation of its positions which are to be terminated, in accordance with the manner prescribed by the Clearing House and within the timeframe set by the Clearing House; and

(2) the termination of positions set out in that allocation would not increase the Clearing House's exposure to the Clearing Member to an extent that is unacceptable to the Clearing House in its absolute discretion.

7A.02.1.6 if a defaulted or suspended party:

a. has offsetting positions with another defaulted or suspended party; or

b. has offsetting positions between his own accounts,

the Clearing House may net such positions before undertaking any action pursuant to Rules 7A.02.1.3 to 7A.02.1.5A. The net loss calculated may be attributable to either or both defaulted or suspended party's account in whatever proportion as the Clearing House deems fit; and/or

7A.02.1.7undertake any action which is ancillary or incidental to activities set out under Rule 7A.02.1.

Added on 7 August 2012 and amended on 8 November 2012, 26 April 2013, 31 December 2013, 30 June 2014, 2 May 2016, 19 September 2016 and 17 July 2019.

7A.02.2

7A.02.2.1 The Clearing Member that has defaulted upon its obligation to the Clearing House, or has been suspended, shall cooperate with the Clearing House and non-defaulting Clearing Members in respect of any of the actions that the Clearing House may take pursuant to Rule 7A.02.1.

7A.02.2.2 Where an auction is held pursuant to Rule 7A.02.1.3.c in respect of the Contract Class specified in Rule 7A.01A.5.a, a Required Participant shall participate in such auction,

and shall comply with all requirements and procedures as prescribed by the Clearing House in relation to such auctions.

Added on 7 August 2012 and amended on 17 July 2019.

7A.02.3

7A.02.3.1 All costs and expenses sustained by the Clearing House in connection with any steps which are or may be taken by the Clearing House pursuant to Rule 7A.02.1, including losses incurred from authorized hedging transactions and the unwinding of such hedging transactions, shall be charged to the account of the defaulted Clearing Member after all outstanding rights and liabilities in respect of all its Contracts with the Clearing House have been determined, and shall be set off against all other amounts owed and owing between the defaulted Clearing Member and the Clearing House, to produce a net sum payable by either party to the other.

7A.02.3.2 All costs and expenses incurred by the Clearing House in connection with any steps which may be taken by the Clearing House in pursuant to Rule 7A.02A to liquidate the position of the Connect Broker in the event of a Trigger Event will be charged to the Connect Counterparty and be satisfied by the use of the Connect Counterparty' s collateral.

Added on 7 August 2012 and amended on 25 May 2015 and 29 July 2022.

7A.02A Open Positions of Connect Broker and Clearing Members holding Positions in Connect Contracts

7A.02A.1 Upon the declaration of a Trigger Event or where the Clearing House determines, in its sole discretion, that it will cease to clear the Connect Contracts due to a termination or discontinuation of the Connect, the Clearing House may require Clearing Members to close out or liquidate all or such part of positions in Connect Contracts. Notwithstanding the preceding, the Clearing House may at its discretion, at any time by notice in writing to the Connect Broker and/or Clearing Members holding positions in Connect Contracts, specify one or more date(s) for the termination of any or all of the Connect Contracts to which it is a party.

7A.02A.2 The Clearing House may prescribe termination price(s) for any or all of the Connect Contracts by reference to the prices derived from the Connect Market or such other prices as it may determine in its sole discretion.

7A.02A.3 The Clearing House shall on the termination date(s) specified in Rule 7A.02A.1 terminate positions in any or all Connect Contracts at the termination price(s) prescribed in Rule 7A.02A.2.

7A.02A.4 Notwithstanding the above, the Clearing House may undertake any additional action it deems necessary in relation to the management of the open positions for the Connect Contracts, including those which are ancillary or incidental to activities set out under Rule 7A.02A.

Added on 29 July 2022.

7A.03 Open Contracts of Other Suspended or Expelled Clearing Members

7A.03.1

When a Clearing Member is suspended (including on a voluntary basis) or expelled for a violation of this Rules, other than for insolvency or default on its obligations to the Clearing House, the Clearing House may designate one (1) or more Clearing Members to deal with the open contracts cleared by the suspended or expelled Clearing Member in accordance with the Clearing House's direction.

Added on 7 August 2012.

7A.04 Effect of Suspension or Expulsion

7A.04.1

A Clearing Member suspended for whatsoever reasons including on a voluntary basis shall not have any of the rights of a Clearing Member during the time of his suspension. A suspended Clearing Member may be reinstated upon such conditions as the Clearing House may impose.

Added on 7 August 2012.

7A.04.2

Any Clearing Member suspended or expelled pursuant to any other provision of this Rules shall not take on or clear any new Contracts or trades and shall have any or all of the open contracts cleared by it transferred out or closed out pursuant to this Rules as may be appropriate.

Added on 7 August 2012.

7A.05 Protection of Clearing House

7A.05.1 Failure by Clearing Member and any other Relevant Market (or its Clearing House) to discharge its obligations to the Clearing House in respect of Contracts

Without prejudice and subject to the other provisions of this Rules:

7A.05.1.1 Where a Clearing Member has failed promptly to discharge any of its obligations to the Clearing House in respect of a House Contract (that is not an Affiliate Contract), the Clearing House may apply any or all of the following to discharge such obligations:

a. the Clearing Member's Collateral deposited with or provided to the Clearing House (except such Collateral deposited or provided in relation to (i) Customer Contracts and (ii) Affiliate Contracts); and

b. in the case of a Bank Clearing Member incorporated outside Singapore which has satisfied Rule 2.02B.1.11.a or b, the Collateral deposited or provided by the Bank Clearing Member pursuant to Rule 2.08.1B.1.

7A.05.1.1A Where a Clearing Member has failed promptly to discharge any of its obligations to the Clearing House in respect of an Affiliate Contract, the Clearing House may apply any or all of the following to discharge such obligations:

a. the Clearing Member's Collateral deposited with or provided to the Clearing House (except such Collateral deposited or provided in relation to Customer Contracts); and

b. in the case of a Bank Clearing Member incorporated outside Singapore which has satisfied Rule 2.02B.1.11.a or b, the Collateral deposited or provided by the Bank Clearing Member pursuant to Rule 2.08.1B.1,

provided that Collateral deposited by the Clearing Member in relation to Affiliate Contracts shall not in any case be applied to discharge any of the Clearing Member's obligations to the Clearing House in respect of a House Contract (that is not an Affiliate Contract).

7A.05.1.2 Where a Clearing Member has failed promptly to discharge any of its obligations to the Clearing House in respect of a Customer Contract other than an Applicable Customer Contract, the Clearing House may apply any or all of the following to discharge such obligations:

a. the Clearing Member's Collateral deposited with or provided to the Clearing House (except such Collateral deposited or provided in relation to Customer Contracts);

b. Collateral deposited or provided by the Clearing Member in relation to Customer Contracts other than an Applicable Customer Contracts provided that the conditions in the SFA in relation to the permissible use of customers' money and assets are satisfied;

b1. Collateral deposited or provided by the Clearing Member in relation to Applicable Customer Contracts, provided Rule 7A.05.1.8 applies;

c. in the case of a Bank Clearing Member incorporated outside Singapore which has satisfied Rule 2.02B.1.11.a or b, the Collateral deposited or provided by the Bank Clearing Member pursuant to Rule 2.08.1B.1; and

d. the qualifying letters of credit deposited with the Exchange by a Trading Member sponsored by the Clearing Member, pursuant to Rule 7.3.6 of the Trading Rules, provided that the Clearing Member's default is attributable to such Trading Member's act or omission,

provided that (i) Collateral deposited by the Clearing Member in relation to Applicable Customer Contracts shall not in any case be applied to discharge any of the Clearing Member's obligations to the Clearing House in respect of a Customer Contract other than an Applicable Customer Contract, save as provided by Rule 7A.05.1.8; and (ii) Collateral deposited by the Clearing Member in relation to Affiliate Contracts shall not in any case be applied to discharge any of the Clearing Member's obligations to the Clearing House in respect of a House Contract (that is not an Affiliate Contract).

7A.05.1.2A Where a Clearing Member has failed promptly to discharge any of its obligations to the Clearing House in respect of an Applicable Customer Contract, the Clearing House may apply any or all of the following to discharge such obligations:

a. the Clearing Member's Collateral deposited with or provided to the Clearing House (except such Collateral deposited or provided in relation to Customer Contracts);

b. [This rule is deleted].

c. Collateral deposited or provided by the Clearing Member in relation to the Applicable Customer Contracts of the Customer to whom the relevant defaulted

Applicable Customer Contract belongs only;

c1. Collateral deposited or provided by the Clearing Member in relation to Customer Contracts other than Applicable Customer Contracts, provided 7A.05.1.8 applies;

d. in the case of a Bank Clearing Member incorporated outside Singapore which has satisfied Rule 2.02B.1.11.a or b, the Collateral deposited by the Bank Clearing Member pursuant to Rule 2.08.1B.1; and

e. the qualifying letters of credit deposited with the Exchange by a Trading Member sponsored by the Clearing Member, pursuant to Rule 7.3.6 of the Trading Rules, provided that the Clearing Member's default is attributable to such Trading Member's act or omission,

provided that (i) Collateral deposited by the Clearing Member in relation to Customer Contracts other than Applicable Customer Contracts, or in relation to the Applicable Customer Contracts of any other Customer, shall not in any case be applied to discharge any of the Clearing Member's obligations to the Clearing House in respect of an Applicable Customer Contract, save as provided by Rule 7A.05.1.8; and (ii) Collateral deposited by the Clearing Member in relation to Affiliate Contracts shall not in any case be applied to discharge any of the Clearing Member's obligations to the Clearing House in respect of a House Contract (that is not an Affiliate Contract).

7A.05.1.3 The Clearing House may liquidate any non-cash Collateral deposited with it by a Clearing Member:

a. in respect of Collateral in relation to House Contracts (that are not Affiliate Contracts), where the Clearing Member has failed to promptly discharge its obligations to the Clearing House in respect of any Contract;

a1. in respect of Collateral in relation to Affiliate Contracts, where the Clearing Member has failed to promptly discharge its obligations in respect of an Affiliate Contract and/or a Customer Contract;

b. in respect of Collateral in relation to Customer Contracts, where the Clearing Member has failed to promptly discharge its obligations in respect of a Customer Contract and the conditions in the SFA in relation to the permissible use of customers' money and assets are satisfied; and

c.in respect of assets in relation to House Contracts or Customer Contracts, if the Clearing House is of the opinion that such liquidation of non-cash assets is necessary to protect the Clearing House from depreciation of the value of Collateral, pending transfer of such House Contracts or Customer Contracts, as the case may be,

provided that (i) the Clearing House shall not be liable for any losses arising from such liquidation and any such losses will be borne by the House Account or Customer Account in respect of which the non-cash assets were liquidated; and (ii) Collateral deposited by the Clearing Member in relation to Affiliate Contracts shall not in any case be liquidated or applied to discharge any of the Clearing Member's obligations to the Clearing House in respect of a House Contract (that is not an Affiliate Contract).

7A.05.1.4 Without prejudice to the rights of the Clearing House in respect of failure by the Clearing Member to promptly discharge any of its obligations to the Clearing House, the Clearing Member shall immediately make up any deficiencies in its Clearing Fund Deposit resulting from such applications.

7A.05.1.5 The Clearing Member shall not take any action or do anything that will directly or indirectly interfere with, prohibit, restrict or inhibit the ability of the Clearing House to so apply the Collateral and the Clearing House shall, except where it has acted in bad faith, be under no liability to the Clearing Member or any other person whatsoever in so applying Collateral and the Clearing Member shall fully indemnify and keep indemnified the Clearing House and hold the Clearing House harmless against any such liability.

7A.05.1.6 If a Relevant Market, including a Participating Market and Connect Market, and/or its clearing house as the case may be (i) fails to promptly discharge any of its obligations to the Clearing House arising out of any arrangement relating to the clearing of Contracts, including the Mutual Offset System and the Connect, or (ii) is liable to the Clearing House for any losses arising out of its default, the Collateral of such Relevant Market, and in the case of the Connect, the Connect Counterparty' s collateral, shall be applied by the Clearing House to discharge the obligation.

7A.05.1.7 Where the Clearing Member which is also a clearing member of CDP has failed to settle its financial obligations to CDP, the Clearing House shall be entitled to retain any Collateral deposited or provided by the Clearing Member in relation to House Contracts (excluding Affiliate Contracts) which have not been utilised pursuant to this Rule 7A.05.

7A.05.1.8 Where the Clearing House is acting pursuant to Rule 7A.05.1.2 and/or Rule 7A.05.1.2A in respect of a Customer Account, the Clearing House may, in discharge of obligations relating to such Customer Account, apply the Collateral deposited for any other Customer Account(s) held on the books of the Clearing Member for the same Customer.

Added on 7 August 2012 and amended on 26 April 2013, 31 December 2013, 2 May 2016, 12 November 2018 and 29 July 2022.

7A.06 Clearing Fund

7A.06.1 Sources of Funds to Support Losses Borne by Clearing House

7A.06.1.1 The clearing fund size shall be determined by the Clearing House

7A.06.1.2 The Clearing Fund shall comprise:

a. Clearing Fund Deposits;

b. Further Assessment Amounts; and

c. Aggregate Clearing House Contribution.

Added on 7 August 2012 and amended on 12 November 2018.

7A.06.2 Clearing Fund Deposit

7A.06.2.1 Upon being granted eligibility by the Clearing House to clear a relevant Contract Class, each Clearing Member wishing to clear that Contract Class shall deposit with the Clearing House as security for its obligations to the Clearing House ("Clearing Fund Deposit") the following amounts:

A. for clearing Contracts which are listed for trading on the Exchange or any Relevant Market and/or Non-Relevant Market Contracts, the higher of:

a. S$1,000,000 or such lower amount as prescribed by the Clearing House from time to time in its discretion; or

b. the Clearing Member's proportionate share of the total Clearing Fund Deposits required from all Clearing Members in this Contract Class, which shall be an amount determined by the Clearing House. Each Clearing Member's proportionate share of the total Clearing Fund Deposits shall be determined based on the exposure that the Clearing Member brings to the clearing system, taking into account factors including, but not limited to, the Clearing Member's average margin requirements over the preceding three month period;

B. [deleted]

C. [deleted]

7A.06.2.2 The Clearing Fund Deposit shall be in cash, government securities or any other forms of Collateral acceptable to the Clearing House from time to time.

7A.06.2.3 Government securities or any other form of Collateral acceptable to the Clearing House shall not exceed a prescribed proportion of the Clearing Fund Deposit, as the Clearing House may specify from time to time in its discretion.

7A.06.2.4 This deposit may be withdrawn when such Clearing Member ceases to be a Clearing Member if, in the opinion of the Clearing House, all Contracts and obligations of such Clearing Member with the Clearing House have been settled and all sums owing to the Clearing House have been paid.

Added on 7 August 2012 and amended on 8 November 2012, 26 April 2013, 30 June 2014, 19 October 2015, 12 November 2018 and 17 July 2019.

7A.06.3 Further Assessment Amount

7A.06.3.1 The aggregate Further Assessment Amount that a Clearing Member is required to furnish pursuant to Rule 7A.06.3.3 shall be an amount up to one (1) time of a Clearing Member's Clearing Fund Deposit requirement, as prescribed by the Clearing House from time to time in its discretion.

7A.06.3.2 [Deleted]

7A.06.3.3 In the use and application of the Further Assessment Amounts pursuant to Rule 7A.01A.2B.2.e in an event of default, the Clearing House shall be entitled to call for payment of the Further Assessment Amount in such portions at such times as it deems appropriate. A Clearing Member shall immediately furnish such amounts to the Clearing House, prior to the close of business on the Business Day immediately following such call.

Added on 7 August 2012 and amended on 8 November 2012, 26 April 2013, 29 July 2013, 12 November 2018 and 17 July 2019.

7A.06.4 Aggregate Clearing House Contributions

7A.06.4.1 Subject to Rule 7A.06.4.2, the total contribution by the Clearing House to the Clearing Fund ("Aggregate Clearing House Contribution") shall be at least an amount equivalent to 25% of the Clearing Fund size, and allocated as follows:

a. [This rule has been deleted]

a1. an amount of not less than 15% of the Clearing Fund size shall form the Clearing House First Loss Contribution as referred to in Rule 7A.01A.2B.2.a;

b. [This rule has been deleted]

b1. an amount of not less than 10% of the Clearing Fund size shall form the Clearing House Intermediate Contribution as referred to in Rule 7A.01A.2B.2.c; and

c. any remaining amount shall form any other contributions to the Clearing Fund as referred to in Rule 7A.01A.2B.2.f.

7A.06.4.2 In the event that any part of the Aggregate Clearing House Contribution is applied in accordance with Rule 7A.01A.2B.2, such that it falls below the Minimum Aggregate Clearing House Contribution, the Clearing House shall restore the Aggregate Clearing House Contribution up to the Minimum Aggregate Clearing House Contribution. The Clearing House shall thereafter maintain Aggregate Clearing House Contribution equivalent to the Minimum Aggregate Clearing House Contribution.

7A.06.4.3 Aggregate Clearing House Contribution shall comprise the following, where such funds are available:

a. the capital of the Clearing House;

b. the net proceeds of such financial guarantee and/or default insurance; and

c. any other financial instrument.

Added on 7 August 2012 and amended on 29 July 2013, 30 June 2014 and 17 July 2019.

7A.06.5 [Rule has been deleted.]

Deleted on 26 April 2013.

7A.06.6 Use of the Clearing Fund in Respect of Events of Default and/or Trigger Events Occurring Within a Multiple Default Period

7A.06.6.1 A Multiple Default Period shall be a fixed period of 90 days commencing on the day an event of default and/or a Trigger Event occurs as declared by the Clearing House, where such event of default and/or a Trigger Event results in the use and application of the Clearing Fund.

7A.06.6.2 An event of default and/or a Trigger Event occurring within a Multiple Default Period shall not trigger the commencement of a new Multiple Default Period.

7A.06.6.3 The Clearing House shall notify Clearing Members of the commencement date of any Multiple Default Period.

7A.06.6.4 The Clearing Fund in the order of priority listed in Rule 7A.01A.2B.2 shall be used and applied in the following manner in respect of events of default and/or a Trigger Event occurring within a Multiple Default Period:

a. The Clearing Fund shall only be drawn upon (i) in the case of an event of default, after the monies of the defaulted Clearing Member with the Clearing House; or (ii) in the case of a Trigger Event, the Connect Counterparty' s collateral and Connect Layer, have been exhausted in accordance with this Rules;

b. The Clearing Fund shall be utilised in respect of each event of default and/or a Trigger Event occurring within the Multiple Default Period in the order of priority listed in Rule 7A.01A.2B.2 irrespective of the number of draw downs on the Clearing Fund;

c. In the event that a utilisation of the Clearing Fund draws on only part of the funds available at any source under Rule 7A.01A.2B.2, the next utilisation of the Clearing Fund in connection with the next event of default and/or Trigger Event occurring within the same Multiple Default Period, shall:

i. subject to Rule 7A.06.6.4.c.ii, draw first from the remaining funds available at the unexhausted source before drawing from the next source, taking into account, at all times, the relevant Contract Class;

ii. where the next event of default and/or Trigger Event occurs in one or more Contract Classes in which all preceding events of defaults and/or Trigger Event in that same Multiple Default Period were not involved, the draw down will revert to the start of the sequence of priority listed in Rule 7A.01A.2B.2 and:

(1) the source of funds provided for in Rule 7A.01A.2B.2.a will consist of any remaining resources in the Clearing House First Contribution or any remaining resources in the Clearing House Intermediate Contribution, whichever amount is the higher; and

(2) the source of funds provided for in Rule 7A.01A.2B.2.c will consist of any remaining contributions to the Clearing Fund as referred to in Rule 7A.01A.2B.2.f, after which, either any remaining resources in the Clearing House Intermediate Contribution or any remaining resources in the Clearing House First Contribution, whichever has not already been used as the source of fund provided for in Rule 7A.01A.2B.2.a pursuant to (1) above.

d. Once all the sources of the Clearing Fund have been exhausted, any current or subsequent utilisation of the Clearing Fund in connection with an event of default and/or Trigger Event occurring within the same Multiple Default Period shall revert to the start of the sequence of the priority listed in Rule 7A.01A.2B.2 in respect of the replenished Clearing Fund; and

e. Upon the commencement of a new Multiple Default Period, the first draw down on the Clearing Fund in connection with an event of default and/or Trigger Event occurring in the new Multiple Default Period shall commence from the first source of funds listed in Rule 7A.01A.2B.2, subject to Rule 7A.06.8.2, and the subsequent sources of funds shall follow accordingly. This applies regardless of the source from which the last payment out of the Clearing Fund was made in connection with an event of default and/or Trigger Event which occurred in any previous Multiple Default Period.

7A.06.6.5 The Clearing House, in its application of the Clearing Fund in accordance with Rules 7A.01A.2B.2, and 7A.01A.2D, shall exclude a resigning Clearing Member whose Clearing Fund Deposit and Further Assessment Amount have been applied fully as specified in Rule 2.28.2A.

7A.06.6.6 Nothing in this Rule 7A.06.6 shall be construed as permitting the Clearing House to apply more than the Clearing Member's Clearing Fund Deposit and Further

Assessment Amount as at the time of the event of default, to meet losses arising from or in connection with any individual event of default and/or Trigger Event.

Added on 7 August 2012 and amended on 29 July 2013, 30 June 2014, 12 November 2018, 17 July 2019 and 29 July 2022.

7A.06.7 Rights of Clearing House for Recovery of Loss

7A.06.7.1 If a Clearing Member's Collateral available to the Clearing House are insufficient to fully discharge all of such Clearing Member's obligations to the Clearing House, including all claims against or expenses incurred by the Clearing House by reason of its substitution for that Clearing Member pursuant to Rule 7.04, the Clearing House shall nonetheless pay all such claims and expenses related to any of the action which the Clearing House may take pursuant to Rule 7A.02.1 (including drawings from the Clearing Fund and expenses), which shall be deemed a loss to it and which shall be a debt from the defaulting Clearing Member to the Clearing House, which the Clearing House may collect from the assets or securities of such Clearing Member available to it or by process of law.

7A.06.7.2 If any amount paid out of the Clearing Fund pursuant to Rule 7A.01A.2B.2 is subsequently recovered by the Clearing House in whole or in part, the Clearing House shall credit the amount so received to the Clearing Fund in the reverse of the order in which it was paid out.

7A.06.7.3 If a loss in respect of which a levy has been made against Clearing Members pursuant to Rules 7A.01A.2B.2 and 7A.01A.2D is afterward recovered by the Clearing House in whole or in part, the net amount of such recovery shall be credited to such persons (whether or not they are Clearing Members at the time of recovery) in proportion to the amount of the assessment paid by such persons.

Added on 7 August 2012 and amended on 26 April 2013, 29 July 2013 and 17 July 2019.

7A.06.8 Clearing Fund Deposits to be Restored

7A.06.8.1 In the event that it shall become necessary as provided in Rule 7A.06 to apply all or part of the Clearing Fund Deposits to meet obligations to the Clearing House (other than a Clearing Member's own obligation resulting from the substitution of the Clearing House on its trades), the Clearing Member shall immediately make good any such deficiency in Clearing Fund Deposits prior to the close of business on the Business Day immediately following such application.

7A.06.8.2 In the event that the limits to the application of the Clearing Member's Clearing Fund Deposit under Rule 2.28.2A.1 have been reached, the Clearing Fund Deposits restored in accordance with Rule 7A.06.8.1 shall be applied only to meet the Clearing Member's own obligations to the Clearing House, resulting from the substitution of the Clearing House on its trades.

Added on 7 August 2012 and amended on 12 November 2018.

7A.06A Connect Layer

7A.06A.1 Sources of Funds to Support Losses Borne by Clearing House

7A.06A.1.1 The Connect Layer fund size shall be determined by the Clearing House.

7A.06A.1.2 The Connect Layer shall comprise:

a. the Clearing House Connect Layer Contribution; and

b. the Clearing Member Connect Layer Contribution Requirement.

7A.06A.1.3 The Clearing Member's proportionate share of the total Connect Layer required from all Clearing Members participating in the Connect Contracts（"Clearing Member Connect Layer Contribution Requirement"）, shall be an amount determined by the Clearing House. Each Clearing Member's proportionate share of the total Connect Layer shall be determined based on the exposure that the Clearing Member brings to the Clearing House for their Connect positions, as well as its exposure relative to the Connect Broker's net positions, taking into account factors including, but not limited to, the average stress loss of the Clearing Member's Connect positions over a preceding period of up to three months.

