

## **Chapter 1**

### **Definitions and Interpretation**

**101. Definitions**

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## 101. Definitions

In these Rules, the following words and expressions shall, unless the context otherwise requires, bear the meanings set out below.

**“Account Trading Limit”** shall have the meaning set out in Rule 711.1.

**“Accredited Investor”** means

- (a) an individual:
  - (i) whose net personal assets exceed in value the minimum amount of S\$2 million (or its equivalent in a foreign currency); or
  - (ii) whose income in the preceding 12 months is not less than S\$300,000 (or its equivalent in a foreign currency);
- (b) a corporation with net assets exceeding S\$10 million in value (or its equivalent in a foreign currency), as determined by:
  - (A) the most recent audited balance-sheet of the corporation; or
  - (B) where the corporation is not required to prepare audited accounts regularly, a balance-sheet of the corporation certified by the corporation as giving a true and fair view of the state of affairs of the corporation as of the date of the balance-sheet, which date shall be within the preceding 12 months;
- (c) the trustee of a trust of which all property and rights of any kind whatsoever held on trust for the beneficiaries of the trust exceed S\$10 million in value (or its equivalent in a foreign currency);
- (d) an entity (other than a corporation) with net assets exceeding S\$10 million in value (or its equivalent in a foreign currency);
- (e) a partnership (other than a limited liability partnership within the meaning of the Limited Liability Partnerships Act (Chapter 163A of Singapore) in which each partner is an Accredited Investor; or
- (f) a corporation, the sole business of which is to hold investments and the entire share capital of which is owned by one or more persons, each of whom is an Accredited Investor.

**“Adverse Event”** means the occurrence in relation to a Member of any of the following events:

- a) the Member fails to perform (or appears to the Exchange and/or the Book Depository unable, or likely to become unable, to perform) any obligation it owes to the Exchange and/or the Book Depository including under these Rules or under any Contract;
- b) the Exchange and/or the Book Depository determines that the financial condition of the Member is such that, in the reasonable opinion of the Exchange and/or the Book Depository, the Member no longer satisfies the admission criteria or the Approval Conditions, or the continuing use of Exchange Trading System by the Member would result in an increased level of risk or uncertainty for the Exchange and/or the Book Depository and/or other Members;
- c) the Exchange and/or the Book Depository have reasonable grounds to believe that the Member or any of its related entities is in or is approaching significant financial or operational difficulty or the Member otherwise will be unable to perform its obligations

to the Exchange and/or the Book Depository or to its Customers or other Members. For this purpose, a related entity of a Member which is a corporation would include the subsidiary, holding corporation or sister subsidiary of the Member, and a related entity of a Member which is a partnership would include an entity which the Member is able to control, or which controls the Member, and sister entities of the Member;

- d) the Member is dissolved or (in the case where the Member is a registered corporation) is struck off the register of corporations, whether pursuant to a consolidation, amalgamation or merger or otherwise, unless such consolidation, amalgamation or merger is on terms previously approved by the Exchange and the Book Depository;
- e) the Member suspends, or ceases to carry on all or substantially all of its business;
- f) the Member admits in writing its inability to pay any debt, or it appears to the Exchange and/or the Book Depository that the Member is unable to pay its debts as they fall due or that the value of its assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities;
- g) the Member stops, or suspends, payment of all or any part of its indebtedness or commences negotiations with any one or more of its creditors with a view to the general readjustment or rescheduling of all or any part of its indebtedness or the making of a general assignment for the benefit of or composition with its creditors or if a moratorium is agreed, declared or otherwise obtained in respect of, or affecting, all or any part of its indebtedness;
- h) any distress, execution or other process is levied or enforced upon or against any property of the Member where the value of the property involved exceeds 20% of its Net Capital (as defined in Rule 406.1) or base capital (as defined in Rule 402.10);
- i) the Member has (i) entered into or initiated or has initiated against it any process for any scheme of arrangement or compromise, (ii) initiated or has initiated against it any corporate or individual voluntary arrangements or entered into any composition agreement with its creditors, (iii) been declared insolvent or bankrupt, (iv) commenced or been the subject of any winding-up or bankruptcy procedure whatsoever or any debt repayment scheme, (v) requested or been subject to the appointment of, or any application being made for the appointment of, the official assignee, any trustee in bankruptcy, receiver (including a receiver and manager), trustee, judicial manager, liquidator, statutory manager, scheme manager or administrator, sequestrator, administrative receiver, administrator or similar officer, (vi) been in a position where it is otherwise insolvent or has become insolvent by reason of the entering into or completion of the transactions contemplated by the Documents (the word "insolvent" having the meaning under Section 100(4) of the Bankruptcy Act, Chapter 20 of Singapore (the "**Bankruptcy Act**")), (vii) been unable to pay its debts or has become unable to pay its debts by reason of the entering into or the completion of the transactions contemplated by the Documents (the phrase "being unable to pay its debts" being within the meaning of sections 254(1)(e) and 254(2) of the Companies Act, Chapter 50 of Singapore (the "**Companies Act**")), (viii) initiated or has initiated against it an application for administration order or direction under law (including pursuant to Order 80 of the Rules of Court) in connection with the termination of a trust or the insolvency or inability to pay in relation to the relevant trusts to which any party