Added on 29 July 2022.

7A.06A.2 Clearing House Connect Layer Contribution

7A.06A.2.1 The total contribution by the Clearing House to the Connect Layer（"Aggregate Clearing House Connect Layer Contribution"）shall be at least an amount equivalent to 25% of the Connect Layer size, and allocated as follows:

a. an amount of not less than 15% of the Connect Layer size shall form the Clearing House Connect Layer First Loss Contribution as referred to in Rule 7A.01A.2F.1.a; and

b. any remaining amount shall form any other Clearing House contribution to the Connect Layer referred to in Rule 7A.01A.2F.1.c.

7A.06A.2.2 Aggregate Clearing House Connect Layer Contribution shall comprise the following, where such funds are available:

a. the capital of the Clearing House;

b. the net proceeds of financial guarantee and/or default insurance; and

c. any other financial instrument.

Added on 29 July 2022.

7A.07 Default of the Clearing House

7A.07.1

A non-defaulting Clearing Member may exercise its rights under Rule 7A.07 if the Clearing House:

a. fails to make a payment to a non-defaulting Clearing Member for a period of 30 days from the date the obligation to pay under a Contract fell due; or

b. commences a procedure seeking or proposing liquidation on the ground of its inability to pay its debts, receivership, judicial management, or a scheme of arrangement involving a compromise with its creditors or any class thereof, or other similar relief with respect to itself or to its debts under any bankruptcy, insolvency, regulatory, supervisory or similar law, or if any of the foregoing cases or procedures is commenced in relation to the Clearing House by any other person which results in liquidation or winding up of the Clearing House on the ground of its inability to pay its debts, or if the Clearing House

takes corporate action to authorise any of the foregoing, in any such case other than for the purposes of corporate restructuring (including any consolidation, amalgamation or merger).

Added on 7 August 2012.

7A.07.2

While any of the circumstances set out in Rule 7A.07.1 continue, the nondefaulting Clearing Member may, at any time by notice in writing to the Clearing House, specify a date (the "Termination Date") for the termination and liquidation of all Contracts to which it is a party in accordance with Rule 7A.07.4 below.

Added on 7 August 2012.

7A.07.3

In the event a Clearing Member exercises its rights under Rule 7A.07.2, the Clearing House may, in its absolute discretion and by notice in writing, take any steps necessary to terminate any related Contract or close out any related positions held with any other Clearing Member, notwithstanding that such Clearing Member is not in default of any of its obligations.

Added on 7 August 2012.

7A.07.4

Upon the specification of a Termination Date:

a. all obligations of the Clearing House and the Clearing Member in respect of any Contract between them shall cease to exist from the Termination Date, provided that such termination shall have no effect upon the rights and obligations under such Contract, which rights and obligations shall survive such termination, and any obligations to make further payments or deliveries which would otherwise have fallen due shall be satisfied by settlement (whether by payment, set-off or otherwise) of the Termination Amount;

b. the Clearing House shall (on, or as soon as reasonably practicable after, the Termination Date) determine the Clearing Member's total loss or total gain (as the case may be) in respect of each Contract, in each case expressed in Singapore Dollars (the "Base Currency");

c. the Clearing House shall treat each gain to the Clearing Member as a positive amount and each loss by that Clearing Member as a negative amount and shall, in accordance with Rule 7A.07.4, aggregate all of such amounts to produce a single, net positive or negative amount, denominated in the Base Currency (the "Termination Amount"); and

d. where a Clearing Member has one or more House Accounts and Customer Accounts:

(i) the Clearing House shall determine net amounts under Rule 7A.07.4 (c) as follows: one net amount for each Applicable Customer Account; one net amount for all Customer Accounts that are not Applicable Customer Accounts; one net amount for all Affiliate Accounts; and one net amount for all other accounts; and

(ii) the net amounts determined under Rule 7A.07.4(d)(i) each shall constitute Termination Amounts.

Added on 7 August 2012 and amended on 2 May 2016.

7A.07.5

If a Termination Amount determined pursuant to Rule 7A.07.4 above is a positive amount, the Clearing House shall pay it to the Clearing Member and if any such Termination Amount is a negative amount, the Clearing Member shall pay it to the Clearing House, in either case in accordance with Rule 7A.07.6. The Clearing House shall notify the Clearing Member of each such Termination Amount, and by which party it is payable, as soon as practicable after the calculation thereof.

Added on 7 August 2012.

7A.07.6

A Termination Amount shall be paid in the Base Currency by the close of business on the business day following notification pursuant to Rule 7A.07.5 above.

Added on 7 August 2012.

7A.07.7

For the purposes of any calculation required to be made under this Rule 7A.07, the Clearing House may convert amounts denominated in any other currency into the Base Currency at such rate prevailing at the time of the calculation as it shall reasonably select.

Added on 7 August 2012.

7A.07.8

The rights of the Clearing House and the Clearing Members under this Rule 7A.07. shall be in addition to, and not in limitation or exclusion of, any other rights which the Clearing House or the Clearing Member may have.

Added on 7 August 2012.

Chapter 7B Payments

7B.1 Nomination of Accounts

7B.1.1

The nomination of an account for the purpose of receiving any funds or other assets to be paid or deposited under this Rules shall, in the case of nomination by a Clearing Member, be in writing to the Clearing House, and in the case of nomination by the Clearing House, be by way of circular or otherwise.

Added on 26 April 2013.

7B.2 Cash Payments : Settlement Bank Payment

7B.2.1

The payment method that is set out in this Rule 7B.2 shall be referred to in this Rules as “Settlement Bank Payment”.

Added on 26 April 2013.

7B.2.2

A "Payment Instruction" means an instruction given by the Clearing House to a Settlement Bank to:

(a) place at the disposal of a Clearing Member by crediting a nominated account held by that Clearing Member at that Settlement Bank an amount of money to be debited from a nominated account held by the Clearing House at that Settlement Bank; or

(b) place at the disposal of the Clearing House by crediting a nominated account held by the Clearing House at that Settlement Bank an amount of money to be debited from a nominated account held by a Clearing Member at that Settlement Bank.

The means by which a Payment Instruction may be communicated by the Clearing House to a Settlement Bank shall be as agreed between the Clearing House and the Settlement Bank.

Added on 26 April 2013.

7B.2.3

A "Confirmation" in relation to a Payment Instruction means a confirmation by a Settlement Bank to the Clearing House that it will carry out that Payment Instruction.

The means by which a Confirmation shall be made or deemed to have been made and communicated by a Settlement Bank to the Clearing House shall be as agreed between the Clearing House and the Settlement Bank.

Added on 26 April 2013.

7B.2.4

A Payment Instruction may be given by the Clearing House in respect of any obligation to pay a sum of money pursuant to or in connection with this Rules. A Payment Instruction shall be irrevocable upon Confirmation of that Payment Instruction by the relevant Settlement Bank.

Added on 26 April 2013.

7B.2.5

Where any sum of money is paid pursuant to or in connection with this Rules through Settlement Bank Payment:

(a) such payment shall not be considered to have been made to the intended recipient until a Confirmation of the relevant Payment Instruction is given by the relevant Settlement Bank; and

(b) such Confirmation shall discharge the payment obligation in respect of which the relevant Payment Instruction was given.

Added on 26 April 2013.

7B.3 Cash Payments : Other Payment Methods

7B.3.1

Where any sum of money is to be paid pursuant to or in connection with this Rules, the Clearing House may stipulate the payment method through which such payment is to be made and Clearing Members shall comply with such stipulation.

Added on 26 April 2013.

7B.3.2

Where any sum of money is paid pursuant to or in connection with this Rules through an Other Payment Method, such payment shall not be considered to have been made to the intended recipient until the payment sum is irrevocably and unconditionally received, in immediately available funds, in such account of the intended recipient as is nominated by the intended recipient.

Added on 26 April 2013.

7B.4 Deposit and Return of Government Securities

7B.4.1

Any deposit or return of government securities pursuant to or in connection with this Rules shall not be considered to have been made until such government securities are received in such account of the intended recipient as is nominated by the intended recipient.

Added on 26 April 2013.

7B.5 Deposit and Return of Book-Entry Securities

7B.5.1

Any deposit of book-entry securities (as defined in section 81SF of the Securities and Futures Act) by a Clearing Member with the Clearing House pursuant to or in connection with this Rules shall not be considered to have been made until the charge over such securities becomes effective in accordance with section 81SS of the Securities and Futures Act.

Added on 26 April 2013 and amended on 3 June 2019.

7B.5.2

Any return of book-entry securities (as defined in Section 81SF of the Securities and Futures Act) by the Clearing House to a Clearing Member pursuant to or in connection with this Rules shall not be considered to have been made until the charge over such securities is discharged in accordance with section 81SS of the Securities and Futures Act.

Added on 26 April 2013 and amended on 3 June 2019.

Chapter 8 Mutual Offset System

8.01 General

8.01.1

This Chapter sets out the rights and responsibilities of Clearing Members with respect to a Mutual Offset System.

Amended on 10 August 2007.

8.01.2

The procedures of the Clearing House, including the duties of a Clearing Member to members of the Participating Markets for whom the Clearing Member provides clearing services or with whom the Clearing Member has an agreement for Inter-Exchange Transfer (as defined in Rule 8.03.1.3), that are not specifically covered herein, shall be governed by the other provisions of this Rules that are consistent with this Chapter.

Amended on 27 March 2006 and 10 August 2007.

8.01.3

If the Clearing House has reason to believe that the access to or usage by a Clearing Member of the Mutual Offset System adversely affects the Clearing House or the Mutual Offset System, the Clearing House may suspend the Clearing Member's access to and/or usage of the Mutual Offset System.

Amended on 10 August 2007.

8.02 Designated Futures Contracts

8.02.1

The Mutual Offset System may be utilised for only those of the Designated Futures Contracts which may be prescribed by the Clearing House from time to time. The Clearing House may at any time and from time to time delist any contract as a Designated Futures Contract.

8.03 Governing Rules

8.03.1

For the purposes of a Mutual Offset System and this Rules, the following additional definitions shall apply:

8.03.1.1 Originating Clearing Member

An Authorised Clearing Member of a Participating Market and/or its clearing house which:

a. initiates an order for execution by an Executing Clearing Member of the other Participating Market; or

b. is deemed with respect to such Executing Clearing Member to be responsible for orders to be executed,

on the other Participating Market pursuant to the Mutual Offset System.

8.03.1.2 Executing Clearing Member

An Authorised Clearing Member of a Participating Market and/or its clearing house that

accepts and is responsible for executing and/or clearing of a trade on such Participating Market requested and/or initiated by an Originating Clearing Member of the other Participating Market pursuant to the Mutual Offset System.

8.03.1.2A Authorised Clearing Member

A clearing member of a Participating Market and/or its clearing house that is authorised to gain access to and use, the Mutual Offset System.

8.03.1.3 Inter-Exchange Transfer

a. The transfer pursuant to the Mutual Offset System to a Participating Market and/or its clearing house of a position as a result of a trade executed on another Participating Market. For the avoidance of doubt, Inter-Exchange Transfer does not apply to a trade executed as a result of private negotiation.

b. All orders received by members of a Participating Market ("Originating Participating Market") for execution on another Participating Market shall (if a Mutual Offset System Agreement subsists between the two (2) Participating Markets and the orders relate to a Designated Futures Contract for the purposes of such agreement) be deemed to be for the purposes of such Mutual Offset System, and the resulting positions shall (if satisfying the prerequisites for Inter-Exchange Transfer set out below) automatically be transferred to the other Participating Market unless upon receipt of an order the member of the Originating Participating Market receives instructions to the contrary.

c. All trades of an Originating as well as those of an Executing Clearing Member who is a Clearing Member for the purposes of the Mutual Offset System shall be promptly reported to the Clearing House in the form of a memorandum provided by the Clearing House (the "Inter-Exchange Transfer Memorandum"). In this connection, it shall be the responsibility of such a Clearing Member to ensure that it receives such information as may be necessary and in due time from such members of a Relevant Market (for whose trades such Clearing Member is deemed to be the Originating Clearing Member or for whose executed trades such Clearing Member is to be the Executing Clearing Member under the Mutual Offset System) for it to promptly effect its reporting obligation as aforesaid.

Amended on 10 August 2007.

8.04 Conditions for Inter-Exchange Transfer

8.04.1

So long as a Mutual Offset System is in effect as between the relevant Participating Markets, a trade will be transferred between Participating Markets and/or their respective clearing houses if all of the following conditions are satisfied:

8.04.1.1 The trade has cleared in the ordinary course on the Participating Market where it is executed.

8.04.1.2 An Inter-Exchange Transfer Memorandum has been duly delivered to the Clearing House in respect of the trade.

8.04.1.3 In relation to a transfer of a trade under the Mutual Offset System to the Clearing House, the Clearing House has received confirmation of the Inter-Exchange trade data

(being trade information supplied in an Inter-Exchange Transfer Memorandum) from the other Participating Market.

8.04.1.4 The Originating Clearing Member and the Executing Clearing Member has, prior to the execution of the trade entered into a written agreement with the Authorised Clearing Member which may have such terms and conditions as the contracting Authorised Clearing Members shall determine, but in any event shall provide in substance as follows:

a. Until such time as Inter-Exchange Transfer occurs with respect to a trade executed pursuant to the Mutual Offset System, each Authorised Clearing Member shall remain liable to the other Authorised Clearing Member for such trade in the same manner and to the same extent as if the Executing Clearing Member had executed such trade for a customer outside of the Mutual Offset System; and

b. Upon the occurrence of Inter-Exchange Transfer with respect to any trade executed pursuant to the Mutual Offset System, each Authorised Clearing Member shall have no further liability (other than with respect to the payment of commissions or fees agreed to by such Authorised Clearing Members) to, or relationship with, the other Authorised Clearing Member with respect to the position created by such trade, and thereafter the Originating Clearing Member shall look only to the clearing house which the trade is transferred to, with respect to the position created by such trade; notwithstanding the foregoing, the Executing Clearing Member shall continue to be fully liable to the Originating Clearing Member with respect to the execution of such trade including fraud or the breach of any obligation or duty ordinarily borne by the party executing a commodity futures contract trade on the Participating Markets, and for any unmatched trades.

Amended on 27 March 2006 and 10 August 2007.

8.05 Exchange Transfer

8.05.1 Clearing Members

The Clearing Member who is the Executing Clearing Member with respect to a trade executed on the Exchange pursuant to a Mutual Offset System shall have the same responsibilities to the Clearing House for such trade as for any other trade made on the Exchange until the trade is transferred to another Participating Market.

After a trade executed on the Exchange is transferred to another Participating Market, the Executing Clearing Member shall have no further responsibility to the Clearing House for such trade and shall have no further responsibility to or relationship with the Originating Clearing Member with respect to the position created by such trade.

After a trade executed on a Participating Market other than the Exchange, is transferred to the Exchange, the Originating Clearing Member who is a Clearing Member shall have no further responsibility to or relationship with the Executing Clearing Member of the other Participating Market with respect to the position created by the trade, and the Originating Clearing Member who is a Clearing Member shall have a position on the Exchange and the same responsibilities to the Clearing House for such a position as it would have had if the trade creating the position had been executed on the Exchange and cleared by the Clearing Member.

8.05.2 Other Participating Markets Other Than Exchange

At such time as a trade executed on the Exchange is transferred to another Participating Market, the other Participating Market and/or its clearing house shall be substituted for the Executing Clearing Member who is a Clearing Member with respect to the position created by such trade.

At such time as a trade executed on a Participating Market, other than the Exchange, is transferred to the Exchange, the other Participating Market and/or its clearing house will have a position equal and opposite to the position created by such trade subject to the Inter-Exchange Transfer.

8.05.3 Trade Not Transferred Between Participating Exchanges

Until and unless a trade executed on the Exchange is transferred under the Mutual Offset System to the other Participating Market, the Executing Clearing Member (who is a Clearing Member) shall be and shall remain responsible to the Clearing House to the full extent as with any trade cleared and/or carried by the same.

8.06 Miscellaneous

Notwithstanding the foregoing, the Clearing House shall be entitled, as between the Clearing House and the Clearing Members, to make such rules as the Clearing House deems necessary in relation to any matter concerning the Mutual Offset System and the rights and obligations of the Clearing Members thereto whether by way of Directives or in such other manner as the Clearing House considers appropriate.

Chapter 9 Definitions and Interpretation

9.01 Definitions

9.01.1

Unless the context otherwise requires,

(1) the following words and expressions shall be defined as set forth herein below; and

(2) where the terms defined below are defined in relation to a holder of a Capital Markets Services Licence, such definitions shall, with the necessary modifications, apply to a Clearing Member as those definitions apply to a holder of a Capital Markets Services Licence whether or not that Clearing Member holds a Capital Markets Services Licence.

A B C D E F G H I J K L M N O P Q R S T U V W X Y Z

Term	Meaning
A	
"Active Clearing Member"	means a Clearing Member who, in respect of a Contract Class, has cleared Contracts or an open commitment in Contracts belonging to the Contract Class in which an event of default and/or Trigger Event has occurred during the Relevant Period.
"Affiliate"	is a related corporation of a Clearing Member with respect to accepted instructions to deal for an account belonging to, and maintained wholly for the benefit of, that related corporation.
"Affiliate Account"	is an account designated by a Clearing Member pursuant to Rule

	7.31.1.
An "Affiliate Contract"	is a Contract booked into an Affiliate Account.
"Act"	means the Companies Act 1967, or any statutory modification, amendment or re-enactment thereof for the time being in force, or any and every other act which may replace it, and unless the context otherwise requires, includes any subsidiary legislation or regulations made pursuant thereto.
"acceptable government securities"	— means securities issued by a government with a Moody's Investors Service sovereign rating of at least Aaa, Standard & Poor's Corporation sovereign rating of at least AAA, Fitch, Inc sovereign rating of at least AAA or such other rating or such other government security, as may otherwise be prescribed by and acceptable to the Clearing House from time to time.
"adjusted net head office funds"	has the the meaning ascribed thereto in Regulation 2 of the SFR (Financial and Margin Requirements).
"ADP Notice"	shall have the meaning ascribed to it under Rule 6.09.2.
"Aggregate Clearing House Contribution"	shall have the meaning ascribed to it in Rule 7A.06.4.1.
"Aggregate Clearing House Connect Layer Contribution"	shall have the meaning ascribed to it in Rule 7A.06A.2.1.
"aggregate indebtedness"	shall have the meaning ascribed thereto under Regulation 2 of the SFR (Financial and Margin Requirements).
"aggregate resources"	— when used in reference to:— a. a Clearing Member incorporated in Singapore, means its financial resources and qualifying letters of credit referred to in Rule 2.07C less its total risk requirement; and b. a General Clearing Member or Direct Clearing Member incorporated outside Singapore or a Bank Clearing Member incorporated outside Singapore which has satisfied Rule 2.02B.1.11.c, means its adjusted net head office funds and qualifying letters of credit referred to in Rule 2.08C less its total risk requirement.
"Alternative Delivery Procedure"	means delivery of the underlying Commodity under different terms and conditions from the Delivery Rules relating to the relevant Contract.
"Applicable Customer Account"	means an account designated by a Clearing Member pursuant to Rule 7.30.1.
"Applicable Customer Contract"	means a Contract booked into an Applicable Customer Account.
"Asset(s)"	[Rule has been deleted.]
"Authorised Clearing Member"	shall have the meaning ascribed to it in Rule 8.03.1.2A.

"Authority"	means the Monetary Authority of Singapore, a body corporate established under the Monetary Authority of Singapore Act 1970.
B	
"Baltic Exchange"	means the Baltic Exchange Limited or its successor.
"Bank Clearing Member"	means a Clearing Member who has such rights and obligations as set out in Chapter 2. For the avoidance of doubt, a reference to a Bank Clearing Member incorporated outside Singapore shall refer to the branch located in Singapore, of a parent bank incorporated outside Singapore.
"base capital"	—when used in reference to:— a. a General Clearing Member or a Direct Clearing Member, shall have the meaning ascribed thereto under Regulation 2 of the SFR (Financial and Margin Requirements);and b. a Bank Clearing Member or a Remote Clearing Member, means its paid-up ordinary share capital and unappropriated profit or loss.
"Board"	means the Board of Directors for the time being of the Clearing House or such number of them as have authority to act for the Board.
"Business Day"	— Except as otherwise specified in the terms of any relevant Contract with respect to such Contract and the rights and obligations flowing therefrom, any day on which the Clearing House is open for business.
"business governed by this Rules" or "operations governed by this Rules"	when used in reference to:— a. a Bank Clearing Member incorporated in Singapore or a Bank Clearing Member incorporated outside Singapore which has satisfied Rule 2.02B.1.11.c, shall mean its business or operations (whichever is applicable) involving all derivatives and securities contracts traded on any exchange and all contracts novated to any clearing facility; and b. a Bank Clearing Member incorporated outside Singapore which has satisfied Rule 2.02B.1.11.a or b, shall mean its business or operations (whichever is applicable) involving derivatives and securities contracts traded on the Exchange and SGX-ST and all contracts novated to the Clearing House and CDP.
"Buyer"	shall: a. for the purpose of Rule 5.01.2 and Chapter 6, refer to the buying party who is responsible for taking delivery of the underlying Commodity under a Contract or delivery contract through the Buying Member, unless such Buyer is itself the Buying Member. b. for the purpose of Rule 7.02A, where it is not the Clearing Member itself, refer to a party for whom the Clearing Member maintains an account and who is a buyer in an Non-Relevant Market Transaction and otherwise shall refer to the Clearing Member itself. Where the Buyer is the Clearing Member itself,

	references in Rule 7.02A to the Clearing Member "acting for a Buyer" shall be correspondingly read as if the words "acting for a Buyer" were superfluous.
"Buying Member"	for the purposes of Chapter 6, shall refer, if it is not itself the Buyer with respect to any Contract or delivery contract, to the Clearing Member who clears for the Buyer or, with respect to any specific obligation to be performed by such Clearing Member, such other person as this Rules may provide in lieu of the Buying Member.
C	
"Capital Markets Services Licence"	has the meaning ascribed to it in the SFA.
"CDP"	means The Central Depository (Pte) Limited.
"CEA"	means the U.S. Commodity Exchange Act.
"CFTC"	means the U.S. Commodity Futures Trading Commission.
"CFTC Regulations"	means the rules and regulations promulgated by the CFTC.
"chief executive officer"	shall mean any person, by whatever name described, who is in the direct employment of, or acting for or by arrangement with, the Clearing Member and is principally responsible for the management and conduct of the business of the Clearing Member.
"Circular"	shall have the meaning ascribed to it in Rule 1.02.2.
"Cleared Swaps Customer"	means a customer of an FCM Clearing Member with positions in Cleared Swaps (as defined in CFTC Regulation 22.1, including Non-Relevant Market Contracts) that the FCM Clearing Member clears with the Clearing House, excluding any entity that controls, is controlled by or is under common control with such FCM Clearing Member, and the account of which would be considered a proprietary account of the FCM Clearing Member pursuant to the CFTC Regulations. Any such customer is deemed a Cleared Swaps Customer only with respect to its positions in Cleared Swaps.
"Cleared Swaps Customer Account"	means an account carried on the books of the Clearing House for an FCM Clearing Member and for or on behalf of a Cleared Swaps Customer.
"Cleared Swaps Customer Collateral"	means Collateral deposited with or provided to the Clearing House by an FCM Clearing Member in connection with a Cleared Swaps Customer Account.
[Deleted]	[Deleted]
"Clearing Fund"	means the clearing fund established in accordance with Rule 7A.06.1.
"Clearing Fund Deposit"	means an amount required to be deposited with the Clearing House by each Clearing Member as security for its obligations to the Clearing House in accordance with Rule 7A.06.2.
"Clearing House"	means the Singapore Exchange Derivatives Clearing Limited by whatever name called or its successor and assigns and where the context so requires such authorised personnel acting in its name.
"Clearing House	means the total contribution by the Clearing House to the Connect

Connect Layer Contribution"	Layer pursuant to Rule 7A.06A.2.
"Clearing House Contribution"	[This definition has been deleted]
"Clearing House First Loss Contribution"	is that part of the Aggregate Clearing House Contribution which is allocated as such pursuant to Rule 7A.06.4.1.a1
"Clearing House Examiner"	shall have the meaning ascribed to it in Rule 4.01A.5.
"Clearing House Intermediate Contribution"	is that part of the Aggregate Clearing House Contribution which is allocated as such pursuant to Rule 7A.06.4.1.b1
"Clearing Member"	means a corporation granted or admitted to be a member of the Clearing House pursuant to this Rules and shall include a General Clearing Member, a Direct Clearing Member and a Bank Clearing Member.
"Clearing Member Connect Layer Contribution Requirement"	means an amount required to be contributed by Clearing Members participating in the Connect Contracts to the Connect Layer in accordance with Rule 7A.06A.1.3.
"Clearing Membership"	means membership of the Clearing House pursuant to this Rules.
"Collateral"	means all or any of the monies and assets deposited with, or otherwise provided to, the Clearing House by or for a Clearing Member as margin, Clearing Fund Deposit, Further Assessment Amount, Clearing Member Connect Layer Contribution Requirement or any other form of credit support and/or security as may be required under this Rules or as otherwise directed by the Clearing House, but shall not include Performance Deposits or other Escrow Assets.
"Collective Customer"	shall have the meaning ascribed to it in Rule 2.20.3.1.
"Collective House Accounts"	shall have the meaning ascribed to it in Rule 2.20.3.2.
"Commodity"	includes:— a. any "commodity" as defined in the SFA from time to time; b. any financial instrument; c. gold, freight, any class of oil or any other physical commodity; and d. any commodity as may be specified by the Clearing House from time to time.
"Confirmation"	has the meaning ascribed to it in Rule 7B.2.3.
"Connect"	means the NSE IFSC - SGX Connect, an arrangement established for the purpose of facilitating access to trading of Connect Contracts on

	the Connect Market by Trading Members.
"Connect Broker"	means SGX India Connect IFSC Private Limited.
"Connect Contract"	means an instrument, contract or transaction, or class of instruments, contracts or transactions that are designated in Appendix 2 for clearing.
"Connect Counterparty"	means the NICCL or such other entity as may be referred to for the purposes of facilitating access to clearing of Connect Contracts in GIFT.
"Connect Exchange"	means the NSE IFSC or such other entity as may be referred to for the purposes of facilitating access to trading of Connect Contracts in GIFT.
"Connect Layer"	means the additional layer of funds as established in accordance with Rule 7A.06A for the purposes of the Connect.
"Connect Market"	means the market operated by the NSE IFSC in GIFT and accessed via the Connect Broker.
"Contract"	means the rights and obligations incurred through: a. unless otherwise excluded by the context, a trade on the Exchange or any Relevant Market which may be satisfied by offset or by delivery or such other means as provided in the rules of the Exchange or the Relevant Market or the relevant Contract Specifications (as the case may be) as novated to the Clearing House pursuant to Rule 7.04; or b. unless otherwise excluded by the context, a trade pursuant to an Non-Relevant Market Transaction which may be satisfied by offset or by delivery or such other means as provided in this Rules or the relevant Contract Specifications as novated to the Clearing House pursuant to Rule 7.04. c. [deleted]
"contract"	means the rights and obligations incurred through any trade or transaction whether or not through a market, and if through a market, whether or not the same is a Relevant Market and whether or not it relates to a Commodity, security or a futures contract as defined in the SFA.
"Contract Class"	refers to any of the classes of Contracts set out in Rule 7A.01A.5.
"Contract Month"	unless the relevant Contract Specifications otherwise provides, means the specified month within which a Contract matures and can be settled by delivery.
"Contract Specifications"	means the commercial and technical terms of a Contract which is listed for trading on the Exchange or any Relevant Market or an Non-Relevant Market Contract, including the Contract size, Contract Month, trading hours, Underlying, exercise price, minimum price fluctuation, Last Trading Day, settlement basis and method of exercise.
"counterparty risk requirement"	shall have the meaning ascribed to it in the Notice on Risk Based Capital Adequacy Requirements for Holders of Capital Markets Services Licences.

"Coupon Settlement Price"	[This definition has been deleted.]
"Corporation"	means a corporation within the meaning of the Act.
"Customer"	means a person whose account is carried on the books of a Clearing Member except where such person is:— a. the Clearing Member itself with respect to the proprietary account of the Clearing Member; b. a director, officer, employee or representative of the Clearing Member; and c. related corporation of the Clearing Member with respect to accepted instructions to deal for an account belonging to, and maintained wholly for the benefit of, that related corporation.
A "Customer Account"	is an account carried on the books of a Clearing Member belonging to and maintained wholly for the benefit of a Customer and, unless otherwise provided, includes an Applicable Customer Account.
A "Customer Contract"	is a Contract of a Customer and, unless otherwise provided, includes an Applicable Customer Contract.
D	
"delivery contract"	means the contract which arises directly between such parties as specified in the relevant Contract Specifications, upon the re-novation process referred to in Rule 6.02A.7.
"delivery default"	shall have the meaning ascribed to it in the relevant Contract Specifications or otherwise refer to the failure to perform any material act in relation to the delivery of a Commodity in accordance with the Contract Specifications.
"Delivery Month"	unless the relevant Contract Specifications otherwise provides, means the specified month in which the delivery period of a Contract subject to physical delivery, begins.
"Delivery Obligations"	means all delivery obligations of a Seller or Buyer or clearing member of any Relevant Market, under a Contract or delivery contract.
"Delivery Rules"	shall have the meaning ascribed to it in Rule 6.01.1.
"depositing party"	shall have the meaning ascribed to it in Rule 6.07.1.
"Designated Futures Contract"	means a futures contract including a futures contract or an option contract, which is traded on Participating Markets and which has been designated pursuant to the terms of the agreement between the Clearing House and the Participating Markets in respect of the Mutual Offset System as a futures contract or option contract eligible for trading under the Mutual Offset System.
"Direct Clearing Member"	means a Clearing Member who has such rights and obligations as set out in Chapter 2.
"Directive"	shall have the meaning ascribed to it in Rule 1.02.2.
"Director"	means any person acting as a Director of the Clearing House and any person duly appointed and acting for the time being as an alternate.

"disputes"	shall have the meaning ascribed to it in Rule 5.01.1.
E	
"Eligible Non-Relevant Market Contract"	means any Non-Relevant Market Contract accepted by the Clearing House for clearing (subject to this Rules), as prescribed by the Clearing House from time to time.
"Eligible OTCF Contracts"	[This definition has been deleted.]
"Eligible Non-Relevant Market Transaction"	[This definition has been deleted]
"Eligible OTCF Transaction"	[This definition has been deleted.]
"Escrow Asset"	means any Title Document, letter of credit, financial instrument, property or money (including Performance Deposits and other payments) which the Clearing House holds or is to hold as escrow agent pursuant to this Rules and/or the relevant Contract Specifications.
"Exchange"	means the Singapore Exchange Derivatives Trading Limited by whatever name from time to time called and shall include its successors and assigns.
"Exchange of Futures for Physical" / "EFP"	means a contract for the simultaneous exchange of a Futures Contract (as defined in the Trading Rules) for the corresponding physical underlying.
"Exchange of Futures for Swap" / "EFS"	means a contract for the simultaneous exchange of a Futures Contract (as defined in the Trading Rules) for a corresponding Non-Relevant Market Contract.
F	
"Facilitator Agent"	shall have the meaning ascribed to it in Rule 6.07A.
"Final Settlement Price"	means the price at which a Contract is settled at maturity, pursuant to any procedure prescribed by the Clearing House or the relevant Contract Specifications, as the case may be.
"financial resources"	has the meaning ascribed thereto in Regulation 2 of the SFR (Financial and Margin Requirements).
"First Original OTCF Contract Counterparty"	[This definition has been deleted.]
"Flat Rate"	— as published by Worldscale Association (London) Limited and Worldscale Association (NY) Inc.
"FCM"	means a futures commission merchant, as defined under the CEA, that is registered in such capacity with the CFTC.
"FCM Clearing Member"	means a Clearing Member that is also an FCM that clears Non-Relevant Market Contracts and/or OTCF Contracts for Cleared Swaps Customers.
"Force Majeure"	shall have the meaning ascribed to it in Rule 6.02A.10.4 or Rule 6.02A.10.5, whichever is applicable.

"free financial resources"	shall have the meaning ascribed to it in Regulation 24 of the SFR (Financial and Margin Requirements).
"Further Assessment Amount"	shall have the meaning ascribed to it in Rule 7A.06.3.
G	
"General Clearing Member"	means a Clearing Member who has such rights and obligations as set out in Chapter 2.
"GIFT"	means Gujarat International Finance Tec-City.
H	
"Holiday"	means any day as may be declared to be a holiday by the Clearing House from time to time.
"House Account"	is an account carried on the books of a Clearing Member which is not a Customer Account and, unless otherwise provided, includes an Affiliate Account.
A "House Contract"	is a Contract for: a. the Clearing Member itself with respect to the proprietary account of the Clearing Member; or b. a director, officer, employee or representative of the Clearing Member; or c. an Affiliate.
I	
"Inter Dealer Broker"	means a party who: a. has signed an agreement with the Clearing House for the access to and use of the Trade Registration System; and b. is designated by the Clearing House as eligible to submit Non-Relevant Market Transactions, NLT transactions, EFP transactions or EFS transactions to the Clearing House on behalf of a Clearing Member pursuant to this Rules.
"initial margin"	means the minimum amount required to be deposited by Third Parties (including Customers) with a Clearing Member: a. for each open Contract as prescribed by the Clearing House; b. for each open contract traded on an exchange other than the Exchange, as prescribed by the relevant exchange or clearing house; or c. [Deleted] d. in relation to any potential Flat Rate adjustment applicable to freight forward contracts for tanker voyage routes, as prescribed by the Clearing House.

"inter-exchange cross-margining"	shall have the meaning ascribed to it in Rule 7.22A.1.
"Irredeemable and Non-Cumulative Preference Share Capital"	has the meaning ascribed to it in Regulation 2 of the SFR (Financial and Margin Requirements).
L	
"Last Trading Day"	means the last day during which trading may be conducted in a Contract prior to expiration pursuant to the relevant Contract Specifications.
"Leveraged Foreign Exchange Trading"	shall have the meaning ascribed thereto under the SFA.
M	
"maintenance margin"	shall: a. for the purpose of Rule 7.22, refer to the minimum balance which shall be maintained in a Third Party's (including a Customer's) account subsequent to the deposit of the initial margins: i. for that Third Party's open positions in Contracts as prescribed by the Clearing House; ii. for that Third Party's open positions in contracts traded on exchanges other than the Exchange, as prescribed by the relevant exchanges or clearing houses; and iii. [Deleted] iv. in relation to any potential Flat Rate adjustment applicable to freight forward contracts for tanker voyage routes, as prescribed by the Clearing House for that Third Party. b. for the purpose of the rest of this Rules, mean the minimum balance prescribed by the Clearing House which shall be maintained in a Clearing Member's account for that Clearing Member's open position in respect of each Contract.
"Market"	shall have the meaning ascribed to "organised market" under the SFA while "market" shall include but not be limited to "Market".
"Minimum Aggregate Clearing House Contribution"	is an amount equivalent to 25% of the Clearing Fund size
"Multiple Default Period"	shall have the meaning ascribed to it in Rule 7A.06.6.1.
"Mutual Offset System"	means the system established pursuant to an agreement or agreements between Participating Markets and/or their respective clearing houses, whereby Authorised Clearing Members may establish or liquidate a position in respect of Designated Futures Contracts on

	either Participating Market through the execution of trades on the appropriate Participating Market in accordance with the terms thereof.
N	
"Negotiated Large Trade" / "NLT"	means large trades executed outside any electronic trading platform operated by the Exchange and pursuant to minimum thresholds and other procedures prescribed by the Exchange.
"net head office funds"	means with respect to a corporation incorporated or established outside Singapore, the net liability of the Singapore branch to its head office and any other branches outside of Singapore. In the case of a Bank Clearing Member, its net liability shall include, without limitation, the liability of its Asian Currency Unit.
"NICCL"	means NSE IFSC Clearing Corporation Limited.
"Non-Relevant Market Contract or Transaction"	means a contract or transaction that is not listed or quoted for trading on the Exchange or any Relevant Market.
"NSE IFSC"	means NSE IFSC Limited.
O	
"Officers"	shall have the meaning ascribed to it in Rule 6.07.4.
"Omnibus Account"	— An account that as between the Clearing Member carrying it and the person who requested its opening and maintenance by the Clearing Member (the "Omnibus Account Holder") is to be regarded as an account carried for customers of the Omnibus Account Holder in the name of the Omnibus Account Holder. In this connection, the expression "customer of the Omnibus Account Holder" shall mean the person whom the Account Holder regards as being the person beneficially entitled to positions established under such account. A "Sub-Account" is an account maintained in or under an Omnibus Account.
"Original OTCF Contract Counterparties"	[This definition has been deleted.]
"OTCF Clearing Member Handbook"	[This definition has been deleted.]
"OTCF Contract or Transaction"	[This definition has been deleted.]
"OTCF Contract Terms"	[This definition has been deleted.]
"Other Payment Method"	means any payment method other than Settlement Bank Payment or payment as described in Rule 7.14.
"Other Regulator"	means any regulator, other than the Authority, who has regulatory oversight over the clearing activities of the Clearing House.
P	
"Participating Clearing Member"	[This definition has been deleted.]
"Participating	means a Market and (where relevant) its clearing house which is/are

Market"	parties to the Mutual Offset System and has assumed rights and obligations thereunder.
"Payment Instruction"	has the meaning ascribed to it in Rule 7B.2.2.
"Performance Deposit"	means the amount, as prescribed in the relevant Contract Specifications, which a depositing party posts with the Clearing House, to secure the performance of a delivery contract. Such deposit shall be in cash or in the form of an irrevocable Letter of Credit or any other security in a form and issued by a bank acceptable to the Clearing House.
"person"	means any individual or any corporation or association or body of persons, corporate or unincorporate.
"Platts"	— a division of The McGraw-Hill Companies, Inc. or its successor.
a "position" or "open contract" or "open position"	means any Contract which shall not have been liquidated by offset or delivery pursuant to this Rules or relevant Contract Specifications.
"Practice Note"	shall have the meaning ascribed to it in Rule 1.02.2.
"Property/Properties"	[Rule has been deleted.]
Q	
"Qualifying Date"	means the close of business on the date immediately preceding the Transfer Date (as defined below).
"qualifying letter of credit"	has the meaning ascribed to it in Regulation 2 of the SFR (Financial and Margin Requirements).
"qualifying subordinated loan"	shall have the meaning ascribed thereto in Regulation 2 of the SFR (Financial and Margin Requirements).
R	
"Reference Price"	[This definition has been deleted.]
"related corporation"	means a corporation within the meaning of the Act.
"Relevant Market"	means any Market or any organisation (whether an exchange, association, corporation or otherwise) responsible for administering a futures, options, stock or other market as the Clearing House may prescribe, and includes the Exchange, Connect Market and each Participating Market.
"Relevant Party"	shall have the meaning ascribed to it in Rule 1.01.4.
"Relevant Period"	in relation to an event of default and/or Trigger Event, refers to a period of six (6) months preceding the day the event of default and/or Trigger Event was declared by the Clearing House.
"relevant person"	shall have the meaning ascribed to it in Rule 2.17.1.2.
"Relevant Regulatory Authority"	means: (a) the authority(ies) or regulatory body(ies) that regulate(s) a Clearing Member's activities in the country where it is carrying on such activities and from which it has applied for Clearing Membership; and

	(b) where the Clearing Member is carrying on regulated activities in Singapore, the MAS.
"Remote Clearing Member"	means a Clearing Member who has such rights and obligations as set out in Chapter 2.
"re-novation"	shall have the meaning ascribed to it in Rule 6.02A.7.
"Required Participant"	means an Active Clearing Member in the Contract Class specified in Rule 7A.01A.5.a who has cleared or had an open commitment in the Contracts being auctioned on the day of the relevant event of default.
"RRA Financial Requirement"	means all applicable financial requirements (whether relating to capital, liquidity, risk or otherwise) imposed on a Clearing Member by its Relevant Regulatory Authority.
"Rules" or "this Rules"	means the rules of the Clearing House as set out herein and as amended or supplemented from time to time by the Clearing House which includes the Directives.
S	
"Second Original OTCF Contract Counterparty"	[This definition has been deleted.]
"Security Deed"	means the deed, in such form as prescribed by the Clearing House, setting out the terms under which a Clearing Member's Collateral is provided to, and held by, the Clearing House.
"Security Interest"	means any mortgage, charge, assignment by way of security, pledge, encumbrance, lien, right of set-off, right of consolidation of accounts, retention of title, trust or flawed asset arrangement for the purpose of, or which has the effect of, granting security or credit support or other interests of any kind whatsoever over or in respect of Collateral.
"securities"	shall have the meaning ascribed to it in the CDP Clearing Rules.
"Seller"	shall, a. for the purpose of Rule 5.01.2 and Chapter 6, refer to the selling party who is responsible for making delivery of the underlying Commodity under a Contract or delivery contract through the Selling Member, unless such Seller is itself the Selling Member. b. for the purpose of Rule 7.02A, where it is not the Clearing Member itself, refer to a party for whom the Clearing Member maintains an account and who is a seller in an Non-Relevant Market Transaction and otherwise shall refer to the Clearing Member itself. Where the Seller is the Clearing Member itself, references in Rule 7.02A to the Clearing Member "acting for a Seller" shall be correspondingly read as if the words "acting for a Seller" were superfluous.
"Selling Member"	for the purposes of Chapter 6, shall refer, if it is not itself the Seller with respect to any Contract or delivery contract, to the Clearing Member who clears for the Seller or, with respect to any specific

	obligation to be performed by such Clearing Member, such other person as this Rules may provide in lieu of the Selling Member.
"Settlement Bank"	means a bank approved by the Clearing House to carry out Settlement Bank Payment.
"Settlement Bank Payment"	has the meaning ascribed to it in Rule 7B.2.1.
"settlement price"	means the official daily closing price of Contracts determined in accordance with Rule 7.11.
"Settlement Variation"	means the dollar amount(s) due one (1) or more times in the course of each Business Day to or from the Clearing House to or from a Clearing Member calculated by the Clearing House with respect the relevant positions of a Clearing Member as determined by the Clearing House.
"SFA" or the "Securities and Futures Act"	means the Securities and Futures Act 2001, or any statutory modification, amendment or re-enactment thereof for the time being in force, or every and any other act which may replace it, and unless the context otherwise requires, includes any subsidiary legislation or regulations made pursuant thereto.
"SFR"	means any regulation promulgated under the SFA or any statutory modification, amendment or re-enactment of such regulation for the time being in force, and any reference to any provision of the SFR is to that provision as so modified, amended or re-enacted (or as contained in any subsequent regulation which may replace the SFR).
"SFR (Financial and Margin Requirements)"	means the Securities and Futures (Financial and Margin Requirements for Holders of Capital Markets Services Licences) Regulations or any statutory modification, amendment or re-enactment thereof for the time being in force, or any regulations which may replace the SFR (Financial and Margin Requirements), and any reference to any provision of the SFR (Financial and Margin Requirements) is to that provision as so modified, amended or re-enacted or as contained in any subsequent regulations which may replace the SFR (Financial and Margin Requirements).
"SFR (Licensing and Conduct of Business)"	means the Securities and Futures (Licensing and Conduct of Business) Regulations or any statutory modification, amendment or re-enactment thereof for the time being in force, or any regulations which may replace the SFR (Licensing and Conduct of Business), and any reference to any provision of the SFR (Licensing and Conduct of Business) is to that provision as so modified, amended or re-enacted or as contained in any subsequent regulations which may replace the SFR (Licensing and Conduct of Business).
"SGX"	means Singapore Exchange Limited.
"SGX Board"	means the board of directors for the time being of Singapore Exchange Limited or such number of them as have authority to act for the SGX Board.
"SGX RegCo"	means Singapore Exchange Regulation Pte. Ltd.
"SGX RegCo Board"	means the board of directors for the time being of SGX RegCo or such number of them as have authority to act for the SGX RegCo Board.
"SGX-ST"	shall mean Singapore Exchange Securities Trading Limited.

"SIAC"	means the Singapore International Arbitration Centre.
"S$"	means the Singapore Dollar or the lawful currency of Singapore.
T	
"Third Party"	means any third party maintaining an account with a Clearing Member and who is not privy to the substitution process between the Clearing House and a Clearing Member, pursuant to Rule 7.04, including without limitation the Customer and parties falling within exception (b) and (c) of the definition of "Customer" above defined and "Third Parties" shall refer to 2 or more of such third parties.
"time"	— Except as otherwise specifically provided, any reference to time shall mean local Singapore time.
"Title Documents"	shall have the meaning ascribed to it in the Trading Rules.
"total net equity"	means the ledger balance of a Third Party's account, including adjustments to the account arising from unrealised gains or losses on open positions, and margins deposited by the Third Party.
"total risk requirement"	has the meaning ascribed thereto in Regulation 2 of the SFR (Financial and Margin Requirements).
"Trade Registration System"	means the software and systems provided by the Clearing House or any third party systems provider approved by the Clearing House to Clearing Members, Inter Dealer Brokers or such other parties authorised by the Clearing Members and, where required under this Rules, approved by the Clearing House, for the purpose of registering Non-Relevant Market Transactions, NLT transactions, EFP transactions and/or EFS transactions with the Clearing House.
"Trading Day"	means any day on which the Exchange is open for trading or deliveries.
"Trading Member"	means an individual or corporation granted trading privileges by the Exchange as contemplated in the Trading Rules.
"Trading Rules"	means the Trading Rules of the Exchange, as applied, interpreted or implemented by directives, regulatory notices and practice notes issued by the Exchange. "Transfer Date" **— 1 October 2000**.
"Trigger Event"	an event declared by the Clearing House as set out in Rule 7A.01C.
U	
"Underlying"	means any asset, Commodity, instrument, index, reference rate or any other thing whose price movement determines the value of the Contract.
"US$"	— The United States Dollar or the lawful currency of the United States of America.
W	
"Winning Bid Price"	means the price stated in the winning bid for an auction held pursuant to Rule 7A.02.1.3.c.
"writing" or "written"	— Includes printing, lithography, typewriting and any other mode of representing or reproducing words in a visible form.

Amended on 27 March 2006, 22 September 2006, 26 January 2007, 10 August 2007, 25 August 2009, 1 October 2009, 22 February 2010, 10 May 2010, 16 July 2012, 7 August 2012, 8 November 2012, 26 April 2013, 29 July 2013, 31 December 2013, 30 June 2014, 29 December 2014, 2 May 2016, 19 September 2016, 14 November 2016, 25 January 2017, 15 September 2017, 8 October 2018, 12 November 2018, 22 April 2019, 3 June 2019, 17 July 2019, 18 January 2022 and 29 July 2022.

9.02 General Principles of Interpretation

9.02.1

Any word importing the singular number only shall, where the context permits, include the plural number and vice versa.

Amended on 27 March 2006.

9.02.2

Any word importing the masculine gender shall include the feminine gender and shall, where the context permits or requires, include a partnership or an incorporated company.

Amended on 27 March 2006.

9.02.3

Save as aforesaid, any word or expression used in the Act and the Interpretation Act 1965, shall, if not inconsistent with the subject or context, have the same meaning in this Rules.

Amended on 27 March 2006 and 18 January 2022.

9.02.4

Any reference to a particular rule in this Rules shall include the sub-sections of that rule.

Added on 27 March 2006.

9.02.5

References in this Rules to statutory provisions shall be construed as references to those provisions as modified or re-enacted from time to time and to any subordinate legislation made under such provisions and shall include references to any repealed statutory provisions which have been so re-enacted (whether with or without modification).

Added on 27 March 2006.

9.02.6

The headings in this Rules are for convenience only and do not affect the construction of this Rules.

Amended on 27 March 2006.

9.02.7 Severability

The invalidity, illegality or unenforceability in whole or in part of any of the provisions of this Rules or the Directives or Circulars, shall not affect the validity, legality and enforceability of the remaining part or provisions of the rest of this Rules and the Directives or Circulars.

Added on 26 April 2013.

Chapter 10 Transitional Provisions

10.1 Transitional Provisions for Capital and Financial Requirements

10.1.1 Applicability

This Rule establishes the transitional provisions relating to Rules 2.07C.1, 2.08C.1, 2.11, and 9.01.1 of the SGX-DC Clearing Rules that was amended on and in force from 29 December 2014.