- is trustee, or (ix) been subject to any event similar to any of the above under the laws of any jurisdiction;
- j) the Member is in material breach of the rules or terms of membership of any exchange, or is suspended or expelled from membership of any exchange, or of any other recognised, designated or overseas investment exchange or clearing house;
  - k) the Member is in material breach of the requirements (whether or not having the force of law) of its regulator or of any other regulatory authority, or the licence, consent, registration, approval, authorisation or regulated status of the Member by any such regulatory authority, is suspended or withdrawn;
  - l) any regulatory authority takes or threatens to take action against or in respect of the Member under any law or regulation;
  - m) the Exchange and/or the Book Depository have reasonable grounds to believe that the suspension or termination of the Member's membership is necessary either for the protection of the Exchange and/or the Book Depository or for any of the other Members or to ensure the orderly operation, security, integrity and/or reputation of the Electronic Trading System;
  - n) a Payment Default or a Delivery Default on the part of the Member; and
  - o) an event specified in Rule 309.2 or Rule 310.1.

**"Affected Contracts"** refers to the sale and/or purchase Contracts of Affected Members.

**"Affected Members"** refers to those Members whose Contracts cannot be or have not been settled by reason of or in connection with a Payment Default and/or a Delivery Default, as the case may be.

**"Aggregate Settlement Risk Position"** shall have the meaning set out in Rule 711.5.

**"Appeals Committee"** refers to the Appeals Committee of the Exchange and/or the Book Depository.

**"Approval Conditions"** shall have the meaning set out in Rule 302.4.

**"Approved Supplier"** means a Member who acts as a supplier of Physical Diamonds on the Exchange Trading System and who is admitted as an Approved Supplier under these Rules.

**"Asking Price"** means the Vendor's asking price for a Listed Product.

**"Bid Price"** means the Purchaser's offer price for a Listed Product.

**"Board"** refers to the Board of Directors of the Exchange and/or the Board of Directors of the Book Depository, as the context so requires.

**"Book Depository"** means SDiX Depository Pte Ltd.

**"Book Depository Register"** shall have the meaning set out in Rule 4.1 of the Depository Account Rules.

**"Broker Member"** means a Member who is admitted as a Broker Member under these Rules.

**"Business Day"** means a day (other than a Saturday or Sunday) on which banks are open for general business (including dealings in foreign exchange and foreign currency deposits)

in Singapore and (i) (in relation to any date for payment or purchase of a currency) in the principal financial centre of the country of that currency and (ii) in relation to any obligation by an Approved Supplier to transfer Physical Diamond from a Vault outside Singapore to the Vault in Singapore, in the country where the Vault outside Singapore is located.

**“Buying Member Transaction”** shall have the meaning set out in Rule 804.2(b).

**“capital markets products”** shall have the meaning given to it in section 2(1) of the SFA.

**“Circular”** refers to a circular issued from time to time by the Exchange and/or the Book Depository, as the same may be amended, modified, supplemented or replaced from time to time.

**“commodity”** shall have the meaning given to it in section 2(1) of the SFA.

**“Consigning Approved Supplier”** shall have the meaning set out in Rule 902.2.

**“Consignment”** refers to the delivery of Physical Diamond into an Approved Vault for sale on the Exchange Trading System in the form of a Product, and **“Consign”** and **“Consigned”** shall be construed accordingly.

**“Continuous Matching”** means Orders from Purchasers and Vendors being matched on a continuous basis during a Trading Period based on price and time priority.