Added on 29 December 2014.

10.1.2 Transitional Arrangements

Rules 2.07C.1, 2.08C.1, 2.11, and 9.01.1 (as amended on and in force from 29 December 2014), except for the definition of Base Capital, shall not apply to a Transitional Clearing Member during the Transitional Period, and the aforesaid Rules as in force immediately before 29 December 2014 shall continue to apply to a Transitional Clearing Member during the Transitional Period. A reference to any provision of the SFR (Financial and Margin Requirements) the aforesaid Rules as in force immediately before 29 December 2014 is to that provision in the SFR (Financial and Margin Requirements) as in force immediately before 3 April 2013. For avoidance of doubt, the definition of Base Capital applicable to a Transitional Clearing Member has the same meaning ascribed in the SFR(Financial and Margin Requirements) as in force on 3 April 2013.

Added on 29 December 2014.

10.1.3 Transitional Period

For the purposes of this Chapter, "Transitional Period" means the period commencing on 3 April 2013 and:—

10.1.3.1 in relation to all rule amendments except the definition of Base Capital, till 2 April 2015; or

10.1.3.2 ending on such date, before the expiry date stated in Rule 10.1.3.1, specified in a written notice to SGX-DC informing SGX-DC of the Transitional Clearing Member's intention to adopt the requirements pursuant to Rule 10.1.4,

whichever is the earlier.

Added on 29 December 2014.

10.1.4 Notification by Writing

For the purpose of Rule 10.1.3.2, the Transitional Clearing Member shall notify SGX-DC in writing at least 14 days before the intended date to adopt the requirements.

Added on 29 December 2014.

10.1.5 Transitional Clearing Member

"Transitional Clearing Member" means

10.1.5.1 in the case of a Clearing Member who is a holder of the Capital Markets Services Licence, is a "specified holder" as defined under Regulation 25 of the Securities and Futures (Financial and Margin Requirements for Holders of Capital Markets Services Licences) (Amendment) Regulations 2013 or a "new holder" as defined under Regulation 26 of the Securities and Futures (Financial and Margin Requirements for Holders of Capital Markets Services Licences) (Amendment) Regulations 2013

10.1.5.2 in the case of a Clearing Member who is not a holder of the Capital Markets Services Licence, is an existing Clearing Member prior to 3 April 2013 or one who applied to be a Clearing Member prior to 3 April 2013.

Added on 29 December 2014.

Directives

Directive No. 1 [Directive has been revoked.]

Deleted on 1 May 2014.

Appendix 1 Request for No-Action Relief from Commodity Exchange Act Sections 5b(a) and 4d(f)(1)

Click here to view Appendix 1.

Added on 31 December 2012.

Appendix 2 CFTC Grant of No Action Relief

Click here to view Appendix 2.

Added on 31 December 2012.

Appendix 3 CFTC Extension of No Action Relief

Click here to view Appendix 3.

Added on 31 December 2013.

Appendix 4 Extension of No-Action Relief with Regard to Section 4d(f) of the Commodity Exchange Act

Click here to view Appendix 4.

Added on 21 April 2014.

Practice Notes

Practice Note 2.13A — Business Continuity Requirements

Issue Date	Cross Reference	Enquiries
Added on 22 January 2009	Rule 2.13A	Please contact Member Supervision: Facsimile No : 6538 8273 E-Mail Address: membersup@sgx.com

1. Introduction

1.1 Rule 2.13A requires Clearing Members to:

(i) maintain adequate business continuity arrangements;

(ii) document business continuity arrangements in a business continuity plan;

(iii) test and review business continuity plans regularly; and

(iv) appoint emergency contact persons.

1.2 The objective is to ensure that Clearing Members have the ability to:

(i) React swiftly to emergency situations; and

(ii) Maintain critical functions and fulfill obligations to customers and counterparties in the event of major operational disruptions.

2. Business Continuity Plan

2.1 Critical Elements of a Business Continuity Plan

Rule 2.13A.1 requires Clearing Members to Clearing Members to maintain adequate business continuity arrangements, and document such arrangements in a business continuity plan. As a guide, a Clearing Member's business continuity plan should document the following elements:

(i) Risk assessment: This includes a comprehensive assessment of business continuity risks (including financial and operational risks) and threat scenarios which may severely disrupt a Clearing Member's operations. Such scenarios may include prolonged power outages, IT system software or hardware failures, loss of voice or data communication links, acts of terrorism, and outbreak of infectious diseases;

(ii) Business impact analysis: This is an evaluation of the impact of the risks and threat scenarios identified in (i) above. The business impact analysis should identify critical business functions (including support operations and related information technology systems) and potential losses (monetary and non-monetary) to enable the Clearing Member to determine recovery strategies/priorities and recovery time objectives;

(iii) Work area recovery: This refers to continuity arrangements for a Clearing Member's critical functional capabilities in the event that the Clearing Member's primary office becomes inaccessible, for example, availability of a disaster recovery site ready for activation within a reasonable period of time;

(iv) Crisis communications: This refers to a communications plan for the Clearing Member to liaise with its internal and external stakeholders such as employees, customers and regulatory authorities during a crisis;

(v) Roles and responsibilities: This refers to the identification of a Clearing Member's key personnel and management staff, their roles and responsibilities, and reporting lines. Alternates should be identified to cover the responsibilities of absent key personnel.

(vi) Backup for critical functions*, information technology systems and data;

** Critical functions refer to business functions whose failure or disruption may incapacitate the firm.*

(vii) Key service providers: This refers to assessing a Clearing Member's dependencies on key service providers in recovery strategies and recovery time objectives, and taking steps to ensure that key service providers are capable of supporting the Clearing Member's business, even in disruptions;

^ Key service providers refer to third-parties who are performing functions that are not normally carried out by Clearing Members internally, but are critical to the Clearing Member's ability to carry on business operations. For example, IT system hardware/software vendors.

(viii) Outsourcing service providers#: This refers to assessing whether the service provider has established satisfactory Business Continuity Plans commensurate with the nature, scope and complexity of the outsourced services; and

 # Outsourcing service providers refer to third parties who are performing functions that would normally be performed by Clearing Members internally. For example, Operations and Technology.

(ix) Any other elements that the Clearing Member deems necessary to be included in its business continuity plan or which the Clearing House may prescribe from time to time.

2.2 Emergency Response During Crisis

2.2.1 A Clearing Member should establish and maintain a crisis management plan as part of its business continuity plan. The crisis management plan should include (but not be limited to):

(i) Emergency response procedures;

(ii) Roles and responsibilities of the crisis management team;

(iii) Command and control structures; and

(iv) Salvage and restoration procedures.

2.2.2 The Clearing House may declare a wide-area crisis in the event of a major and widespread incident. When such declaration is made, the Clearing House may require a Clearing Member to submit status reports to the Clearing House. A wide-area crisis may include any incident where the operations of a large number of market participants are disrupted simultaneously.

2.3 Regular Review, Testing and Training

2.3.1 Rule 2.13A.4 requires a Clearing Member to review and test its business continuity plan regularly. Clearing Members should do so at least once a year to

ensure that their business continuity plans remain relevant.

2.3.2 Where there are material changes to a Clearing Member's business activities and operations, the Clearing Member should update its business continuity plan accordingly. Regular training should be conducted for staff to be updated and aware of any relevant changes to the Clearing Member's business continuity arrangements. As a principle, training should be conducted when:

(i) changes have been made to the Clearing Member's BCP; and

(ii) new staff are recruited.

Clearing Members should also conduct refresher courses for existing staff where appropriate.

3. Emergency Contact Persons

3.1 Rule 2.13A.5 requires a Clearing Member to appoint emergency contact persons and furnish the contact information of such persons to the Clearing House. Clearing Members may appoint an emergency contact person and up to two (2) alternates. A template is attached as Appendix A to this Practice Note for the notification of contact information (postal address, email, telephone, mobile telephone and facsimile numbers) to the Clearing House.

Refer to Appendix A of Practice Note 2.13A.

3.2 Clearing Members are to ensure that the contact information provided to the Clearing House is updated on a semi-annual basis. Nonetheless, where there are changes to a Clearing Member's emergency contact persons and contact information, the Clearing Member should notify the Clearing House immediately in writing.

3.3 A Clearing Member's authorized emergency contact person should immediately notify the Clearing House in the event where:

(i) a Clearing Member's business operations are or will be significantly disrupted; and/or

(ii) a Clearing Member's business continuity plan is activated.

Appendix A to Practice Note 2.13A Business Continuity Management Emergency Contact Person(s)

Please click here to view Appendix A to Practice Note 2.13A Business Continuity Management Emergency Contact Person(s).

Practice Note 2.28A Procedures to Suspend Qualification of a Trading Member

Issue Date	Cross Reference	Enquiries
11 January 2011	Clearing Rules Rule 2.28A.3 and 2.28A.5	Please contact: **Member Supervision** Facsimile No : 6538 8273 E-Mail Address :

		membersup@sgx.com **Market Control** Hotline : 6236 8433

1 Introduction

1.1 Rule 2.28A.3 states that a Clearing Member who wishes to suspend its clearing arrangement with a Trading Member, shall notify the Clearing House of its decision to suspend its clearing arrangement with that Trading Member, and comply with any reasonable direction of the Clearing House in relation to the suspension of the clearing of the Trading Member's trades.

1.2 Rule 2.28A.5 states that the Clearing Member shall clear and settle all the trades of the Trading Member which are done right up to the point when the Trading Member has been disabled from entering trades to be cleared by the Clearing Member.

1.3 This Practice Note sets out the operational procedures that a Clearing Member should follow to notify the Clearing House of its decision to suspend its clearing arrangement with a Trading Member.

2 Procedures for Suspending a Trading Member

Designated Officers

2.1 Clearing Members shall at all times have at least two Designated Officers whose role is to notify the Clearing House of the Clearing Member's decision to suspend a Trading Member.

2.2 For each Designated Officer, the Clearing Member shall submit to Market Control the Designated Officer's name, identification number, contact details, and a sealed envelop containing authentication information stipulated by Market Control. (For security reasons, the required authentication information will not be published in this Practice Note. Clearing Members are to contact Market Control regarding the required information.)

2.3 Clearing Members must promptly update Market Control of changes in Designated Officers, and any changes to a Designated Officer's information.

Notification of Suspension of Trading Member

2.4 Once a Clearing Member has decided to suspend a Trading Member, the Clearing Member's Designated Officer shall contact Market Control by telephone during trading hours at the Market Control Hotline, 6236 8433, and notify Market Control of the suspension.

2.5 Market Control will verify the identity of the caller by requiring the caller to respond correctly to two authentication questions.

2.6 If the caller is authenticated as the Clearing Member's Designated Officer, Market Control will effect the suspension of the Trading Member. The suspension will be effected within one hour of the authentication of the Designated Officer.

2.7 SGX will suspend the Trading Member's trading access and cancel all open orders for the suspended Trading Member. Market Control will notify the Designated Officer when this is done.

Final Traded Position

2.8 For the purposes of Rule 2.28A.5, the Clearing Member shall accept the Trading Member's final traded position as stated in the trade report produced by SGX.

2.9 For clarifications, the Clearing Member may call the Market Control Hotline, 6236 8433.

Added on 11 January 2011 and amended on 15 September 2017.

Practice Note 2.28A.1.3 — Pre-Execution Checks

Issue Date	Cross Reference	Enquiries
Added on 15 March 2013 amended on 14 November 2016 and 29 July 2022.	Rule 2.28A.1.3	Please contact Member Supervision: Facsimile No : 6538 8273 E-Mail Address : membersup@sgx.com

1. Introduction

1.1 This Practice Note provides further details on the pre-execution checks contemplated in Rule 2.28A.1.3.

2. Pre-Execution Checks

2.1 Rule 2.28A.1.3 requires a Clearing Member, in order to clear the trades of a Trading Member, to satisfy the Clearing House that it has in place automated pre-execution credit control checks to monitor the Trading Member's trades and manage its risk exposure to such trades. The purpose of this is to prevent overtrading and for credit risk management purposes. As such, the checks must be appropriately set to effectively limit the firm's risk exposure to Trading Members to prevent the taking on of excessive risk.

2.2 [This paragraph is deleted.]

2.3 Clearing Members will be able to meet the requirement in Rule 2.28A.1.3 by using the appropriate pre-execution checks hosted by the Exchange, or the Connect Broker for the Connect Market, or by directly setting and controlling the appropriate pre-determined automated limits in the Trading Member's system, having automated alerts whenever such limits are altered, and by conducting regular post-execution reviews of trades. Clearing Members should assess and continue to ensure that the pre-execution risk management control checks are robust on an ongoing basis.

Added on 15 March 2013 and amended on 14 November 2016 and 29 July 2022.

Practice Note 2.28A.1.6 — Conflicts of Interest

Issue Date	Cross Reference	Enquiries
Added on 15 March 2013	Rule 2.28A.1.6	Please contact Member Supervision: Facsimile No : 6538 8273 E-Mail Address : membersup@sgx.com

1. Introduction

1.1 This Practice Note provides guidance on how front office and back office functions of Clearing Members should be separated, in accordance with Rule 2.28A.1.6.

2. Separation of Key Functions

2.1 The purpose of separating a Clearing Member's various key functions is to minimise and manage conflicts of interests among these functions.

2.2 Examples of proper separation include:—

(a) the setting and authorising of credit limits on customers by senior management staff who are independent of sales and marketing functions, and are not related to the customer in question; and

(b) having adequate separation of management responsibilities e.g the heads of sales, dealing or marketing functions should not have responsibilities over the middle and back office functions of Clearing Members.

2.3 The basis for determining and amending credit limits should be properly documented. Adequate audit trail reports should be maintained to show all changes to credit limits, the date and time of the modifications and the authorised person who approved the changes. In addition, sufficient checks and procedures should be in place to ensure that all limits and parameters set and modified by the credit control administrator are accurate and have been approved.

Added on 15 March 2013.

Practice Note 6.07A — Facilitator Agent

Issue Date	Cross Reference	Enquires
Added on 1 October 2009.	Rule 6.07A	Please contact: **Operations, Clearing and Depository** Email: otclear@sgx.com Clearing Hotline Tel: (65) 6236 5319

1. Introduction

1.1 Rule 6.07A states that the Clearing House may appoint any person as a Facilitator Agent to perform any function for the purpose of facilitating delivery by Clearing Members.

1.2 This Practice Note elaborates on the role of a Facilitator Agent, and sets out the Facilitator Agents appointed by the Clearing House, and the functions for which such Facilitator Agents are appointed.

2. Role of a Facilitator Agent

2.1 Where, upon maturity of a Contract settled by way of physical delivery of an underlying Commodity, a Clearing Member continues to hold open positions which have been cleared through the Clearing House, the Clearing House may facilitate delivery by such Clearing Member in accordance with the Contract Specifications.

2.2 The Clearing House may appoint a Facilitator Agent to carry out, on its behalf, any function to facilitate such delivery by a Clearing Member.

2.3 For the avoidance of doubt, where a Facilitator Agent is appointed, the rights and liabilities (including any exclusion or limitation of liability) as between the Clearing House and Clearing Members in relation to physical delivery provided under Chapter 6 of this Rules, shall continue to apply.

3. Facilitator Agent for Contracts Traded on the Singapore Commodity Exchange Limited ("SICOM") and Settled by Way of Physical Delivery

3.1 In respect of Contracts matched and executed on SICOM and cleared through the Clearing House, SICOM shall be appointed as the Clearing House's Facilitator Agent.

3.2 SICOM shall, on behalf of the Clearing House, perform all functions required to facilitate delivery by Clearing Members in accordance with the relevant Delivery Rules except all matters in relation to Clearing Members' monies.

3.3 The functions performed by SICOM shall include:

a) matching of Clearing Members with open positions after the Last Trading Day, in accordance with the Contract Specifications;

b) acceptance of any documents, or instruments (other than monies) from any Clearing Member required pursuant to the relevant Delivery Rules for the purpose of effecting delivery;

c) release of any documents or instruments (other than monies of a Clearing Member) to any party in accordance with the Contract Specifications; and

d) receipt of notification of any claims in relation to the performance of Delivery Obligations from any Clearing Member.

3.4 Except for matters in relation to Clearing Members' monies, Clearing Members effecting delivery through the Clearing House shall deal directly with SICOM in the performance of their Delivery Obligations, regardless of whether its counterparty is a Clearing Member, or a clearing member of SICOM.

3.5 Clearing Members shall deal directly with the Clearing House in respect of all matters relating to monies under the Contract Specifications.

Practice Note 7.11.1.1 — Daily Settlement Procedures for Eligible Non-Relevant Market Contracts

Issue Date	Cross Reference	Enquires
Added on 22 September 2006 and amended on 23 November 2009 and 8 November 2012.	Rule 7.11.1.1	Please contact: **Operations, Clearing and Depository** Clearing Hotline Tel: (65) 6236 5319 Email: otclear@sgx.com **SGX OTC Clearing Business** Email: sgxotc@sgx.com

1. Introduction

1.1 This Practice Note describes the procedures for determining Daily Settlement Prices for Eligible Non-Relevant Market Contracts.

1.2 Daily Settlement Price is the official daily closing price of a Contract determined in accordance with SGX-DC Clearing Rule 7.11.1.1. An Eligible Non-Relevant Market Contract is any Non-Relevant Market Contract accepted by the Clearing House for clearing, subject to SGX-DC Clearing Rules, as prescribed by the Clearing House from time to time.

1.3 The procedures in this Practice Note shall only be applicable for determining the Daily Settlement Price of an Eligible Non-Relevant Market Contract from the first trading day to one day before last trading day.

The formulas for the computation of Daily Settlement Prices on the last trading day, otherwise also known as Final Settlement Prices, are provided in Appendix 1 of SGX-DC Clearing Rules.

Refer to Appendix 1.

2. Procedures

2.1 Clearing House shall prescribe a list of Price Contributors for each Eligible Non-Relevant Market Contract.

2.2 Clearing House shall obtain daily price assessments for each Eligible Non-Relevant Market Contract from each Price Contributor.

2.3 The Daily Settlement Price for a contract month shall be the weighted average price assessments provided by each Price Contributor, whose weight shall be decided by Clearing House. Clearing House may discard the lowest or highest assessments before averaging.

2.4 In the event that no price assessment is obtained for a contract month, the Daily Settlement Price for that contract month shall be interpolated using the following but not limited to:

a) available price assessments for preceding months and following months;

b) current month's spot assessments;

c) prices of registered transactions.

3. Price Contributors

3.1 The Price Contributors for each Eligible Non-Relevant Market Contracts group are:

Oil Swaps

a) Platts

b) Forward Market Curve Limited

c) Market Participants

Freight Forward Contracts

a) The Baltic Exchange Limited

Iron Ore Swaps

a) Market Participants

Practice Note 7.11.1.2 — Daily Settlement Price Methodology

Issue date	Cross Reference	Enquiries
Added on 22 September 2006 and amended on 1 October 2009, 24 January 2011, 8 November 2012 and 14 November 2016.	Rule 7.11.1.2	Please contact Derivatives: Telephone No: 6236 8888

1. Introduction

Rule 7.11.1.2 of the Clearing Rules states that the Daily Settlement Price for Contracts other than Non-Relevant Market Contracts shall be determined by the Clearing House in accordance with the relevant formula and procedures applicable to each Contract. In arriving at such formula, the Clearing House may, in consultation with the Exchange, take into account factors, including but not limited to:

a) the last traded price;

b) bid and offer spread at the close of market;

c) price data derived from pricing models, as selected or established by the Clearing House from time to time.

This Practice Note sets out the formulas and methodologies used by the Clearing House to compute the Daily Settlement Price as contemplated in the above Rule.

2. Methodology for Computation of Daily Settlement Price

2.1 Most Commonly Adopted Methodology.

Save for exceptional situations, the Clearing House can use any one of the following methodologies to compute the Daily Settlement Price:

a) a price determined by a pre-closing routine; or

b) a price derived from the prices in the closing range;

c) a price determined by taking into account typical spread relationships with other Contract Months in the relevant Contract;

d) a price determined by theoretical pricing models selected by the Clearing House; or

(e) a price determined through polling, conducted by the Clearing House, of market participants and/or any other price source deemed as reliable by the Clearing House.

Higher bid or lower offer prices at the close may be used by the Exchange in the computation of the Daily Settlement Price under methodologies b, c and d.

2.2 Exceptional Situations.

In exceptional cases when none of the methodologies set forth in paragraph 2.1 above yields a Daily Settlement Price that is reflective of market conditions, the Clearing House may use any of the following alternative methodologies for the computation of the Daily Settlement Price:

a) in regards to Futures Contracts, the Daily Settlement Price may be set at a price which when compared to the Daily Settlement Price of the next Contract Month reflects the same differential that existed between the two Contract Months on the previous day, unless there is a higher bid or lower offer in existence at the close. In such case, the higher bid or lower offer may be the Daily Settlement Price; or

b) in regards to Futures Contracts or Options Contracts, such other price that the Clearing House determines to be reflective of prevailing market conditions.

"**Option Contracts**" and "**Futures Contracts**" shall have the meaning ascribed to them in the Trading Rules.

2.3 [This paragraph is deleted.]

Practice Note 7.22 — Margins of Third Parties

Issue date	Cross Reference	Enquiries
Added on 23 July 2014 and amended on 25 January 2017.	Rule 7.22	Please contact Member Supervision: Facsimile No: 6538 8273

1. Introduction

1.1 Rule 7.22 sets out Clearing Members' obligations in relation to the collection of margins from Third Parties (including Customers). This Practice Note elaborates on those obligations.

2. Margin Rates and Acceptable Forms of Margins

2.1 Margin System

Standard Portfolio Analysis of Risk Margin System

2.1.1 The Standard Portfolio Analysis of Risk Margin System ("SPAN") is the risk margin system adopted by the Exchange and the Clearing House. Margin requirements generated by SPAN shall constitute the Exchange's and the Clearing House's minimum margin requirements ("minimum margin requirements").

2.1.2 SPAN is a risk-based, portfolio approach margining system used to compute minimum overall margin requirements for a portfolio of positions in Contracts. SPAN requirements are computed using risk parameter files which are distributed at least daily by the Clearing House.

2.1.3 The margin requirements computed under SPAN have two components: the risk component, which accounts for potential changes in the market price and volatility of the Futures Contract[1], and the equity component, which is the value of the Option Contract[2] marked to the current day's settlement price. If the net option value in a Customer Account is short, it is added to the risk margins to increase the margin requirements. If the net option value is long, it may be applied towards reducing the risk margin requirements.

2.1.4 All Clearing Members are advised to use SPAN for Contracts. Clearing Members may use margining systems other than SPAN to compute the minimum margin requirements provided the Clearing Members can demonstrate that their systems will always produce margin requirements equal to or greater than the SPAN margin requirements.

2.2 Margin Rates and Requirements (Rule 7.22.1)

2.2.1 Margin rates and requirements on Contracts are prescribed by the Clearing House. Under Rule 7.22.1, Clearing Members are required to procure initial margins from their Customers and ensure that their Customers comply with maintenance margins for such amounts as required by the Clearing House.

2.2.2 For contracts listed in other exchanges, Clearing Members shall ensure that their Customers comply with initial margins and maintenance margins prescribed by the relevant exchanges or clearing houses.

2.2.3 [Deleted]

2.2.4 Clearing Members may, at their discretion, set higher margin rates/requirements than that required by the Clearing House. Clearing Members shall review their internal margin rates/requirements on a continual basis to ensure compliance with the required minimum initial margins and maintenance margins prescribed by the Clearing House.

2.3 Acceptable Forms of Margins (Rule 7.22.2)

2.3.1 Pursuant to Rule 7.22.2, the Clearing House has prescribed a list of instruments which Clearing Members may accept from Customers for meeting their required initial margins and maintenance margins.

2.3.2 A list of the acceptable instruments and their prescribed maximum valuations can be found on the Exchange's website (http://www.sgx.com).

2.3.3 Where a Clearing Member does not have physical possession of Japanese Government Bonds or securities listed on the First Section of Tokyo Stock Exchange, the Clearing Member shall be deemed to have complied with the requirements of Rule 7.22.2 if the Clearing Member can obtain written confirmation from a financial institution in Singapore or in Japan, that the financial institution is holding such securities from the Customers, as custodian for the Clearing Member concerned.