**“Continuous Matching Algorithm”** shall have the meaning set out in paragraph (4) of Attachment A of Chapter 7.

**“Contract”** refers to an agreement to purchase or sell a Product and to settle such purchase or sale pursuant to these Rules and the Depository Account Rules. For the avoidance of doubt, a **“Contract”** shall comprise an Original Contract, a Novated Contract, a Re-Novated Contract, or such other re-novated Contract as contemplated in Rule 807.3.

**“Customer”** refers to a customer of a Broker Member for the benefit of whom the Broker Member transacts on the Exchange Trading System as principal and whose account is carried on the books of a Broker Member, other than the related or associated corporations and/or entities, Registered Persons, representatives, employees, directors, officers and partners of the Broker Member unless specifically provided for otherwise in the Rule.

**“Customer Account”** means an account carried on the books of a Broker Member for a Customer.

**“Customer Depository Account”** means a Depository Account opened and maintained by a Broker Member as principal for the benefit of its Customer(s).

**“Default Event”** means a Payment Default or a Delivery Default.

**“Delivery Account”** shall have the meaning set out in Rule 806.1(a).

**“Delivery Default”** shall have the meaning set out in Rule 806.1(h).

**“Depository Account”** refers to an account of a Member maintained with the Book Depository.

**“Depository Account Rules”** refers to the rules of the Book Depository, as the same may be amended, modified, supplemented or replaced from time to time, which govern the relationship between a Member and the Book Depository for the accounts held by the Member with the Book Depository for the holding and recording of Physical Diamonds Consigned by the Member or for the recording of Products sold or purchased by the Member on the Exchange Trading System.

“**Diamond Basket**” means a basket of individual diamonds which conforms to a particular Product Specifications.

“**Disciplinary Committee**” refers to the Disciplinary Committee of the Exchange and/or the Book Depository.

“**Exchange**” means Singapore Diamond Investment Exchange Pte Ltd.

“**Exchange Rules**” shall mean the trading rules and settlement rules of the Exchange and/or the Book Depository pursuant to which Members transact on the Exchange Trading System, and settle such transactions, as the same may be amended, modified, supplemented or replaced from time to time.

“**Exchange Systems**” means any systems used or operated by the Exchange (including the Exchange Trading System and any pre-trade, trade or post-trade systems, operated by the Exchange in connection with the Markets), Book Depository or Physical Depository.

“**Exchange Trading System**” means the trading system on which Members enter into Contracts for the purchase or sale of Products.

“**Expert Investor**” means:

- (a) a person whose business involves the acquisition and disposal, or the holding, of capital markets products or commodity, whether as principal or agent; or
- (b) such other person as the Exchange may prescribe.

“**Force Majeure Events**” means events beyond the reasonable control of the affected party, including but not limited to any breakdown, malfunction or failure of transmission or power, communication or computer facilities or systems, strikes or industrial actions, lockout, the failure of any agent (such as an agent, custodian, sub-custodian, carrier, delivery facility) for any reason to perform its obligations, unavailability of any energy source or utility, suspension or absence of quotation, war, invasion, act of foreign enemy, hostility (whether war has been declared or not), civil war, rebellion, revolution, insurrection, riot, malicious damage, civil commotion, terrorist acts, sabotage or other blockade or embargo, requisition by any government, regional or local authority, competent regulatory authority, department, council or other authority (whether de jure or de facto) or any agency thereof, acts and regulations of any government or supra national bodies or authorities, exercise of military or usurped powers or any law, statute, rules, regulation, edict, order, requisition or mandate of any such body, or suspension of trading in any currency, currency devaluations, imposition or changes to foreign exchange controls, moratorium or governmental intervention or restrictions on currency exchange or remittance, whether having the force of law or not or any act of God, fire, flood, frost, storm, explosion, disease epidemic or chemical contamination.

“**GIA**” refers to Gemological Institute of America.

“**GST**” means goods and services tax chargeable pursuant to the Goods and Services Tax Act, Chapter 117A of Singapore, and any similar taxation levied in any jurisdiction by reference to added value, services, turnover or sales.

“**Guidance Note**” refers to a guidance note issued from time to time by the Exchange and/or the Book Depository, as the same may be amended, modified, supplemented or replaced from time to time.

“**House Account**” means an account carried on the books of the Member for:

- (a) the Member;
- (b) a corporation or an entity related or associated to the Member; or

- (c) a director, officer, partner, employee, representative or Registered Person of the Member.

**“House Assets”** means assets belonging to a House Account.

**“House Depository Account”** means a Depository Account opened and maintained by a Member for the benefit of:

- (a) the Member;
- (b) a corporation or an entity related or associated to the Member; or
- (c) a director, officer, partner, employee, representative or Registered Person of the Member.

**“House Funds”** means funds belonging to a House Account.

**“HRD”** refers to HRD Antwerp.

**“IGI”** refers to International Gemological Institute.

**“Immobilised”** means the Physical Diamond that is safekept by the Physical Depository in a Vault and is recorded in the Book Depository Register and can only be sold on the Exchange Trading System.

**“Indemnitees”** means collectively, the Exchange, the Book Depository, and any of their related corporations and any of their respective directors, officers, employees, representatives, third party services providers or agents, and **“Indemnified Persons”** shall collectively refer to any of the Exchange, the Book Depository, and any of their related corporations and any of their respective directors, officers, employees, third party service providers or agents.

**“Intellectual Property Rights”** means all copyright, patents, utility innovations, trade marks and service marks, geographical indications, domain names, layout design rights, registered designs, design rights, database rights, trade or business names, rights protecting trade secrets and confidential information, rights protecting goodwill and reputation, and all other similar or corresponding proprietary rights and all applications for the same, whether presently existing or created in the future, anywhere in the world, whether registered or not, and all benefits, privileges, rights to sue, recover damages and obtain relief or other remedies for any past, current or future infringement, misappropriation or violation of any of the foregoing rights.

**“Laboratory”** refers to such diamond certification laboratory that is recognised and approved and prescribed by the Exchange and the Book Depository from time to time for the purpose of Consignments.

**“Liabilities”** shall have the meaning set out in Rule 710.5(a).

**“Listed Product”** means a Product listed for sale on the Exchange Trading System.

**“Listing Date”** means the first date in which a Product approved by the Exchange is made available for trading.

**“Losses”** means any liabilities, losses (including but not limited to losses of earnings, diminution in value, loss or damage to property, loss of profits, business, goodwill or opportunity, or otherwise), damages, costs (including legal costs on a full indemnity basis), taxes, fines, penalties, judgments, interest, awards, expenses, fees, charges, actions, suits, proceedings, claims, claims for an account or equitable compensation or equitable lien, any other causes of action, demands or remedy of any kind whatsoever, in each case whether or

not foreseeable, and in each case whether arising by law, contract, tort, voluntary settlement, in equity or otherwise.

“**Manual**” refers to manuals issued from time to time by the Exchange and/or the Book Depository, as the same may be amended, modified, supplemented or replaced from time to time.

“**Market**” refers to a market accessible via the Exchange Trading System for a specific category of Products.

“**Member**” refers to a Person admitted to membership of the Exchange and the Book Depository in accordance with these Rules, and “**Membership**” shall be construed accordingly.

“**Member Specific Diamond**” in relation to a Member, refers to Single Stones and/or allocated Diamond Baskets that are the Member’s own proprietary assets and reflected as credited to the Member’s House Depository Account.

“**Negotiated Matching**” means Orders from Purchasers and Vendors being matched during a Trading Period based on a specific GIA Certificate and price.

“**Net Credit Amount**” shall have the meaning set out in Rule 805.2.

“**Net Debit Amount**” shall have the meaning set out in Rule 805.1.

“**Net Settlement Amount**” for any Settlement Date in relation to Contracts allocated to a Member’s House Account or Customer Account (as the case may be) refers to the aggregate purchase price for all Buying Member Transactions allocated to the House Account or Customer Account (as the case may be), after netting off the aggregate sale price for all Selling Member Transactions allocated to the House Account or Customer Account (as the case may be), entered into by a Member due for settlement on that Settlement Date.

“**Net Trading Limit**” shall have the meaning set out in Rule 711.1.

“**Non-Consigning Vendor**” shall have the meaning set out in Rule 806.1(a).

“**Novated Contract**” shall have the meaning set out in Rule 804.2(b).

“**Novation**” shall have the meaning set out in Rule 804.1.

“**Obligations**” in relation to a Member refers to all Losses, Liabilities, fees and amounts which are or may become due and payable by the Member to the Book Depository and the Exchange.