2.3.4 Bank certificates of deposits, including fixed deposits, may be accepted as good security under the following terms and conditions:

(1) the Customer signs a memorandum of charge of its deposits in favour of the Clearing Member. The memorandum shall operate as an equitable assignment which entitles the Clearing Member to payment out of the monies in the accounts;

(2) where a memorandum of charge is given by a corporate Customer, the Clearing Member shall ensure that the memorandum is registered with the Accounting and

Corporate Regulatory Authority ("ACRA") (with the filing of the necessary forms). The Clearing Member shall also make a search at ACRA to ensure that there is no prior charge of the same account to other persons;

the Clearing Member shall also ensure that it receives a confirmation from the bank that the required amount is deposited with the bank and has not been subjected to any banker's lien or right of set-off or consideration, or any other lien or charge. The Clearing Member shall notify the bank of the memorandum of charge as soon as it is executed so that the bank withholds all further payments to its Customer unless such payments are made with the consent of the Clearing Member. The Clearing Member shall document proof of such notice; and

(3) where a memorandum of charge is given by a Customer who is an individual, the Clearing Member shall cause the Customer to authorise the bank to disclose to the Clearing Member whether there have been notices of earlier charges and the details thereof, if any. This is to ensure that there is no prior charge of the same account to other persons.

2.3.5 The Clearing House has prescribed that where gold certificates issued by banks approved by MAS or gold bars are used to margin open short gold futures positions, the maximum valuation of these instruments shall be one hundred (100) percent of market value. If these instruments are used for margining positions other than open short gold futures positions, the maximum valuation of these instruments shall be seventy (70) percent of market value.

2.3.6 Clearing Members are allowed to apply a more conservative valuation (that is, less than the maximum valuation prescribed) on the acceptable instruments.

3. Margin Calls (Rules 7.22.1 and 7.22.4)

3.1 Issuance of Margin Calls

3.1.1 Margin calls are issued to collect the required margins to ensure the performance of a contract. A margin call is a request from a Clearing Member to a Customer to deposit additional margins.

3.1.2 Pursuant to Rule 7.22.4, whenever a Customer's total net equity falls below the maintenance margins, the Customer Account shall be deemed to be under-margined. The under-margined amount is equal to the difference between the Customer's initial margins and the Customer's total net equity. This is the minimum amount that the Clearing Member must call from the Customer in order to restore the Customer's total net equity to the initial margins level.

3.1.3 Margin calls shall be made within one Trading Day after the occurrence of the event giving rise to the margin calls.

3.1.4 A Clearing Member may, at their discretion, call for additional margins or issue margin calls on a more frequent basis, including the issuance of intra-day margin calls.

3.2 Computation of Margin Calls

3.2.1 In determining margin calls, Customer Accounts shall be reviewed at the close of the Trading Day. All Customer Accounts opened by the same Customer, for the benefit of its own clients shall be combined in one group. All other Customer Accounts opened by the same Customer shall be combined in a separate group. Below is an example to illustrate the treatment of the accounts opened by Customer XYZ under the following scenarios:

(1) XYZ — proprietary A/C 1
XYZ — client omnibus A/C 2
Treatment : A/C 1 and A/C 2 should be treated as separate accounts for the purpose of computing margin calls.

(2) XYZ — proprietary A/C 1A
XYZ — proprietary A/C 1B
Treatment : A/C 1A and A/C 1B should be combined when computing margin calls.

(3) XYZ — client speculative A/C 2A
XYZ — client omnibus A/C 2B
Treatment : A/C 2A and A/C 2B should be combined when computing margin calls.

3.2.2 If Customer Accounts are not combined in accordance with paragraph 3.2.1 above, there is a risk that the Clearing Member may either fail to issue a margin call or understate the amount required under a margin call. This is illustrated below:

Assume proprietary A/C A & proprietary A/C B are owned by the same Customer:

	A/C A $	A/C B $	Combined $
Total net equity	8,000	42,000	50,000
Initial margins	26,000	50,000	76,000
Maintenance margins	21,000	40,000	61,000
Under-margined	18,000	Nil	26,000
Margin Call Required	**18,000**	**Nil**	**26,000**

In the above example, if the two accounts are not combined, the Customer as a whole would be subjected to a lesser margin call of $18,000 instead of $26,000.

3.3 Reduction and Deletion of Margin Calls

3.3.1 A Clearing Member may:

(1) reduce the amount required under a margin call through a receipt of cash and other acceptable forms of margins which are less than the amount required under the margin call. The Customer is still required to meet the remaining amount required under the margin call; and

(2) consider the total margin call to be satisfied if the Customer's total net equity is equal to or greater than the Customer's initial margins as of the close of the Trading Day.

3.3.2 A Clearing Member shall reduce a Customer's oldest outstanding margin call first. Individual margin calls shall be aged separately throughout their existence. A Customer's total margin call is the sum of all individually aged margin calls. A Clearing Member's records shall clearly indicate the age of all margin calls issued and outstanding.

3.3.3 In order to protect the age of outstanding margin calls for re-established positions, the liquidation and re-establishment of positions during the same Trading Day to circumvent

paragraph 3.3.2 is not allowed.

3.3.4 Where a Customer is meeting a margin call by remitting cash funds, Clearing Members shall take into consideration only those funds that they have actually received when determining whether the Customer's total net equity has been restored to the initial margins level. Clearing Members shall not treat cash funds as received even though the Customer's remittance indicates that the funds would be forthcoming on a future value date. Clearing Members are not allowed to use the Customer's confirmation that the funds are forthcoming to reduce or delete a margin call as the funds have yet to be received.

3.4 Recording and Monitoring

3.4.1 A Clearing Member is required to keep written records which should include the following in respect of each Customer:

(1) all margin calls, whether made in writing or by telephone and the number of days such calls are outstanding; and

(2) all reductions and deletions of margin calls and the dates they occurred.

3.4.2 Any manual adjustments made to equity system reports to determine a Customer's margin status (e.g. adjustments to margin requirements, margin calls, etc.) shall be maintained on file.

3.4.3 Clearing Members shall maintain a proper monitoring system to ensure that all Customers who are under-margined are subject to prompt margin calls and that such calls are being properly monitored and followed up in order to restore the relevant Customers' total net equity to the initial margins levels.

3.5 Ageing of Margin Calls

3.5.1 In ageing margin calls, for the purpose of determining whether calls are met within the reasonable period:

T = trade date/ date that the Customer's total net equity falls below the maintenance margins

1 = first Trading Day after the date that the Customer's total net equity falls below the maintenance margins

2 = second Trading Day after the date that the Customer's total net equity falls below the maintenance margins

3 = third Trading Day after the date that the Customer's total net equity falls below the maintenance margins

Reasonable period shall have the meaning ascribed to it in Rule 7.22.

3.6 Examples

The following examples illustrate how margin calls are aged, reduced and deleted.

Assumptions:

(1) Customer's total net equity and margin requirements are as of the close of the respective Trading Days indicated.

(2) The Customer was properly margined on the previous Trading Day (Friday). If an individual margin call is required to be issued, the margin call shall equal: initial margins — total net equity

Example 1 — Issuing of margin calls due to unfavourable market movements

Margin calls must be issued no later than one Trading Day after the date that the Customer's total net equity falls below the maintenance margins.

	Monday	Tuesday	Wednesday	Thursday
Total net equity	50,000	49,000	44,000	44,000
Initial margins	60,000	60,000	60,000	60,000
Maintenance margins	50,000	50,000	50,000	50,000
UNDER-MARGINED	Nil	11,000	16,000	16,000
Unfavourable market movements [UMM] of $1,000 occurred on Tuesday and $5,000 on Wednesday. No margins were deposited.				
CALL RE'QD/(AGE)	-0-	11,000 (T)	11,000 (1)	11,000 (2)
			5,000 (T)	5,000 (1)
		Customer Account is under-margined	Clearing Member must issue margin call of $11,000 no later than today.	Clearing Member must issue margin call of $5,000 no later than today.
			Additional margin call of $5,000 required due to UMM.	

Example 2 — Impact on margin calls due to liquidation of positions

Margin calls cannot be reduced/deleted if the liquidation does not restore the Customer's total net equity to or above initial margins.

	Monday	Tuesday	Wednesday	Thursday
Total net equity	45,000	45,000	45,000	45,000
Initial margins	60,000	55,000	55,000	50,000
Maintenance margins	55,000	53,000	53,000	48,000
UNDER-MARGINED	15,000	10,000	10,000	5,000
Positions were liquidated on Tuesday reducing initial margins by $5,000				

and maintenance margins by $2,000 and on Thursday reducing initial margins by $5,000 and maintenance margins by $5,000. No margins were deposited.				
CALL RE'QD/(AGE)	15,000 (T)	15,000 (1)	15,000 (2)	15,000 (3)
		Margin call cannot be reduced or deleted as the liquidation did not result in total net equity equal to or exceed initial margins.		*Margin call cannot be reduced or deleted as the liquidation did not result in total net equity equal to or exceed initial margins.*

Example 3 — Impact on margin calls due to receipt of margin deposits

Margin calls can be reduced by the amount of margins actually received.

	Monday	Tuesday	Wednesday	Thursday
Total net equity	50,000	45,000	44,000	47,000
Initial margins	60,000	60,000	60,000	60,000
Maintenance margins	55,000	55,000	55,000	55,000
UNDER-MARGINED	10,000	15,000	16,000	13,000
Unfavourable market movements [UMM] of $5,000 occurred on Tuesday and $1,000 on Wednesday. Cash of $3,000 was deposited on Thursday.				
CALL RE'QD/(AGE)	10,000 (T)	10,000 (1)	10,000 (2)	7,000 (3)
		5,000 (T)	5,000 (1)	5,000 (2)
			1,000 (T)	1,000 (1)
		Additional margin call of $5,000 required due to UMM.	*Additional margin call of $1,000 required due to UMM.*	*Margin call of $10,000 can be reduced by the cash receipt of $3,000.*

Example 4 — Impact on margin calls due to favourable market movements that are less than total margin call outstanding

Margin calls cannot be reduced/deleted if favourable market movements do not restore the Customer's total net equity to or above initial margins.

	Monday	Tuesday	Wednesday	Thursday
Total net equity	55,000	58,000	52,000	58,000
Initial margins	60,000	60,000	60,000	60,000
Maintenance margins	58,000	58,000	58,000	58,000
UNDER-MARGINED	5,000	No (see below)	8,000	No (see below)
Favourable market movements [FMM] of $3,000 occurred on Tuesday. Unfavourable market movements [UMM] of $6,000 occurred on Wednesday. FMM of $6,000 occurred on Thursday. No margins were deposited.				
CALL RE'QD/(AGE)	5,000 (T)	5,000 (1)	5,000 (2)	5,000 (3)
			3,000 (T)	3,000 (T)
		Margin call of $5,000 cannot be reduced or deleted as FMM did not result in total net equity equal to or exceed initial margins.	*Additional margin call of $3,000 required due to UMM.*	*Margin call of $5,000 and $3,000 cannot be reduced or deleted as FMM did not result in total net equity equal to or exceed initial margins.*

Example 5 — Impact on margin calls due to favourable market movements that exceed total margin call

Margin calls can be deleted if favourable market movements restore the Customer's total net equity to or above initial margins.

	Monday	Tuesday	Wednesday	Thursday
Total net equity	54,000	51,000	58,000	60,000
Initial margins	60,000	60,000	60,000	60,000
Maintenance margins	55,000	55,000	55,000	55,000
UNDER-MARGINED	6,000	9,000	No (see below)	-0-
Unfavourable market movements [UMM] of $3,000 occurred on Tuesday. Favourable market movements [FMM] of $7,000 occurred on Wednesday and $2,000 on Thursday. No margins were deposited.				
CALL RE'QD/(AGE)	6,000 (T)	6,000 (1)	6,000 (2)	-0-

		3,000 (T)	3,000 (1)	
		Additional margin call of $3,000 required due to UMM.	*Margin call of $6,000 was not reduced or deleted as FMM did not result in total net equity equal to or exceed initial margins.*	*Total margin call of $9,000 deleted as total net equity equals initial margins.*

Example 6 — Impact on margin calls due to favourable market movements plus receipt of margins that exceed total margin call

Margin calls can be deleted if favourable market movements and receipt of margins restore the Customer's total net equity to or above initial margins.

	Monday	Tuesday	Wednesday	Thursday
Total net equity	50,000	52,000	52,000	61,000
Initial margins	60,000	60,000	60,000	60,000
Maintenance margins	58,000	58,000	58,000	58,000
UNDER-MARGINED	10,000	8,000	8,000	-0-
Favourable market movements [FMM] of $2,000 occurred on Tuesday. Cash of $9,000 was deposited on Thursday.				
CALL RE'QD/(AGE)	10,000 (T)	10,000 (1)	10,000 (2)	-0-
		Margin call of $10,000 was not reduced or deleted as FMM did not result in total net equity equal to or exceed initial margins.		*As both cash receipt and FMM caused total net equity to exceed initial margins, the margin call of $10,000 was deleted.*

4. Under-Margined Accounts (Rule 7.22.3)

4.1 Acceptance of Orders

4.1.1 A Clearing Member shall only allow a Customer to incur a new trade when the required margins are on deposit or forthcoming within a reasonable period.

4.1.2 In a situation where a Customer has failed to place margins within the reasonable period, such that the Customer's total net equity is not restored to the initial margins level, the Clearing Member concerned:

(1) is required to promptly take all necessary actions including but not limited to closing all or such part of the Customer's positions to restore the Customer's total net equity to the initial margins level; and

(2) shall not accept orders for new trades, including day trades, for such Customers. However, orders which would result in reducing the Customer's maintenance margins requirements may be accepted by the Clearing Member.

4.1.3 A Clearing Member shall not accept orders for the purchase of option contracts unless the full amount of premium is on deposit or forthcoming within a reasonable period.

4.1.4 For settlement currency denominated in Japanese Yen, 'reasonable period' means a period which shall not exceed three (3) Trading Days from the trade date (T+3). For all other settlement currencies, it means a period which shall not exceed two (2) Trading Days from the trade date (T+2).

4.1.5 For example, if a Clearing Member has received indication from the Customer's banker on T + 1, that the Customer has remitted cash of US$1 million for value date T + 4, the Clearing Member shall not treat the US$1 million as part of the Customer's ledger balance on T + 1, as the funds would actually be received by the Clearing Member only on the value date of T + 4. The amount shall be accounted as part of Customer's ledger balance only on close of business T + 4. In the above example, since the Customer's funds are not forthcoming within the reasonable period (i.e. by the close of business T + 2), the Customer is not allowed to incur any new trade during this period (T + 1 and T + 2) except for trades which reduce the Customer's maintenance margins requirements.

4.1.6 In a situation where a Customer has liquidated all its positions resulting in a negative total net equity, the Clearing Member shall not accept orders for the Customer until sufficient funds or acceptable instruments are deposited such that total net equity is no longer negative.

4.1.7 The following indicates what is the allowable trading activity for a Customer whose total net equity is not restored to the initial margins level after a margin call:

(A) During the reasonable period,

(i) if the Clearing Member receives indication from the Customer that margins are forthcoming within the reasonable period

Allowable Trading Activity Within The Reasonable Period

Trading Activity	Risk Increasing	Risk Neutral	Day Trading	Risk Reducing
Allowed for Customer	Yes	Yes	Yes	Yes

(ii) if the Clearing Member receives indication from the Customer that margins are forthcoming after the reasonable period or that no funds are forthcoming

Allowable Trading Activity Within The Reasonable Period

Trading Activity	Risk Increasing	Risk Neutral	Day Trading	Risk Reducing
Allowed for Customer	No	No	No	Yes

(B) Beyond the reasonable period,

Allowable Trading Activity Beyond The Reasonable Period

Trading Activity	Risk Increasing	Risk Neutral	Day Trading	Risk Reducing
Allowed for Customer	No	No	No	Yes

In the above examples:

A risk increasing trade is the establishment or closure of a position in a contract which increases a Customer's maintenance margins requirement (e.g. closing one leg of a spread position).

A risk neutral trade is the establishment of a position in a contract which does not impact a Customer's maintenance margins requirement (e.g. spread trades that do not impact maintenance margins requirements).

A risk reducing trade is the establishment or closure of a position in a contract which reduces the Customer's maintenance margins requirement (e.g. liquidation of a naked open position).

4.2 Prohibition of Financing of Trading Margins

4.2.1 Under no circumstances shall a Clearing Member enter into any financing arrangement with any Customer to allow the Customer to trade without placing the required minimum margins. This shall not apply to a Bank Trading Member or Bank Clearing Member.

4.3 Monitoring Procedures

4.3.1 A Clearing Member is required to maintain proper monitoring and internal control procedures to ensure that the requirements under Rule 7.22 are complied with at all times.

4.4 Examples

Assumptions:

(1) All accounts are Customer Accounts.

(2) All margin calls are properly issued and aged for the full amount.

(3) The Customer's initial margins and maintenance margins remain unchanged.

(4) The Customer was properly margined on the previous Trading Day (Friday).

(5) The Customer has indicated that margins are forthcoming within the reasonable period.

Example 1 — Under-margined beyond reasonable period — Deletion of margin calls

Trading is allowed within reasonable period but no trading is allowed beyond reasonable period except for risk reducing trades until the Customer's total net Equity is restored to the initial margins level.

Week 1

	Monday	Tuesday	Wednesday	Thursday	Friday
AMT U/M	5,000	5,000	5,000	5,000	-0-
CALL/AGE	5,000 (T)	5,000 (1)	5,000 (2)	5,000 (3)	
TRADING	All*	All	All	RR**	All

* All trading activity
** Only risk reducing trades

Assuming the margin call is in US Dollars, the reasonable period is T + 2, which is as of the close of business on Wednesday. As of Thursday, the Customer cannot be allowed to incur any risk increasing, risk neutral or day trades. The Customer can only be allowed to incur risk reducing trades.

On Friday, a cash deposit of $5,000 was received to delete the margin call. Once the Customer's total net equity is restored to the initial margins level, all trading activities would be allowed.

Example 2 — Under-margined beyond reasonable period — Deletion and reduction of margin calls

Trading is allowed within reasonable period but no trading is allowed beyond reasonable period except for risk reducing trades until the Customer's total net equity is restored to the initial margins level.

Week 1

	Monday	Tuesday	Wednesday	Thursday	Friday
AMT U/M	10,000	10,000	10,000	10,000	15,000
CALL/AGE	10,000 (T)	10,000 (1)	10,000 (2)	10,000 (3)	10,000 (4) 5,000 (T)
TRADING	All*	All	All	All	RR**
Unfavourable market movements of JPY 5,000 occurred on Friday.					

Assuming the margin call is in Japanese Yen, the reasonable period is T + 3, which is as of the close of business on Thursday. As of the close of business on Thursday, the Customer's total

net equity was not restored to the initial margins level. Thus on Friday, the Customer can only be allowed to incur risk reducing trades.

Week 2

	Monday	Tuesday	Wednesday	Thursday	Friday
AMT U/M	15,000	5,000	4,000	1,000	1,000
CALL/AGE	10,000 (5) 5,000 (1)	5,000 (2)	5,000 (3)	2,000 (4)	2,000 (5)
TRADING	RR**	All*	All	RR	RR
Favourable market movements of JPY 1,000 occurred on Wednesday.					

* All trading activity
** Only risk reducing trades

On Tuesday of Week 2, cash deposit of JPY 10,000 was received which deleted the outstanding margin call of JPY10,000. After this, the only margin call of JPY 5,000 is still within the reasonable period of T + 3. Thus during this period, Tuesday and Wednesday, all trading is allowed. On the close of business on Wednesday, the Customer's total net equity was not restored to the initial margins level. On Thursday, cash of JPY3,000 was received which reduced the margin call to JPY2,000. As the Customer Account is still under-margined with a margin call of JPY2,000 outstanding beyond the reasonable period, the Customer on Thursday and Friday can only be allowed to incur risk reducing trades.

5. Omnibus Accounts and Other Margin Policies (Rule 7.22.1)

5.1 Omnibus Accounts

5.1.1 Omnibus Accounts generally contain concurrent long and short positions. Clearing Members shall ensure that positions in an Omnibus Account are carried and margined on a gross basis.

5.1.2 A Clearing Member shall obtain and maintain written instructions from undisclosed Omnibus Account holders for positions which are entitled to be margined as spread positions.

5.1.3 For purchase and sale offsets, a Clearing Member shall obtain and maintain written instructions from undisclosed Omnibus Account holders on a daily basis. If no such instructions are received, the Clearing Member must assume that the positions belong to separate owners. These positions must be margined on a gross basis.

5.2 Grouping of Accounts

5.2.1 For the purpose of margin computation, positions in accounts belonging to the same beneficial owner who may be the Customer or a client of the Customer, may be combined. Concurrent speculative long and short positions may also be netted in such accounts.

5.2.2 Accounts which are owned by different legal entities e.g. related corporations must be treated separately for margin computation purposes.

5.3 Excess Margins Payments

5.3.1 Pursuant to Rule 7.22, a Clearing Member may allow its Customers to withdraw Excess Margins[3]. The withdrawal of Excess Margins must be supported by proper documentation.

5.3.2 If the net option value is long, it may be applied towards reducing the risk margin requirements. However, option value in excess of initial margins cannot be treated as Excess Margins available for disbursement. The computation of Excess Margins available for disbursement treats option value differently from all other margins. This is because option value is not a cash asset and does not form part of Customer's total net equity.

5.3.3 For example, Customer deposits $1,000 in its account. It then purchases an option contract where the option premium is $1,000. At the time of purchase, the full premium of $1,000 is deducted from its account resulting in zero total net equity. Thus, there are no funds available for withdrawal. The option value of the long option position, which at the time of purchase is $1,000 (option value would vary with passage of time), cannot be available for withdrawal as it does not form part of the Customer's total net equity. Furthermore, the Clearing Member would be deemed to be financing the Customer's trades, which is prohibited under these guidelines, in the purchase of the option contract if the option value is allowed to be withdrawn.

5.3.4 If total net equity is zero or negative, a disbursement cannot be made as there are no funds available. The Clearing Member shall use the Customer's latest available total net equity and latest required initial margins to determine the amount of Excess Margins available for disbursement, notwithstanding that the Customer (e.g. a Customer in different time zone) has yet to receive the latest Customer statement sent out by the Clearing Member. In determining the Excess Margins available for disbursement, the Clearing Member shall take into consideration the Customer's incoming remittance and the Clearing Member's disbursement based on value dates. If an incoming remittance is accounted for in determining the amount of Excess Margins to be released, the Clearing Member shall effect the disbursement only after the receipt of the funds. This means that the value date for the disbursement shall be subsequent to the value date of the Customer's incoming remittance.

5.3.5 For the purpose of determining the amount of Excess Margins available for disbursement, all Customer Accounts opened by the same Customer, for the benefit of its own clients shall be combined in one group ("Group A"). All other Customer Accounts opened by the same Customer shall be combined in a separate group ("Group B"). If the Clearing Member does not combine such accounts, it runs the risk of allowing a Customer to withdraw more funds than what the Customer actually has available with the Clearing Member [see Example 4 below for illustration]. Available Excess Margins from Group A cannot be used for disbursement for Group B and vice versa.

5.4 Examples

Note: In the computation, if the net option value is greater than the initial margin risk component, the maximum amount of Excess Margins available for disbursement shall be equal to the total net equity.

Example 1 — Excess Margins Payments

Customer Account	**Balance**
Total net equity	$5,000

Net option value	$1,200
Initial margins risk component	$3,000

* An Excess Margins payment can be made from the Customer Account for $3,200 {$5,000 − [($3,000 − $1,200) which = $1,800]}

Example 2 — Excess Margins Payments

Customer Account	**Balance**
Total net equity	$-0-
Net option value	$9,000
Initial margins risk component	$7,000

* As total net equity is zero, no payment can be made. {$-0- − [($7,000 − $9,000) which = 0]}. The only margin asset in the Customer Account is long option value which cannot be used to make an Excess Margins payment.

Example 3 — Excess Margins Payments

Customer Account	**Balance**
Total net equity	$32,800
Net option value	$<12,000>
Initial margins risk component	$14,000

* An Excess Margins payment can be made from the Customer Account for $6,800 {$32,800 − [($14,000 − <$12,000>) which = $26,000]}

Example 4 — Accounts owned by the same Customer

Assume client A/C A & client A/C B are owned by the same Customer.