“**Offered Quantity**” is the then-current unfulfilled quantity of an Order entered by a Vendor, as more particularly described in the relevant Product Specifications.

“**Order**” refers to a sell order or buy order for a particular Product listed on the Exchange Trading System, submitted by a Member on the Exchange Trading System during Trading Period.

“**Original Contract**” shall have the meaning set out in Rule 713.1(b).

“**Payment Default**” shall have the meaning set out in Rule 805.1.

“**Person**” refers to any individual, corporation, partnership, statutory body, government ministry, association, trust or entity as the context admits or requires.

“**Physical Depository**” refers to Malca Amit and its group of companies, or such other person(s) that the Book Depository may from time to time appoint to safe-keep the Physical Diamonds.



**“Physical Diamond”** means either a Single Stone or a Diamond Basket.

**“Pool”** means a mass or collection of Diamond Baskets of the same Product Specifications (a) which is contained in a designated area in the Singapore Vault used exclusively for the storage of such Diamond Baskets; and (b) where any one of such Diamond Baskets in the designated area is interchangeable with any other Diamond Basket in such designated area.

**“Product”** refers to:

- (a) one or more Diamond Baskets representing an undivided share in a particular Pool;
- (b) one or more Diamond Baskets identified by the unique number allocated to each basket, other than a Diamond Basket set out in (a) above;
- (c) one or more Single Stones; or
- (d) such other product,

which may from time to time be available for trading on the Exchange Trading System in the relevant Market, based on such criteria as may be prescribed by the Exchange and the Book Depository from time to time.

**“Product Specifications”** refers to the specifications of a Product as may be prescribed by the Exchange and the Book Depository from time to time.

**“proprietary trading”** means trading for or on behalf of a proprietary account, and **“proprietary trades”** shall be construed accordingly.

**“Proprietary Trading Member”** means a Member who is admitted as a Proprietary Trading Member under these Rules.

**“Purchaser”** means a Member who enters an Order to buy a Listed Product, and if Matched, who enters into an Original Contract to purchase such Listed Product (and where applicable, such quantities of Listed Product as determined by the Continuous Matching Algorithm), during the Trading Period.

**“related corporation”** shall have the meaning given to it in section 4(1) of the Companies Act.

**“Registered Operator”** means an individual registered with the Exchange as a Registered Operator to enter an Order on the Exchange Trading System on behalf of a Member.

**“Registered Person”** means an individual registered as a Registered Operator or Registered Representative.

**“Registered Representative”** means an individual registered with the Exchange as a Registered Representative to deal in Products on behalf of a Member.

**“Relevant Member”** refers to a Member who is required to make payment of a settlement sum under Rule 901.2(f)(ii) or Rule 902.6(b), as the case may be.

**“Re-Novated Contract”** shall have the meaning set out in Rule 807.1.

**“Re-Novation”** shall have the meaning set out in Rule 807.1.

**“Remote Broker Member”** means a Broker Member who does not have a physical presence in Singapore and who carries on business and operates in a foreign jurisdiction.

**“Required Quantity”** is the then-current unfulfilled quantity of an Order entered by a Purchaser, as more particularly described in the relevant Product Specifications.

**“Rules”** refers to the Exchange Rules and the Depository Account Rules, each as supplemented, applied, interpreted or implemented by Circulars, Guidance Notes and Manuals, each as the same may be amended, modified, supplemented and replaced from

time to time. References to these Rules shall include the Depository Account Rules and all Circulars, Guidance Notes and Manuals.

“**SD Bank Guarantee**” shall have the meaning set out in Rule 710.1.

“**SD Trust Account**” shall have the meaning set out in Rule 710.1.

“**SDiX Group**” means the Exchange, the Book Depository and any of their respective subsidiaries, related companies, holding companies, branches, head office, representative offices, associated companies or any entity (whether or not corporate) owned wholly or partly by any of the aforesaid, and includes their respective successors and assigns.

“**Security Deposit**” refers to the security deposit to be placed by the Member with the Book Depository on trust for a Member on such terms and in accordance with Rule 710.

“**Selling Member Transaction**” shall have the meaning set out in Rule 804.2(b).

“**Settlement Bank**” shall mean such bank(s) licensed in Singapore as the Book Depository shall prescribe from time to time.