	A/C A $	A/C B $	COMBINED $
Total net equity	8,000	80,000	88,000
Initial margins	25,000	50,000	75,000
Maintenance margins	20,000	40,000	60,000
Excess Margins for withdrawal	(17,000)	30,000	13,000

If client A/C A and client A/C B are not combined, then the amount of Excess Margins that is available for withdrawal, ie $30,000, is greater than what is actually available for the Customer as a whole.

5.5 Concurrent Long and Short Positions

5.5.1 Concurrent long and short positions are long and short positions traded on the same market in the same futures or option contract for the same delivery month or expiration date and, if applicable, having the same strike price.

5.5.2 A Clearing Member may carry concurrent long and short positions as follows:

(1) all positions held by Omnibus Account holders shall be margined on a gross basis, unless otherwise exempted by the Exchange; and

(2) in a hedge account in which both the long and short positions are bona fide hedge positions, such positions shall be margined on a net basis, unless otherwise required by other regulatory bodies.

5.5.3 A Clearing Member may carry concurrent long and short hold-open positions for speculative and hedge accounts. Hold-open positions are positions offset at the Exchange but have been held open on the Clearing Member's internal bookkeeping records for the convenience of the Customer. As hold-open positions only remain open on the Clearing Member's internal records and have been offset at the Exchange, no margin is required. The Clearing Member's internal bookkeeping records shall clearly indicate all hold-open positions.

Added on 23 July 2014 and amended on 25 January 2017.

---

[1] "Futures Contract" refers to any Contract, over any Underlying, designated by the Exchange as a futures contract.

[2] "Option Contract" refers to any Contract which grants an option in respect of an Underlying or a Futures Contract.

[3] "Excess Margins" refers to credits in excess of initial margins.

Practice Note 7.23 — Additional Margins

Issue date	Cross Reference	Enquiries
Added on 8 August 2016	Rule 7.20 and Rule 7.23	Please contact Risk Management: rmd@sgx.com

1. Introduction

1.1 Rule 7.20 states that margin requirements shall be prescribed by the Clearing House from time to time, and Rule 7.23 provides for the Clearing House to call for additional margins from one or more Clearing Members in certain situations. This Practice Note elaborates on the additional margins.

1.2 The objective of additional margin requirements is to provide greater assurance that unique risks which may potentially not be captured under the Clearing House's margin setting methodology are appropriately accounted for and collateralized. As risks unique to a Clearing Member attract additional margin rather than being mutualized through the Clearing Fund, it makes Clearing Members accountable for excessive risk they bring to the system.

1.3 The Clearing House conducts daily monitoring of Clearing Members' exposures and assesses the adequacy of the Clearing House and Clearing Members' resources using a comprehensive range of scenarios. In addition, as part of its continuing risk management process, the Clearing House monitors news and developments which may affect Clearing Members, and conducts risk-based inspections on Clearing Members' risk and credit management practices.

1.4 In the event that any of the circumstances specified in Rule 7.23 exist, the Clearing House may impose additional margin requirements. Such additional margin requirements may include, without limitation:

(a) Default Fund risk add-on;

(b) Credit risk add-on;

(c) Liquidity risk add-on;

(d) Position risk add-on; and

(e) Discretionary risk add-on.

1.5 If the composition of a Clearing Member's portfolio calls for multiple add-ons, the Clearing House may at its discretion decide on an appropriate quantum sufficient to cover the risks.

1.6 For clarity, the additional margin requirements prescribed under this Practice Note do not count towards the sources of funds for the clearing fund as prescribed in Rule 7A.06 ("Clearing Fund").

1.7 Besides the add-ons described in paragraph 1.4 of this Practice Note, the Clearing House also imposes margin add-on on positions held in respect of Applicable Customer Accounts pursuant to Rule 7.30. The details are provided in Practice Note 7.30.

2. Default Fund risk add-on

2.1 The Clearing House may impose a default fund risk add-on to mitigate risk arising from a Clearing Member's stress loss when its potential tail risk exposure is significant.

2.2 The Clearing House conducts daily stress testing of Clearing Members' outstanding positions in line with the CPMI-IOSCO[1] and global best practices to assess clearing fund adequacy. The test includes a comprehensive range of stressed scenarios, and clearing fund resources must be able to cover the simultaneous default of the Clearing Member and its affiliated Clearing Members with the largest aggregate loss ("Top 1"), and two other financially weakest Clearing Members ("Weak 1", "Weak 2").

2.3 While stress testing focuses on the mutualized resources to cover a default of the Top 1, Weak 1 and Weak 2, the Clearing House would also want to secure appropriate amount of resources from an individual Clearing Member with significant potential tail risk exposure. This provides a balance between mutualization and the defaulter pay principle. For guidance, the potential tail risk exposure is the worst loss estimated from different stressed scenarios, net of margins and any add-ons. The potential tail risk exposure is considered to be significant if:

(a) the potential tail risk exposure of a Clearing Member and its affiliated Clearing Members ("Member Group") exceeds a percentage (a threshold as determined by SGX) of SGX-DC Clearing Fund resources ("Threshold 1"); or

(b) the aggregate potential tail risk exposure of any Member Group, together with Weak 1 and Weak 2, exceeds a percentage (a threshold as determined by SGX) of SGX-DC Clearing Fund resources ("Threshold 2"). Threshold 2 will be higher than Threshold 1[2].

2.4 The Clearing House will determine the quantum of the default fund risk add-on based on the potential tail risk exposure from each Clearing Member relative to each of the two

thresholds, as described below:

- In respect of Threshold 1, the applicable add-on for a Member Group is equal to the difference between its potential tail risk exposure and the threshold;
- In respect of Threshold 2, the total applicable add-on is equal to the difference between (i) the potential tail risk exposure aggregated across the Member Group, Weak 1 and Weak 2, (provided the Member Group does not include Weak 1 or Weak 2) after offsetting any add-on arising from Threshold 1, and (ii) the threshold. The applicable add-on is then allocated to the Member Group, Weak 1 and Weak 2 proportional to their exposure; and
- The add-on for a Clearing Member is equal to the sum of its applicable add-on arising from Threshold 1 and/or Threshold 2. The Clearing House may at its sole discretion not impose on Weak 1 or Weak 2 the add-on if it is not significant.

2.5 An illustration of the calculation is provided at the end of this Practice Note.

3. Credit risk add-on

3.1 The Clearing House may impose a credit risk add-on if there are concerns regarding the solvency or credit-worthiness of a Clearing Member. For guidance, these concerns may be based on indicators that include, without limitation:

(a) deterioration in the credit standing of the Clearing Member as assessed through SGX's internal credit risk rating model, downgrading of the credit rating or credit outlook of the member or its parent/affiliates by external credit agencies, widening credit default swaps of the member or its parent/affiliates;

(b) adverse market sentiments/news or any other relevant indicators on the Clearing Member or its parent/affiliate, or when the Clearing House believes the Clearing Member or its parent/affiliate may be adversely affected by unstable market conditions or price fluctuations which the Clearing House deems a concern;

(c) reduction of the Clearing Member's financial resources;

(d) in the Clearing House's view, there is an increase in the Clearing Member's risk exposure, for example, increased operational risk due to unsound risk or credit practices or, that potentially places the Clearing House at greater risk; and

(e) other specific issues or concerns relating to the Clearing Member, which may arise from SGX's on-site inspection, the Authority's audit findings; or frequent rule violations committed by the Clearing Member.

3.2 For guidance, the quantum of the credit risk add-on for Clearing Members will be determined by considering the following:

(a) for a Clearing Member with credit standing the Clearing House deems equivalent to B rating and below (based on the indicators described in paragraph 3.1 of this Practice Note), the quantum is equal to the difference between the member's potential tail risk exposure and a threshold. This threshold[3] will be determined by SGX, as a percentage of actual SGX-DC Clearing Fund resources and will be lower than the Threshold 1 described in paragraph 2.3 of this Practice Note; and

(b) [deleted]

(c) the Clearing Member's available financial resources, prevailing market conditions and the size of Clearing Member's positions.

4. Liquidity risk add-on

4.1 The Clearing House may impose a liquidity risk add-on if there are liquidity concerns on a Clearing Member, such as not maintaining sufficient liquid resources to cover the potential funding gap for its variation margin.

4.2 The quantum of the liquidity risk add-on may be to close potential funding gap, taking into consideration any mitigating actions taken by the member. For guidance, the potential funding gap is estimated based on:

(a) its potential variation margin impact over the next clearing day for its current day portfolio (on the assumption of static portfolio), and

(b) the Clearing Member's liquid resources that is available (to offset the potential variation margin impact), which includes its excess margin collateral held with SGX-DC, and credit lines granted by its settlement banks.

4.3 [This paragraph has been deleted.]

5. Position risk add-on

5.1 The Clearing House may impose a position risk add-on if:

(a) a significant proportion of the open interest in the Contract is highly concentrated in a customer or a Clearing Member.

(b) [deleted]

5.2 The quantum of the position risk add-on should mitigate the potential slippage when liquidating a large portfolio. For guidance, before imposing position risk add-on for a Contract, the Clearing House may take into considerations the risk contribution from the Contract, and whether the concentration will be cured within a short period of time.

6. Discretionary risk add-on

6.1 The Clearing House may impose a discretionary risk add-on to a Contract or on Clearing Members with positions in a Contract to cover unique risk that may not be captured in the estimate of the Contract's potential future exposure or the conditions described in the earlier paragraphs, or to cover any types of risk arising from exceptional market conditions. The quantum of the add-on is discretionary depending on the circumstances that necessitate it. The add-on may be imposed as an absolute dollar amount, or as a percentage add-on to a Clearing Member's maintenance margin requirements, or as percentage add-on to the Contract's margin.

6.2 An example is the gap risk associated with FX-related Contracts that may arise from potential changes in currency regimes or political environment. To determine the quantum of the FX gap add-on, the Clearing House may, but not limited to, make reference to similar events in the past for relevant currency pairs.

ILLUSTRATION ON THE CALCULATION OF THE DEFAULT FUND RISK ADD-ON

Assumptions:

(i) Actual Clearing Fund resource is $800.

(ii) Assume SGX assigns percentages of 70% and 90% to Threshold 1 and Threshold 2 respectively.
Threshold 1: 70% x 800 = 560 (Any Member Group)
Threshold 2: 90% x 800 = 720 (Any Member Group + Weak 1 + Weak 2)

Example 1 — Add-on applies to a Member Group X only

Assume only one stress testing scenario generates exposure that exceed the thresholds,

- Exposure (X + Weak 1 + Weak 2) = 700
- Exposure (X) = 640
- Exposure (Weak 1) = 60
- Exposure (Weak 2) = 0

		Loss exceeds threshold		Potential add-on	
	Loss	**Threshold 1**	**Threshold 2**	**Threshold 1**	**Threshold 2**
X + Weak 1 + Weak 2	700		No		
X	640	Yes		640-560=80	
Weak 1	60	No			
Weak 2	0	No			

- Therefore, credit risk add-on of 80 applies to Member Group X only.

Example 2 — Add-on applies to a Member Group X, and Weak 1 and Weak 2 by apportionment

Assume only one stress testing scenario generates exposure that exceed the thresholds,

- Exposure (X + Weak 1 + Weak 2) = 760
- Exposure (X) = 520
- Exposure (Weak 1) = 200
- Exposure (Weak 2) = 40

		Loss exceeds threshold		Potential add-on	
	Loss	**Threshold 1**	**Threshold 2**	**Threshold 1**	**Threshold 2**
X + Weak 1 + Weak 2	760		Yes		760-720=40
X	520	No			
Weak 1	200	No			
Weak 2	40	No			

- Therefore, credit risk add-on of 40 applies to (X + Weak 1 + Weak 2). The add-on for each of the three members will be proportionate to their share of the aggregate exposure.
    - For X, add-on = 520/(520+200+40)*40 = 28

- For Weak 1, add-on = 200/(520+200+40)*40 = 11
- For Weak 2, add-on = 40/(520+200+40)*40 = 2

Example 3 — Add-on applies to a Member Group X, and Weak 1 and Weak 2 by apportionment

Assume only one stress testing scenario generates exposure that exceed the thresholds,

- Exposure (X + Weak 1 + Weak 2) = 820
- Exposure (X) = 640
- Exposure (Weak 1) = 180
- Exposure (Weak 2) = 0

		Loss exceeds threshold		Potential add-on	
	Loss	**Threshold 1**	**Threshold 2**	**Threshold 1**	**Threshold 2**
X + Weak 1 + Weak 2	820		Yes		820-720=100
X	640	Yes		640-560=80	
Weak 1	180	No			
Weak 2	0	No			

- Based on Threshold 1, credit risk add-on of 80 applies to the X.
- Based on Threshold 2, there is a balance of 20 since an add-on of 80 already applies to X from Threshold 1. This balance will be apportioned among X, Weak 1, and Weak 2.
    - For X, add-on from Threshold 1 = 80
    - For X, add-on from Threshold 2 = 560/(560+180)*20 = 15^
    - For Weak 1, add-on = 180/(560+180)*20 = 5
    - For Weak 2, add-on = 0

    ^ The loss for X is taken as 560 here because it has been partially offset by the 80 from Threshold 1. (When X exceeds Threshold 1, the calculation for its pro rata assignment under Threshold 2 will be based on Threshold 1.)

Example 4 — Add-on applies to a Member Group X, a Member Group Y, and Weak 1 and Weak 2 by apportionment

Assume a stress testing scenario generates exposure that exceed the thresholds,

- Exposure (X + Weak 1 + Weak 2) = 820
- Exposure (X) = 640
- Exposure (Weak 1) = 180
- Exposure (Weak 2) = 0

Assume a second stress testing scenario generates exposure that also exceed the thresholds,

- Exposure (Y + Weak 1 + Weak 2) = 790
- Exposure (Y) = 620
- Exposure (Weak 1) = 170
- Exposure (Weak 2) = 0

First stress scenario					
		Loss exceeds threshold		**Potential add-on**	
	Loss	**Threshold 1**	**Threshold 2**	**Threshold 1**	**Threshold 2**
X + Weak 1 + Weak 2	820		Yes		820-720=100
X	640	Yes		640-560=80	
Weak 1	180	No			
Weak 2	0	No			

Second stress scenario					
		Loss exceeds threshold		**Potential add-on**	
	Loss	**Threshold 1**	**Threshold 2**	**Threshold 1**	**Threshold 2**
Y + Weak 1 + Weak 2	790		Yes		790-720=70
Y	620	Yes		620-560=60	
Weak 1	170	No			
Weak 2	0	No			

- Based on Threshold 1, credit risk add-on of 80 and 60 applies to X and Y respectively.
- Both scenarios have to be considered to determine the add-on arising from Threshold 2.
- For first scenario (X + Weak 1 + Weak 2), balance of 20 applies.
    - For X, add-on = 560/(560+180)*20 = 15
    - For Weak 1, add-on = 180/(560+180)*20 = 5
    - For Weak 2, add-on = 0
- For second scenario (Y + Weak 1 + Weak 2), balance of 10 applies.
    - For Y, add-on = 560/(560+170)*10 = 8
    - For Weak 1, add-on = 170/(560+170)*10 = 3
    - For Weak 2, add-on = 0
- Therefore the final add-on is:

- For X, add-on = 80 + 15 = 95
- For Y, add-on = 60 + 8 = 68
- For Weak 1, add-on = higher of (5, 3) = 5
- For Weak 2, add-on = 0

---

[1] Principles for Financial Market Infrastructures issued by the Committee on Payments and Market Infrastructure (CPMI) and the Technical Committee of the International Organization of Securities Commissions (IOSCO)

[2] Threshold 1 and 2 is currently defined as 70% and 90% respectively, but may be revised from time to time.

[3] The threshold is currently defined as 15%, but may be revised from time to time.

Added on 8 August 2016 and amended on 17 July 2019.

Practice Note 7.30 — Enhanced Customer Collateral Protection

Issue date	Cross Reference	Enquiries
Added on 31 December 2013 and amended on 17 July 2019	Rule 7.30	Please contact: **Operations, Clearing and Depository** Clearing Hotline Tel: (65) 6236 5319 Email: otclear@sgx.com **SGX OTC Clearing Business** Email: sgxotc@sgx.com **SGX AsiaClear Commodities Clearing Business** Email: asiaclear@sgx.com

1. Introduction

1.1 Rules 7.30.1 and 7.30.2 provide that a Customer may opt for **"Enhanced Customer Collateral Protection" ("ECCP")** in respect of Non-Relevant Market Transactions by requesting that its Clearing Member designate any of the Customer's Customer Accounts as an **"Applicable Customer Account"**. Each such Customer is referred to as an **"Applicable Customer"**. The Clearing Member shall inform each of its Customers of the availability of the choice for ECCP and shall offer ECCP to any Customer that requests for it.

1.2 This Practice Note provides information on—

(a) the requirement on a Clearing Member to inform its Customers of the availability of the choice for ECCP;

(b) the treatment of position and Collateral under the ECCP model; and

(c) the key benefits and costs to Customers of opting for ECCP.

2. Requirement to inform Customers of the availability of the choice for ECCP

2.1 Clearing Members that offer client clearing for Non-Relevant Market are required to inform each of their Customers that the choice for ECCP is available.

2.2 Clearing Members should retain records of communication between themselves and their Customers, including communication by their Customers on whether they wish to opt for ECCP.

3. Treatment of position and Collateral under the ECCP model

Positions

3.1 Under Rule 7.30.3, the Clearing House will only treat a Customer Account as being an Applicable Customer Account where it has received information relating to the identity of the Applicable Customer from the relevant Clearing Member. This applies to both (i) individual position accounts, and (ii) omnibus position accounts.

3.2 Where a Customer opts for ECCP, its positions will be maintained on the Clearing House's records on a position account level. Clearing Members are required to maintain separate position accounts for each Applicable Customer by ensuring that each Applicable Customer's trades are correctly booked into the appropriate Applicable Customer Account in the clearing system. The positions of each such Applicable Customer Account will be clearly identified on the Clearing House's books and will not be commingled with other Customers' positions.

3.3 A customer omnibus position account that is the subject of ECCP will be treated as an Applicable Customer Account and ring-fenced from other Customer Accounts held with SGX-DC. However, each Customer within a customer omnibus position account will remain exposed to the risk of fellow customers within that same customer omnibus position account.

Collateral

3.4 The Clearing House will maintain records of Collateral in respect of each Applicable Customer Account. These records will be maintained for the purposes of margining and default management based on information provided by the relevant Clearing Member.

3.5 The Collateral records in respect of each Applicable Customer Account will be kept separate from the Collateral records of any other Customer Account held with SGX-DC. However, Collateral deposited in respect of Applicable Customer Accounts and non-Applicable Customer Accounts may be physically commingled in an omnibus account held with a bank, custodian or depository.

3.6 Collateral deposited in respect of all Customer Accounts (including Applicable Customer Accounts) will be kept separate from Clearing House's assets and Clearing Members' assets deposited for house obligations.

4. Benefits and Costs

4.1 Clearing Members should advise their Customers of the benefits and costs involved in opting for ECCPin order to facilitate an informed decision by their Customers.

4.2 ECCPprovides the following key benefits:

(a) Protection from fellow-customer risk

Non-Applicable Customers are technically exposed to a degree of risk in the default of another non-Applicable Customer. Section 60(1)(b) of the SFA and Regulation 24(1) of the Securities and Futures (Clearing Facilities) Regulations 2013 ("SFR (Clearing Facilities)") provide that the Clearing House may use Customer Collateral of non-Applicable Customers to meet obligations of a Clearing Member that arise from other non-Applicable Customers' contracts where certain conditions are met.

In contrast, Applicable Customers are protected from fellow-customer risk because SFR (Clearing Facilities) Regulation 24(2) provides that in the event of a default of a Clearing Member caused by a Customer, Collateral of a non-defaulting Applicable Customer will not be used to satisfy the obligations arising from the Contracts of such defaulting Customer. In the event of a default of a Clearing Member caused by an Applicable Customer, only the Collateral of such defaulting Applicable Customer will be used. Other Customers' Collateral will not be used.

(b) Ease of porting

Clear identification of positions and associated Collateral in respect of each Applicable Customer Account enables Clearing House to accurately determine the minimum amount of Collateral each Applicable Customer has to deposit and will potentially expedite the porting of positions and associated Collateral in an event of default.

4.3 In consideration of the additional protection against fellow-customer risk that Applicable Customers receive, a margin add-on of 10% will be imposed on positions held in respect of Applicable Customer Accounts as compared to non-Applicable Customer Accounts. The differentiation in margining is required due to an Applicable Customer, as a corollary of obtaining protection from fellow-customer risk, no longer having the benefit of non-defaulting Customers sharing in the fulfilment of its obligations if it defaults. Higher margin is therefore required in respect of each Applicable Customer Account to maintain the existing level of safety in the clearing system.

Practice Note 7A.02.1.5.c.ii [Rule has been deleted.]

Deleted on 30 June 2014.

Practice Note 7A.01A.2A — Apportionment of Clearing Fund Contributions across Contract Classes and across OTCF auctions [This Practice Note has been deleted.]

Deleted on 17 July 2019.

Practice Note 7A.01A.2B.2 — Apportionment and application of Clearing Fund Contributions when one or more auctions are held in respect of a Contract Class

Issue Date	Cross Reference	Enquiries
Added on 17 July	Clearing Rules 7A.01A.2C, 7A.01A.2D and 7A.01A.2E	Please contact:

2019.		**Risk Management** E-Mail Address : rmd@sgx.com

1. Introduction

1.1. This Practice Note illustrates the apportionment and application of Clearing Fund Contributions when one or more auctions are held in respect of a Contract Class. For the purposes of this Practice Note, the Contract Class specified in Rule 7A.01A.5.a, which comprises of (i) contracts that are listed for trading on the Exchange or Relevant Market and (ii) Non-Relevant Market Contracts, will be referred to as the "**ETD and NMC Contract Class**", the contracts collectively as "**ETD and NMC Contracts**", the Contract Class and an auction held in respect of this Contract Class as an "**ETD and NMC Auction**".

1.2 This Practice Note describes:

i. the apportionment of the Clearing House First Loss Contribution, Clearing House Intermediate Contribution, and the Clearing Fund Deposit of each Clearing Member, where one or more ETD and NMC Auctions are held pursuant to Rules 7A.01A.2C.2, 7A.01A.2D.2, and 7A.01A.2E.2; and

ii. the use of Required Participants' Clearing Fund Deposits based on their bidding behaviour in an ETD and NMC Auction, pursuant to Rule 7A.01.2D.2.

2. Apportionment of Clearing House First Loss Contribution and Clearing House Intermediate Contribution to auctions held in respect of the ETD and NMC Contract Class

2.1 For each ETD and NMC Auction, the Clearing House First Loss Contribution and Clearing House Intermediate Contribution shall be apportioned to that auction, based on the proportion of the notional value of the Auction Portfolio vis-à-vis the aggregate notional value of the defaulted Clearing Member's contracts in the ETD and NMC Contract Class.

Apportionment of Clearing House First Loss Contribution to an ETD and NMC Auction

$$\frac{\text{Notional value of ETD and NMC Contracts that constitute the Auction Portfolio}}{\text{Aggregate notional value of all ETD and NMC Contracts in the defaulted Clearing Member's portfolio}} \times \text{Clearing House First Loss Contribution}$$

Apportionment of Clearing House Intermediate Contribution to an ETD and NMC Auction

$$\frac{\text{Notional value of ETD and NMC Contracts that constitute the Auction Portfolio}}{\text{Aggregate notional value of all ETD and NMC Contracts in the defaulted Clearing Member's portfolio}} \times \text{Clearing House Intermediate Contribution}$$

3. Apportionment of a Required Participant's Clearing Fund Deposit to an ETD and NMC Auction

3.1 For each ETD and NMC auction, the Clearing Fund Deposit of each Required Participant shall be further apportioned to that auction based on the proportion of the notional value of the Required Participant's contracts that are the same as those in the Auction Portfolio vis-à-vis the aggregate notional value of all of that Required Participant's contracts in the ETD and NMC Contract Class.

Apportionment of the Clearing Fund Deposit of a Required Participant to an ETD and NMC auction

$$\frac{\text{Notional value of Required Participant's contracts that are the same as those constituting the Auction Portfolio}}{\text{Notional value of all of the Required Participant's ETD and NMC Contracts}} \times \text{Required Participant's Clearing Fund Deposit apportioned to the ETD and NMC Contract Class}$$

4. Illustration of how the Clearing Fund Deposits of Required Participants who have submitted bids for an ETD and NMC auction are pro-rated pursuant to Rule 7A.01A.2D.2

4.1 This section illustrates how Required Participants' Clearing Fund Deposits are pro-rated pursuant to Rule 7A.01A.2D.2.

4.2 Pursuant to Rule 7A.01A.2D.2, where an ETD and NMC auction is held, the Clearing Fund Deposits of all Required Participants apportioned to that auction will be applied to meet losses arising from or in connection with that auction, in the following order of priority and manner, with each level to be exhausted before the next level is applied:

a. first, the apportioned Clearing Fund Deposits of Required Participants who did not participate in the auction;

b. second, the apportioned Clearing Fund Deposits of Required Participants who had submitted bids that were below the Winning Bid Price, which will be applied on a pro-rata basis based on the product of:

i. the distance between such Required Participant's bid price and the Winning Bid Price; and

ii. the apportioned Clearing Fund Deposit of such Required Participant;

c. third, the unused apportioned Clearing Fund Deposits of Required Participants who had submitted bids that were below the Winning Bid Price, that was not applied in (b);

d. fourth, the apportioned Clearing Fund Deposits of Required Participants who had submitted the Winning Bid Price.

4.3 The following example illustrates Rule 7A.01A.2D.2.b.

A and B are Required Participants who had submitted bids that were below the Winning Bid Price. Their liabilities under Rule 7A.01A.2D.2.b will be in the following proportions:

	Distance (price differential) between the Required Participant's bid price and the winning bid price (I)	Amount of Required Participant's Clearing Fund Deposit that is apportioned to the auction (II)	(I) X (II)	Proportion of remaining loss for which the Required Participant will be liable
Required Participant A	$5 million	$20 million	5 x 20 = 100	$\frac{100}{(100+150)} = 40\%$
Required Participant B	$6 million	$25 million	6 x 25 = 150	$\frac{150}{(100+150)} = 60\%$

Practice Note 7A.01B — Illustrations of the Application of Clearing Member's Clearing Fund Deposit and Further Assessment Amounts in respect of OTCF Contracts [This Practice Note has been deleted.]

Deleted on 17 July 2019.

Practice Note 9.01.1 — OTCF Product Groups [This Practice Note has been deleted.]

Deleted on 17 July 2019.

Appendices

Appendix 1 — Final Settlement Price

Oil Swaps Contracts

Products	**Gasoil**	**Naphtha**
Contract	Gasoil Swap FOB Singapore	Naphtha CFR Japan
Final Settlement Price	Arithmetic average of Platts' daily spot assessments in the Contract Month for the relevant underlying product, rounded to 3 decimal places.	Cash settlement using arithmetic average of Platts daily spot assessments in the contract month, rounded to three decimal places.

Products	**Fuel Oil 180**	**Fuel Oil 380**
Contract	Singapore Fuel Oil 180cst Swap, 3.5% sulfur	Singapore Fuel Oil 380cst Swap, 4% sulfur
Final Settlement Price	Arithmetic average of Platts' daily spot assessments in the Contract Month for the relevant underlying product, rounded to 3 decimal places.	

Products	**Mini Fuel Oil 180 CST**	**Mini Fuel Oil 380 CST**
Contract	Mini Singapore Fuel Oil 180 CST Swap,	Mini Singapore Fuel Oil 380 CST Swap,

	3.5% Sulfur	4% Sulfur
Final Settlement Price	Arithmetic average of Platts' daily spot assessments in the Contract Month for the relevant underlying product, rounded to 3 decimal places.	

Products	**Visco**
Contract	Fuel Oil 180cst vs 380cst Swaps Differential
Final Settlement Price	FSP of Fuel Oil 180cst Swap minus FSP of Fuel Oil 380cst Swap

Product	**Petrochemical Swaps**				
Contract	SGX Platts Benzene-Naphtha Swap	SGX Platts Paraxylene-Naphtha Swap	SGX PLATTS PX CFR China Swap	Benzene FOB Korea Swaps	SGX Platts Methanol CFR China Swap
Final Settlement Price	Cash settlement using the arithmetic difference between the Final Settlement Prices of the SGX Platts BZ FOB Korea Swap and the SGX Platts Naphtha CFR Japan Swap, rounded to 3 decimal places.	Cash settlement using the arithmetic difference between the Final Settlement Prices of the SGX Platts PX CFR Taiwan/China Swap and the SGX Platts Naphtha CFR Japan Swap, rounded to 3 decimal places.	Cash settlement using the arithmetic average of all Platts PX daily spot price assessments in the contract month, rounded to 2 decimal places	Cash settlement using the arithmetic average of Platts daily spot 'marker' physical cargo assessments in the contract month, rounded to 3 decimal places.	Cash settlement using the arithmetic average of all Platts Methanol CFR China daily spot price assessments in the expiring month, rounded to two decimal places.

Product	**Petrochemical Swaps**
Contract	SGX ICIS Isomer MX FOB Korea Swap
Final Settlement Price	Cash settlement using the arithmetic average of all ICIS Isomer MX FOB Korea index assessments in the expiring contract month, rounded to 2 decimal places

Product	**Petrochemical Swaps**					
Contract	[deleted]	[deleted]	SGX ICIS MEG CFR China Swap	[deleted]	[deleted]	SGX ICIS SM CFR China Swap

Final Settlement Price	[deleted]	Cash settlement using the arithmetic average of all ICIS MEG CFR China Main Ports index assessments in the expiring contract month, rounded to 2 decimal places	[deleted]	Cash settlement using the arithmetic average of all ICIS SM CFR China (Price Range for the Week) index assessments in the expiring contract month, rounded to 2 decimal places

Product	**0.5% Sulphur Fuel Oil Singapore**
Contract	SGX Platts Marine Fuel 0.5% FOB Singapore Swap
Final Settlement Price	Arithmetic average of Platts' spot assessments in the Contract Month for the relevant underlying product, rounded to 3 decimal places.

Iron Ore Swap Contracts

Products	**Iron Ore Swap**				
Contract	SGX TSI Iron Ore CFR China (62% Fe Fines) Swap	SGX MB Iron Ore CFR China (58% FE Fines) Swap	[deleted]	SGX MB Iron Ore CFR China (65% Fe Fines) Swap	SGX Platts Iron Ore CFR China (Lump Premium) Swap
Final Settlement Price	Cash settlement using the arithmetic average of all The Steel Index (TSI) Iron Ore Fines 62% FE CFR China reference prices in the expiring	Cash settlement using the arithmetic average of all the aggregate daily values of MBIOI — 58% FE Fines, CFR Qingdao Index and MBIOI — 58% Premium FE Fines, CFR Qingdao Index reference prices, as published by Metal Bulletin, in the expiring contract month, rounded to 2 decimal places.	[deleted]	Cash settlement using the arithmetic average of all the MBIOI 65% Fe Brazilian Fines, CFR Qingdao Index reference	Cash settlement using the arithmetic average of all Platts IO Spot Lump Premium 62.5% CFR China Index reference prices in

	month, rounded to 2 decimal places.			prices in the expiring contract month, rounded to 2 decimal places.	the expiring contract month, rounded to 4 decimal places.

Product	**Iron Ore Option**
UnderlyingContract	Iron Ore Swap
Option Exercise and Settlement	European Style: An option will be exercised automatically at expiry only if it is in-the-money. Cash Settled: Upon exercise, a **call** option will have a value equal to final settlement price of the underlying Iron Ore Swap minus the strike price, multiplied by the contract size. Upon exercise, a **put** option will have a value equal to the strike price minus the final settlement price of the underlying Iron Ore Swap, multiplied by the contract size.

Freight Forward Contracts: Dry Trip Timecharter Routes

Product	**P2A**	**P3A**
Contract	Panamax Route P2A Forward Freight Agreement Skaw/Gibraltar — Far East, re-delivery Taiwan/Japan range. 60/65 days	Panamax Route P3A Forward Freight Agreement Trans Pacific round either via Australia or Pacific, delivery and re-delivery Japan/South Korea range. 35/50 days
Final Settlement Price	Arithmetic average of last seven (7) Baltic's daily spot assessments in the expiring Contract Month for the relevant underlying product, as provided by Baltic	

Products	**P2A_82**	**P3A_82**
Contract	Panamax 82 Route P2A Forward Freight Agreement. 7 Days Average	Panamax 82 Route P3A Forward Freight Agreement. 7 Days Average
Final Settlement Price	Arithmetic average of last seven (7) Baltic's daily spot assessments in the expiring Contract Month for the relevant underlying product, as provided by Baltic	

Product	**P2E**	**P2E_82**
Contract	Panamax Route P2E Forward Freight Agreement Skaw/Gibraltar — Far East. Entire	Panamax 82 Route P2E Forward Freight Agreement. Entire Month

	Month Average	Average
Final Settlement Price	Arithmetic average of all Baltic's daily spot assessments in the expiring Contract Month for the relevant underlying product, as provided by Baltic	

Freight Forward Contracts: Dry Voyage Routes

Product	P8
Contract	SGX Baltic Panamax Voyage P8 Route Freight Forward Agreement
Final Settlement Price	Arithmetic average of all Baltic's daily spot assessments in the expiring Contract Month for the relevant underlying product, as provided by Baltic

Product	**[deleted]**	**C4**	**[deleted]**
Contract	[deleted]	Capesize Route C4 Forward Freight Agreement Richards Bay-Rotterdam. 150,000mt	[deleted]
Final Settlement Price	Arithmetic average of last seven (7) Baltic's daily spot assessments in the expiring Contract Month for the relevant underlying product, as provided by Baltic		

Product	**C3**	**C5**	**C7**
Contract	Capesize Route C3 Forward Freight Agreement Tubarao-Qingdao	Capesize Route C5 Forward Freight Agreement W Australia — Qingdao. 160,000mt	Capesize Route C7 Forward Freight Agreement Bolivar-Rotterdam. 150,000mt
Final Settlement Price	Arithmetic average of all Baltic's daily spot assessments in the expiring Contract Month for the relevant underlying product, as provided by Baltic		

Freight Forward Contracts: Dry Timecharter Basket Routes

Product	**[deleted]**	**5CTC**	**4PTC**	**5PTC**	**6STC**	**10STC**	**[deleted]**	**7HTC**
Contract	[deleted]	Capesize Time Charter Basket (5 routes)	Panamax Time Charter Basket (4 routes)	Panamax Time Charter Basket (5 routes)	Supramax Time Charter Basket (6 routes)	Supramax Time Charter Basket (10 routes)	[deleted]	Handysize Time Charter Basket (7 routes)
Final Settlement Price	Arithmetic average of all Baltic's daily spot assessments in the expiring Contract Month for the relevant underlying product, as provided by Baltic							

Product	**[deleted]**	**Capesize Option (5 routes)**	**Panamax Option (4 routes)**	**Panamax Option (5 routes)**	**[deleted]**	**Supramax Option (10 routes)**	**[deleted]**
Underlying Contract	[deleted]	Capesize Time Charter Basket (5 routes)	Panamax Time Charter Basket (4 routes)	Panamax Time Charter Basket (5 routes)	[deleted]	Supramax Time Charter Basket (10 routes)	[deleted]
Option Exercise and Settlement	European Style: An option will be exercised automatically at expiry only if it is in-the-money. Cash Settled: Upon exercise, a **call** option will have a value equal to final settlement price of the underlying FFA minus the strike price, multiplied by the contract size. Upon exercise, a **put** option will have a value equal to the strike price minus the final settlement price of the underlying FFA, multiplied by the contract size.						

Freight Forward Contracts: LNG Trip Timecharter Routes

Products	**BLNG1g**	**BLNG2g**	**BLNG3g**
Contract	LNG Freight Route BLNG1g (LNG Fuel)	LNG Freight Route BLNG2g (LNG Fuel)	LNG Freight Route BLNG3g (LNG Fuel)
Final Settlement Price	Arithmetic average of all Baltic's spot assessments for each day that is published in the expiring Contract Month for the relevant underlying product, as provided by Baltic		

Coal Swap Contracts

Product	**Coal Swap**					
Contract	[deleted]	SGX IHS McCloskey Indonesian 4200kc GAR FOB Thermal Coal Swaps	[deleted]	SGX TSI CFR China Premium JM25 Coking Coal Swap	SGX TSI FOB Australia Premium Coking Coal Swap	[deleted]
Final Settlement Price	[deleted]	Cash settlement using the arithmetic average of all publications of the IHS McCloskey Indonesian (4200kc GAR) FOB Marker reference prices in the expiring contract	[deleted]	Cash settlement using the arithmetic average of all publications of the relevant index published by TSI in the expiring	Cash settlement using the arithmetic average of all publications of the relevant index published by TSI in the expiring	[deleted]

		month, rounded to 2 decimal places.		contract month, rounded to 2 decimal places.	contract month, rounded to 2 decimal places.	

Product	**Coal Option**
Underlying Contract	Coal Swap
Option Exercise and Settlement	European Style: An option will be exercised automatically at expiry only if it is in-the-money. Cash Settled: Upon exercise, a call option will have a value equal to final settlement price of the underlying contract minus the strike price, multiplied by the contract size. Upon exercise, a put option will have a value equal to the strike price minus the final settlement price of the underlying contract, multiplied by the contract size.

Cobalt and Lithium Swaps

Product	**COM**	**COH**	**LIC**	**LIH**
Contract	SGX FM Cobalt Metal In-whs Rotterdam (Standard Grade) Swaps	SGX FM Cobalt Hydroxide CIF China Swaps	SGX FM Lithium Carbonate CIF CJK (Battery Grade) Swaps	SGX FM Lithium Hydroxide CIF CJK (Battery Grade) Swaps
Final Settlement Price	Arithmetic average of all the aggregate daily values of the underlying index, as published by Fastmarkets, in the expiring contract month, rounded to 2 decimal places			

Steel Swap Contracts

Product	**Steel Swap Contracts**
Contract	SGX Mysteel Shanghai Rebar (USD) Swap
Final Settlement Price	Cash settlement using the arithmetic average of all the Mysteel Shanghai Rebar (USD) Index reference prices in the expiring contract month (including any Index reference price published on a Saturday or a Sunday, where applicable), rounded to two decimal places.

[deleted]

[deleted]	**[deleted]**	**[deleted]**	**[deleted]**
[deleted]	[deleted]	[deleted]	[deleted]
[deleted]	[deleted]	[deleted]	[deleted]

Added on 27 March 2006 and amended on 1 September 2006, 1 March 2007,1 August 2007, 28 November 2007, 5 May 2008, 17 April 2009, 31 May 2010, 3 November 2010, 28 February 2011, 5 December 2011, 1 February 2012, 1 March 2012, 10 September 2012, 26 November 2012, 21 October 2013, 17 February 2014, 4 August 2014, 2 December 2014, 19 January 2015, 9 March 2015, 31 August 2015, 5 October 2015, 7 December 2015, 25 January 2016, 31 October 2016, 27 March 2017, 22 May 2017, 17 July 2017, 18 September 2017, 18 September 2017, 2 January 2018, 9 April 2018, 21 May 2018, 23 July 2018, 3 December 2018, 29 July 2019, 21 October 2019, 18 November 2019, 24 February 2020, 18 May 2020, 3 August 2020, 28 September 2020, 1 October 2020, 14 December 2020, 1 March 2021, 19 April 2021, 10 May 2021, 31 May 2021, 12 July 2021, 2 August 2021, 24 January 2022, 28 February 2022, 18 July 2022, 26 September 2022 and 21 November 2022.

Appendix 2 — Contracts of Other Relevant Markets Accepted by the Clearing House

Subject to any conditions or limitations set forth in this Rules, the Clearing House shall clear the following Contracts:

1. Designated Futures Contracts pursuant to the Mutual Offset System with the Chicago Mercantile Exchange:

    a. SGX FTSE China H50 Index Futures Contract

    b. SGX FTSE Emerging Market Index Futures Contract

    c. SGX Nikkei Average Stock Index Futures Contract

    d. USD SGX Nikkei Average Stock Index Futures Contract

2. Connect Contracts that are available for trading under the Connect Market:

    a. NSE IFSC Nifty 50 Index Futures

    b. NSE IFSC Nifty Bank Index Futures

    c. NSE IFSC Nifty IT Index Futures

    d. NSE IFSC Nifty Financial Services Index Futures

    e. NSE IFSC Nifty 50 Index Options

    f. NSE IFSC Nifty Bank Index Options

    g. NSE IFSC Nifty IT Index Options

    h. NSE IFSC Nifty Financial Services Index Options

Added on 1 October 2009 and amended on 22 April 2010, 19 July 2010, 5 August 2011, 28 March 2016, 19 September 2016, 4 June 2018, 17 December 2019, 19 April 2021 and 29 July 2022.

Schedules

Schedule A

Chapter 1 — Application of Rules

Rule Violation		Whether composition may be offered	Composition Amount which may be Offered by the Clearing House, where the Clearing House has Determined the Clearing Member to be Liable			Mandatory minimum penalty imposable by the DC
Rule Chapter/Number	Brief Description of Rule		1st Violation	2nd Violation	3rd Violation	
Chapter 1 — Application of Rules						
1.01.5	Clearing Member not to operate an account for a person unless such person has been notified of the provisions under this Rules	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.

Added on 16 May 2011.

Chapter 2 — Clearing Membership

Rule Violation		Whether composition may be offered	Composition Amount which may be Offered by the Clearing House, where the Clearing House has Determined the Clearing Member to be Liable			Mandatory minimum penalty imposable by the DC
Rule Chapter/Number	Brief Description of Rule		1st Violation	2nd Violation	3rd Violation	
Chapter 2 — Clearing Membership						
2.06.1	Clearing Member to comply with the Rules and the criteria and requirements for Clearing Membership	***[Unless otherwise specified in this Schedule]***				
		Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
[deleted]	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]
2.06.1 r/w	General	Compoundable	$2,000 –	$4,000 –	$7,000 –	N.A.

2.02.1.5	Clearing Member's managerial or executive staff to have a high standard of integrity and level of knowledge		$4,000	$7,000	$10,000	
2.06.1 r/w 2.02.1.6	General Clearing Member to have sufficient resources and adequate systems for preserving sound liquidity and financial position.	Not Compoundable	Not Compoundable			$10,000
2.06.1 r/w 2.02.1.7	General Clearing Member to maintain segregated and adequate back office functions	Not Compoundable	Not Compoundable			$10,000
2.06.1 r/w 2.02.1.8	General Clearing Member to satisfy requirements and criteria for Clearing Membership which the Clearing House may prescribe from time to time	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
[deleted]	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]
2.06.1 r/w 2.02A.1.1 & 2.02.1.5	Direct Clearing Member's managerial or executive staff to have a high standard of integrity and level of knowledge	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.

2.06.1 r/w 2.02A.1.1 & 2.02.1.6	Direct Clearing Member to have sufficient resources and adequate systems for preserving sound liquidity and financial position.	Not Compoundable	Not Compoundable			$10,000
2.06.1 r/w 2.02A.1.1 & 2.02.1.7	Direct Clearing Member to maintain segregated and adequate back office functions	Not Compoundable	Not Compoundable			$10,000
2.06.1 r/w 2.02B.1.4	Bank Clearing Member or its parent bank to have base capital or net head office funds of at least S$50,000,000	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
2.06.1 r/w 2.02B.1.6	Bank Clearing Member's managerial or executive staff to have a high standard of integrity and level of knowledge	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
2.06.1 r/w 2.02B.1.7	Bank Clearing Member to have sufficient resources and adequate systems for preserving sound liquidity and financial position.	Not Compoundable	Not Compoundable			$10,000
2.06.1 r/w 2.02B.1.8	Bank Clearing Member to maintain segregated and adequate	Not Compoundable	Not Compoundable			$10,000

	back office functions					
2.06.1 r/w 2.02B.1.9	Bank Clearing Member to satisfy requirements and criteria for such Clearing Membership as the Clearing House may prescribe from time to time	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
2.06.2	Compliance with SFA	Not Compoundable	Not Compoundable			$10,000
2.06A	Clearing Member to inform Clearing House immediately of the stipulated events	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
2.07.1	General Clearing Member incorporated in Singapore to comply with the minimum base capital, Financial, Aggregate Indebtedness Requirement	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
2.07.1A	Direct Clearing Member incorporated in Singapoe to comply with the minimum base capital, Financial, Aggregate Indebtedness Requirement	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
2.07.1B	Bank Clearing Member incorporated in Singapore to comply with	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.

	the minimum base capital and RRA Financial Requirement					
2.07.5	Clearing Member incporporated in Singapore to immediately notify the Clearing House if it fails or becomes aware that it will fail to comply with the minimum capital and financial requirements as prescribed	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
2.07.6	Clearing Member incorporated in Singapore to comply with the directions of the Clearing House where it has failed to comply with the minimum capital and financial requirements	Not Compoundable	Not Compoundable			$10,000
2.07A.1	Clearing Member incoporated in Singapore to immediately notify the Clearing House of the stipulated failures to meet its financial requirements	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
2.07A.2	Clearing Member	Not Compoundable	Not Compoundable			$10,000

	incorporated in Singapore to comply with the directions of the Clearing House where its financial resources have fallen below the specified threshold					
2.07A.3	General Clearing Member and Direct Clearing Member incorporated in Singapore to comply with the direction of the Clearing House where its aggregate indebtedness have exceeded the specified threshold	Not Compoundable	Not Compoundable			$10,000
2.07B.1	Clearing Member incorporated in Singapore to notify the Clearing House if financial resources fall below the specified threshold or of any reportable event in relation to its regulatory capital and liquidity ratios	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
2.07B.3	Clearing Member incorporated in Singapore to comply with the directions of the Clearing	Not Compoundable	Not Compoundable			$10,000

	House where its financial resources have fallen below the specified threshold or that a reportable event in relation to its regulatory capital and liquidity ratios has occurred					
2.08.1	General Clearing Member incorporated outside Singapore to comply with minimum base capital, Financial, Aggregate Indebtedness Requirement	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
2.08.1A	Direct Clearing Member incorporated outside Singapore to comply with minimum base capital, Financial, Aggregate Indebtedness Requirement	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
2.08.1B	Bank Clearing Member incorporated outside Singapore to comply with the minimum base capital and RRA Financial Requirement	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
2.08.1BA	Bank Clearing	Not	Not Compoundable			$10,000

	Member incorporated outside Singapore to comply with Liquidity Resource Requirement	Compoundable				
2.08.5	Clearing Member incorporated outside Singapore to immediately notify the Clearing House if it fails or becomes aware that it will fail to meet the minimum capital and financial requirements as prescribed	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
2.08.6	Clearing Member incorporated outside Singapore to comply with the directions of the Clearing House where a Clearing Member has failed to comply with the minimum capital and financial requirements	Not Compoundable	Not Compoundable			$10,000
2.08A.1	Clearing Member incorporated outside Singapore to immediately notify the Clearing House of the stipulated	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.

	failures to meet its financial requirements					
2.08A.2	Clearing Member incorporated outside Singapore to comply with the directions of the Clearing House where its adjusted net head office funds have fallen below the specified threshold	Not Compoundable	Not Compoundable			$10,000
2.08A.3	Clearing Member incorporated outside Singapore to comply with the directions of the Clearing House where its aggregate indebtedness has exceeded the specified threshold	Not Compoundable	Not Compoundable			$10,000
2.08B.1	Clearing Member incorporated outside Singapore to immediately notify the Clearing House if its financial resources have fallen below the specified threshold or of any reportable event in relation to its regulatory capital and liquidity ratios	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.