“**Settlement Date**” shall have the meaning set out in Rule 802.1.

“**Settlement Statement**” shall have the meaning set out in Rule 803.1.

“**SFA**” means the Securities and Futures Act, Chapter 289 of Singapore.

“**Singapore Vault**” shall mean the Vault premises of the Physical Depository, which the Book Depository has appointed, in Singapore.

“**Single Stone**” means a single diamond which conforms to a particular Product Specifications and identified by a certificate number issued by the GIA or such other Laboratory as the Exchange and the Book Depository may prescribe from time to time.

“**Spot Price**” refers to the current market price.

“**S\$**” refers to Singapore dollars.

“**Trading Day**” means a day on which the Exchange is open for trading via the Exchange Trading System.

“**Trading Period**” shall have the meaning set out in Rule 708.1.

“**US\$**” refers to United States dollars.

“**Vault**” means such vault or secured facility used by the Physical Depository to store and safe-keep the Physical Diamond on the instructions of the Book Depository, as may be approved from time to time by the Book Depository and the Exchange, and in such jurisdiction as may be determined from time to time by the Book Depository and the Exchange.

“**Vendor**” means a Member who enters an Order to sell a Listed Product, and if Matched, who enters into an Original Contract to sell such Listed Product (and where applicable, such quantities of Listed Product as determined by the Continuous Matching Algorithm), during the Trading Period.

## **102. Interpretation**

102.1 These Rules are intended to ensure a fair, orderly and transparent market on the Exchange Trading System and to facilitate the settlement of Contracts and the regulation of delivery of Products. In the observance of these Rules and in areas or circumstances not explicitly

covered by any Rule, all Members and Registered Persons shall guide themselves not only by the letter but also the spirit of these Rules.

- 102.2 Words and expressions used in the singular shall include the plural and vice versa; those in the masculine gender shall include the feminine and the neuter genders, and vice versa; and those importing individuals shall include corporations and bodies of persons, and vice versa.
- 102.3 Headings are inserted for convenience only and shall be ignored in construing these Rules.
- 102.4 Any reference to any statute, statutory instrument, regulations, set of rules, notices, directives, circulars, practice notes, codes, orders and guidelines shall be references to such statute, statutory instrument, regulations, set of rules, notices, directives, circulars, practice notes, codes, orders and guidelines as from time to time be amended, re-enacted or replaced and to any codification, consolidation, re-enactment or substitution thereof as from time to time in force.
- 102.5 Notwithstanding anything to the contrary, where any right of the Exchange and/or the Book Depository is specified to be at its “discretion”, its “absolute discretion” or “its sole and absolute discretion”, this shall be construed to refer to the “sole, unfettered and absolute discretion” of the Exchange and/or the Book Depository; any determination to be made by the Exchange and/or the Book Depository or any exercise by the Exchange and/or the Book Depository of any rights or entitlement may be made at the sole, unfettered and absolute discretion of the Exchange and/or the Book Depository and, in every case, shall be conclusive and binding on the Member.
- 102.6 The word “includes” or “including” as used in these Rules shall be construed to mean “includes without limitation” or, as the case may be, “including without limitation”.
- 102.7 Any reference to time in these Rules is to Singapore time.
- 102.8 Any reference to “certificate” in relation to a Physical Diamond shall mean such report or certificate issued by a Laboratory in respect of such Physical Diamond.
- 102.9 Any reference to “price” in relation to a Product shall mean the full purchase consideration payable to purchase the Product.
- 102.10 A “**connected person**” shall have the meaning given to it in section 2(1) of the SFA.
- 102.11 Unless the context otherwise requires, any reference in these Rules to a person associated with another person shall be construed in accordance with section 3 of the SFA.
- 102.12 References in these Rules to “**Account**” shall mean one of the following: House Account or Customer Account, or where the context so requires, the Depository Account (whether the House Depository Account or Customer Depository Account) held by or for the relevant Member.
- 102.13 In these Rules, unless the context otherwise requires:
- (a) a person has an interest in a Product if it or he has authority (whether formal or informal, or express or implied) to dispose of, or to exercise control over the disposal of, the Product;
  - (b) a person has an interest in in an account if it or he has discretion over the account.

For this purpose, it is immaterial that the authority of a person to dispose of, or to exercise control over the disposal of, a Product or the discretion of a person over an account is, or is capable of being made, subject to restraint or restriction.