2.08B.3	Clearing Member incorporated outside Singapore to comply with the directions of the Clearing House where its adjusted net head office funds or cash and/or acceptable government securities deposited with the Clearing House or CDP have fallen below the specified threshold or that a reportable event in relation to regulatory capital and liquidity ratios has occurred	Not Compoundable	Not Compoundable			$10,000
2.09.1	General Clearing Member incorporated in Singapore to maintain the stipulated special reserve fund	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
2.09.2	Special reserve fund not to be available for the declaration of dividends without the approval of the Clearing House	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
2.10.1	General Clearing Member	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.

	incorporated outside Singapore to maintain the stipulated special reserve fund					
2.10.2	Special reserve fund not to be available for the declaration of dividends without the approval of the Clearing House	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
2.11.1.1	Clearing Member incorporated in Singapore, except in the case of Bank Clearing Member, not to reduce paid-up capital without prior approval of the Clearing House	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
2.11.2.1	Clearing Member incorporated in Singapore, except in the case of a Bank Clearing Member, to immediately notify the Clearing House prior to the date of issue of any preference share	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
2.11.2.2	Clearing Member incorporated in Singapore, except in the case of Bank Clearing Member, not	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.

	to redeem any redeemable preference share unless the Clearing Member complies with conditions set out					
2.11.3.1	Clearing Member incorporated in Singapore to immediately notify the Clearing House when it draws down a qualifying subordinated loan no later than the date of draw down	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
2.11.3.2	Clearing Member incorporated in Singapore not to repay, whether in part or in full any subordinated loan principal before the maturity date without the prior approval of the Clearing House or any subordinated loan principal that has matured subject to conditions set out	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
2.11.4.1	Clearing Member, except for a Bank Clearing Member or a Remote Member not to	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.

	make any unsecured loan or advance, pay any dividend or director's fees or increase any director's remuneration without the prior approval of the Clearing House, unless the stipulated conditions are met. Remote Clearing Member to notify the Clearing House immediately of any action taken that has or may have a financial or capital impact and is required to be reported to the Relevant Regulatory Authority, or in relation to the events set out in Rule 2.11.4.1.					
2.11.5.1	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]
2.13.1.1	Clearing Member to maintain bank accounts in the currencies that may incur settlement and with banks acceptable to the Clearing House	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
2.13.1.2	Clearing Member to clear Non-Relevant	Not Compoundable	Not Compoundable			$10,000

	Market Contracts and/or Contracts made on any Relevant Market by such members of the Relevant Market with whom it has agreed to clear					
2.13.1.3	Clearing Member not to carry any account or clear any Contract for the benefit of an employee or officer of another Clearing Member without prior approval of the other Clearing Member	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
2.13.1.4	Clearing Member not to provide funds, credit or finance any other Clearing Member or member of a Relevant Market without the prior approval of the Clearing House	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
2.13.1.5	Clearing Member to provide and maintain Clearing Fund Deposit in addition to any security deposit requirement	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.

	that may be required					
2.13.1.7	Clearing Member to clear Contracts made on any Relevant Market by any person through any approved electronic trading terminal or facilities provided to it or to such members of the Relevant Market to whom it shall have agreed to provide clearing services	Not Compoundable	Not Compoundable			$10,000
2.13.1.8	Clearing Member to have in place sufficient resources and establish and maintain adequate internal control and risk management system for its businesses	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
2.13.1.9	Clearing Member to comply with such other requirements as may be prescribed by the Clearing House from time to time	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
2.13A.1	Clearing Member to assess business	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.

	and operational risk and maintain adequate business continuity arrangements					
2.13A.2	Clearing Member to document its business continuity arrangements in a business continuity plan	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
2.13A.3	Clearing Member to demonstrate awareness of risks, mitigating measures and state of readiness by way of attestation to the Board of Directors	Compoundable	$500	$1,000	$2,000	N.A.
2.13A.4	Clearing Member to review and test its business continuity plan regularly	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
2.13A.5	Clearing Member to appoint emergency contact persons and furnish the contact information to the Clearing House	Compoundable	$500	$1,000	$2,000	N.A.
	Clearing Member's emergency contact persons to be	Compoundable	$500	$1,000	$2,000	N.A.

	contactable at all times					
	Clearing Member to notify Clearing House in the event of emergencies	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
2.14.1	Clearing Member to prepare, maintain and keep current books and records required by this Rules and SFA, where they shall be open to inspection and promptly provided to the Clearing House upon request	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
2.14.2	Clearing Member to file any information requested by the Clearing House within the time period specified in the request	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
2.14.3	Clearing Member to maintain the ability to provide, in an acceptable form, a complete set of equity system reports to the Clearing House upon the Clearing House's request	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
2.14.3A	Clearing	Compoundable	$2,000 –	$4,000 –	$7,000 –	N.A.

	Member to submit to the Clearing House a report on all its credit facilities with its financial institutions, any change to its credit facilities immediately upon such change, and the identities of the owners or controlling parties for any House Account or Customer Account		$4,000	$7,000	$10,000	
2.14.4	Clearing Member to notify Clearing House when it fails to make or keep current the books and records required by the Clearing House and shall thereafter comply with all orders of the Clearing House	Not Compoundable	Not Compoundable			$10,000
2.15.1	General Clearing Member to furnish the required statutory audit report in accordance with the specified timelines	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
2.15.1A	Direct Clearing Member to furnish thre required audit	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.

	report in accordance with the specified timelines					
2.15.1B	Bank Clearing Member to furnish the required audit report in accordance with the specified timelines	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
2.15.2	General Clearing Member or Bank Clearing Member to cause its internal auditors to conduct the required internal audit and submit a report	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
2.17.1.1	General Clearing Member not to grant any unsecured advance, loan or credit facility to any of its directors or their connected persons	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
2.17.1.2	General Clearing Member not to grant any unsecured advance, loan or credit facility to its officers or its employees which exceeds one year's	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.

	emoluments of the person					
2.18.1.1	General Clearing Member or Bank Clearing Member to inform the Clearing House of such information as the Clearing House requires to discharge its segregation obligations under the SFA or enable it to issue the verification of margin funds statement to the Authority	Not Compoundable	Not Compoundable			$10,000
2.18.3	Clearing Member not to fix the Clearing House with a notice of fact or claim in respect of any Third Party	Not Compoundable	Not Compoundable			$10,000
2.19.1	Clearing Member to provide Clearing House with the required information in relation to Ominibus Accounts	Compoundable	$500	$1,000	$2,000	N.A.
2.19.3	Clearing Member to ensure that the Omnibus Account is operated at all times in accordance with the Rules	***[Unless otherwise specified in this Schedule]***				
		Compoundable	$500	$1,000	$2,000	N.A.
2.19.4	Clearing	Compoundable	$2,000 –	$4,000 –	$7,000 –	N.A.

	Member to notify Clearing House of any failure by the Omnibus Account Holder to disclose its gross long and short positions		$4,000	$7,000	$10,000	
	Clearing Member to comply with the orders of the Clearing House if the Omnibus Account Holder fails to make the required disclosure	Not Compoundable	Not Compoundable			$10,000
	Clearing Member to ensure that Omnibus Account Holder is aware of this Rule.	Compoundable	$500	$1,000	$2,000	N.A.
2.20.3	Clearing Member to ensure compliance with respective position limits prescribed by Clearing House	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
2.20.4	Clearing Member to furnish such documents as the Clearing House may require where the aggregate maintenance margins exceed such relevant amount as may be prescribed	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.

	by the Clearing House					
2.20A.2	Clearing Member to comply with enforcement instructions upon notification by Clearing House	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
2.20B	Clearing Member to withold profits from overtrading upon notification by the Clearing House	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
2.20C.1	Clearing Member to provide information as and when requested by Clearing House	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
2.21.1	Clearing Member to ensure that its Memorandum and Articles of Association conform to this Rules	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
2.22.1.1	Clearing Member to notify the Clearing House of any change in ownership	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
2.22.1.2	Clearing Member to notify the Clearing House of any change in circumstances which may alter the control of itself	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.

2.22.1.3	Clearing Member to notify the Clearing House of any change in director	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
2.22.1.4	Clearing Member to notify the Clearing House of any change in name	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
2.22.1.5	Clearing Member to notify the Clearing House of change to constitutive documents	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
2.22.1.6	Clearing Member to notify the Clearing House of the death or bankruptcy of a director	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
2.22.1.7	Clearing Member to notify the Clearing House of the engagement or involvement in any new business or change in business	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
2.22.1.8	Clearing Member to notify Clearing House of any change in senior management	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
2.23.1.1	Clearing Member to notify the Cleairng House of the stipulated	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.

	reduction in capital within the timelines					
2.23.1.2	Clearing Member to immediately notify the Clearing House of any under-segregation	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
2.23.1.3	Clearing Member to notify the Clearing House of the stipulated reduction in capital within the timelines	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
2.24	General Clearing Member or Direct Clearing Member not to appoint CEO, Deputy CEO unless the prior written approval of the Clearing House is obtained	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
2.25	Clearing Member to inform and consult the Clearing House at least 30 days prior to any general meeting where new auditors are to be appointed	Compoundable	$500	$1,000	$2,000	N.A.
2.26.1	Clearing Member to submit to the Clearing House such financial statements and in accordance with such	Not Compoundable	Not Compoundable			$10,000

	timelines as required by the Clearing House					
2.26.2	Clearing Member to keep records of formal computations of capital and financial requirements	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
2.27	Clearing Member to notify the Clearing House of undermargined Customer Accounts and House Accounts	Not Compoundable	Not Compoundable			$10,000
2.28.2	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]
2.28.2B	Clearing Member not to increase its positions in any Contract during its Notice Period unless permitted by the Clearing House or under this Rules	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
2.28A.1.1	Clearing Member to inform the Clearing House of the clearing arrangement with a Trading Member	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
	Clearing Member to provide such details as requested by the Clearing House	Not Compoundable	Not Compoundable			$10,000

2.28A.1.2	Clearing Member to pay such administrative fees as the Clearing House may levy	Compoundable	$500	$1,000	$2,000	N.A.
2.28A.1.3	Clearing Member to have in place adequate internal control measures and risk management systems to monitor the Trading Member's trades	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
2.28A.1.4	Clearing Member to enter into a written agreement with the Trading Member setting out the terms and conditions governing their relationship	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
2.28A.1.5	Clearing Member to inform the Clearing House if it believes that a Trading Member whom it has a clearing arrangement with has defaulted or may default	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
2.28A.1.6	Clearing Member to have proper separation of	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.

	front and back office functions					
2.28B	Clearing Member not to clear any transactions where both sides of the trade belong to the same person.	Not Compoundable	Not Compoundable			$10,000
2.30.1A	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]
2.31.1.1	[deleted]	[deleted]	[deleted]			[deleted]
2.33.2	[deleted]	[deleted]	[deleted]			[deleted]
2.35.2	Clearing Member to notify relevant parties in an event of Force Majeure	Not Compoundable	Not Compoundable			$10,000
2.35A.5	[deleted]	[deleted]	[deleted]			[deleted]
2.37.1	Clearing Member to ensure that agreements with Third Parties provide that all Contracts are subject to the Rules, SFA and SFR and that this is agreed upon.	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.

Added on 16 May 2011, amended on 7 August 2012, 8 November 2012, 15 March 2013, 19 September 2016, 12 November 2018, 22 April 2019, 17 July 2019 and 3 August 2020.

Chapter 4 — Enforcement of Rules

Rule Violation		**Whether composition may be offered**	**Composition Amount which may be Offered by the Clearing House, where the Clearing House has Determined the Clearing Member to be Liable**			**Mandatory minimum penalty imposable by the DC**
Rule Chapter/Number	**Brief Description of Rule**		**1st Violation**	**2nd Violation**	**3rd Violation**	

Chapter 4 — Enforcement of Rules						
4.01A.3	Clearing Member to cooperate with Clearing House investigtions	Not Compoundable	Not Compoundable			$10,000
4.01A.4	Clearing Member, director, officer, employee not to wilfully make or furnish false information to Clearing House	Not Compoundable	Not Compoundable			$10,000
4.01B.2	Clearing Member, director, officer, employee to give Clearing House access to information, books and records	Not Compoundable	Not Compoundable			$10,000
4.01B.4	Clearing Member to pay fees for inspection by Exchange	Compoundable	$500	$1,000	$2,000	N.A.
4.04A.4.2	Clearing Member to give the Clearing House a written undertaking not to disclose information received in relation to the charge	Not Compoundable	Not Compoundable			$10,000
4.04A.4.3	Clearing Member not to breach	Not Compoundable	Not Compoundable			$10,000

	written undertaking not to disclose information received in relation to the charge			
4.04A.5.2	Clearing Member not to disclose information received in relation to the appeal	Not Compoundable	Not Compoundable	$10,000
4.12.1.1	Clearing Member not to be guilty of fraud or act of bad faith or dishonest conduct	Not Compoundable	Not Compoundable	$10,000
4.12.1.2	Clearing Member not to make a material misstatement to the Clearing House, SGX RegCo, any committee, or theit respective employees and members	Not Compoundable	Not Compoundable	$20,000
4.12.1.3	Clearing Member to take steps to prevent further Contracts having to be cleared by it after its insolvency	Not Compoundable	Not Compoundable	$10,000
4.12.1.4	Clearing Member not to refuse to appear before the Clearing	Not Compoundable	Not Compoundable	$10,000

	House, in connection with any investigation, or any committee at a duly convened hearing, or in connection with any investigation, refuse to fully answer all questions or produce all books and records at any audit, hearing or investigation, or give false testimony, or fail to produce any books or records requested by the Clearing House staff in connection with an investigation etc			
4.12.1.5	Clearing Member not to make use of or reveal any confidential information obtained by reason of participating in any investigative proceeding or hearing	Not Compoundable	Not Compoundable	$10,000
4.12.1.6	Clearing Member to maintain minimum	Not Compoundable	Not Compoundable	$10,000

	financial requirements and the required Clearing Fund Deposit			
4.12.1.7	Clearing Member not to commit an act which is substantially detrimental to the interests of the Clearing House	Not Compoundable	Not Compoundable	$10,000
4.12.1.8	Clearing Member not to refuse to comply with a final arbitration award	Not Compoundable	Not Compoundable	$10,000
4.12.1.9	Clearing Member not to refuse, after hearing, to comply with an order of any hearing committee	Not Compoundable	Not Compoundable	$10,000
4.12.1.10	Clearing Member not to violate any provision under this Rules which	***[Unless otherwise specified in this Schedule]***		
		Not Compoundable	Not Compoundable	$10,000
4.12.1.11	Clearing Member to comply with any written directive from the Clearing House or any other officer or committee of the Clearing House	Not Compoundable	Not Compoundable	$10,000
4.12.1.12	Clearing	Not	Not Compoundable	$10,000

	Member to maintain and keep complete and accurate records in accordance with the SFA and/or SFR	Compoundable				
	Clearing Member to maintain and keep complete and accurate records in accordance with this Rules	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	$10,000
4.12.2.1	Clearing Member not to make false or misleading entry in the Documents	Not Compoundable	Not Compoundable			$10,000
4.12.2.2	Clearing Member not to omit from making a material entry in any of the Documents	Not Compoundable	Not Compoundable			$10,000
4.12.2.3	Clearing Member not to alter or destroy any of the Documents without a valid reason	Not Compoundable	Not Compoundable			$10,000
4.13.1	Clearing Member not to be guilty of dishonourable conduct	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
4.13.2	Clearing Member not to make a false entry on clearing sheet	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
4.13.3	Clearing	Compoundable	$500	$1,000	$2,000	N.A.

	Member not to fail to answer Customer's complaints promptly					
4.13.5	Clearing Member not to make mis-statement to Clearing House, SGX RegCo, any committee, or their respective employees and members	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.

Added on 16 May 2011, amended on 15 September 2017 and 12 November 2018.

Chapter 5 — Arbitration

Rule Violation		Whether composition may be offered	Composition Amount which may be Offered by the Clearing House, where the Clearing House has Determined the Clearing Member to be Liable			Mandatory minimum penalty imposable by the DC
Rule Chapter/Number	Brief Description of Rule		1st Violation	2nd Violation	3rd Violation	
Chapter 5 — Arbitration						
5.01.2.3	Clearing Member not to fail or refuse to arbitrate or settle dispute	Not Compoundable	Not Compoundable			$10,000
5.01.2.4	Clearing Members to cause their Sellers or Buyers to agree to arbitrate if there is dispute as a result of or	Not Compoundable	Not Compoundable			$10,000

	arising in connection with a deliverable commodity futures contract			

Added on 16 May 2011.

Chapter 6 — Delivery and Related

Rule Violation		Whether composition may be offered	Composition Amount which may be Offered by the Clearing House, where the Clearing House has Determined the Clearing Member to be Liable			Mandatory minimum penalty imposable by the DC
Rule Chapter/Number	Brief Description of Rule		1st Violation	2nd Violation	3rd Violation	
Chapter 6 — Delivery and Related						
6.02A.1	Clearing Member to cause compliance with relevant delivery obligations	Not Compoundable	Not Compoundable			$10,000
6.02A.2	Clearing Member to guarantee and assume complete responsibility for performance of all Delivery Obligations	Not Compoundable	Not Compoundable			$10,000
6.02A.10	Clearing Member to notify the Clearing House of an occurrence of Force Majeure relevant to the performance of Delivery Obligations	Not Compoundable	Not Compoundable			$10,000
6.03.1	Clearing Member not to	Not Compoundable	Not Compoundable			$10,000

	default on delivery					
6.04.1	Clearing Member to require evidence from its Seller or Buyer that all open positions which are not offset on the Last Trading Day will be completed by delivery	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
6.04.2	Clearing Member to liquidate open positions on or before LTD if the Seller or Buyer fails to provide evidence that all open positions wil be completed by delivery	Not Compoundable	Not Compoundable			$10,000
6.07.1	Clearing Member to post with Clearing House as escrow agent a Performance Deposit or other payment which may be prescribed under Contract Specifications as security for benefit of Buyer or Seller who is counterparty to delivery contract	Not Compoundable	Not Compoundable			$10,000
6.07.2	Clearing Member to collect Performance Deposits or	Not Compoundable	Not Compoundable			$10,000

	escrow assets within such time as prescribed in the Contract Specifications or by the Clearing House					
6.07.3	Clearing Member not to grant any advance, loan, credit facility to Seller/Buyer for purpose of posting Performance Deposits/Escrow Assets	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
6.07A	Clearing Member to perform Delivery Obligations through the Facilitator Agent as prescribed by the Clearing House.	Not Compoundable	Not Compoundable			$10,000

Added on 16 May 2011.

Chapter 7 — Clearing and Margins

Rule Violation		Whether composition may be offered	Composition Amount which may be Offered by the Clearing House, where the Clearing House has Determined the Clearing Member to be Liable			Mandatory minimum penalty imposable by the DC
Rule Chapter/Number	Brief Description of Rule		1st Violation	2nd Violation	3rd Violation	
Chapter 7 — Clearing and Margins						
7.02A.2	Clearing Member to comply and ensure compliance with the requirements	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.

	and procedures in relation to the registration of Non-Relevant Market Transactions, NLT transactions, EFP transactions and EFS transactions.					
7.02A.2.2	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]
7.02A.2.3	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]
7.02A.2.4	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]
7.02A.2.5	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]
7.02A.2.6	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]
7.02A.2.7	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]
7.02A.2.8	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]
7.02AA.2.2	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]
7.02AA.2.3	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]
7.02AA.2.4	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]
7.03.1.3	[deleted]	[deleted]	[deleted]			[deleted]
7.03.1.4	[deleted]	[deleted]	[deleted]			[deleted]
7.03.12.1	[deleted]	[deleted]	[deleted]			[deleted]
7.04A	Clearing Member to comply with registration requirements of such NLT, EFP or EFS as set forth in the rules.	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
7.04.5E	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]
7.08.1	Clearing Member not to place any false or inaccurate entries on any other submission or	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.

	otherwise provide false or inaccurate information in any document submitted to the Clearing House for clearing purposes					
7.09	Clearing Member to submit position change sheets to the Clearing House each trading day by the time specified by the Clearing House	Compoundable	$500	$1,000	$2,000	N.A.
7.10.2	Clearing Member to notify the Clearing House in writing and no later than 5 pm on the following Business Day if it believes that there is any error in the recap ledger (produced by Clearing House)	Not Compoundable	Not Compoundable			$10,000
7.14.1	Clearing Member to deposit additional collateral to cover any shortage in its cash margin held	Not Compoundable	Not Compoundable			$30,000

	with the Clearing House					
7.15.1	[deleted]	[deleted]	[deleted]			[deleted]
7.15A.2	[deleted]	[deleted]	[deleted]			[deleted]
7.16	Clearing Member to comply with requirements in relation to reports of large positions	Not Compoundable	Not Compoundable			$10,000
7.17.1	Clearing Member not to carry speculative long and short positions in the same Commodity for the same Contract Month	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
7.20.1	Clearing Member to meet margin requirements prescribed by the Clearing House	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
7.03A.10	Clearing Member to provide the Clearing House with the required regulatory information	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
7.03A.6.3	Clearing Member to deposit such Collateral as may be required by the Clearing House by reason of any revaluation	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.

7.22	Clearing Member to comply with requirements in relation to margins of Third Party	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
7.22A.1	Clearing Member to grant margin credit only if the specified conditions are met.	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
7.22A.1.8	Clearing Member to notify Clearing House if it offers inter-exchange cross margining arrangement to Third Parties	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
7.26.1	Clearing Member to pay fines for errors, delays and omissions	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
7.27.1	Subject to approval of the Clearing House, trades to be transferred to the books of another Clearing Member only in the specified circumstances	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
7.27.2	Except with approval of Clearing House, existing	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.

	trades on books of Clearing Members not to be transferred to books of another Clearing Member					
7.27.3	Relevant Trades to be transferred only if the specified conditions are met.	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
7.27.4.4	Clearing Member to act according to directions of Clearing House for transfer and placement of Relevant Trades	Not Compoundable	Not Compoundable			$10,000
7.27.6	Clearing Member to report to the Clearing House all transfers and placements made and to maintain full and complete record of all transactions	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
7.27.7	Clearing Member to furnish such margins as the Clearing House may require	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
7.28.2	Clearing Member to report to the Clearing House all	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.

	inter-clearing house transfers of positions and maintain a full and complete record of the transfers					

Added on 16 May 2011, amended on 7 August 2012, 8 November 2012, 29 July 2013, 19 September 2016 and 17 July 2019.

Chapter 7A — Suspension and Default

Rule Violation		Whether composition may be offered	Composition Amount which may be Offered by the Clearing House, where the Clearing House has Determined the Clearing Member to be Liable			Mandatory minimum penalty imposable by the DC
Rule Chapter/Number	Brief Description of Rule		1st Violation	2nd Violation	3rd Violation	
Chapter 7A — Suspension and Default						
7A.01.2	Clearing Member to comply with conditions and requirements imposed by the Clearing House if its activities are restricted	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
7A.01.4	Clearing Member to notify Clearing House upon the occurrence of any of the events stated in Rule 7A.01.1.	Compoundable	$2,000 – $4,000	$4,000 – $7,000	$7,000 – $10,000	N.A.
[deleted]	[deleted]	[deleted]	[deleted]			[deleted]
7A.02.2.1	Clearing Member that has defaulted upon its obligation to	Not Compoundable	Not Compoundable			$10,000

	the Clearing House, or has been suspended, to cooperate with the Clearing House and non-defaulting Clearing Members in respect of actions which the Clearing House may take under Rule 7A.02.1.			
7A.02.2.2	Required Participant to participate in such auction stated in Rule 7A.02.1.3.c, and comply with requirements and procedures as prescribed by the Clearing House in relation to such auctions.	Not Compoundable	Not Compoundable	$10,000
7A.04.2	Suspended or Expelled Clearing Member not to take on or clear new Contracts	Not Compoundable	Not Compoundable	$10,000
7A.05.1.4	Clearing Member to make up deficiencies in Clearing Fund Deposit resulting from applications by Clearing House on default by	Not Compoundable	Not Compoundable	$10,000

	Clearing Member			
7A.05.1.5	Clearing Member not to take any action to interfere with ability of Clearing House to apply the Clearing Fund Deposit	Not Compoundable	Not Compoundable	$30,000
7A.06.2.1	Clearing Member to place required Clearing Fund Deposit with the Clearing House	Not Compoundable	Not Compoundable	$10,000
[Deleted]	[Deleted]	[Deleted]	[Deleted]	[Deleted]
7A.06.3.3	Clearing Member to immediately furnish Further Assessment Amount prior to the close of business on the Business Day immediately following the call	Not Compoundable	Not Compoundable	$10,000
7A.06.8.1	Clearing Member to make good any deficiency in Clearing Fund Deposits prior to close of business on Business Day immediately following such application	Not Compoundable	Not Compoundable	$10,000
7A.06A.1.3	Clearing Member participating in Connect	Not Compoundable	Not Compoundable	$10,000

	Contracts to place Clearing Member Connect Layer Contribution Requirement with the Clearing House			
7A.07.5	Clearing Member to pay Termination Amount (if negative) to Clearing House	Not Compoundable	Not Compoundable	$10,000

Added on 7 August 2012, amended on 30 June 2014, 12 November 2018, 17 July 2019 and 29 July 2022.